

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master in Equity

Case No. 2016-000636

RECEIVED
SEP 28 2016
SC Court of Appeals

Norwest Properties, LLC, ... Appellant,

v.

Michael T. Strebler, Lisa W. Strebler, and Paul J. Mitchell, ... Defendants,

Of Whom, Michael T. Strebler and Lisa W. Strebler are the Respondents.

RECORD ON APPEAL

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master in Equity

Case No. 2005-CP-40-06132

RECEIVED
MAR 25 2016
SC Court of Appeals

Norwest Properties, LLC, ... Appellant,

v.

Michael T. Strebler, Lisa W. Strebler, and Paul J. Mitchell,

Of Whom, Michael T. Strebler and Lisa W. Strebler are Respondents.

NOTICE OF APPEAL

Norwest Properties, LLC, ("Appellant") appeals the Order of the Honorable Joseph M. Strickland dated February 29, 2016, and filed March 1, 2016, granting Michael T. Strebler and Lisa W. Strebler's ("Respondents") motion to approve amount of damages. Appellant received written notice of entry of this Order on March 7, 2016. This Notice is timely filed. A copy of the Order appealed from is attached to this Notice.

[Signature block appears on the following page.]

Dated: March 23, 2016

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CASE NO.: 2005-CP-40-06132

ORDER GRANTING

DEFENDANTS STREBLERS

MOTION TO APPROVE

AMOUNT OF DAMAGES

RECEIVED

MAR 25 2016

SC Court of Appeals

Norwest Properties, LLC,)

)

Plaintiff,)

vs.)

)

Michael T. Strebler, Lisa W.)

Lisa W. Strebler and Paul J.)

Mitchell,)

Defendant(s))

RICHLAND COUNTY
FILED
2016 MAR -1 PM 2:46
JEANNETTE W. HOBBS
C.C.P. & G.S.

The matter before the court is Michael and Lisa Streblers' Motion to approve the amount for costs and damages ordered by the undersigned in the above referenced matter. The Streblers are the prevailing parties.

The Plaintiff and the Streblers entered into a contract for the sale of real property in August of 2005. The contract was the basis for litigation commenced by the plaintiff in October of 2005. The Streblers, in their Answer, requested costs and damages, including reimbursement of property taxes on the property at the issue for the years 2006, 2007, 2008 and 2009, as well as the holding costs of the property. Costs and damages are allowed by the contract between the Plaintiff and the Streblers.

The trial was held on November 9, 2009, Michael Strebler testified regarding the following costs and damages incurred during the litigation: (1) Property taxes, (2) Homeowners association fees, (3) Carrying costs of the property, and (4) Cost of pro se

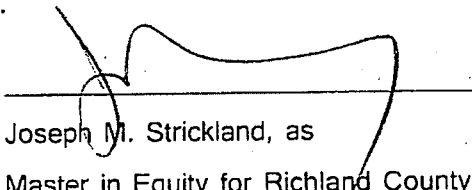
*Rec'd 3-7-16
Regular Mail*

representation in litigation:

A final order was issued on May 19, 2010. The undersigned ruled the Plaintiff breached the Contract by not terminating the contract in writing nor continuing with the closing that was scheduled for August 31, 2005. The Court ordered the Streblers' be awarded costs and damages in this case in accordance with the contract, and that the Streblers would submit those amounts to the Court for final determination of the amount of this award.

On June 2, 2010, the Plaintiff filed a Motion to Reconsider, Alter or Amend Judgment pursuant to Rule 59(e), SCRPC. The motion was heard on November 8, 2010. An order denying Plaintiff's Motion to Reconsider, Alter or Amend Judgment was signed on December 31, 2010 and filed by the Clerk of Court for Richland County on January 12, 2011. More than thirty days has passed since the Court's ruling on Plaintiff's motion to reconsider. In accord with evidence submitted by the Streblers, this Court awards damages to the Streblers in the amount of \$40,388.00. Pro-se litigants are not entitled to attorney's fees.

IT IS SO ORDERED.



Joseph M. Strickland, as
Master in Equity for Richland County

Columbia, South Carolina
February 29, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
)
NORWEST PROPERTIES, LLC,)
)
Plaintiff,)
)
vs.)
)
MICHAEL T. STREBLER,)
LISA W. STREBLER and)
PAUL J. MITCHELL,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

CA#: 2005-CP-40-6132

ORDER DENYING PLAINTIFF'S MOTION
TO RECONSIDER, ALTER OR AMEND
JUDGMENT

2011 JAN 12 PM 3:08
JEANETTE W. NOBRIDE
C.C.P. & G.S.

This matter is before me for a ruling on Plaintiff's motion to reconsider, alter or amend judgment pursuant to Rule 59(e) SCRCP. For the reasons set forth below, Plaintiff's motion is denied.

The bench trial of this case occurred on November 9, 2009, before this Court. This Court entered judgment for Defendants on May 19, 2010, and made the following conclusions of law:

1. The Plaintiff breached the contract for sale;
2. Plaintiff has failed to carry its burden of proof to justify this Court compelling specific performance;
3. The equitable maxim of "he who seeks equity must do equity" precludes the Plaintiff from being granted specific performance by this Court;
4. Plaintiff has asked the Court to re-write the contract to add an additional remedy, which is prohibited; and
5. Defendant Mitchell has an easement to the portion of Strebler's land upon which

his driveway and fence are constructed, and as such Plaintiff's demand that the driveway and fence be removed is denied.

Further, this Court ordered the following:

1. That the Court finds for the defendants, and Plaintiff's causes of action for breach of contract and specific performance are denied;
2. That Mitchell has an easement as reflected on Plaintiff's Trial Exhibit Number 4.
3. That Strebler be awarded his costs and damages in this case in accordance with Paragraph 20 of the Contract.

Thereafter, Plaintiff filed its Motion to Reconsider, Alter or Amend Judgment on June 2, 2010. Plaintiff's Motion set forth no grounds for the Motion. Defendants filed Memoranda in opposition to Plaintiff's Motion based on Plaintiff's failure to satisfy the pleading requirements for filing a Rule 59(e), SCRCF, motion. On June 25, 2010, Plaintiff filed a memorandum in support of its Motion to Reconsider identifying two grounds in support of the Motion:

1. The Court's Order erred in concluding Defendant Strebler stood ready to execute the contract because the Defendant Strebler could not and did not provide marketable title and hence breached the contract.

2. The Court's Order of May 19, 2010, erred in concluding that Specific Performance was not an appropriate remedy based on the evidence.

A hearing was held on November 8, 2010, on Plaintiff's motion. Brian Boger, Esquire, represented the Plaintiff; defendant Michael Strebler appeared *pro se*, and Andrew Melling, Esquire, appeared on behalf of Paul Mitchell. At the hearing, Plaintiff's counsel, over defendants' objections, raised several other criticisms of the Court's Order that had not been mentioned in either Plaintiff's Motion, or Memorandum in Support of its Motion for Reconsideration. Plaintiff

objected to the Court's use of the term "easement" throughout the Court's Order, rather than the term "encroachment". The Court found that defendant Mitchell did in fact have an easement to the piece of property at issue, and as such, the use of the term "easement" in the Order was appropriate.

The Plaintiff's other objection focused on page 6 of the Order, and involved the allegation that the Court failed to discuss that specific performance was a remedy available to the Plaintiff. The Court found that when the Plaintiff was made aware of the easement held by defendant Mitchell, that paragraph 8 of the contract provided two options to the Plaintiff. The first was to terminate the contract, and the second was to proceed with the purchase subject to the easement held by Mitchell. The remedy of specific performance was not at issue because the Court found no breach of contract by the defendants.

Set forth below are the Court's findings on each of the points raised in Plaintiff's Motion and Memorandum in Support of its Motion. As an initial matter, Plaintiff did not allege in its Motion, or Memorandum in Support, that there were any issues that had been raised at trial and not ruled on. Nor did Plaintiff allege that the Court's Order ruled on issues that had not been raised at trial. Nor did Plaintiff allege that the Court's ruling was unclear. Plaintiff's Motion simply asserts that based on the evidence presented at trial, that the Court came to the wrong conclusion. The Court finds that there was sufficient evidence presented at trial to support the Court's findings and conclusions as set forth in the Court's Order of May 19, 2010. The Court's Order explains the basis for its rulings, and as such, is incorporated herein.

Plaintiff's Claim That the Court Erred in Finding Defendant Strebler
Did Not Have Marketable Title

The Plaintiff at the hearing on this motion, argued that defendant Strebler breached the contract for sale of the subject property, because he did not have marketable title at the time of the sale. This issue was addressed at trial, and ruled on in the Court's Order of May 19, 2010.

Defendants argued, and the Court agrees, that defendant Strebler did have marketable title to the subject property. As stated in the Court's order of May 19, 2010, and as asserted by defendants at the hearing, Keith Norville (the owner of the Plaintiff business) testified at trial that the property was marketable. His testimony was that it just was not marketable to him.

Further, as provided by the Supreme Court of South Carolina in *Edisto Island Historical Society, Inc. v. Gregory*, 354 S.C. 198 (2003), an encumbrance, or in this case an easement, does not render the title to property unmarketable, when the buyer is aware of the encumbrance:

Moreover, where the purchaser is aware of an encumbrance and is willing to purchase, title is marketable. (marketable title is that which a reasonable purchaser, well-informed as to the facts and their legal significance, is ready and willing to accept).

Id. at 202. (internal citations omitted). As established at trial in the case at hand, the Plaintiff was aware of the easement held by defendant Mitchell, as it was Plaintiff's surveyor who revealed it to him prior to the closing on the sale. It was at that point, as already discussed in the Court's Order of May 19, 2010, that paragraph 8 of the sales contract came into effect, and gave the Plaintiff two options. The Plaintiff could have either terminated the contract, or proceeded with the purchase of the property subject to the easement held by defendant Mitchell. As Plaintiff did neither, it breached the contract. The evidence in support of the Court's findings that it was the Plaintiff in this case that breached the sales contract, is detailed in the Court's Order of May 19, 2010.

Plaintiff's Claim That the Court Erred in Concluding That Specific
Performance Was Not An Appropriate Remedy

The Plaintiff's second argument is that the Court's Order of May 19, 2010, erred in concluding that specific performance was not an appropriate remedy based on the evidence. As the Court has concluded that the Plaintiff breached the contract, and defendant Strebler did not

breach the contract, the Plaintiff is not entitled to specific performance. That remedy would only be considered if the Court found that defendant Strebler breached the contract.

Beyond the fact that the Court finds no breach of the contract by defendants, what was argued at trial, and restated at the hearing on this motion, by the defendants, is that the Plaintiff fraudulently induced defendant Strebler to enter into the contract by misrepresenting that the earnest money check had been written and deposited into the Russell & Jeffcoat trust account. The Court is in agreement with Defendants' position on this, as reflected in the Order of May 19, 2010. As such, the equitable remedy of specific performance would not be appropriate.

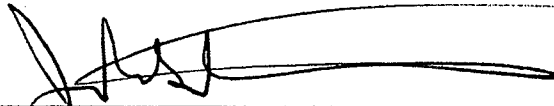
Further, defendants argue, and the Court agrees, that the Plaintiff never performed his part of the contract which is required for specific performance. One example of this is that Plaintiff violated paragraph 4 of the contract by failing to provide proof of available funds. No proof has ever been provided that the Plaintiff has the financial capability of paying the \$175,000.00 for the property. The basis for the Court's finding that specific performance is inapplicable has been addressed in detail in the Court's Order of May 19, 2010, and those findings and conclusions are incorporated herein.

THEREFORE, IT IS HEREBY ORDERED, that Plaintiff's Motion to Reconsider, Alter or Amend Judgment is denied in its entirety.

IT IS SO ORDERED.

Columbia, South Carolina

December 31, 2010.



Joseph M. Strickland
Master-in-Equity for Richland County

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2005-CP-40-6132_

Norwest Properties, LLC,

Michael T. Strebler, Lisa w. Strebler and Paul J. Mitchell,

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:☐

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐

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

☐

ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a) SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other

☐

ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

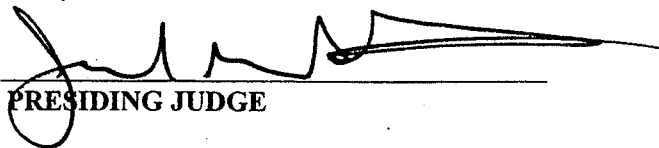
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order. (Formal order to follow)

☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this 19th day of May, 2010.


 PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Brian Boger, Esquire
 ATTORNEY(S) FOR THE PLAINTIFF(S)

Andrew G. Melling, Esquire
 ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride
 CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

CA#: 2005-CP-40-6132

NORWEST PROPERTIES, LLC,)

Plaintiff,)

vs.)

MICHAEL T. STREBLER,)
LISA W. STREBLER and)
PAUL J. MITCHELL,)

Defendants.)

PROPOSED ORDER

JEANETTE W. McFARLAND
C.C.P. & C.S.
2010 MAY 20 AM 9:05

Date of Trial: November 9, 2009
Presiding Judge: Honorable Joseph M. Strickland
Plaintiff's Counsel: Brian Boger, Esquire
Defendant Mitchell's Counsel: Andrew G. Melling, Esquire
Defendant Strebler's Counsel: *Pro Se*

The above-captioned action was tried before me in Richland County, South Carolina. Present at the trial were the following: Brian Boger, Esquire, attorney for the Plaintiff; Defendant Michael Strebler appearing *pro se*; and Andrew G. Melling, Esquire attorney for Defendant Paul Mitchell.

The Plaintiff in this action has asserted two causes of action: (1) breach of contract; and (2) specific performance. Plaintiff has asked this Court to find that Defendant Strebler breached the contract and has asked for the sole remedy of specific performance. As part of that specific performance, Plaintiff has asked the Court to order Defendant Mitchell to remove a driveway and fence he constructed in 2001 with the express permission of the landowner, Defendant Strebler.

Defendant Strebler in his Answer requested costs and damages, including property taxes on the property at issue for the years 2006, 2007, 2008 and 2009, as well as the holding costs of such property. Such costs and damages are supported by Paragraph 20 of the Contract between Plaintiff and Defendant Strebler. Defendant Mitchell moved at trial to have the pleadings conform to the evidence so he could add a demand for attorney's fees, such motion to amend pleadings was granted. Defendant Mitchell moved at trial for sanctions in the form of Defendant Mitchell's attorney's fees, for discovery abuses on the part of the Plaintiff. Defendant Mitchell has withdrawn his motions for attorney's fees and sanctions.

FINDINGS OF FACT

In 1999, Defendant Mitchell ("Mitchell") was the owner of Lot 5 in Governor's Hill in Columbia, South Carolina, and Defendant Strebler ("Strebler") was the owner of Lots 6 and 7. Mitchell's Lot 5 and Strebler's Lot 6 are contiguous, sharing a property line.

In 2000, Mitchell began construction of his home on Lot 5. As part of that construction process, Mitchell had to obtain approval by Fred Delk with Columbia Development Corporation (the Governor's Hill subdivision Developer), for all construction plans, including landscaping and driveway placement. Towards the end of 2000, Mitchell was formulating his landscaping plan and configuring the layout of his driveway. Mitchell's desire was to have a one-car parking pad on the right side of his property. However, to accomplish this, Mitchell needed to expand his driveway approximately 5 feet onto Strebler's Lot 6.

In late 2000, Mitchell, Strebler and Mr. Delk, met at Lot 6 to discuss Mitchell's driveway placement, and the layout of the house that Strebler was planning on building

on his Lots 6 and 7. What was agreed to, was that Mitchell's driveway could extend approximately five feet on to Strebler's Lot 6 at the road frontage. From that point, a line would angle straight back and tie into the original property line at the back of Mitchell and Strebler's Lots. This would in effect create a long triangular sliver of land that Strebler granted Mitchell express permission to use. It was discussed and understood that the front portion of that sliver of land would be used for Mitchell's parking pad and from the top of the parking pad a temporary fence would be constructed along the new line to the back of the Property. This easement is reflected on Plaintiff's Trial Exhibit 4, which is a survey performed August 29, 2005 by Inman Surveying Company (See Exhibit 1 attached hereto).

Mr. Delk testified at trial that at that meeting in 2000, Strebler granted Mitchell express permission to build his driveway and fence where they are both presently located. Following that meeting, Mr. Delk gave his approval for the building of the parking pad and fence on Strebler's property. Mr. Delk testified that Mitchell's driveway and fence would not be in their present location without his approval on behalf of Columbia Development Corporation. Prior to trial, Mr. Delk had produced architectural drawings that reflect the driveway easement, that had been retained in his files. (See Exhibit 2 attached hereto: Defense Trial Exhibit 2). The easements are not recorded elsewhere.

After obtaining Strebler's express permission, and in reliance upon it, Mitchell had a brick driveway pad constructed with a portion of it located on Strebler's property, and a fence extending from the head of the parking pad to the back of Mitchell's property. Further, in reliance on Strebler granting him this easement, Mitchell had a

pool deck constructed with brick planter boxes that fill in the land on Mitchell's side of the fence. Strebler visited his property subsequent to Mitchell's construction and never expressed any objection to Mitchell's driveway, fence or pool deck layout. Strebler testified that he granted Mitchell a property right to that sliver of his property in 2000, and, that he still believes that Mitchell has a property right or easement to that portion of Lot 6.

In 2005, four years after Mitchell constructed his driveway pad and fence on Strebler's property, Strebler had chosen not to build a home on Lot 6, and put the Lot on the market for sale. Norwest Properties, which is fifty percent owned by Mr. Keith Norville, submitted an offer on August 8, 2005 to purchase Lot 6. Keith Norville, who is also a real estate agent with Russell & Jeffcoat, acted as the buyer's agent for Norwest Properties. The contract price was \$175,000. The Contract signed by Mr. Norville on behalf of Norwest Properties was dated August 8, 2005, and represented that \$5,000 earnest money had been paid by check, and was being held in trust by Russell & Jeffcoat. However, the \$5,000 earnest money check had not been written on August 8, 2005, and was in fact not written until August 11, 2005. On August 10, 2005, Strebler, who was being represented by Dana Wolfe of The Wolfe Company, in reliance on the representation that the earnest money check was being held in trust by Russell & Jeffcoat, signed the Contract for Sale. On August 11, 2005, Mr. Norville wrote a \$5,000 earnest money check that was deposited into the Russell & Jeffcoat trust account on

August 15, 2005.¹

Paragraph 4 of the Contract required the Plaintiff to provide Strebler with proof of available funds within ten days from the date Strebler signed the contract. The Plaintiff never provided such proof of available funds, and admitted to this contract breach at trial.

The closing date set in the contract was for August 31, 2005. On August 29, 2005, a survey was performed (see Plaintiff's Trial Exhibit 4) which revealed to Plaintiff the location of Mitchell's driveway and fence on Strebler's property.² Thus, prior to closing, Plaintiff gained actual knowledge of Mitchell's easement. Plaintiff refused to go forward with the closing on the property until such time as Strebler had Mitchell's driveway and fence removed from his property. Strebler refused to order Mitchell to remove the fence and driveway. On August 31, 2005, the Contract expired. Paragraph 13 of the Contract provides that time is of the essence, and no extensions of time to close on the Contract were granted by Strebler.

Paragraph 8 of the Contract addresses the scenario that presented itself in the case at hand. Paragraph 8 addresses the options a buyer has, should a survey determine that the property does not meet certain specifications. It provides that:

¹ An issue regarding the payment of Earnest Money by Plaintiff arose at trial. On April 29, 2009, Plaintiff responded to Defendant Strebler's Request to Produce documents. Strebler requested: "9. Proof of the payment into escrow of the required contractual amount." Plaintiff's response was "Plaintiff is not in possession of the check for the earnest monies. This is held by the Defendant's real estate agency." As such, Plaintiff never produced any documentation that the earnest money had been paid or deposited in escrow. At trial Plaintiff testified in contradiction to its discovery response, and stated that the earnest money check had been deposited in the Russell & Jeffcoat trust account. Plaintiff's counsel informed the court that he had filled out the discovery responses without consulting his client, and made an incorrect discovery response. Over Defendants' objections, the Court allowed Plaintiff during trial to go and locate witnesses and documents to support Plaintiff's testimony that the earnest money check had been written and was deposited in the Russell & Jeffcoat trust account.

² Strebler testified at trial that in the five years since 2000, when he had granted Mitchell permission to build his fence and driveway on Strebler's property, that he had forgotten he had done so when he put his lot on the market in 2005.

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 minimum specifications _____ (dimensions, sq. ft., acres), Purchaser may elect to **terminate the contract** by notifying seller or seller's agent in writing of Purchaser's intent to terminate **or** Purchaser shall **complete this sale** according to the terms and conditions of this contract.

(Emphasis added). In the case at hand, Plaintiff did in fact obtain a survey that found that the property did not meet the required dimensions, square feet, and acres, and as such, Plaintiff had two contractually provided options. First, Plaintiff had the option to terminate the Contract upon written notice. Second, Plaintiff had the option of going ahead with the sale with Mitchell's easement in place. Despite Strebler being ready and willing to perform in accordance with the Contract, Plaintiff failed to exercise either option by the date of closing set forth in the contract.

CONCLUSIONS OF LAW

1. **Plaintiff's Cause of Action for Specific Performance as a Remedy for Breach of Contract is not supported by the evidence presented at trial.**

A. **The Plaintiff Breached the Contract for Sale.**

Plaintiff is seeking specific performance as its sole remedy for an alleged breach of contract by Strebler. Plaintiff's demand is based on Paragraph 20 of the Contract. Paragraph 20, entitled "Default", provides that "[u]pon default by Seller, Purchaser shall have the option of suing for damages or specific performance" It was proven at trial, that Strebler stood ready to perform in accordance with the Contract on August 31, 2005, and that it was in fact the Plaintiff that breached the Contract for

Sale. As such, Strebler was never in default of the Contract, and Plaintiff is not entitled to specific performance.

Plaintiff's various breaches are as follows: Paragraph 3 of the Contract includes a representation on behalf of Plaintiff that a \$5,000 earnest money check was being held in trust by Russell & Jeffcoat. What was revealed at trial was that on August 8, 2005 this was not true, and the check was in fact not written until August 11, 2005. This misrepresentation was relied upon by Strebler who testified that he would not have signed the Contract on August 10, 2005 had he known the earnest money check had not been written yet. The broker-in-charge of Russell & Jeffcoat was called to trial, and testified that the standard in the industry is for the buyer's real estate agent (in this case Mr. Norville) to take possession of the earnest money check at the time the proposed buyer signs the Contract. He testified that he would not have handled this transaction the way that Mr. Norville did. As such, Plaintiff's misrepresentation amounts to a breach of Paragraph 3 of the Contract.

Paragraph 4 of the Contract required that in the case of a cash transaction such as this, that the Purchaser provide proof of available funds within 10 days of the seller signing the contract. The Plaintiff never provided the proof of available funds. To this date, Plaintiff has not provided proof that it had available funds to close the transaction in August 2005, or has available funds now. This is an additional breach of the Contract by the Plaintiff.

Paragraph 8 provided that upon a survey revealing that the property failed to meet minimum specifications, that the Purchaser could either (1) terminate the contract in writing, or (2) complete the sale. Prior to the closing, the

Plaintiff did in fact obtain a survey that showed that the property failed to meet minimum specifications due to the sliver of property upon which Mitchell's driveway and fence were constructed. The Plaintiff breached Paragraph 8 of the Contract by neither terminating the Contract in writing nor continuing with the closing that was scheduled for August 31, 2005. In contrast, Strebler stood ready and willing to perform according to the Contract on August 31, 2005. On that date, the Contract expired. Paragraph 13 of the Contract provides that time is of the essence, and no extensions of time to close on the Contract were granted by Strebler.

Paragraph 11 of the Contract provides that:

Conveyance shall be made **subject to all easements** as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. (Emphasis added).

Keith Norville (the owner of Plaintiff Norwest Properties) testified that while Mitchell's easement makes the property "unmarketable" to him, it does not render the property "unmarketable" to others. Clearly there would be buyers who would be willing to purchase Lot 6 Governor's Hill subject to Mitchell's very limited use of a sliver of the property along the property border. Plaintiff became aware of the easement prior to closing on the property, and as stated above, could have either terminated the contract in writing, or continued with the closing on August 31, 2005, subject to Mitchell's easement, that did not render the property unmarketable.

As Strebler stood ready to perform in accordance with the Contract on August 31, 2005, he was not in default of, and did not breach, the Contract. According to Paragraph 8 of the Contract, the Plaintiff could have either terminated the Contract in writing after discovering Mitchell's easement, or it could have gone forward

with the sale scheduled for August 31, 2005 subject to the easement. As Plaintiff did neither, the Plaintiff breached the Contract.

Therefore, the Court finds no breach of contract on the part of either Defendant, and as such the Court finds for the Defendants on Plaintiff's claims for breach of contract and specific performance.

B. Plaintiff Has Failed to Carry Its Burden of Proof to Justify This Court Compelling Specific Performance.

The South Carolina Court of Appeals in *Lowcountry v. Charleston Southern University*, 376 S.C. 399, 408 (S.C. Ct. App., 2008), found that for a Court to compel specific performance, the Court must find three things: "(1) there is clear evidence of a valid agreement; (2) the agreement has been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his part or has been and remains able and willing to perform his or her part of the contract." *Id.*

Based on the testimony and evidence presented at trial, Plaintiff has failed to meet the first requirement, as there is no clear evidence of a valid agreement. Plaintiff's actions with regard to representations made regarding the payment of earnest money, amount to fraud in the inducement to enter into a contract.

The S.C. Court of Appeals in *Turner v. Milliman*, 381 S.C. 101 (S.C. Ct. App., 2009) stated the elements of a claim of fraud in the inducement:

(1) a representation, (2) its falsity, (3) its materiality, (4) knowledge of its falsity or reckless disregard of its truth or falsity, (5) intent that the representation be acted upon, (6) the plaintiff's ignorance of its falsity, (7) the plaintiff's reliance on its truth, (8) the plaintiff's right to rely thereon, and (9) the plaintiff's consequent and proximate injury.

Id. at 112.³ On August 8, 2005, Plaintiff represented to Strebler, that \$5,000 of earnest money had been paid by check and was being held in trust by Russell & Jeffcoat. That representation was false as the check in fact was not written until August 11, 2005, the day after Strebler signed the Contract. The payment of earnest money required under a contract is a material part of a contract for the sale of property. Mr. Norville knew at the time he filled out the Contract that the \$5,000 earnest money check had not been written, and was not being held in trust by Russell & Jeffcoat. The false representation was made with the knowledge that it would be relied upon by Strebler. Strebler testified to the extent that he had no knowledge that the check had not been written and was not being held in trust by Russell & Jeffcoat. As testified, it was relied upon by Strebler who was the seller of the property, and who had a right to rely on such a representation as it was a basis for his execution of the contract. Finally, Strebler testified he would not have signed the Contract on August 10, 2005 if he had known of Plaintiff's false representation. This has injured Strebler, as had he known of the falsity of the representation, he would not have entered into the Contract, which has resulted in Plaintiffs refusing to close on the property in violation of the Contract. Plaintiff's actions amount to fraud in the inducement, and therefore the Contract is not valid. As such, the Court finds there is no clear evidence of a valid agreement.

The Plaintiff has failed to meet the requirement that he has performed his part, or has been and remains able and willing to perform his or her part of the contract. The Plaintiff failed to provide any proof that it had the ability to pay the \$175,000.00 required under the Contract either in August 2005, or at the time of trial.

³ The S.C. Supreme Court recognized principle that fraud in the inducement of a contract may be asserted as a defense to a claim prosecuted by the person guilty of fraud. *Hatchell v. Jackson*, 290 S.C. 256, 259 (S.C. Ct. App., 1986) (citing *Computing Scales Co. v. Long*, 66 S.C. 379, 44 S.E. 963 (1903)).

The Court of Appeals in *Lowcountry*, elaborated on this requirement: "The party seeking to compel specific performance 'must be able to perform at the exact time he requested specific performance, not some 'reasonable time' in the future.'" *Lowcountry*, at 408. The S.C. Supreme Court in *Ingram v. Kasey's Associates*, 340 S.C. 98 (S.C., 2000) discussed the burden on a Plaintiff seeking specific performance:

At a minimum, Ingram must demonstrate that he was ready and willing to perform his part of the contract (i.e. willing to tender the purchase price) on February 28, 1994, the date the lease expired, or on March 14, 1994, the date he brought the action for specific performance. The record indicates that Ingram was not in a position to pay Kasey's the purchase price for Remy's on either date. . . Ingram admits that prior to February 28, 1994 he did not have the purchase money in any depository account either under his control, his attorney's control, or in any escrow account.

Ingram at 106. Clearly, at a minimum, Plaintiff needed to present evidence to the Court that it had the \$175,000.00 in available funds in August, 2005, as well as at the date of trial when it was asking the Court to order specific performance. No evidence was offered, and as such Plaintiff cannot prove that it had been, and remains able and willing to perform its part of the Contract.

In addition to this general legal principle, Paragraph 4 of the Contract required proof of available funds, as this was a cash transaction. No such proof of available funds was offered by the deadline set in the Contract, or ever. The Court cannot order specific performance when it has no evidence that the Plaintiff would be capable of paying the \$175,000 indicated in the Contract for Sale.

As Plaintiff has failed to satisfy the requirements necessary for a Court to compel specific performance, Plaintiff's demand is denied.

C. The Equitable Maxim of "He Who Seeks Equity Must Do Equity" Precludes the Plaintiff From Being Granted Specific Performance by This Court.

Equity does not favor the granting of specific performance where the Plaintiff has violated the equitable maxim of "he who seeks equity must do equity". *Ingram*, 340 S.C. 98, 107 (S.C., 2000). "The doctrines of unclean hands and equitable estoppel can be used to preclude Ingram from recovering in equity. Unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." *Id.*

On August 8, 2005, Keith Norville serving as the real estate agent for his own company, Norwest Properties, filled out a Russell & Jeffcoat Contract for Sale that stated that \$5,000 of earnest money had been paid by check and was being held in trust by Russell & Jeffcoat. This was a misrepresentation of the facts, as the check was in fact not written until August 11, 2005. That representation by Keith Norville was known to be false by him at the time he wrote it. As testified to by Strebler in this case, he relied upon that statement, and would not have signed the Contract had he known that the earnest money check was not in fact even written, nor held in trust by Russell & Jeffcoat.

The broker-in-charge of Russell & Jeffcoat, where Keith Norville is a real estate agent, testified that the standard in the industry is for the buyer's agent to obtain the earnest money check at the time the proposed buyer signs the contract. He testified he would not have handled the transaction the way that Keith Norville did.

Keith Norville, on behalf of Plaintiff, acted unfairly regarding a material aspect of the contract, the payment of earnest money. Strebler testified he

would not have signed the contract had he known the earnest money check had not been written or given to Russell & Jeffcoat. As such he was prejudiced by this misrepresentation. Plaintiff has come to the Court with unclean hands and is thus denied the equitable remedy of specific performance.

D. Plaintiff Has Asked The Court To Re-write The Contract to Add An Additional Remedy, Which is Prohibited.

The Plaintiff is asking this Court to rewrite the Contract to obtain a remedy not provided for in the Contract. Even should the Court find that Strebler was in default of the Contract, Plaintiff is not simply seeking specific performance in accordance with the terms of the Contract. Plaintiff is asking the Court to compel Strebler to not only sell Plaintiff the property, but to force Mitchell to remove a fence and driveway that Strebler had given him express permission to build in 2000. The S.C. Court of Appeals addressed this issue in *Lowcountry*, 376 S.C. at 411: "Succinctly stated, a court has no authority to rewrite a contract and impose unwanted obligations and terms under the guise of specific performance or judicial construction."

Strebler testified that he cannot convey the land upon which Mitchell's fence and driveway are built, as he believes Mitchell has a property right or easement to it. Specific performance would only consist of conveying that which Strebler can convey. That is not what the Plaintiff is seeking. Plaintiff has asked for a sole remedy, that Strebler be not only forced to sell it the property at issue, but that he be forced to have Mitchell remove a fence and driveway that Strebler gave him express permission to construct five years before the Contract was ever signed. That is more than the contract provides and would require the Court to re-write the Contract,

something it is prohibited from doing. The Court denies Plaintiff's request for specific performance under these terms.

2. **Defendant Mitchell has an easement to the portion of Strebler's land upon which his driveway and fence are constructed, and as such Plaintiff's demand that the driveway and fence be removed is denied.**

The testimony at trial as given by Strebler, Mitchell, and Fred Delk, established that Strebler granted Mitchell express permission to build his driveway and fence in their present location. Strebler testified that he gave Mitchell a "property right" which he also referred to as an "easement". "An easement is a right which one person has to use the land of another for a specific purpose." *Frierson v. Watson*, 371 S.C. 60, 67 (S.C. Ct. App., 2006). Fred Delk testified that a meeting took place in 2000 during which he, Mitchell and Strebler all discussed the easement at issue. Delk testified that as the developer of Governor's Hill, he had to approve the location of Mitchell's fence and driveway before they could be built. Delk produced architectural drawings in this case prior to trial that evidence the driveway easement. "An easement by grant is not required to be recorded to be valid. Although notice is assumed when a document conveying an interest in real property is recorded, recording is not necessary if the buyer has actual notice." *Id.* At 68. Plaintiff gained actual knowledge of the easement prior to closing on the property through the survey dated August 29, 2005, and testified to that fact at trial.

Mitchell's easement also qualifies as an easement by estoppel. It is clearly established that Strebler granted Mitchell express permission to build his driveway and fence in their present location. Mitchell testified that he would not have built his driveway and fence on Strebler's property had he not been granted express

permission. He incurred the expense of building the fence, driveway, and pool area based on Strebler's express grant of permission. Equity recognizes and enforces the easement, particularly as Plaintiff had actual knowledge of Mitchell's use of the land prior to closing on the Contract.

Therefore, the Court finds that Mitchell has an easement for the portion of Strebler's Lot #6 upon which Mitchell built his driveway and fence.

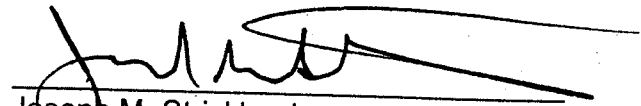
IT IS, THEREFORE, ORDERED,

1. That the Court finds for the Defendants, and Plaintiff's causes of action for breach of contract and specific performance are denied;

2. That Mitchell has an easement as reflected on Plaintiff's Trial Exhibit Number 4 (attached as Exhibit 1 hereto).

3. That Strebler be awarded his costs and damages in this case in accordance with Paragraph 20 of the Contract. Strebler shall submit those actual amounts with supporting documentation to the Court for final determination of the amount of this award.

AND IT IS SO ORDERED.


Joseph M. Strickland
Master-in-Equity for Richland County

Columbia, South Carolina

May 19, 2010.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Norwest Properties, LLC,)
Plaintiff,)

CA:

vs.)

COMPLAINT
(Non-Jury)

Michael T. Strebler and Lisa W.)
Strebler,)
Defendants.)

2005 NOV 18 PM 3:55
CAROLINA A. SMITH
C.C.C. & G.S.
RICHLAND COUNTY

The Plaintiff, complaining of the Defendants, would respectfully show unto this Honorable Court the following:

1. Plaintiff is a limited liability corporation doing business in Richland County, South Carolina.
2. Upon information and belief, Defendants are residents of the State of Ohio.
3. Richland County is the proper venue for this action as it is one involving real estate located in Richland County, South Carolina, and this Court has jurisdiction over the subject matter of this action.
4. That Plaintiff and Defendants have a written contract, which is incorporated herein and referenced as "Exhibit A." Said contract is for the sale of a residential lot commonly known as 6 Governors Hill Street, Columbia, SC 29201 and all improvements thereon, and being described as follows:

All that certain piece, parcel, or lot of land with improvements thereto, if any, situate, lying, and being in the County of Richland, State of South Carolina, and being more particularly shown and delineated as Lot 6, on a plat of Governor's Hill Subdivision prepared by U.S. Group, Inc. dated June 1, 1994, recorded in the Office of the RMC for Richland County in Plat Book 55, at page 3894, said property having such courses, metes, measurements, and boundaries as shown on the aforesaid plat which plat is incorporated herein by reference.

200
300
#1

Derivation: This being the same property conveyed to Michael T. Strebler and Lisa W. Strebler by deed filed in Deed Book D1362, at page 451 in the Office of the RMC for Richland County.

TMS #: 09010-07-19.

FOR A FIRST CAUSE OF ACTION
(Specific Performance)

5. Said contract, which was signed on August 8, 2005, stated the time of closing to be on or before August 31, 2005 and provided a purchase price of One Hundred Seventy Five and no/100 (\$175,000) Dollars.
6. Said contract further provided in Paragraph 11:
"Seller agrees to convey marketable title and to have prepared a proper statutory warranty deed free of encumbrances."
7. Plaintiff, as purchaser, was ready, willing, and able to perform at the closing time; however, upon receipt of the survey, Plaintiff noticed several encumbrances on the property.
8. Plaintiff requested that Defendants remove the encumbrances, but Defendants refused to comply with this request.
9. Plaintiff is informed and believes that it has done all that said contract required of it and therefore believes that said contract is binding on the Defendants.
10. Plaintiff is informed and believes that because all real estate is unique, this Court should inquire into these matters and enforce the contract between Plaintiff and Defendants and order Defendants to honor the contract and perform their obligations thereunder.

11. Plaintiff is further informed and believes that it should be awarded specific performance, requiring the Defendants to sign the deed and sell the property to Plaintiff with marketable title as provided in the contract.
12. Further, Plaintiff is informed and believes that it is entitled to attorney's fees as provided in paragraph 20 of the contract. Paragraph 20 states:

"In any action to enforce the provisions of this contract, the prevailing party...shall be entitled to the award of their costs, including reasonable attorney's fees.

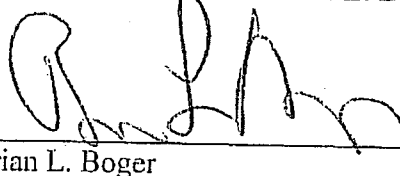
FOR A SECOND CAUSE OF ACTION
(Breach of Contract; Damages)

13. Plaintiff re-alleges each and every allegation set forth above herein verbatim.
14. Plaintiff is informed and believes that Defendants are in breach of said contract because they refused to perform their obligations thereunder.
15. The Plaintiff has been damaged to the extent that it expended money in preparation to fulfill the contract and finance the real property.
16. Plaintiff is further informed and believes that damages should be awarded because of Defendants' breach.
17. Plaintiff is further informed and believes that it is entitled to attorney's fees per paragraph 20 of the contract.

WHEREFORE, Plaintiff, having fully made out its Complaint against Defendants, prays that this Court inquire into the matters herein and issue its Order granting Plaintiff's requests for specific performance, attorney's fees, and damages against the Defendants, and for such other and further relief as this Court deems just and proper.

BBB
#3

LAW OFFICES OF BRIAN L. BOGER



Brian L. Boger
Attorney for the Plaintiff
1331 Elmwood Ave., Suite 210
P.O. Box 65
Columbia, SC 29202
(803) 252-2880

11/17/05
October 21, 2005

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
NORWEST PROPERTIES, LLC,)
)
PLAINTIFF,)
)
VS.)
)
MICHAEL T. STREBLER,)
)
LISA W. STREBLER,)
)
PAUL J. MITCHELL,)
)
DEFENDANTS.)
)
_____)

IN THE COURT OF COMMON PLEAS

CA#: 2005-CP-40-6132

AMENDED COMPLAINT

RICHLAND COUNTY
FILED
2009 FEB 13 PM 12:33
JEANETTE W. McBRIDE
C.C.P. & G.S.

The Plaintiff, complaining of the Defendants, would respectfully show this honorable court the following:

1. Plaintiff is a limited liability corporation doing business in Richland County, South Carolina.
2. Upon information and belief, Defendants Michael T. Strebler and Lisa W. Strebler are residents of the state of Ohio.
3. Upon information and belief, Defendant Paul J. Mitchell is a resident of Richland County, State of South Carolina.
4. Richland County is the proper venue for this action as it is one involving real estate located in Richland County, South Carolina, and this Court has jurisdiction over the subject matter of this action.
5. That Plaintiff and Defendants Strebler have a written contract, which is incorporated herein and referenced as "Exhibit A." Said contract is for the sale of a residential lot commonly known as 6 Governor's Hill Street, Columbia, SC 29201 and all

improvements thereon, and being described as follows:

All that certain piece, parcel, or lot of land with improvements thereto, if any, situate lying and being in the County of Richland, State of South Carolina, and being more particularly shown and delineated as Lot 6, on a plat of Governor's Hill Subdivision prepared by U.S. Group, Inc. dated June 1, 1994, recorded in the Office of the RMC for Richland County in Plat Book 55, at page 3894, said property having such courses, meted, measurements and boundaries as shown on the aforesaid plat which is incorporated herein by reference.

Derivation: This being the same property conveyed to Michael T. Strebler and Lisa W. Strebler by deed filed in Deed Book D1362, at page 451 in the Office of the RMC for Richland County.

TMS#: 09010-07-19.

6. Paul J. Mitchell is a necessary party to this action because his property, purchased from the Defendants Michael and Lisa Strebler, currently encroaches on the land deeded to the Plaintiff by Defendants Strebler. Accordingly, this action must involve both the Defendants Strebler, as the contracting party with the Plaintiff, and Defendant Mitchell as the party currently situated on the offending property.

FOR A FIRST CAUSE OF ACTION
(Specific Performance)

7. Plaintiff re-alleges each and every allegation set forth above herein verbatim.
8. Said contract, which was signed on August 8, 2005, stated the time of closing to be on or before August 31, 2005 and provided a purchase price of One Hundred Seventy Five Thousand and no/100 dollars (\$175,000).
9. Said contract further provided in Paragraph 11:

“Seller agrees to convey marketable title and to have prepared a proper statutory warranty deed free of encumbrances.”

10. Plaintiff, as purchaser, was ready , willing and able to perform at the time of closing; however, upon receipt of the survey, Plaintiff noticed several encumbrances on the property.
11. Plaintiff requested that Defendants Strebler remove the encumbrances, but the Defendants refused to comply with this request.
12. Since that time, the Plaintiff has learned that the property under contract with the Defendants Strebler has had encumbrances placed upon it by the Defendant Mitchell, who is currently the owner of the encumbering property.
13. Plaintiff is informed and believes that it had done all that said contract required of it and therefore believes that said contract is similarly binding on the Defendants.
14. Plaintiff is informed and believes that because all real estate is unique, this Court should inquire into these matters and enforce the contract between the Plaintiff and the Defendants and order the Defendants to honor the contract and perform their obligations thereunder.
15. Plaintiff is further informed and believes that it should be awarded specific performance, requiring the Defendants Strebler to sign the deed and sell the property to Plaintiff with marketable title as provided in the contract.
16. The Plaintiff is further informed and believes that it should be awarded specific performance from Defendant Mitchell, requiring him to remove the encumbrance on the property the Plaintiff is attempting to purchase.
17. Further, Plaintiff is informed and believes that it is entitled to attorney’s fees as provided

in paragraph 20 of the contract. Paragraph 20 states:

“In any action to enforce the provisions of this contract, the prevailing party... shall be entitled to the award of their costs, including reasonable attorney’s fees.”

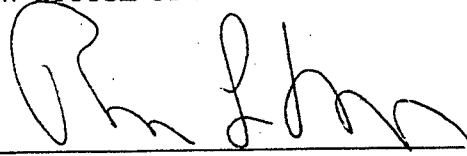
FOR A SECOND CAUSE OF ACTION
(Breach of Contract, Damages)

18. Plaintiff re-alleges each and every allegation set forth above herein verbatim.
19. Plaintiff is informed and believes that Defendants Strebler are in breach of said contract because they refuse to perform their obligations thereunder.
20. The Plaintiff has been damages to the extent that it expended money in preparation to fulfill the contract and finance the real property.
21. Plaintiff is further informed and believes that damages should be awarded because of Defendants Streblers’ breach of contract.
22. Plaintiff is further informed and believes that it is entitled to attorney’s fees per paragraph 20 of the contract.

WHEREFORE, Plaintiff, having fully made out its Complaint against Defendants, prays this court inquire into the matters herein and issue its Order granting Plaintiff’s requests for specific performance; an Order requiring Defendant Mitchell to remove the encumbrances he has placed on the property; attorney’s fees and damages against the Defendants; and for such other and further relief as this Court deems just and proper.

SIGNATURE PAGE TO FOLLOW

LAW OFFICE OF BRIAN L. BOGER

A handwritten signature in black ink, appearing to read 'Brian L. Boger', written over a horizontal line.

Brian L. Boger
Attorney for the Plaintiff
1331 Elmwood Ave, Suite 210
PO Box 65
Columbia, SC 29202
(803) 252-2880

Columbia, South Carolina

February 11, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

CA#: 2005-CP-40-6132

NORWEST PROPERTIES, LLC,)
Plaintiff,)

vs.)

MICHAEL T. STREBLER,)
LISA W. STREBLER and)
PAUL J. MITCHELL,)
Defendants.)

ANSWER OF PAUL J. MITCHELL
TO AMENDED COMPLAINT

JEANETTE W. HARRIS
C.C.P. & G.S.

2009 MAR 17 AM 10:07

FILED

Defendant, Paul J. Mitchell, (hereafter "Defendant Mitchell"), answers Plaintiff's Amended Complaint dated February 13, 2009, as follows:

1. Defendant Mitchell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 1 and 2 of the Amended Complaint, and therefore denies same.
2. Defendant Mitchell admits the allegations of Paragraph 3 of the Amended Complaint.
3. The allegations contained in Paragraph 4 of the Amended Complaint state legal conclusions to which no response is required. To the extent a response is required, Defendant Mitchell denies the allegations of Paragraph 4.
4. Defendant Mitchell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 5 of the Amended Complaint, and therefore denies same.

5. The allegations contained in Paragraph 6 of the Amended Complaint state legal conclusions to which no response is required. Notwithstanding the preceding statement, Defendant Mitchell denies that he purchased his property from Michael T. and Lisa W. Strebler ("the Strebler Defendants"). Further, Defendant Mitchell admits that the Strebler Defendants granted him express permission and an easement to construct a fence, a portion of which partially protrudes across land owned by the Strebler Defendants. Defendant Mitchell further admits that to the extent the Court may order removal of the fence, he is a necessary party.

6. In response to the allegations contained in Paragraph 7 of the Amended Complaint, Defendant Mitchell incorporates herein all of his responses to Paragraphs 1 through 6 herein.

7. Defendant Mitchell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 8, 9, 10 and 11 of the Amended Complaint, and therefore denies same.

8. Denied as stated. Defendant Mitchell admits that the Strebler Defendants granted him express permission and an easement to construct a fence, a portion of which partially protrudes across land owned by the Strebler Defendants. Defendant Mitchell further admits that he is the owner of the property adjacent to the Strebler Defendants' lot at issue.

9. Defendant Mitchell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 of the Amended Complaint, and therefore denies same.

10. The allegations contained in Paragraphs 14 and 15 of the Amended Complaint state legal conclusions to which no response is required. To the extent a response is required, Defendant Mitchell denies the allegations of those stated Paragraphs.

11. Defendant Mitchell denies the allegations of Paragraph 16 of the Amended Complaint.

12. The allegations contained in Paragraph 17 of the Amended Complaint state legal conclusions to which no response is required. To the extent a response is required, Defendant Mitchell denies the allegations of Paragraph 17.

13. In response to the allegations contained in Paragraph 18 of the Amended Complaint, Defendant Mitchell incorporates herein all of his responses to Paragraphs 1 through 17 herein.

14. The allegations contained in Paragraph 19 of the Amended Complaint state legal conclusions to which no response is required. To the extent a response is required, Defendant Mitchell denies the allegations of Paragraph 19.

15. Defendant Mitchell is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20 of the Amended Complaint, and therefore denies same.

16. The allegations contained in Paragraphs 21 and 22 of the Amended Complaint state legal conclusions to which no response is required. To the extent a response is required, Defendant Mitchell denies the allegations of Paragraphs 21 and 22.

AFFIRMATIVE DEFENSES AS TO
DEFENDANT MITCHELL

17. Plaintiff's Amended Complaint, and each and every count contained therein, fails to state a cause of action or claim upon which relief can be granted against Defendant Mitchell.

18. Some or all of Plaintiff's claims are barred by the applicable statute of limitations and/or statutes of repose.

19. Plaintiff's claims against Defendant Mitchell are barred, in whole or in part, by laches, waiver and/or estoppel.

20. Plaintiff had knowledge of the existence of the easement granted to Defendant Mitchell by the Strebler Defendants prior to purchasing the land owned by the Streblers, and therefore, should Plaintiff be awarded specific performance of the contract at issue, must take the land subject to the easement.

21. Plaintiff had knowledge, prior to the purchase of the land at issue, that Defendant Mitchell, upon receiving express permission from the Strebler Defendants, had constructed a fence that partially protruded across the land owned by the Strebler Defendants, and as such Plaintiff cannot challenge Defendant Mitchell's legal right to maintain the fence as constructed.

22. It would be inequitable for the Court to order Defendant Mitchell to remove the fence at issue, based on the fact that in incurring the cost to build it, he relied on the express permission of the landowners, the Strebler Defendants, who were in rightful possession of the property, and had every legal right to grant Defendant Mitchell permission to build said fence across a portion of their property.

23. Based on Plaintiff's legal notice of the easement, and the express permission given in this case by the Strebler Defendants to Defendant Mitchell, they are legally precluded from forcing Defendant to remove the fence at issue.

24. Defendant Mitchell reserves the right to amend its answer, and separate and affirmative defenses, to conform to such facts as may be revealed in discovery or otherwise.

McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, SC 29211
(803) 799-9800
Andrew G. Melling

By:



Andrew G. Melling
Attorneys for Defendant Paul Mitchell

Columbia, S.C.

March 13, 2009

Mike Strebler

6157 Burr Oak Way
Hudson, Ohio 44236

March 13, 2009

Andrew J. Meling
McNair Law Firm, P.A.
P.O. Box 11390
Columbia, SC 29211

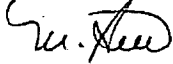
SENT VIA FIRST CLASS MAIL

Re: Northwest Properties, LLC v. Michael T. Strebler, Lisa Strebler and Paul J. Mitchell
Case No. 05-CP-40-6132

Dear Sir:

Enclosed for filing please find the answer of Michael T. Strebler and Lisa Strebler to Plaintiff's Amended Complaint in the captioned matter.

Sincerely,



Mike Strebler

JEANETTE W. McBRIDE
C.C.P. & G.S.

2009 MAR 27 AM 10:17

FILED

RECEIVED

MAR 25 2009

McNair Law Firm, PA

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Norwest Properties, LLC

Plaintiff,

-vs-

Michael T. Strebler,

Lisa W. Strebler, Paul J. Mitchell

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2005-CP-40-6132

ANSWER OF
MICHAEL T. STREBLER AND
LISA W. STREBLER TO
AMENDED COMPLAINT

The defendants, answering the amended complaint dated February 13, 2009 reiterate the defenses raised in the Answer of December 13, 2005 to the Complaint dated November 17, 2005. To the extent that any new issues or allegations have been raised in the Amended Complaint, we would respectfully allege that:

1. Paragraphs 8. and 9. of the Amended Complaint support the defendant's legal theory of breach of the agreement by the Plaintiff.
2. Paragraphs 10., 11., 12., 15., 16., deal with an imagined encumbrance. The imagined encumbrance is a temporary privacy fence placed by co-defendant Paul J. Mitchell on or near the property line until such time as a house could be built to provide the privacy designed for the development.
3. Plaintiff is not entitled to attorney's fees for the bad faith effort to resolve the issues in 2005 and plaintiff's self termination of contract due to failure to comply with the terms of the agreement.
4. Defendant's Michael T. Strebler and Lisa W. Strebler are currently in the process of filing a Complaint against Norwest Properties, LLC and Keith Norville for breach of contract in the Court of Common Pleas for Richland County and believe this case should be dismissed or delayed until such time as that case is resolved.

WHEREFORE, the defendants, having fully answered the complaint of the plaintiff, prays that the same be dismissed with costs and damages to the Defendants Michael T. Strebler and Lisa W. Strebler.

Michael T. Strebler

Michael T. Strebler

Hudson, Ohio

March 13, 2009.

RECEIVED

MAR 25 2009

McNair Law Firm, PA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CA#: 2005-CP-40-6132

NORWEST PROPERTIES, LLC,)

Plaintiff,)

PLAINTIFF'S MOTION TO RECONSIDER;
ALTER; OR AMEND JUDGMENT

vs.)

MICHAEL T. STREBLER, LISA)
W. STREBLER and PAUL)
MITCHELL)

Defendants.)

JEANETTE W. HUBRIDE
C.C.P. & G.S.
2010 JUN -2 PM 1:56

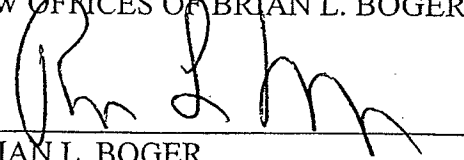
FILED

TO: ANDREW MELLING, ESQUIRE, MIKE STREBLER, AND LISA STREBLER

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Norwest Properties, by and through its undersigned attorney, no sooner than ten (10) days after the service hereof shall move and request that the Master in Equity, The Honorable Judge Joseph M. Strickland, reconsider the Order in the above referenced matter.

Said Motion is being made pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. The grounds in support of this motion shall be more thoroughly detailed in a written motion to be sent at a later date.

LAW OFFICES OF BRIAN L. BOGER



BRIAN L. BOGER
Attorney for the Plaintiff
1331 Elmwood Ave., Suite 210
Post Office Box 65
Columbia, SC 29202
(803) 252-2880

JUNE 1, 2010
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JUN 04 2010

McNair Law Firm, P.A.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CA#: 2005-CP-40-6132

NORWEST PROPERTIES, LLC,)

Plaintiff,)

vs.)

MICHAEL T. STREBLER, LISA)
W. STREBLER and PAUL)
MITCHELL)

Defendants.)

MEMORANDUM IN SUPPORT OF
ALTERATION, AMENDMENT, OR
RECONSIDERATION OF THE JUDGMENT

FILED
2010 JUN 25 PM 2:30
JEANIE C. CRIDE
C.C.P. & S.

TO: ANDREW MELLING, ATTORNEY FOR THE DEFENDANT PAUL MITCHELL,
LISA W. STREBLER, AND MICHAEL T. STREBLER

FACTUAL BACKGROUND

Plaintiff and Defendants Strebler have a written contract, which is incorporated herein and referenced as "Exhibit A." Said contract is for the sale of a residential lot commonly known as 6 Governor's Hill Street, Columbia, SC 29201 and all improvements thereon, and being described as follows:

All that certain piece, parcel, or lot of land with improvements thereto, if any, situate lying and being in the County of Richland, State of South Carolina, and being more particularly shown and delineated as Lot 6, on a plat of Governor's Hill Subdivision prepared by U.S. Group, Inc. dated June 1, 1994, recorded in the Office of the RMC for Richland County in Plat Book 55, at page 3894, said property having such courses, meted, measurements and boundaries as shown on the aforesaid plat which is incorporated herein by reference.

Derivation: This being the same property conveyed to Michael T. Strebler and Lisa W. Strebler by deed filed in Deed Book D1362, at page 451 in the Office of the RMC for Richland County.

TMS#: 09010-07-19.

COPY

Paul J. Mitchell is a necessary party to this action because his property, purchased from the Defendants Michael and Lisa Strebler, currently encroaches on the land deeded to the Plaintiff by Defendants Strebler. Accordingly, this action must involve both the Defendants Strebler, as the contracting party with the Plaintiff, and Defendant Mitchell as the party currently situated on the offending property.

THE COURTS ORDER OF MAY 19, 2010 ERRED IN CONCLUDING THAT THE PLAINTIFF DID NOT BREACH THE CONTRACT AND SPECIFIC PERFORMANCE WAS NOT AN APPROPRIATE REMEDY BASED ON THE EVIDENCE.

A. Standard for specific performance.

An action for specific performance is one in equity. Campbell v. Carr, 361 S.C. 258, 262-63, 603 S.E.2d 625, 627 (Ct.App.2004).

Clardy v. Bodolosky, 383 S.C. 418, 679 S.E.2d 527 (S.C.App. 2009)

B. The Court's Order erred in concluding Defendants Strebler stood ready to execute the contract because the Defendants Strebler could not and did not provide marketable title and hence breached the contract.

The Court's Order erred in concluding that the Defendants Strebler stood ready to execute the contract because the Defendants Strebler could not provide marketable title at the time of sale and hence breached the contract. The contract, introduced at trial, on page 2 of 3 states:

Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable).... Seller agrees to convey by marketable title..."

Title is unmarketable if there is a "reasonable probability of litigation." Sales Int'l Ltd. v. Black River Farms, Inc., 270 S.C. 391, 242 S.E.2d 432 (1978).

Based on the foregoing rules, the Defendants Strebler had three means of not defaulting on the contract: (1) Defendants Strebler could record the easement given to Mitchell at or before

the conveyance; (2) the easement could be removed; or (3) Defendants Strebler could have put Norwest Properties, LLC on notice of the easement to minimize chances of litigation. The record reflects that the Defendants Strebler took none of these actions. When questioned about the easement given, the partial transcript of Defendant Michael Strebler's cross examination states:

Q Mr. Strebler, you indicated today that you gave Mr. Mitchell a grant of property, or grant of easement, is that correct?

A That is correct.

....

Q So is that a true statement in No. 7 that I just read or is it a true statement that you gave Mr. Mitchell an easement a true statement; which is it?

A I did not say I gave Mr. Mitchell an easement.

Q What did you say you gave him?

A A property right.

Partial Trial Transcript, page 3.

Q And the contract that you signed with him, once again, did not have this agreement that you have with Mr. Mitchell in it anywhere, does it?

A It couldn't have.

Partial Trial Transcript, page 14.

The cross examination of Mr. Mitchell states that the agreement was not "of record."

Q This agreement that you and Mr. Strebler had is not in writing?

A No.

Partial Trial Transcript, page 15.

Because of the real estate values in the area and the amount of land tied up in this easement, there was not only a reasonable probability of litigation, but a likelihood. This likelihood of litigation made the title unmarketable. This failure to provide marketable title constitutes a breach of the contract at issue. Because of the foregoing, the Defendants Strebler were in default and breached the contract on the date of closing for failure to provide marketable title or otherwise record the easement and put Plaintiff on notice.

C. The Court's Order of May 19, 2010 erred in concluding that Specific Performance was not an appropriate remedy based on the evidence.

The Court's Order of May 19, 2010 erred in concluding that specific performance was not an appropriate remedy based on the evidence presented at trial because the contract at issue specifically provides for specific performance. Page 3 of 3 of the contract states:

20. DEFAULT ...Upon default by Seller, Purchaser shall have the option of suing for damages or specific performance...

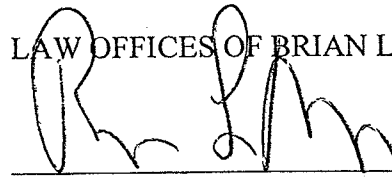
The Order of May 19, 2010 states the same, however concludes that the Defendants Strebler were not in default for the sheer reason that Strebler was ready to execute a deed. The Order does not go so far as to state that it was proven at trial that Defendants Strebler could or were willing to provide marketable title, which is a material part of the contract. In fact, the Partial Transcript reflects that Michael Strebler was unable or unwilling to provide marketable title to the property at the date of closing. Because the Defendants Strebler were not able to provide marketable title, he was in default of the contract as of the date of closing. For the foregoing reasons, the Order of May 19, 2010 erred in concluding that Specific Performance was not supported by the evidence presented.

CONCLUSION

For all of the foregoing reasons, the Defendants Strebler were in default as of the date of the sale, and the Order of May 19, 2010 erred in its conclusion that Specific Performance was not appropriate.

THIS SPACE INTENTIONALLY LEFT BLANK, SIGNATURE PAGE TO FOLLOW

LAW OFFICES OF BRIAN L. BOGER



Brian L. Boger
1331 Elmwood Avenue, Suite 210
P.O. Box 65
Columbia, SC 29202
(803) 252-2880

JUNE 25, 2010

RECEIVED

JUN 29 2010

McNair Law Firm, PA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

CA#: 2005-CP-40-6132

NORWEST PROPERTIES, LLC,)

Plaintiff,)

DEFENDANTS STREBLERS' MOTION
TO APPROVE AMOUNT OF DAMAGES

MICHAEL T. STREBLER,)
LISA W. STREBLER and)
PAUL J. MITCHELL,)

Defendants.)

RECEIVED
C.C.P. & G.S.

2011 MAY 16 AM 10:38

TO: BRIAN BOGER, ESQUIRE.

YOU WILL PLEASE TAKE NOTICE that defendants Michael T. Strebler and Lisa W. Strebler ("Streblers"), no sooner than ten (10) days after the service hereof shall move and request approval of the amount for costs and damages ordered by the Master in Equity, the Honorable Judge Joseph M. Strickland, in the above referenced matter.

Plaintiff and defendants Streblers entered into a contract for the sale of real property in August of 2005. The contract was the basis for litigation commenced by the plaintiff in October of 2005. The Streblers in their Answer requested costs and damages, including property taxes on the property at issue for the years 2006, 2007, 2008 and 2009, as well as the holding costs of such property. Such costs and damages are supported by Paragraph 20 of the Contract between Plaintiff and the Streblers.

The bench trial was held on November 9, 2009, before the Honorable Joseph M. Strickland. Defendant Michael Strebler testified regarding the following costs and damages incurred pending the litigation: (1) Property taxes, (2) Homeowners association fees, (3) Carrying costs of the property, and (4) Cost of pro se representation in litigation. Plaintiff did not object to the costs and damages, nor did plaintiff provide any testimony to dispute this.

A resulting order was issued on May 19, 2010, and made the conclusion of law that the plaintiff breached Paragraph 8 of the Contract by neither terminating the Contract in writing nor continuing with the closing that was scheduled for August 31, 2005. The Court ordered that Strebler be awarded his costs and damages in this case in accordance with Paragraph 20 of the Contract, and that Strebler shall submit those amounts to the Court for final determination of the amount of this award.

The time for appeal of the Court's ruling has transpired. On June 2, 2010, Plaintiff filled a motion to reconsider, alter or amend judgment pursuant to Rule 59(e) SCRCP. The motion was heard on November 8, 2010. An order denying plaintiff's motion to reconsider, alter or amend judgment was signed on December 31, 2010 and filed by the Clerk of Richland County on January 12, 2011. More than thirty days has passed since the Court's ruling on Plaintiff's motion to reconsider. The property is now free from impairment by the litigation, and the Streblers now request final determination of the amount of the award ordered on May 19, 2010, as follows:

Summary of Damages

1. Real Estate taxes	6,842
2. Homeowners Association	2,560
3. Cost of Capital	30,637
4. Litigation costs	
Professional time:	
Hours	111
Rate	75
	<u>8,325</u>
Expenses	<u>350</u>
	8,675
Total Damages	<u><u>48,713</u></u>

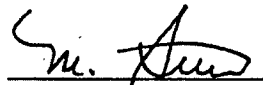
Calculation of carrying cost

	Beginning Invested Capital	Real Est. Taxes	HOA Fees	Ending Invested Capital	Interest Rate	Carrying Cost
2005	175,000	221		175,221	3.0%	876
2006	176,096	1,188		177,284	3.0%	5,301
2007	182,585	1,252	640	184,477	3.0%	5,506
2008	189,983	1,325	640	191,947	3.0%	5,729
2009	197,676	1,301	640	199,617	3.0%	5,959
2010	205,576	1,334	640	207,550	3.0%	6,197
2011	213,747	222		213,969	3.0%	1,069
		6,842	2,560			30,637

Defendants Streblers hereby request that the Court award costs and damages to them in the amount of \$48,713.

Respectfully submitted,

By:


Michael T. Strebler

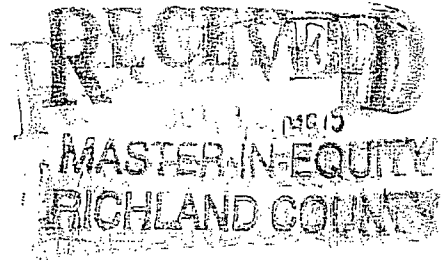
Hudson, Ohio
May 13th, 2011

Michael T. Strebler

6157 Burr Oak Way
Hudson, OH 44236

October 23, 2015

The Honorable Joseph M. Strickland
Master in Equity Office
P.O. Box 192
Columbia, SC 29202



RE: Case 2005-CP-40-6132
Motion to approve amount of damages

Dear Judge Strickland:

Good day Judge. I writing regarding a bench trial held November 9, 2009 in which you were the presiding judge and I was a defendant appearing pro se. Your order for the case was issued May 19, 2010. The order was as follows:

IT IS, THEREFORE, ORDERED,

1. That the Court finds for the Defendants, and Plaintiff's causes of action for breach of contract and specific performance are denied;
2. That Mitchell has an easement as reflected on Plaintiffs Trial Exhibit Number 4.
3. That Strebler be awarded his costs and damages in this case in accordance with Paragraph 20 of the Contract. Strebler shall submit those actual amounts with supporting documentation to the Court for final determination of the amount of this award.

AND IT IS SO ORDERED.

Subsequent to the order, the plaintiffs filed a motion to reconsider, alter, or amend judgement. That motion was denied in an **Order denying plaintiff's motion to reconsider, alter, or amend judgement**. The order denying plaintiff's motion is included as Attachment 1.

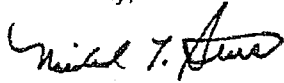
Pursuant to item three of the order above, I submitted the actual amount of damages with supporting documentation in **Defendants Streblers' motion to approve amount of damages**. My motion is included as Attachment 2. The motion hearing took place on July 29, 2011 in front of you at the Richland County Judicial Center. I have included a copy of the **Summons and Order of Appointment** for that hearing to this letter as Attachment 3.

Through a probable oversight, I never received an order approving my motion. Could I now receive an order approving my motion which will bring this case to an end? For your convenience I have included the following attachments:

1. Order denying plaintiff's motion to reconsider, alter or amend judgement
2. Defendant Streblers' motion to approve amount of damages
3. Summons and order of appointments – Motion to Approve Amount of Damages

Should you require additional documentation or information I can be reached during working hours at 330.672.0432. I pray we can wrap this up at your earliest convenience and apologize for not pressing the court at an earlier date. I only seek approval of the original motion submitted and heard.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael T. Strebler". The signature is fluid and cursive, with a large initial "M" and a stylized "S" at the end.

Michael T. Strebler

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CA#: 2005-CP-40-6132

NORWEST PROPERTIES, LLC,)

Plaintiff,)

vs.)

**MEMORANDUM IN OPPOSITION
TO DEFENDANT STREBLERS'
MOTION TO APPROVE AMOUNT OF
DAMAGES**

MICHAEL T. STREBLER, LISA)
W. STREBLER and PAUL)
MITCHELL,)

Defendants.)

RICHLAND COUNTY
FILED
2016 FEB 23 PM 3:22
JEANETTE W. HODGE
C.C.P. & C.S.

INTRODUCTION

This is a breach of contract action predicated on Defendant Michael Strebler's failure to inform Plaintiff, either verbally or in writing, of an encumbrance on a piece of property Plaintiff contracted to buy from Defendants Strebler. The case was tried for a full day on November 9, 2009. On May 19, 2010, the Master in Equity for Richland County, the Honorable Joseph M. Strickland issued an Order, attached as Plaintiff's Exhibit B, that Defendant Michael Strebler: "be awarded his costs and damages in this case in accordance with Paragraph 20 of the Contract. Strebler shall submit those actual amounts with supporting documentation to the Court for final determination of the amount of this award."

On May 13, 2011, almost one year later, Defendants submitted their Motion to Approve Amount of Damages, attached as Plaintiff's Exhibit C which is currently the matter before the court. This Motion requested \$6,842 for Real Estate Taxes, \$2,560 for Homeowners Association fees, \$30,637 for "Cost of Capital," \$8,325 for "Professional time" and \$350 for expenses, for a

total of \$48, 713.

ARGUMENTS

1. DEFENDANTS' REQUEST FOR DAMAGES HAS NO FACTUAL OR LEGAL BASIS

Under well settled South Carolina Law, Defendants would at most be entitled to the difference between the purchase price of the property in question as provided in the purchase contract, and 1) the fair market value of the property at the time of the alleged breach, or 2) the price for which the property was subsequently sold.

Paragraph 20 "Default" of the aforementioned contract, attached as Plaintiff's Exhibit B, states that "If purchaser shall default under this Contract, Seller shall have the option of suing for damages or rescinding this Contract." Defendants Strebler's Answer to Plaintiff's Amended Counterclaim, attached as Plaintiff's Exhibit A, stated "Wherefore, the defendants, having fully answered the complaint of the plaintiff, prays that the same be dismissed with costs and damages to the Defendants Michael T. Strebler and Lisa W. Strebler."

Defendants' Motion to Approve Amount of Damages, states incorrectly that "The Streblers in their Answer requested costs and damages, including property taxes on the property at issue for the years 2006, 2007, 2008, and 2009." Defendants never requested property taxes in their Answer, they merely asked for "costs and damages."

Since Defendants merely requested, "costs and damages," they are ineligible to receive special damages and may only receive general damages. "The law implies general damages. Special damages, however, are not implied by law because they do not necessarily result from the wrong." *Sheek v. Lee*, 289 S.C. 327, 345 S.E.2d 496 (1986) (citing *Carolina Life Insurance*

Company v. Bank of Greenwood, 217 S.C. 277, 60 S.E.2d 599 (1950)).” Special damages must be alleged in the complaint to avoid surprise to the other party.” *Id.* (citing *Crozier v. Charleston & W.C. Railway Company*, 222 S.C. 121, 71 S.E.2d 800 (1952)).

As such, general damages are all that Defendants may be entitled to recover. South Carolina Courts have clearly held, “In an action for breach of a contract to purchase real estate, general damages may be measured by the ***difference between the contract price and the fair market value of the property at the time of the breach.***” *Bannon v. Knauss*, 282 S.C. 589, 320 S.E.2d 470 (1984) (emphasis added). “In the case of a lost sale of a house, **the proper measure of damages is the difference between the contract price and either (1) the fair market value of the house on the date of the breach or (2) the price at which the house is subsequently sold.**” *Bannon v. Knauss*, 282 S.C. 589, 320 S.E.2d 470 (Ct.App.1984)(emphasis added); *Benya v. Gamble*, 282 S.C. 624, 321 S.E.2d 57 (Ct.App.1984); *Barr v. MacGlothlin*, 176 Va. 474, 11 S.E.2d 617 (1940). “If the property is resold within a reasonable time after the breach, the amount received is prima facie evidence of its market value at the time of the breach.” *Benya v. Gamble*, 282 S.C. 624, 321 S.E.2d 57 (Ct.App.1984).

The purchase price for the property at issue, as stipulated in the August 8, 2005 contract for sale was \$175,000. The Plaintiff’s alleged breach occurred in October 2005. Defendants subsequently sold the property at issue for \$175,000 on May 3, 2011 to the other Defendant in this matter, Paul J. Mitchell. See Documents attached as Exhibit D. Therefore, under South Carolina law, Defendants would be entitled to general damages in the amount of either 1) the difference between the \$175,000 purchase price and the property’s fair market value in October 2005, or 2) the difference between the \$175, 000 purchase price and the \$175,000 price the

property was sold for in 2011. Under Scenario 1, the market value would have been what the two parties agreed upon, the \$175,000.00. It is well settled that market value is what a willing buyer will pay a willing seller in an arms length transaction. When the property sold just a few months ago for the same price, in a well known falling market during the Great Recession, the holding in *Benya*, would be prima facia evidence of the property's fair market value at the time of breach, which again would result in Defendants being entitled to no general damages. Under scenario 2, since there is no difference between the \$175,000 August 8, 2005 purchase price and the \$175,000 May 3, 2011, sale price, Defendants would be entitled to no general damages. Under either scenario, Defendants would be entitled to negligible, if any, general damages, and since Defendants are only entitled to recover general damages because they did not request specific damages in their Answer to Plaintiff's amended complaint, Defendants are entitled to recover negligible damages, if any. They are most certainly not entitled to the \$40,039 in damages Defendant's seek in their Motion.

2. **PLAINTIFF'S ARE NOT LEGALLY RESPONSIBLE FOR DEFENDANTS' REAL ESTATE TAXES OR HOMEOWNER'S ASSOCIATION FEES**

Assuming, *in arguendo*, that Plaintiff's calculation of Defendants' damages to be nothing, based on a sound and exhaustive analysis of applicable law and facts, is wrong, under no circumstances should Defendants be compensated for their Real Estate Taxes or Home Association Fees, because Defendants retained possession of the property at issue, continued to visit it, and were able to enjoy its use. As Defendant Michael Strebler wrote in an email, the validity and authenticity of which he affirmed in his November 9, 2009 testimony, "We found it to be the nicest lot in the development and spent many evenings watching the Columbia skyline

from our lot.” See Documents attached as Plaintiff’s Exhibit E. At all times up until the May 3, 2011 sale of the property to Defendant Mitchell, Defendants were free to visit the property on a misty night, open a bottle of chianti, and enjoy scenic Columbia, or do anything else with the property they wished. In fact, at trial, when asked what he wanted to do with the property, Defendant Michael Strebler went so far in his testimony as to admit that “My wife told me I have to keep the property,” because she enjoyed it so much. He continued that, “No, I would not like to; my wife told me not to [sell the property].” Because Defendants retained possession of the property and continued to enjoy its use, Plaintiffs should not be compelled to pay the taxes and homeowners fees for this property. This would have the Plaintiff subsidizing the Defendants use of the property for over five years, which would be an inequitable outcome.

3. **DEFENDANTS, AS PRO SE LITIGANTS, ARE NOT ENTITLED TO
COMPENSATION FOR “PROFESSIONAL TIME.”**

Defendants request \$8, 325.00 in litigation costs for “professional time,” which Defendants are attempting to recover in the place of attorney’s fees. In effect, Defendants are asking to be paid for the legal services they have exerted on their own behalf. However, South Carolina jurisprudence clearly holds that a Pro Se litigant is not entitled to attorney’s fees or for the loss of use of their time. “A pro se litigant, whether an attorney or layperson, does not become liable for or subject to fees charged by an attorney. Accordingly, we hold that pro se litigants are not entitled to attorney fees...” *Calhoun v. Calhoun* S.C. 96529 S.E.2d 14 (2000). “A pro se litigant is not entitled to an award of attorney fees, even when the litigant is a practicing attorney. *First Union Nat. Bank of South Carolina v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (Ct.App. 1998).

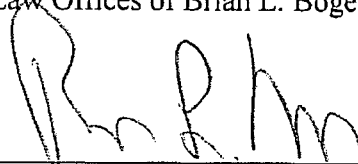
Therefore, Defendants cannot and should not be compensated for representing themselves. As *Calhoun* alludes to, this would create a perverse incentive for people to forego legal representation, often to their detriment, so that they may be rewarded with attorney's fees for representing themselves. "Professional services" is merely a euphemism for "attorney's fees," or for the loss of use of their time and, as such, Defendants cannot be compensated for them. Alternatively, Defendants may be asking to be paid for the time this present litigation took out of their lives, (i.e., the time they missed from work, etc.) If this is the case, Defendants' request should most certainly not be granted, because doing so would allow every defendant and every plaintiff in South Carolina to request the same thing, which would wreak havoc on the judicial system.

CONCLUSION

Under South Carolina law, Defendants are entitled to no specific damages because they did not request them in their Answer, and no general damages, because according to South Carolina law, Defendants have not been damaged by Plaintiff. They contracted with Plaintiff to sell their property for \$175, 000, and ended up selling their property for \$175,000. In between, they got five years use and enjoyment out of "the nicest lot in the development." On the contrary, the Plaintiff is the one who has been damaged by Defendants' actions. Defendant Michael Strebler "forgot" that he had granted Defendant Mitchell several easements on the property at issue for three and a half years, never once informing Plaintiff of this fact. Then, miraculously, Defendant Michael Strebler had, on the day of trial, a courthouse revelation that he had, in fact, granted Mitchell the aforementioned easements. Awarding Defendants damages and costs, particularly in the requested amount of \$48, 713, which, incidentally, should be \$48, 714 if

Defendants' line items were correctly added, would be rewarding Defendants for intellectual dishonesty. Therefore, Defendants should only be entitled to reimbursement for \$350.00 in costs.

Law Offices of Brian L. Boger

A handwritten signature in black ink, appearing to read 'B. L. Boger', written over a horizontal line.

Brian L. Boger, Attorney for Plaintiff
1331 Elmwood Avenue, Suite 210
P.O. Box 65
Columbia, SC 29202

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Norwest Properties, LLC

Plaintiff,

-vs-

Michael T. Strebler,
Lisa W. Strebler, Paul J. Mitchell

Defendants.

IN THE COURT OF COMMON PLEAS

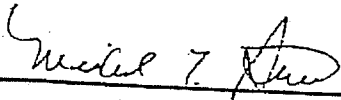
Civil Action No. 2005-CP-40-6132

ANSWER OF
MICHAEL T. STREBLER AND
LISA W. STREBLER TO
AMENDED COMPLAINT

The defendants, answering the amended complaint dated February 13, 2009 reiterate the defenses raised in the Answer of December 13, 2005 to the Complaint dated November 17, 2005. To the extent that any new issues or allegations have been raised in the Amended Complaint, we would respectfully allege that:

1. Paragraphs 8. and 9. of the Amended Complaint support the defendant's legal theory of breach of the agreement by the Plaintiff.
2. Paragraphs 10., 11., 12., 15., 16., deal with an imagined encumbrance. The imagined encumbrance is a temporary privacy fence placed by co-defendant Paul J. Mitchell on or near the property line until such time as a house could be built to provide the privacy designed for the development.
3. Plaintiff is not entitled to attorney's fees for the bad faith effort to resolve the issues in 2005 and plaintiff's self termination of contract due to failure to comply with the terms of the agreement.
4. Defendant's Michael T. Strebler and Lisa W. Strebler are currently in the process of filing a Complaint against Norwest Properties, LLC and Keith Norville for breach of contract in the Court of Common Pleas for Richland County and believe this case should be dismissed or delayed until such time as that case is resolved.

WHEREFORE, the defendants, having fully answered the complaint of the plaintiff, prays that the same be dismissed with costs and damages to the Defendants Michael T. Strebler and Lisa W. Strebler.



Michael T. Strebler

Hudson, Ohio

March 13, 2009.

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MAR 25 2009

EXHIBIT B



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 the 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 8 day of August, 20 05
by Normest Properties LLC, Purchaser(s)
to Burns of Beaufort, Seller(s).

2. PROPERTY DESCRIPTION

Subject to terms and conditions herein, Seller agrees to sell and Purchaser agrees to buy the following described property with improvements and fixtures thereon:

Lot Block Section Subdivision Havenmore Hill
Address 6 Havenmore Hill
Tax Map # 0090.1007019 City Columbia Zip 29201
County of Richland State of South Carolina.

3. PRICE

The sales price is \$ 175,000.00
A. \$ 2,000.00 to be paid as follows:
B. \$ 170,000.00 Earnest Money paid by [] cash, [] check, [] other
C. \$ held in trust by Russell-Jeffcoat
Balance of down payment at closing to be in the form of a cashier's check or certified funds.
Loan amount (type marked below) to be obtained by Purchaser.
CONVENTIONAL SELLER CASH (NO FINANCING REQUIRED) ✓ OTHER TERMS

4. FINANCING

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 credit-worthiness 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 specified date of closing.

5. CLOSING COSTS
DISCOUNT POINTS

Purchaser's closing costs shall be paid by Purchaser. Purchaser's prepaid items shall be paid by .
Discount points (if any) shall be paid by . If Seller pays closing costs, prepaid items, and/or discount points on behalf of Purchaser, Seller will pay costs of Purchaser, not to exceed \$.

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 credit report 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 Brokers or Agents. If loan is rejected by initial 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 understands that said Havenmore Hill is a
licensed agent's possession of Normest
Properties LLC

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 (dimensions, square feet, acres), Purchaser may elect to terminate the Contract by notifying Seller or Seller's Agent in writing of Purchaser's intent to terminate or Purchaser shall 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 all appropriate insurance coverage, including that required by the lender.

9. CONDITION OF PROPERTY

The Seller shall not remove any timber, dirt, minerals or otherwise affect the condition of the property after the signing of this Contract. All timber, dirt, minerals, etc., shall remain with the property and be a part of the property and be transferred to Purchaser. The Seller shall not bring 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 [X] located in a flood zone.

B. Seller represents that the property is [] or is not [X] subject to a mandatory association fee (i.e., homeowner's association/ regime or otherwise). If property is subject to a mandatory fee, the fee is \$ _____ per _____ and shall be current at closing.

C. Seller represents that the property is [] or is not [X] subject to a special assessment of any governing body, including but not limited to a homeowner's association/regime, utility or otherwise. If the property is subject to a special assessment, the assessment has [] or has not [X] been paid. If assessment has not been paid, it shall be paid by [] Seller in 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 Purchaser.

E. Seller represents that the property is [] or is not [X] 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 this Contract.

All required reports and certifications concerning environmental matters, wells, septic systems, wetlands, hazardous materials or a special study area shall be done by professional inspectors 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 acceptance of this Contract by both parties. If Seller or Seller's agent does not receive Purchaser's written response to the inspections or studies and a copy of such reports 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 this Contract and refund of Purchaser's earnest money.

B. If Purchaser elects to proceed with this sale, Purchaser has the option of accepting the property in current condition as referenced by the reports or 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 the 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 this 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 this 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 limits herein provided, or Purchaser's acceptance of the deed 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.

Conveyance shall be made subject to all easements 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 statutory warranty deed free of encumbrances, except as herein stated. All statutory deed recording fees shall be the responsibility of Seller. The deed shall be prepared in the name of Monument Properties LLC and delivered to the stipulated place of closing. This transaction shall be closed on or before 8-31-05 with Buyer's money.

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.

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) calendar days from the original closing date. In cash transaction, if terms and conditions of Section 4.B. have been met, both parties agree to extend this Contract for a period not to exceed ten (10) calendar days from the original closing date.

All real estate brokerage fees as specified in the Listing Agreement or in the Buyer's Brokerage Representation Agreement, if applicable, are earned upon the acceptance of this offer and are due and payable at the time of closing, subject to any contingencies specified herein.

Broker does 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 acting as 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 same to be charged and assessed against Purchaser or Seller or both as the court may decide. Earnest money shall not be refunded 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 his right to ownership of the interest and relinquishes to the Broker by this written agreement said right of ownership. The earnest money so noted will will not be deposited into an interest bearing account with the interest accruing to the benefit of the Broker."

Purchaser's Initials (PM) DATE 8-31-05 HAVE READ THIS PAGE. Seller's Initials (PM) DATE 8-31-05 HAVE READ THIS PAGE.

- 16. 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 the like shall be adjusted as of the date of closing. Tax prorationa 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. ROLLBACK TAXES** If applicable, rollback taxes shall be the responsibility of Seller
- 18. NON-RESIDENT TAXES** Seller agrees to comply with the provisions of South Carolina Code Section 12-9-550 (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 then 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, condition 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 15-48-10, et. seq. shall not apply to 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 as state law permits.
- 23. EXPIRATION OF OFFER** This offer from Purchaser shall be withdrawn at 12 o'clock P.m (ET) on 8-10-05, 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 remain 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. HUD/CLOSING STATEMENT RELEASE** Seller and Purchaser authorize their respective attorneys and the settlement agent to furnish to listing 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, services or systems, thereto, including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems, or to the structure; (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 thereto; (E) Give no warranty, express or implied, that the property being purchased is in compliance with all necessary zoning ordinances and restrictions; (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 THEREOF, this Contract has been duly executed by the parties hereto.

Witness as to Purchaser	<u>[Signature]</u>	Purchaser	<u>[Signature]</u>	Date	<u>8-8-05</u>	SSN	
Witness as to Seller	<u>[Signature]</u>	Seller	<u>[Signature]</u>	Date		SSN	
Witness as to Seller	<u>[Signature]</u>	Seller	<u>[Signature]</u>	Date		SSN	
Listing Agent		Office		Telephone Number			
Selling Agent		Office		Telephone Number			

FINAL CONTRACT ACCEPTED BY BOTH PARTIES AT 067 O'CLOCK 067 M. (ET) ON

EXHIBIT C

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

CA#: 2005-CP-40-6132

NORWEST PROPERTIES, LLC,)

Plaintiff,)

DEFENDANTS STREBLERS' MOTION
TO APPROVE AMOUNT OF DAMAGES

MICHAEL T. STREBLER,
LISA W. STREBLER and
PAUL J. MITCHELL,

Defendants.)

TO: BRIAN BOGER, ESQUIRE.

YOU WILL PLEASE TAKE NOTICE that defendants Michael T. Strebler and Lisa W. Strebler ("Streblers"), no sooner than ten (10) days after the service hereof shall move and request approval of the amount for costs and damages ordered by the Master in Equity, the Honorable Judge Joseph M. Strickland, in the above referenced matter.

Plaintiff and defendants Streblers entered into a contract for the sale of real property in August of 2005. The contract was the basis for litigation commenced by the plaintiff in October of 2005. The Streblers in their Answer requested costs and damages, including property taxes on the property at issue for the years 2006, 2007, 2008 and 2009, as well as the holding costs of such property. Such costs and damages are supported by Paragraph 20 of the Contract between Plaintiff and the Streblers.

The bench trial was held on November 9, 2009, before the Honorable Joseph M. Strickland. Defendant Michael Strebler testified regarding the following costs and damages incurred pending the litigation: (1) Property taxes, (2) Homeowners association fees, (3) Carrying costs of the property, and (4) Cost of pro se representation in litigation. Plaintiff did not object to the costs and damages, nor did plaintiff provide any testimony to dispute this.

A resulting order was issued on May 19, 2010, and made the conclusion of law that the plaintiff breached Paragraph 8 of the Contract by neither terminating the Contract in writing nor continuing with the closing that was scheduled for August 31, 2005. The Court ordered that Strebler be awarded his costs and damages in this case in accordance with Paragraph 20 of the Contract, and that Strebler shall submit those amounts to the Court for final determination of the amount of this award.

The time for appeal of the Court's ruling has transpired. On June 2, 2010, Plaintiff filled a motion to reconsider, alter or amend judgment pursuant to Rule 59(e) SCRCP. The motion was heard on November 8, 2010. An order denying plaintiff's motion to reconsider, alter or amend judgment was signed on December 31, 2010 and filed by the Clerk of Richland County on January 12, 2011. More than thirty days has passed since the Court's ruling on Plaintiff's motion to reconsider. The property is now free from impairment by the litigation, and the Streblers now request final determination of the amount of the award ordered on May 19, 2010, as follows:

Summary of Damages

1. Real Estate taxes	6,842
2. Homeowners Association	2,560
3. Cost of Capital	30,637
4. Litigation costs	
Professional time:	
Hours	111
Rate	75
	<u>8,325</u>
Expenses	<u>350</u>
	8,675
Total Damages	<u><u>48,713</u></u>

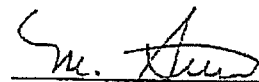
Calculation of carrying cost

	Beginning Invested Capital	Real Est. Taxes	HOA Fees	Ending Invested Capital	Interest Rate	Carrying Cost
2005	175,000	221		175,221	3.0%	876
2006	176,096	1,188		177,284	3.0%	5,301
2007	182,585	1,252	640	184,477	3.0%	5,506
2008	189,983	1,325	640	191,947	3.0%	5,729
2009	197,676	1,301	640	199,617	3.0%	5,959
2010	205,576	1,334	640	207,550	3.0%	6,197
2011	213,747	222		213,969	3.0%	1,069
		6,842	2,560			30,637

Defendants Streblers hereby request that the Court award costs and damages to them in the amount of \$48,713.

Respectfully submitted,

By:



Michael T. Strebler

Hudson, Ohio

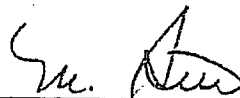
May 13th, 2011

CERTIFICATE OF SERVICE

I, Michael Strebler, hereby certify that a true and correct copy of the foregoing Defendant's motion to approve damages amount, was served on counsels of record by causing a copy of same to be placed in the United States Mail, postage prepaid, this 13th day of May, 2011, addressed as follows:

Brian L. Boger, Esq.
Post Office Box 65
Columbia, SC 29202

Andrew G. Melling
McNAIR Law Firm, P.A.
Post Office Box 11390
Columbia, SC 29211



Michael T. Strebler

Hudson, Ohio

EXHIBIT D

Instrument: 2011029859

Book/Page: R 1681 : 2443

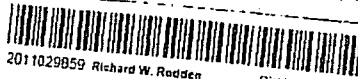
Date/Time: 05/03/2011 15:36:54:153

Document: 01

Book 1681-2443

2011029859 05/03/2011 15:36:54:153

Fee: \$10.00 County Tax: \$192.50

Deed
State Tax: \$455.00

2011029859 Richard W. Rodden

Richland County R.O.O.

Space above this line for recording information

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS THAT WE, **MICHAEL T. STREBLER AND LISA W. STREBLER**, herein referred to as **Grantors**, for and in consideration of the sum of **ONE HUNDRED SEVENTY FIVE THOUSAND and 00/100 (\$175,000.00) DOLLARS**, to us paid by **PAUL J. MITCHELL**, hereinafter referred to as **Grantee**, in the State aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said **Grantee**, his heirs and assigns forever.

All that certain piece, parcel, or lot of land, together with any improvements thereon, situate, lying, and being in Columbia, Richland County, South Carolina, being more fully shown and delineated as Lot 6 on a plat of Governor's Hill Subdivision prepared by U.S. Group, Inc., dated June 1, 1994 and recorded in the Office of the Register of Deeds for Richland County in Plat Book 55 at Page 3894, said property having such courses, metes, measurements, and boundaries as shown on the aforesaid plat, which plat is incorporated herein by reference.

DERIVATION: Book D1362 at Page 451

Also please see Order issued in connection with quiet title action on record in the Office of the Clerk of Court for Richland County as Judgment Roll No. 2010-CP-40-0670.

Grantee's Address: P O BOX 8053
Columbia, SC 29202

This property is commonly known as 6 Governor's Hill Street, Columbia, South Carolina, and is identified by the Richland County Tax Assessor as Tax Map No.: 09010-07-19.

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

Richland County Register of Deeds

Audited by Paul Brawley 2007

WITNESS my Hand and Seal this 29th day of April, 2011.

Signed, Sealed and Delivered
in the Presence of:

Yvonne R Lee

Michael T. Strebler
MICHAEL T. STREBLER

Mary Kay Hluch

Lisa W. Strebler
LISA W. STREBLER

STATE OF OHIO

COUNTY OF Portage

ACKNOWLEDGEMENT

I, Mary Kay Hluch (name of notary), do hereby certify that
MICHAEL T. STREBLER AND LISA W. STREBLER personally appeared before me
this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 29th day of April, 2011

Mary Kay Hluch
Notary Public for Ohio
My Commission Expires: 2/2/2013
(NOTARY SEAL)

Richland County Register of Deeds

Audited by Paul Brawley 2007

Assessor Data View

The information provided on this page reflects data as of **December 31, 2009** and should be used for reference only. For official assessment information, please contact the Richland County Assessor's Office.

Information presented on the Assessor's Database is collected, organized and provided for the convenience of the user and is intended solely for informational purposes. **ANY USER THEREOF OR RELIANCE THEREON IS AT THE SOLE DISCRETION, RISK AND RESPONSIBILITY OF THE USER.** While every attempt is made to provide information that is accurate at the date of publication, portions of such information may be incorrect or not current. **RICHLAND COUNTY HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO ITS ACCURACY, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE.** All official records of the County and the countywide elected officials are on file in their respective offices and may be viewed by the public at those offices.

Owner Information

Tax Map Number: R09010-07-19
 Owner: MITCHELL PAUL J
 Address 1: P O BOX 8053
 Address 2:
 Address 3:
 City/State/Zip: COLUMBIA
 SC 29202
 Property Location/Code: 6 GOVERNORS HILL ST

Tax Information

Year: 2010
 Property Tax Relief: \$0.00
 Local Option Sales Tax Credit: (\$134.15)
 Tax Amount: \$1,333.75
 Paid: Yes
 Homestead: No
 Assessed: \$3,000.00

Assessment Information

Year Of Assessment:	2011	Legal Residence:	No
Tax District:	1CC	Sewer Connection:	CITY
Acreage Of Parcel:	0.00	Water Connection:	CITY
Non-Agriculture Value:	\$50,000.00	Agriculture Value:	\$0.00
Building Value:	\$0.00	Improvements:	\$0.00
Taxable Value:	\$50,000.00		
Zoning:	PUD-R	PLANNED UNIT DEVELOPMENT-RESIDENTIAL	

Property Information

Legal Description: LOT 6
 38.9X80.6X100.1X88.1
 Land Type: RESIDENTIAL LAND

#SU GOVERNORS HILL
 #PR 55-3894

Sales History

Current Owner Name	Sale Date	V/I	Book / Page	Sale Price	Qual Code *
MITCHELL PAUL J	05/03/2011	V	R1681/ 2443	\$175,000.00	Q
STREBLER MICHAEL T &	01/30/1997	V	D1362/ 451	\$57,000.00	Q
COLUMBIA DEVELOPMENT CORP	07/29/1994		D1211/ 115	\$0.00	

* Qualification Code Definitions

Structure Information

Building Number	Year Structure Was Assessed	Building Description	Actual Year Built	Number Of Bathrooms	Number Of Bedrooms	Total Number Of Stories	Heated Square Footage	Total Square Footage
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Structure Details

Structure Type	Structure Description	Building Number
----------------	-----------------------	-----------------

Exemptions

Exemption Year	Exemption Description
----------------	-----------------------

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2005-CP-40-6132

Norwest Properties, LLC,)
Plaintiff,)

vs.)

TRANSCRIPT OF RECORD

Michael Strebler, Lisa Strebler,)
and Paul Mitchell,)
Defendant(s).)

November 9, 2009

B E F O R E:

THE HONORABLE JOSEPH M. STRICKLAND
Master in Equity for Richland County

A P P E A R A N C E S:

Brian L. Boger, ESQUIRE
Attorney for the Plaintiff

Michael Strebler
Pro Se

Andrew Melling, ESQUIRE
Attorney for the Defendant, Paul Mitchell

PATRICIA J. HARMAN, CCR

Official Court Reporter
Master in Equity, Richland County
1701 Main Street – Post Office Box 192 (29202)
Columbia, South Carolina 29201

I

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Official Court Reporter
Master in Equity, Richland County
1701 Main Street – Post Office Box 192 (29202)
Columbia, South Carolina 29201

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EXHIBITS

<u>PLAINTIFF'S</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVIDENCE</u>
NO. 1	Contract of Sale		20
NO. 2	Contract of Sale (Unsigned)		20
NO. 3	Plat (Governors Hill)		20
NO. 4	Plat (Aug. 29, 2005)		20
NO. 5	Ltr (Aug. 30, 2005) to Wolfe Fr Norville		20
NO. 6	Ltr (Sept 19, 2005) to Wolfe Fr Norville		20
NO. 7	Email (Oct 4, 2005) to Boger Fr Strebler		20
NO. 8	Ltr (Oct 25, 2005) to Boger Fr Strebler		20
NO. 9	Ltr (Feb 6, 2007) to Mitchell Fr Boger		20
NO. 10	Answer to Plf's First Set of Interrogatories		20
NO. 11	Plat (Nov 9, 2009)		20
NO. 12	Ltr (Nov 13, 2005) to Boger Fr Strebler		20
NO. 13	Lis Pendens		20
NO. 14	Deed (6 Governors Hill St.)		20
NO. 15	Check 5314 (Copy) dated 8-11-05		88
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Official Court Reporter

*Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201*

1 THE COURT: Please be seated.

2 MR. BOGER: Your Honor, it has occurred to me that we

3 have not given Mr. Strebler copies of the exhibits. We

4 might want to do that.

5 MR. STREBLER: Your Honor, I have my own exhibits - -

6 everything that they have for exhibits, I believe I have.

7 THE COURT: Okay.

8 MR. MELLING: And I think, Mr. Strebler, as you

9 indicated, that a copy of the contract you will be

10 principally relying on, is that fair to say?

11 MR. STREBLER: Yes.

12 THE COURT: All right, now to help the court

13 reporter, before we get started let me just go around and

14 identify everybody while they're here.

15 MR. MELLING: I'm Andrew Melling, M-E-L-L-I-N-G, and

16 I'm representing Mr. Paul Mitchell, M-I-T-C-H-E-L-L.

17 MR. MITCHELL: And I'm Paul Mitchell.

18 THE COURT: Okay.

19 MR. STREBLER: And I'm Mike Strebler, Mike and Lisa

20 Strebler, Defendants; I'm representing my wife and I, pro

21 se.

22 MR. BOGER: I'm Brian Boger; I represent the

23 Plaintiff, Norwest Properties.

24 MR. MOORE: And I am Keith Norville, managing partner

25 of Norwest Properties.

Official Court Reporter

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1 MR. MELLING: And I was remiss to mention, Mr. Brough
2 Odoms, also of the McNair Law Firm, for Paul Mitchell.
3 THE COURT: These gentlemen in the back here? Your
4 name, sir?
5 MR. WOLFE: I'm Daniel Wolfe.
6 THE COURT: All right, you are a witness in this
7 case?
8 MR. WOLFE: I am.
9 THE COURT: All right.
10 THE COURT: Your name, sir?
11 MR. INMAN: I'm Rick Inman, land surveyor.
12 THE COURT: Okay.
13 THE COURT: Yes, sir?
14 MR. WEST: I'm Bob West, one of the partners of
15 Norwest Properties.
16 THE COURT: All right, thank you.
17 THE COURT: I've talked to the lawyers in chambers
18 about how I like to manage trials. If anybody needs a
19 break for any reason, just let me know, and we'll take a
20 break.
21 THE COURT: Mr. Boger, you may proceed with opening
22 statements, and please limit the opening statements to two
23 and a half minutes or so. Mr. Boger?
24 MR. BOGER: Your Honor, I'm going to delay my opening
25 statements. I think we introduced in chambers - - I don't

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1 think for the record it will provide me additional
2 assistance, so I'll waive my opening.

3 THE COURT: All right.

4 THE COURT: Mr. Strebler?

5 MR. STREBLER: Yes, Your Honor. An attempt was made
6 for a contract of sale for a residential lot. The
7 contract and the sale failed. I do own a vacant
8 residential lot in Columbia, South Carolina. The
9 plaintiffs did contact me about purchasing my lot. They
10 made me an offer to purchase the lot, to which I said
11 okay. The plaintiff then surveyed the property and
12 objected to my neighbor's driveway on the corner of my
13 lot.

14 The neighbor, Paul Mitchell, was granted the right
15 to be there by myself and my wife. I offered to sell the
16 property to the purchaser with a neighbor's land right.
17 The purchaser refused. I said, "Thank you for the
18 interest. I'm sorry the lot isn't for you."

19 Plaintiffs then filed suit to take away my neighbor's
20 land right so he could buy it, even after he has already
21 refused.

22 The position of my defense is three-fold. First,
23 that the contract was not fully executed. Second, that
24 the neighbor, Paul Mitchell, has a valid property right to
25 the property which the plaintiff has refused to accept us

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1 ending their contract. And, third, there are no legal
2 principals which allow the re-writing of this contract
3 beyond what was already established. And so there are
4 currently no - - exists no legal relationship between the
5 plaintiff and the defendants regarding my property. His
6 action should be dismissed, and the defendants should be
7 awarded damages.

8 Thank you, Your Honor.

9 THE COURT: Mr. Melling?

10 MR. MELLING: May it please the court, Your Honor.

11 THE COURT: Yes, sir..

12 MR. MELLING: My name is Andrew Melling, as I
13 mentioned before, and I represent Mr. Paul Mitchell in
14 this case.

15 In 1999 Mr. Mitchell purchased lot 5 of Governors
16 Hill; Governors Hill is that development that overlooks
17 Finlay Park, just up the street from here. In 2000 he
18 began planning and building his home on his lot. In late
19 2000 he had to come up with his landscaping plan, which
20 would include the placement of his driveway. Mr. Mitchell
21 wanted to have a one-car parking pad to the right side of
22 his property, but to do so he would need to expand about
23 four feet onto Mr. Strebler's property. And Mr. Strebler -
24 - lot 6 is an empty lot. Mr. Strebler was the owner in
25 2000 of lot 6. So Mr. Mitchell - - the evidence will show

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1 Mr. Mitchell, Mr. Strebler, and Fred Delk, who was the
2 developer out there, they all met out at the property, Mr.
3 Strebler brought with him some hand-drawn architectural
4 plans for a house that he was thinking of building, and
5 basically they talked about the fact that Mr. Mitchell
6 needed this extra room for his parking pad.

7 Well, what was clear at the time was that Mr.
8 Mitchell's plans for the parking pad and then the fence
9 running back to the back of Mr. Mitchell's property would
10 not interfere in any way with Mr. Strebler's plan to build
11 his house. Mr. Strebler in fact owned both lot 6 and lot
12 7 of Governor's Hill, and was planning on building a
13 rather large house there that was over both pieces of
14 property. So he wasn't going to have to build it right on
15 the property line, as is the norm.

16 So basically at that time Mr. Strebler granted Mr.
17 Mitchell an express easement, express permission to expand
18 his driveway about four feet onto Mr. Strebler's property,
19 and that basically from the point on the road it would
20 shoot straight back and tie back into Mr. Mitchell's
21 property; and so it was a straight line shooting back from
22 the road.

23 Well, along that line Mr. Mitchell was to build a
24 temporary fence. That fence was to remain temporary until
25 such time as Mr. Strebler chose to build his house, and

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1 the temporary fence would come down and a brick wall or
2 some other brick permanent structure would go up in that
3 place. So that was expressly granted by Mr. Strebler to
4 Mr. Mitchell at that time. It was done in the presence of
5 Mr. Delk, who had to approve all of this, because he is
6 the representative of the developer who approved
7 everything down to what type plants you are going to have
8 in your garden, it was approved. So anyway, that occurred
9 in 2000.

10 Well, in 2005 Mr. Strebler had not - - had chosen not
11 to build a house by that point, and he put it on the
12 market - - put his piece of land on the market. In August
13 2005 Norwest Properties submitted a Contract for Sale, and
14 Mr. Strebler signed it.

15 Now, it's important to point out that Mr. Norville,
16 Keith Norville, who is sitting next to Mr. Boger, he's 50
17 percent owner of Norwest Properties. Also at the time he
18 was a broker, a real estate broker for Russell and
19 Jeffcoat; he served as his own broker in this case.

20 Prior to the closing of the contract, which was to
21 take place August 30th or 31st, Mr. Norville had a survey
22 performed, or a survey was performed at that time, which
23 showed Mr. Mitchell's driveway and fence easement. At
24 that point Norwest Properties refused to go through with
25 the sale unless Mr. Strebler would force Mr. Mitchell to

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1 remove his driveway and fence. Mr. Strebler refused to do
2 that, and the plaintiff brought this lawsuit.

3 Now the evidence at trial will show that the Contract
4 of Sale is not valid and not enforceable. The evidence
5 will show that the plaintiff committed several breaches
6 prior to ever discovering that Mr. Mitchell's driveway and
7 fence were located on Mr. Strebler's property. The
8 evidence will show that the plaintiff, in fact, breached
9 the contract, not Mr. Strebler. And finally the evidence
10 will show that Mr. Mitchell has a valid easement for the
11 portion of Mr. Strebler's property that he built his
12 driveway and fence upon.

13 Thank you, Your Honor.

14 THE COURT: All right, Mr. Boger, call your first
15 witness, please.

16 MR. BOGER: I would call Keith Norville, Your Honor.

17 THE COURT: Please put your left hand on the Bible
18 and raise your right hand.

19 (Keith G. Norville, being duly sworn, testified as
20 follows:)

21 DIRECT EXAMINATION

22 BY MR. BOGER:

23 Q Your full name for the record.

24 A Keith G. Norville.

25 Q And what is your address?

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1 A [REDACTED]
2 [REDACTED].
3 Q And what is your occupation?
4 A Well, I am the managing partner of Norwest
5 Properties, which is our primary occupation.
6 Q And Norwest Properties is an LLC, is that correct?
7 A Yes.
8 Q And are you a licensed real estate agent?
9 A Yes.
10 Q Are you a broker?
11 A I have the educational requirements for a broker, but
12 I am not a broker.
13 Q And do you hang your license, as they say, somewhere?
14 A Yes.
15 Q And for what company is that license hung?
16 A Russell and Jeffcoat.
17 Q And how long have you been a licensed agent with
18 Russell and Jeffcoat?
19 A Approximately twenty (20) years.
20 Q Were you licensed with another company before that?
21 A Yes.
22 Q And who was that?
23 A It was called Palmetto Homes. It was a small,
24 independent company.
25 Q Okay. So it would be fair to say you're in the real

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1 | estate business?
2 | A Yes.
3 | Q And Norwest Properties, LLC owns property, is that
4 | right?
5 | A Yes.
6 | Q And manages rentals?
7 | A Yes.
8 | Q And are these rentals your own rentals; are they
9 | Norwest owned rentals?
10 | A Yes, they are.
11 | Q And approximately how many of those do you manage?
12 | A Approximately thirty (30).
13 | Q Thirty (30)?
14 | A Yes.
15 | Q Now, your - - and I want to make sure I said this - -
16 | what is your capacity with Norwest?
17 | A I am managing partner.
18 | Q Okay. And the other partner is seated behind here,
19 | is that right? Is that Bob West?
20 | A Yes.
21 | Q Okay. And Mr. West is - - he doesn't manage it as
22 | actively as you do, would that be a fair statement?
23 | A Yes.
24 | Q You pretty much manage the company, is that right?
25 | A I manage the company.

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1 Q Now, tell me when did you first hear about this
2 property being for sale at Governors Hill?
3 A I don't remember the exact date. Of course, it was
4 listed, and it was advertised in the paper. I had seen it
5 advertised in the paper. And I would say that was
6 probably the first time, one of the two.
7 Q And why were you - - why did you have any interest in
8 buying at Governors Hill?
9 A We wanted to live downtown, and we wanted a very nice
10 location. We looked at it several times - - I mean, we
11 didn't make the decision overnight. And we decided that,
12 you know, we would build a house there that would be our
13 retirement house.
14 Q Okay. And the address you gave earlier, [REDACTED]
15 [REDACTED], is that on Lake Murray?
16 A Yes it is.
17 Q Okay, so you were going to move from Lake Murray back
18 downtown?
19 A Yes.
20 Q And tell me about your mother a little bit. Did you
21 have any plans for her to live with you?
22 A Well, yes. We had one occasion when we basically
23 took our entire families up there, both of them, and
24 showed them the property. And my mother was there, and
25 you know, I told her that we were going to put an

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1 | apartment in the house for her; she has Parkinson
2 | Syndrome. And that was, like I said, I was planning on
3 | building a house there that we would spend the rest of our
4 | lives in together.

5 | Q So this was more than an investment for you, is that
6 | correct?

7 | A It was not purchased as an investment. It was
8 | purchased to build our home on.

9 | Q Okay, and tell me - - I mean, we could look out the
10 | window, I guess, and look at Governors Hill - - but tell
11 | me what you liked about the property that is different.

12 | A Basically you have a view of the entire city of
13 | Columbia. It is a truly unique piece of property. And
14 | that's - - I guess we liked that, we liked the size - - it
15 | was a smaller lot - - and we could put a pool in, and
16 | things like that.

17 | Q Okay. So you made - - did you ever make any contact
18 | with Mr. Strebler?

19 | A I had - - I've never spoken to Mr. Strebler. On a
20 | couple of occasions when the property was not listed, I
21 | had written Mr. Strebler a couple of letters and expressed
22 | interest in the property, to purchase it. And he never
23 | responded directly to me; he had Dana Wolfe finally
24 | contact me and said that Mr. Strebler had asked him to
25 | contact me.

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1 Q Okay, and Dana Wolfe is back here. He also sells
2 real estate, right?
3 A Yes.
4 Q And you know each other in the business, right?
5 A Not - - I know his name, I know he's in the business.
6 Q Okay. So at some point - - well, let me ask you
7 this. How much was the sales price of the lot? How much
8 was it listed for?
9 A It was listed for \$175-, and I offered \$175-.
10 Q And why did you offer the full price?
11 A When Dana finally contacted me, he said there was an
12 offer on the lot. I asked him had it been accepted; he
13 said, no, they had been negotiating back and forth. I
14 talked to Bob and I said, "Well, if we want the lot, we've
15 got one shot at getting it." So we offered him full
16 price, cash.
17 Q So you didn't mess around with negotiating about the
18 price?
19 A No.
20 Q You wanted it?
21 A We wanted it.
22 Q Let me show you the contract, which has already been
23 marked, Your Honor, as Exhibit 1. And just for brevity's
24 sake, I'm going to give you Exhibit 2, because it's more
25 legible.

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1 A Okay.

2 Q So take a look at that one and see if that's what you

3 signed. And I think counsel would agree that Exhibit 2 is

4 the same as 1, except not signed by Mr. Strebler, but it's

5 just for simplicity of making it easier to read.

6 MR. MELLING: That's correct, Your Honor.

7 A Yes, this is what I signed.

8 Q Okay. And it's no different from No. 1, I'm

9 representing that to you and counsel, and opposing

10 counsel, that it's the same as No. 1, it's just easier to

11 read, No. 2?

12 A It appears to be the same document.

13 Q Okay, now you agreed to pay \$175,000 for the

14 property, and ultimately the Streblers signed it, is that

15 right, \$175-?

16 A Yes.

17 Q Now, then what happened?

18 A Well, I mean, I turned the Contract over to you and

19 told you to do all the necessary legal work. A few days

20 before we were supposed to close - - I don't remember the

21 exact date - - I'm going to say probably about the 26th,

22 Dana Wolfe called me and asked me was I going to have the

23 lot surveyed. And I said, "Well" - - I kind of made a bad

24 assumption, but I said, "No, I really wasn't planning on

25 it. Should I?" And he said "Yes", because he understood -

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1 - or that Mt. Mitchell was encroaching on the lot. That
2 was the first time I ever heard of it. It was not
3 mentioned in the listing, or had it ever been mentioned
4 before.

5 So immediately I contacted your office and had a
6 surveyed ordered, and of course he was encroaching. I
7 notified Dana that as soon as that was rectified we were
8 ready to close.

9 Q Okay, now looking at page 2 of the Contract, in
10 paragraph 11, where it says, "Conveyance date of closing."

11 A Yes.

12 Q If you could, read that first sentence to the court.

13 A "Conveyance shall be made subject to all easements as
14 well as" - - you'll have to excuse me, I don't have my
15 glasses.

16 Q "---Covenants of record"?

17 A "---Covenants of record", yes.

18 Q Okay. So was the easement - - this encroachment - -
19 was that of record?

20 A No.

21 Q It wasn't anywhere in the courthouse, was it?

22 A No.

23 Q Okay. And you signed a contract---

24 A Yes.

25 Q I'm asking you, did you sign the Contract knowing

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1 | that there was something there - - knowing that there was
2 | an encroachment there?
3 | A No, I signed the contract based on the assumption
4 | that Mr. Strebler was conveying a lot free of all
5 | encumbrances.
6 | Q Okay, now on the contract - - and you've been a
7 | realtor for a long time - - did Mr. Strebler anywhere on
8 | that contract tell you that there was an easement with Mr.
9 | Mitchell?
10 | A No.
11 | Q So at that point in time you wanted the easement, you
12 | wanted the encroachment, the encumbrance removed, is that
13 | correct?
14 | A Yes. And it was never referred to as an easement to
15 | me until -- in other words, it was always Mr. Mitchell
16 | was encroaching on the property.
17 | Q Okay, and at some point in time you wrote a letter to
18 | Dana Wolfe, is that right?
19 | A Yes.
20 | Q Telling him that this thing needed to be moved?
21 | A Yes.
22 | MR. BOGER: For the record, we're going to go back
23 | just a little bit just for housekeeping, Your Honor, and I
24 | think we can stipulate that Exhibit 3, without him
25 | testifying about it, is the plat at Governors Hill.

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1 Q Take a look at that - - and Mr. Norville, I'm not
2 sure you and I have reviewed that recently. Does that
3 look like a plat of Governors Hill?
4 A Yes.
5 MR. BOGER: That's going to be pre-marked as No. 3,
6 Your Honor.
7 THE COURT: Okay.
8 BY MR. BOGER:
9 Q And let me show you, going back a little bit, No. 4.
10 Is that the survey you had done?
11 A Yes, it is.
12 Q So No. 4 is the survey that was done that showed you
13 that there is an encroachment and encumbrance on the
14 property, is that correct?
15 A Yes.
16 Q And then No. 5 is your letter to Mr. Wolfe, is that
17 correct?
18 A That's correct.
19 Q And in that letter you say what?
20 A I basically told him that we wanted the encroachment
21 removed, and we were ready to close when it was corrected.
22 Q Okay, and did you hear anything back about that from
23 them?
24 A There were several phone conversations, but I would
25 say, summing it up, I was told Mr. Strebler said he wasn't

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1 | doing anything.

2 | Q And then let me show you No. 6, which is - - tell me

3 | what that letter - - you all sent that letter, is that

4 | right?

5 | A Yes.

6 | Q And that's when the closing had been rescheduled for

7 | October, isn't it?

8 | A October 14th.

9 | Q And did the closing happen?

10 | A No.

11 | Q Okay.

12 | MR. BOGER: Your Honor, I'm going to move - -I've got

13 | 14 exhibits. I'm going to put them all in at one time.

14 | But what we'll do is refer to these by number as we move

15 | along here.

16 | THE COURT: Hold on a second. You're doing it now?

17 | MR. BOGER: No, no, no, I'm going to - - well, yes,

18 | I'll just do it now, just get all 14 exhibits in. I move

19 | to put them all in.

20 | MR. BOGER: Any objection?

21 | MR. MELLING: No, we don't object to those.

22 | THE COURT: All right.

23 | THE COURT: Mr. Strebler?

24 | MR. STREBLER: I'm fine, Your Honor.

25 | THE COURT: All right, your motion is granted.

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1 (Plaintiff's Exhibits No. 1 through No. 14 received
2 into evidence.)
3 BY MR. BOGER:
4 Q So then what happened?
5 A Well, we started having correspondence or Emails - -
6 I think Mr. Strebler sent several Emails to you, making
7 various statements. One, he said that he had no knowledge
8 of Mr. Mitchell encroaching on the property. I think, you
9 know, you made numerous attempts to contact him, to no
10 avail. And I guess it just progressed to the point we're
11 at now, that I'm asking to get what Mr. Strebler
12 represented that he had for sale.
13 Q Which was the entire lot?
14 A Which was the entire lot. Had he told me up front,
15 or his agent told me, I don't know if we would be sitting
16 here today. Probably not.
17 Q You would not have offered to purchase the lot if it
18 had been represented that there was an encroachment, is
19 that right?
20 A It would have certainly been addressed in the offer,
21 which it would have been to have the encroachment removed.
22 Q And just for the record, let's talk about the
23 configuration of this lot.
24 MR. BOGER: And, Your Honor, this is No. 11.
25 THE COURT: Okay.

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1 Q So looking at No. 11, you see that this lot has an
2 unbuildable area to the right side of the property,
3 because there is an easement there, is that right?
4 A That's correct.
5 Q Or what is called a set-back line?
6 A I think there is an easement there for the city.
7 Q Okay, so your house would have to be on which side of
8 the lot for it to be usable?
9 A It would have to be on the left side, next to Mr.
10 Mitchell's property.
11 Q And if you were to build, where would your wall be?
12 Where would the wall of your home be?
13 A Well, the way the lots are laid out, or the
14 neighborhood is, the wall of my house becomes basically
15 the wall that separates us; in other words, I cannot build
16 a house with windows in it that overlook Mr. Mitchell.
17 And I'm supposed to be building on basically the property
18 line.
19 Q Okay, and if - - let's just look back over this No.
20 11 - - down at the base, close to the road where it says
21 Governors Hill Street, the encroachment is how many feet?
22 A I believe it is 5.8 feet.
23 Q Darn near 6 feet?
24 A Almost 6 feet. And, you know, you keep referring to
25 a parking pad. It is more than a parking pad; it is also

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1 a brick wall that either I would have to build a house
2 behind it - - in other words, you can't just build a house
3 anywhere there.

4 Q Let's talk about that. Talking about how wide it is
5 at the street, that's 5.8 feet?

6 A Yes.

7 Q And then moving in that deeply shaded area, there is
8 a - - the next thing down it says "3.0 fence, the
9 encroachment." And that is---

10 A That is a brick wall.

11 Q Okay. And that wall extends down with little "x"
12 marks.

13 A Well, where it says 3.0, it is brick. Now, behind
14 that there is a wood fence that kind of runs on down to
15 the end of the property line. And I've never been on Mr.
16 Mitchell's property, but he has brick planters built,
17 which would - - I would say most likely be on Lot No. 6.

18 Q Okay. And that's what you would like to have
19 removed, the brick - - it's really a brick pillar, isn't
20 it?

21 A Well, it is a brick pillar that has a brick wall
22 attached which has a wrought iron gate in it.

23 Q And if that is not removed, how would that affect
24 your ability to build on this property?

25 A Well, I will have a much smaller piece of property to

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1 | build on.

2 | Q Well, and you can calculate, can't you, by looking at

3 | this, about how much property would you lose, buildable

4 | space?

5 | A Yes. Well, per the surveyor, I would probably lose

6 | between 2- and 300 feet of buildable space.

7 | Q And the total amount of this - - the total amount of

8 | the lot - - I mean it speaks for itself, but the total

9 | amount of the lot is how big?

10 | A It's quite small. I'm looking on here to see where

11 | it indicates the acreage.

12 | Q It's right in the middle where it says, "Vacant---"

13 | A Oh, .13 of an acre.

14 | Q And we know an acre is 208 by 208, which is some

15 | 43,000 square feet, is that right?

16 | A Yes.

17 | Q And 13/100th of an acre is about 5624 feet, does that

18 | sound---

19 | A Probably. It's very small.

20 | Q And Mr. Inman has also shown that shaded area, has he

21 | not, that the buildable space - - do you see the big arrow

22 | there where it says 3029 square feet; do you see that?

23 | A Yes.

24 | Q Now what does that represent to you?

25 | A That is - - I guess that represents to me what he's

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1 | saying I've got to build on, minus what's being deducted
2 | because of the encroachment.

3 | Q Now, I'm not asking you to be a mathematician, but
4 | how much would you be losing in terms of buildable space
5 | if you lose between 2- and 300 square feet and the whole
6 | buildable area is 3,000?

7 | A Well, I would be losing a considerable amount of
8 | building space, in that say 300 square feet is 10 by 30.
9 | So you're losing a 10 by 30 room that you could have on
10 | the ground floor, which being on the ground floor is very
11 | important to us.

12 | Q Why is that?

13 | A We wanted as much on the ground floor as possible,
14 | because we have some mobility issues. Also very
15 | definitely if my mother was to come there, we've got big
16 | mobility issues. And, like I said, we were planning on
17 | living there the rest of our life, and we would like to -
18 | - we were planning on trying to design a house that we
19 | could live on one floor.

20 | Q Okay. And not to ask you a sensitive question, but
21 | how old are you?

22 | A I am sixty-five (65).

23 | Q Okay. And how old is Bob?

24 | A Now you ask a sensitive question; he is seventy-one
25 | (71).

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1 Q Okay, so you are both senior citizens?
2 A Yes. I always ask for my discount.
3 Q Okay, and that's why this number of feet matter to
4 you, is that correct?
5 A Yes.
6 Q Now---
7 A Could I add - - one of the reasons. I mean, I also -
8 - Mr. Mitchell has a three-car garage in addition to the
9 parking pad. And I told my architect, "I'd like a three-
10 car garage, because we have three cars." And when you
11 knock out 6 feet, when you've got, I think it's probably
12 about 35 feet road frontage, that doesn't leave a lot of
13 space to put a three-car garage.
14 Q Now, you've been in the business for 30-some years,
15 is that fair to say?
16 A Yes.
17 Q Do you consider Mr. Strebler in breach of contract?
18 A Yes, I do.
19 Q And you would have chosen to ask for something called
20 specific performance; you're not asking to have the price
21 of the lot reduced, are you, let me ask you?
22 A No, absolutely not. I don't - - one, I've never been
23 offered anything. Two, I don't want anything. I want
24 what Mr. Strebler represented he had to sell.
25 Q And, once again, was this easement of record?

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1 A No.

2 Q And I'll call it an easement just---

3 A There was nothing of record, that I know of. And I

4 had spoken to Mr. Delk, and he had never told me anything

5 either.

6 Q Okay. And that's what you're asking this court to do

7 is - - well, let's back up one more step. In getting

8 ready for - - in negotiating this matter between these

9 parties you contacted a contractor, is that right,

10 somebody to go out there and find out what it is going to

11 cost to remove this thing?

12 A Well, actually my architect that I was talking to had

13 the contractor go out and do the estimate on removing the

14 encroachments.

15 MR. BOGER: Your Honor, and that's Plaintiff's

16 Exhibit No. 9.

17 BY MR. BOGER:

18 Q There is a letter - - does that letter look familiar,

19 Mr. Norville, that I sent?

20 A Yes.

21 Q And then on the back page of that letter, the second

22 page, is a proposal or something to move the fence?

23 A Yes.

24 Q And what is the cost of moving that fence and brick

25 structure?

1 A To remove it, it would be \$1500; to replace it,
2 rebuild it where it should be, would be an additional
3 \$1400. In other words, a total of \$2900.

4 Q Okay, and that is all it costs to get this done?

5 A Per Mr. Rogers of Rogers Construction Engineering.

6 Q Okay, is he your best guy, or is he your best buddy,
7 or anything?

8 A I've never met him. Like I said, Mr. Hagler, the
9 architect, contacted him and asked him to go out and look
10 at the problem.

11 Q Okay. Now, in this matter you have - - the Contract
12 provides for, in the event of default, for attorney's
13 fees, is that correct?)

14 A Yes.

15 Q And what has been your fees so far in this matter?

16 A I believe I've paid \$3500 so far.

17 Q Okay, and are you asking this court to award fees as
18 well?

19 A Yes. .

20 Q And that does not include the past 30 days, is that
21 correct?

22 A No, that's through the last billing that I received.

23 Q Okay.

24 MR. BOGER: Your Honor, for brevity's sake, I would
25 preserve my right to have a hearing about fees at a later

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1 time.

2 MR. MELLING: No objection, Your Honor.

3 MR. STREBLER: No objection.

4 THE COURT: Okay, the motion is granted.

5 BY MR. BOGER:

6 Q Once again, you would like to have this wall removed

7 so you can buy what he told you to buy, is that right?

8 A That's what I would like, yes.

9 Q Well, let me ask you this. What's wrong with just

10 going in there and buying the lot, finishing the deal, and

11 just knocking on Mr. Mitchell's door and saying, "I'm

12 having a contractor in today. I need to put this wall

13 in." What's wrong with doing it that way?

14 A Well, one, I would be losing building space---

15 Q No, I'm sorry, about asking Mr. Mitchell to just move

16 it when you get ready to build?

17 A Well, Mr. Mitchell never directed to me, but has

18 conveyed that he would move it, and then when we - - if I

19 started to build, he would move it. Then when you deposed

20 him, he indicated that he wasn't going to move it. So. .

21 Q So we're at a stand-off?

22 A We're at a stand-off, and I don't believe - - I do

23 not want to buy a problem. I was going there and hoping -

24 - in other words, I wanted to be a good neighbor to

25 everyone up there.

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1 Q So you tried to do that?
2 A I tried to do that, yes.
3 Q That has not been successful?
4 A No.
5 Q Okay, answer any questions Mr. Strebler or Mr.
6 Melling may have.
7 THE COURT: All right, Mr. Strebler, Cross-
8 examination.
9 MR. STREBLER: Thank you, Your Honor.
10 CROSS-EXAMINATION
11 BY MR. STREBLER:
12 Q Mr. Norville, you did characterize yourself as a real
13 estate professional, is that true?
14 A Yes.
15 Q Okay. What is the customary procedure for a purchase
16 of a piece of real estate with regards to the presentment
17 of a contract?
18 A I guess I don't know if - - I would basically you
19 write your offer, you deliver it to the other agent, and
20 he presents it to, in this case, the seller.
21 Q Is it customary for a contract of this type to
22 require earnest money?
23 A Yes.
24 Q Would earnest money be delivered with the contract?
25 A No.

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1 Q It would not?

2 A A copy of the check might be delivered with it, but
3 not the money. Normally the company that produces the
4 contract retains the earnest money. In other words,
5 Russell and Jeffcoat would retain the earnest money, and
6 Mr. Wolfe would be - - he knows that. In other words, he
7 has a copy of the check that was issued, and the money is
8 put in escrow, which it is in escrow.

9 Q When I sent a Request for Production, dated March 13,
10 2009, I specifically asked for proof of payment into
11 escrow of the required contractual amount. Are you
12 familiar with that question?

13 A No, I'm not.

14 Q Would you say that if that question was answered by
15 your attorney on April 29, 2009 that the plaintiff is not
16 in possession of the check for the earnest monies, would
17 you say that that is correct?

18 A Russell and Jeffcoat is in possession of the earnest
19 money. It is in a trust account, being held by Russell
20 and Jeffcoat.

21 Q How would you explain your attorney's answer that the
22 Wolfe Company is holding the money?

23 A I think he made a mistake, because Russell and
24 Jeffcoat is holding the money, which it states in the
25 contract that Russell and Jeffcoat would hold the money.

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1 MR. STREBLER: Your Honor, I'm a little confused in
2 that in my Request for Production I asked for proof of
3 this payment, and none was given except for the statement
4 that it was in the hands of the Wolfe Company. I think
5 Dana Wolfe will testify that he did receive no money;
6 therefore, there is no proof at all that any payment ever
7 took place.

8 THE COURT: That's the kind of thing you say when you
9 present your case, when you testify in narrative form.

10 MR. STREBLER: Okay. Thank you, Your Honor.

11 THE COURT: Yes, that's the way you get it in.

12 MR. STREBLER: Okay.

13 BY MR. STREBLER:

14 Q You're familiar with the Contract, Exhibit 1, I
15 believe?

16 A Yes.

17 Q Item 4, there was an item called "Financing"?

18 A Yes.

19 Q Would you agree that the contract indicates this is a
20 cash transaction?

21 A Yes.

22 Q So what do you believe - - what date do you believe
23 the contract was accepted?

24 A The date you signed it.

25 Q Okay. Can you read Item 4, which is "Financing"?

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1 A "In a cash transaction purchaser agrees to provide
2 seller or agent within 15 - - excuse me, I can't quite
3 read it - - 15 business days of acceptance of this
4 contract written verification of sufficient and available
5 funds for the specific date of closing."
6 Q As a realtor, what would you consider written
7 verification as to sufficient funds?
8 A It could be whatever you ask for.
9 Q And who would you deliver such evidence to in order
10 to satisfy the contract?
11 A It would have been delivered to your agent.
12 Q And did you provide us written verification in
13 accordance with the contract?
14 A No.
15 Q Why didn't you comply with the terms of the contract
16 regarding the---
17 A I was never asked to.
18 MR. BOGER: Objection.
19 THE COURT: On what grounds, Mr. Boger?
20 MR. BOGER: He is putting words in his mouth, Your
21 Honor. He is saying that he breached a contract, which
22 has not been established.
23 THE COURT: Objection overruled.
24 THE COURT: Please proceed.
25 BY MR. STREBLER:

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1 Q Let's move on to a different issue. Item 8 in the
2 contract it says it's not uncommon for things to show up
3 regarding title, survey, encumbrances, et cetera. Is that
4 true?
5 A Most of the time, no, things don't show up.
6 Q All right. And does the contract contain a normal
7 provision for such type of things to show up, in general?
8 A Well, if they do show up, yes, the contract specifies
9 different options. You know, mediation, or whatever.
10 Q And regarding this contract, what section, what item
11 number of this contract would address issues of survey,
12 title examination, and insurance?
13 MR. BOGER: Let me show him and get him his glasses.
14 THE WITNESS: Your eyes are better than mine.
15 A Well - - I'm sorry, what was the question again?
16 Q Which section of the contract would address issues of
17 survey, title examination, or insurance?
18 A Section 8.
19 Q Okay. And did you have a survey performed? I think
20 you said you did, yes?
21 A Yes.
22 Q Okay. And we agree that Section 8. explicitly deals
23 with surveys?
24 A It does deal with surveys, yes.
25 Q Okay. And in Section 8 could you read the sentence

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1 beginning - - it would be on the third line down, just in
2 after the parens - - "purchaser may---.
3 A The line under "purchasers may" or---
4 Q No, beginning with "purchaser may", please.
5 A Okay. "Purchasers may select---
6 Q "elect".
7 A ---to terminate the contract by notifying seller or
8 seller's agents in writing of purchaser's intent to
9 terminate."
10 Q Continue on.
11 A Oh, you want me to continue - - "terminate.
12 Purchasers shall complete this sale according to the terms
13 and conditions of the contract."
14 Q So does this section not give you - - upon finding a
15 defect, does this section not give you the right to
16 terminate the contract or continue on with the contract as
17 is?
18 A It gives me the right to do a number of things. I
19 would say both of those. But it also gives me the right
20 to expect to get what you agreed to sell.
21 Q But is that---
22 A I have the right to request that the encroachments be
23 taken care of.
24 Q But there is no language that says that here?
25 A Not in that particular one, no.

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1 Q But that's - - are you relying on this language, or
2 how do you believe this language applies to the situation?
3 A I think the language gives me the right to do, like I
4 said, either proceed and say I'll accept it, or to say I
5 want it rectified, especially when something has been
6 misrepresented to me.
7 Q But the language is not included in this paragraph,
8 is it?
9 A Not in that particular paragraph, no.
10 Q And this language deals with survey, title
11 examination, and insurance, does it not?
12 A Yes.
13 Q Okay. Thank you. Let's move down to Item 11, "Date
14 of closing." In the very first sentence of Item 11, could
15 you read that sentence for me, please?
16 A "Conveyance shall be made subject to all easements,
17 as well as covenants of record, provided they do not make
18 the title unmarketable."
19 Q Okay. And what would you describe - - how would you
20 define "unmarketable"?
21 A Well, in this particular case, having the
22 encroachments on the lot make it very difficult to secure
23 financing, it would make it very difficult to sell. There
24 are a number of things, but primarily I have been advised
25 by a number of banks that they would not touch a loan on

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1 what exhibit - - September 19, 2005 letter. Let me just
2 help you out.

3 A Okay, here we go, September 19th.

4 Q That's Plaintiff's Exhibit No. 6, is that right?

5 A Yes.

6 Q Now - - and if you can just read that - - it's just
7 one sentence or two sentences - - read that for the court.

8 A "We had scheduled another closing for October 14,
9 2005. Please tell Mr. Strebler so he can have the
10 encroachments removed in time for us to have the property
11 checked."

12 Q So something else had happened between you and Mr.
13 Wolfe for this to be rescheduled, is that correct?

14 A I guess I was going on the assumption that Mr.
15 Strebler was going to do something.

16 Q Okay.

17 A And like I said, I was ready to close any time.

18 Q So even 20 days after the scheduled closing date, you
19 postponed it for almost another month, per this letter, is
20 that correct?

21 A I would say yes.

22 Q You were still ready to close?

23 A Still ready to close.

24 Q Did Norwest Properties have the \$170,000 to complete
25 this transaction?

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1 A Yes.
2 Q Does it have that money now?
3 A Yes.
4 MR. MELLING: I object to that testimony, Your Honor,
5 based on there is no foundation for it.
6 THE COURT: Overruled.
7 BY MR. BOGER:
8 Q Was the easement - - was this encroachment at the
9 courthouse somewhere in a written document?
10 A No.
11 Q Okay. In your - - and I keep saying 30 years - -
12 have you been selling real estate for 30 years?
13 A Mostly likely - - yes, I would say so.
14 Q It may be over 30, right at 30?
15 A Give or take some.
16 Q In that 30-year period, how many times have you had a
17 cash transaction where the seller proved that they had the
18 money in the bank?
19 A None.
20 Q None. Zero?
21 A Zero.
22 Q Never happened in your 30 years?
23 A No. And I have had some cash transactions.
24 Q In looking at paragraph 20, if you will look at
25 Exhibit 2 of the contract. And looking at paragraph 20,

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1 on the right side of that paragraph, the third line down
2 where it says "Upon default by seller" - - could you read
3 that?
4 A Okay. "Upon default by seller, purchaser shall have
5 the option of suing for damages or specific performance or
6 rescinding the contract upon default by seller."
7 Q That's okay. Just that one sentence, is that what
8 you are relying on here today?
9 A Yes.
10 Q You would like specific performance of the contract
11 that was signed by both parties?
12 A Yes.
13 Q Now under paragraph 4, did you want the contract to
14 be performed as it was written, or did you want to change
15 it to something else after you found out about this---
16 A No, I've always said all I wanted was what Mr.
17 Strebler represented he had to sell, and that was a lot
18 free of encumbrances.
19 MR. BOGER: That's all I have of Mr. Norville at this
20 time. I may call him back in Reply.
21 THE COURT: I understand.
22 THE COURT: Mr. Strebler, any Recross?
23 MR. STREBLER: I think one question, Your Honor.
24 RECROSS EXAMINATION
25 BY MR. STREBLER:

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1 the best of his knowledge. And the earnest money was not
2 talked about in any of the depositions, and it's an
3 absolute surprise to us that this - - that my clerical
4 error came up today. And so Mr. Melling, I think, has no
5 standing to object to this, because he didn't ask who my
6 witnesses were at all.

7 Insofar as Mr. Strebler, that's correct, it was my
8 error, I'm fixing it. And it's not as though a fact
9 witness that is going to testify as to what he saw at a
10 wreck scene that we suddenly found. It's just simply the
11 earnest money check.

12 THE COURT: Objection overruled.

13 THE COURT: You may proceed, Mr. Boger.

14 DIRECT EXAMINATION

15 BY MR. BOGER:

16 Q Your full name, please?

17 A Thomas Edward Carter, Jr.

18 Q And what do you do?

19 A I'm Broker-in-Charge of the metro office of Russell
20 and Jeffcoat, which is downtown.

21 Q And you've been a broker for a long time?

22 A Twenty-five (25) years.

23 Q And you are charged with the responsibility of
24 knowing what's in your escrow account?

25 A Right. I'm the custodian of that account, or the

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1 | portion that pertains to my branch.
2 | Q Have you reviewed your books today?
3 | A I did, today.
4 | Q And are you familiar with the \$5,000 earnest money?
5 | A We are.
6 | Q And you have a copy of the check that Mr. Norville
7 | gave your company?
8 | A I do.
9 | Q Okay, let me look at it. And let me show this to
10 | everybody else, a copy of that.
11 | MR. MELLING: And, Your Honor, I want to make a
12 | contemporaneous objection to the introduction of that
13 | evidence, based on my previously made objections.
14 | THE COURT: All right. Overruled.
15 | BY MR. BOGER:
16 | Q Now, Mr. Carter, you say you've examined your books
17 | today?
18 | A Yes.
19 | Q And that is something you do in your charge, is that
20 | correct?
21 | A This isn't the first time I've seen it, but I did
22 | have to - - I looked at it today before I came here to
23 | make sure that I was speaking the truth here.
24 | Q Okay. And that money is still in your account, is
25 | that correct?

1 Q Now, you said that the only way that the earnest
2 money could come out of the account is either court order
3 or by mutual agreement of the parties, is that correct?
4 A That's correct.
5 Q And has that happened? Have either one of those---
6 A In this instance, no, it has not happened. We still
7 have the earnest money.
8 Q You are still holding the earnest money?
9 A We are.
10 Q And I noticed that check is dated August 11th?
11 A Right.
12 Q And would have been deposited very soon thereafter of
13 that date?
14 A Yes. We are required within 48 hours of contracts
15 being fully executed and delivered to all parties, within
16 48 hours to get it in the bank. That's 48 business hours;
17 weekends excluded and holidays excluded.
18 Q So that would have been normally the circumstances,
19 in your view?
20 A Right. We deposited it actually August 15th.
21 Q And I don't know the dates; was that a weekend?
22 A I don't know.
23 Q And it cleared?
24 A It did, and we still have it.
25 MR. BOGER: I want to introduce that into evidence. I

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1 that there were no agreements or extensions of the closing
2 by any parties.

3 Thank you, Your Honor.

4 THE COURT: And, again, I think the plaintiff has
5 submitted enough evidence to get past a motion for a
6 nonsuit, and therefore your motion is denied.

7 At this time, Mr. Strebler, you have a chance to
8 present your case. Do we need a break before we get
9 started or are you ready---

10 THE COURT: Does anyone need a break for any reason?

11 MR. BOGER: I wouldn't mind a five-minute break,
12 Your Honor.

13 THE COURT: All right, we'll come back at 3:00.

14 (Break.)

15 THE COURT: Thank you, please be seated.

16 THE COURT: Mr. Strebler, you are going to testify on
17 your own behalf, in narrative form?

18 MR. STREBLER: I am, Your Honor. Would you like me
19 to take the seat?

20 THE COURT: Please, yes, sir. Please put your left
21 hand on the Bible and raise your right hand.

22 (Michael Strebler, being duly sworn, testified as
23 follows:)

24 THE COURT: Now, what I want to do is let Mr.
25 Strebler testify in narrative form.

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1 THE COURT: And, of course you understand, Mr.
2 Strebler, you will be subject to Cross-examination by Mr.
3 Boger and by Mr. Melling?

4 MR. STREBLER: I will, Your Honor.

5 THE COURT: All right, you may proceed in narrative
6 form.

7 MR. STREBLER: This case is a straightforward sale of
8 property. It should have been a routine transaction. In
9 2001 one neighbor, Mike and Lisa Strebler, gave another
10 neighbor, Paul Mitchell, some help with his property by
11 granting him a property right for his driveway.

12 The Streblers' plans for the property changed, and
13 they offered the property for sale in late summer 2005. A
14 sale contract was entered into in the fall of 2005. The
15 purchaser performed some due diligence on the potential
16 purchase, and discovered what he terms an encroachment.
17 At this point the transaction should have reasonably
18 concluded, like any other property.

19 THE COURT: Now, Mr. Strebler, you can't sit there
20 and read your testimony from another document. Is that
21 what you're doing, or are you just refreshing your
22 recollection from notes?

23 MR. STREBLER: Well, I guess I'm confused as to what
24 I can do. These are my points of testimony, Your Honor.

25 THE COURT: Just an outline?

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1 MR. STREBLER: It's an outline.
2 THE COURT: Okay.
3 THE COURT: Mr. Boger, do you object to him
4 testifying this way?
5 MR. BOGER: I do, Your Honor. I'll just let him tell
6 the story without his notes.
7 THE COURT: All right.
8 THE COURT: Mr. Melling?
9 MR. MELLING: Well, the only point I would offer,
10 Your Honor, is that if he had an attorney asking him
11 questions, the attorney would certainly be standing there
12 with an outline like that to control his own testimony.
13 THE COURT: All right.
14 MR. STREBLER: These are my facts of the case, Your
15 Honor.
16 THE COURT: I understand, but you don't - - you have
17 to - - I mean, I had the impression you were reading from
18 that document, that's why I interrupted - - I apologize
19 for interrupting - - but I had the impression you were
20 just reading it, that you weren't really testifying, that
21 you were reading what you had written down before.
22 MR. STREBLER: Well, the points that I'm going to say
23 are certainly written, because I have prepared.
24 MR. BOGER: I object to that. He can't read his
25 testimony.

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1 THE COURT: Mr. Melling?

2 MR. MELLING: I have nothing further to offer on it.

3 THE COURT: Okay. Objection overruled. Please
4 proceed. As long as you're not reading a statement, I
5 mean you are actually testifying and using those notes to
6 refresh your memory.

7 MR. STREBLER: I am, Your Honor. It will take me a
8 little bit longer, but I'll be happy to look at it,
9 translate it into something that is not a reading.

10 THE COURT: Okay, good.

11 MR. STREBLER: The land right in question, when the
12 contract was presented was three years out of my mind. It
13 was a handshake agreement with Paul and I, standing at the
14 site. (The defendants have no question that they gave the
15 right to Paul Mitchell. The agreement that defendants
16 made between themselves is corroborated by the existence
17 of the driveway which was discussed and agreed upon.

18 The purchaser really has no rights in this property,
19 other than any contractual rights that the purchaser may
20 believe he had. Those rights were terminated on August
21 31, because he failed to execute the contract because of
22 an encroachment, as he calls it, which was the result of
23 him doing a survey. This discovery of a defect in a - -
24 his belief of what the property was, I don't see that it's
25 any different than had he discovered that there was a

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1 removal of the property rights. And, in addition, the
2 contract says that it will terminate on August 31 of 2005
3 unless it has been closed by then. The contract clearly
4 was not. There were no extensions granted. I think that
5 it's a - - when the property right was discovered, the
6 seller did offer to the purchaser the property as is;
7 purchaser denied the negotiation that ended - - that was
8 subsequent to the original contract. The negotiation was
9 over.

10 Furthermore, defendant would - - is it appropriate in
11 my testimony to ask for damages, as I sit here?

12 THE COURT: Well - - in your Pleadings did you ask
13 for damages?

14 MR. STREBLER: Yes, I did, Your Honor.

15 THE COURT: Okay, you can go ahead and talk about it.

16 MR. STREBLER: Defendant would like - - in the
17 Pleadings has asked for damages. Defendant has been
18 damaged to the extent that he has costs of ownership
19 beyond August 31, 2005, the contractual closing date.
20 Those costs are financial carrying costs, property taxes,
21 homeowner's association fees, maintenance costs, and costs
22 of administration. And further, the defendant requests
23 damages for resources expended in defending this action.

24 Thank you, Your Honor.

25 THE COURT: All right.

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1 THE COURT: Mr. Boger, Cross-examination?
2 MR. BOGER: If it please the court, Your Honor.
3 THE COURT: Yes, sir.
4 CROSS-EXAMINATION
5 BY MR. BOGER:
6 Q Mr. Strebler, you indicated today that you gave Mr.
7 Mitchell a grant of property, or grant of easement, is
8 that correct?
9 A That is correct.
10 Q And you are familiar with Exhibit 7 - - and let me
11 just show you - - that is - - and see if you recognize
12 Exhibit 7.
13 A I know this exhibit.
14 Q And isn't it true that in that exhibit you say, in
15 the third sentence - - and I'm reading, "If I had known
16 there was an encumbrance, I would have disclosed it from
17 the beginning"?
18 A That is correct.
19 Q So is that a true statement in No. 7 that I just
20 read, or is it a true statement that you gave Mr. Mitchell
21 an easement a true statement; which is it?
22 A I did not say I gave Mr. Mitchell an easement.
23 Q What did you say you gave him?
24 A A property right.
25 Q Okay. Do you understand that this encumbrance, this

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1 | property right, messed up this deal that you say in No. 7
2 | you didn't know about?
3 | A I'm saying at the time that we did the contract I had
4 | no recollection - - I did not remember of the
5 | conversations and the discussions and the decisions that
6 | transpired back in 2001.
7 | Q And for four years you have not remembered that,
8 | until today when you came in and said you gave a grant of
9 | easement, isn't that correct?
10 | A No.
11 | Q When did you tell anyone involved in this deal that
12 | you gave Mr. Mitchell an easement or a grant of property
13 | right until today? When did you do that?
14 | MR. MELLING: Objection, Your Honor.
15 | THE COURT: On what grounds?
16 | MR. MELLING: Assumes facts not in evidence. No
17 | request has been made of such information.
18 | THE COURT: Overruled.
19 | A When I read Paul's - - Paul's deposition, it was very
20 | clear to me that I do recall the conversation.
21 | Q Okay, and when did you read Paul's deposition?
22 | A What is the date of the deposition?
23 | Q June of '09.
24 | A I would have to see.
25 | Q June 18th of '09.

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1 A It was shortly thereafter; would that be a
2 satisfactory answer?
3 Q Yes, sir.
4 A Okay.
5 A So for almost four years you had forgotten about this
6 grant that you gave Paul?
7 A Yes, absolutely.
8 Q Although it was being litigated for almost four
9 years?
10 A I think the litigation was the wall, was the wall.
11 That's the - - was what this started with.
12 Q Well, when did the litigation start, on or about
13 October, 2005?
14 A Of 2005, yes.
15 Q Okay. So whether it was the wall, or the driveway,
16 there was something going on that had stirred your memory
17 to remember it, isn't that correct?
18 A I told you it was the deposition - - or it was Paul's
19 deposition that I recalled the conversation.
20 Q And until today was the first time you've told the
21 plaintiff in this courtroom that you remember this grant
22 of easement, isn't that right?
23 A If that's when you found out.
24 Q That's today?
25 A If that was when you found out.

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1 Q Now, you would agree also that it was your intention
2 to sell this at a higher price when this deal fell
3 through?
4 A No, it was not.
5 Q Look at Exhibit 7.
6 A I've seen Exhibit 7.
7 Q Well, let's just look at it. It says that you would
8 - - the second paragraph from the bottom - - actually the
9 second paragraph from the bottom, what is the last
10 sentence in that paragraph?
11 A I know that sentence.
12 Q Do you want me to read it for you?
13 A No, I know the sentence.
14 Q Well, what does it say?
15 A It says that I could ask Dana to resell the property
16 at a higher price.
17 Q With the known defect disclosed?
18 A Yes.
19 Q Indicating that my client didn't know about the
20 defect at the time he signed the contract?
21 A I don't know what your client knew.
22 Q You had also agreed that this lot was one of the most
23 unique properties remaining in Columbia, isn't it?
24 A I like the lot. I don't know about all the lots in
25 Columbia and their uniqueness.

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1 Q Well, let's look at your Email again, in paragraph
2 four.
3 A It is my personal opinion, if that's where you're
4 going.
5 Q Well, let's just read it. I'll read it for you.
6 A Be my quest.
7 Q "We found it to be the nicest lot in the development
8 and spent many evenings watching the Columbia skyline from
9 our lot."
10 A That is correct, I did write that.
11 Q If this sale had gone through, this would have been
12 Mr. Norville's problem, wouldn't it?
13 A I don't understand your question.
14 Q If the sale had gone through and he had to approach
15 Mr. Mitchell and say, "Hey, I need this thing moved, this
16 wall, this fence you have up", that would have been Mr.
17 Norville's problem, wouldn't it?
18 A I don't know what Mr. Norville would have done.
19 Q But you would have had your money?
20 A I would have sold the property according to the
21 contract.
22 Q And - - well, let's talk about that. Where in the
23 contract, in Exhibit 2, does it disclose this encumbrance,
24 this encroachment to Mr. Norville; where in that contract
25 does it say that?

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1 A It does not say it in the contract.
2 Q So, if it didn't say it, and you didn't disclose it,
3 then haven't you breached the contract?
4 A I don't believe so.
5 Q Do you think it's important for a seller to disclose
6 what defects he has on a piece of property?
7 A Do I think that's important?
8 Q Yes.
9 A Yes, I think that's important.
10 Q Did you disclose that to Mr. Norville?
11 A I did not know it to disclose it to Mr. Norville.
12 Q Until you told Mr. Norville today that your memory
13 was improved in June when you read Mr. Mitchell's
14 deposition, is that correct?
15 A I'm sorry, you're going to have to straighten that
16 question out.
17 Q Well, once again, you didn't tell Mr. Norville until
18 today that you remembered this grant of easement, this
19 grant of property right that you gave Mr. Mitchell?
20 A I do not know what Mr. Norville does or does not
21 know.
22 Q Now during this time, this four years, have you ever
23 called Mr. Mitchell to see if he would move the fence?
24 A No, I have not.
25 Q And have you got Exhibit No. 8?

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1 A What is it?
2 Q It's your letter of October 25th. See if you can
3 remember that.
4 A Yes, I know this letter.
5 Q And what was threatening about the letter that came
6 from me?
7 A This letter to my realtor?
8 Q Yes.
9 A The threatening thing in this letter is where it
10 says, "If this matter is not resolved within the time
11 frame set forth, Norwest Properties, LLC, will go forward
12 with their rights to file legal action against the
13 Streblers for Breach of Contract and Specific Performance.
14 They will also be seeking recovery of their attorney's
15 fees."
16 Q Do you think they had the right to do that?
17 A No.
18 Q And why not?
19 A Well, because I believe your client breached the
20 contract.
21 Q We've already sort of beat that horse to death, but
22 we'll do it again.
23 A If you would like.
24 Q Do you think that you've breached the agreement in
25 any way by not disclosing to Mr. Norville that there was

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1 Q And did you also give them the option of going ahead
2 and buying the property subject to Mr. Mitchell's
3 easements?

4 A Yes, I did.

5 Q And so is it your opinion that you satisfied
6 paragraph 8 of the contract?

7 A I would have to disagree with your interpretation of
8 the contract. Those are not seller options, they're
9 buyer's options. At the point that he did not complete
10 the contract by August 31 of 2005, the contract was
11 terminated, in my opinion. What I offered him was a
12 counter-offer.

13 Q Okay, well I appreciate that clarification. Now,
14 let's talk a little bit about Mr. Mitchell's easement in
15 this case. I don't think we've paid it much attention to
16 date. When did you first purchase Lot 6 and 7 out of
17 Governors Hill?

18 A I think Lot 6 was probably - - in the mid-90's.

19 Q Okay. How about Lot 7?

20 A Probably late '90's.

21 Q And those lots are right next to each other, is that
22 correct?

23 A That is correct.

24 Q And what were your plans for those at that time,
25 vacant lots 6 and 7?

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1 A To build a house.

2 Q Okay.

3 MR. MELLING: Your Honor, we've pre-marked

4 Defendant's Exhibit 3. It should be some house plans.

5 Can I hand Mr. Strebler a copy?

6 THE COURT: Yes.

7 BY MR. MELLING:

8 Q I would like to hand you a copy and see if you can

9 identify that for us.

10 A I would say these are architectural site renderings

11 by Wayne Rogers at Catalyst Architects.

12 Q And is that the house plans that you at that time

13 were intending on building on Lot 6 and 7?

14 A Yes, it is.

15 Q Okay. And the year we're talking about is late 2000,

16 the beginning of 2001, is that correct?

17 A Well, this date on here says December 4th of 2000,

18 which is what my memory would serve me as being about this

19 time.

20 Q Okay.

21 MR. MELLING: Your Honor, just some housekeeping

22 matters. We introduced all of the pre-marked Plaintiff's

23 Exhibits. I would like to introduce all of the pre-marked

24 Defendant's Exhibits, unless you have any objections.

25 MR. BOGER: No objection.

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1 (Defendant's Exhibits No, 1, No. 2, and No. 3
2 received into evidence.)
3 BY MR. MELLING:
4 Q Now do you recall that in 2000 both you and Paul were
5 in the process of drawing up house plans and - - at least
6 Paul was starting the construction on his lot?
7 A I recall Paul was already in construction on his lot
8 at that time.
9 Q Okay, and that would be about 2000, the year 2000?
10 A Yes.
11 Q When did you first meet Mr. Mitchell?
12 A I couldn't tell you. It had to have been after he
13 started construction of his home. It would have been
14 during a site visit by myself and probably my spouse.
15 Q Do you recall that he actually recommended Catalyst
16 Architects to you for that drawing that you have in front
17 of you, which is Defense Exhibit 3?
18 A I do not remember that.
19 Q Do you recall meeting Mr. Mitchell and Mr. Delk out
20 at the property one day?
21 A I've certainly met with both Paul Mitchell and Fred
22 Delk at the property. I couldn't tell you which day.
23 Q Okay. But you recall meeting out at your property,
24 which involved Mr. Mitchell and Mr. Delk, is that correct?
25 A I don't know if I recall Fred being there.

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1 Q Is it possible that he was there?
2 A Sure. I saw Fred a lot during those days.
3 Q Okay. And for everyone's benefit, who is Fred Delk
4 again? Who is he? What was his role in all of this?
5 A Fred was the head of - - I believe it was the
6 Columbia Development Corporation, which was either a
7 government agency or quasi-government agency whose purpose
8 was to develop the various areas of the Congaree Vista.
9 That's my understanding; I can't assert that that's
10 exactly what his organization did.
11 Q And they developed Governors Hill, is that right?
12 A Yes, they did.
13 Q And so Columbia Development Company---
14 A ---Corporation.
15 Q ---Corporation - - sorry - - and Mr. Delk, they had
16 to approve all of the house plans, landscaping plans, et
17 cetera, out at Governors Hill, didn't they?
18 A Yes, they did.
19 Q What is your recollection of the conversation between
20 you and Mr. Mitchell with regard to him placing his
21 driveway partially on your property?
22 A I can recall that we stood at approximately where the
23 two lots came together and Paul asked me about having his
24 driveway sweep over the corner of Lot 6. I have a fairly
25 good recollection that it was a sunny day, and when Paul

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1 asked, I said that would be fine, it did not impair my
2 plans, and we shook hands on it.

3 Q And looking at the drawings that are in front of you,
4 do you recall having those out at that meeting with Mr.
5 Mitchell?

6 A I do not.

7 Q Is it possible that you did?

8 A It certainly is possible, but I certainly don't
9 recall having them. I recall standing and having a
10 discussion with Paul.

11 Q Okay. And so Mr. Mitchell, am I correct, asked for
12 what amounted to approximately four feet of the front part
13 of your property, is that fair to say?

14 A I think the description was more that in order for
15 him to get in and out of his parking spot, it just had to
16 sweep over the corner of my lot.

17 Q Okay. And you gave him permission to do that, is
18 that correct?

19 A I absolutely did.

20 Q Okay. And he built a brick driveway there---

21 A Yes.

22 Q ---in reliance on your permission, correct?

23 A There is a brick driveway there. I've seen it in the
24 survey, I've seen it live. I would assume Paul built it.

25 Q Now, this would have been in 2000 or early 2001,

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1 correct?

2 A The brick driveway?

3 Q Yes.

4 A you know, I can't tell you when I first saw the brick

5 driveway. I moved from Columbia approximately the same

6 time.

7 Q Okay.

8 A Maybe a year later.

9 Q All right. Had you seen the brick driveway and the

10 fence in its location before you entered in the Contract

11 for Sale with Norwest Properties?

12 A I must have seen them at least once. I can't tell

13 you when, but I think I saw that once.

14 Q Did you ever object and go to Paul and say, "Hey, why

15 is your driveway or fence on my property?"

16 A No.

17 Q You approved of him having his driveway and fence on

18 your property, is that correct?

19 A Yes, I gave him explicit permission on the driveway,

20 and the fence it was my interpretation that it was a

21 temporary fence because the building was such that my

22 house was supposed to provide a permanent fence on that

23 side. And it didn't look like anything Paul - - what was

24 up there did not look like anything that Paul Mitchell

25 would build on a permanent basis.

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1 Q And let's talk about that a little bit more. It's a
2 wooden fence, isn't it?
3 A It is.
4 Q It's a wooden fence. And when you were going to
5 build your home, the wooden fence was going to come down
6 and your house was going to get built where that wooden
7 fence presently stands, is that correct?
8 A Approximately.
9 Q Okay. Are you aware that Mr. Mitchell built a pool
10 and had a pool deck poured, and some planters built up to
11 that temporary fence, are you aware of that?
12 A I've heard that since then, but I've never seen them.
13 Q Okay. But if you were going to build your house,
14 would you have anticipated telling Paul Mitchell to tear
15 out his pool deck and planters so that your wall could go
16 back along the original property line?
17 A Would I have told him to do that?
18 Q Yes.
19 A Well, I think there's a lot of variables. Number one
20 is whether or not it mattered to me.
21 Q Well, based on the house you planned on building
22 there, would it have mattered to you?
23 A No.
24 Q Now, the driveway easement that we're discussing,
25 would you agree that it's about 4 feet - - approximately 4

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1 | fence with Mr. Mitchell?
2 | A I do not..
3 | Q Would you defer to Mr. Mitchell and/or Mr. Fred
4 | Delk's recollection of that conversation?
5 | A If they have a better understanding than mine, I
6 | certainly would, because I have no recollection of the
7 | fence.
8 | Q Okay. Do you have any opposition, as we sit here
9 | today, to the location of Mr. Mitchell's fence?
10 | A Opposition to a fence? In what regard?
11 | Q Opposition to him placing that fence on your
12 | property, shall I say?
13 | A I would hope that it would disappear when there was a
14 | side of a building there.
15 | Q Okay, and that was the arrangement between the two of
16 | you?
17 | A Yes.
18 | Q Okay.
19 | A That is, if I'm building the property.
20 | Q Okay.
21 | MR. MELLING: Just one moment, Your Honor.
22 | THE COURT: Yes, sir.
23 | MR. MELLING: I have no further questions, Your
24 | Honor. Thank you.
25 | THE COURT: All right, Mr. Strebler, do you have

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1 anything to add, by way of Redirect, I guess, in narrative
2 form? Anything you want to clarify or visit again?

3 REDIRECT EXAMINATION

4 MR. STREBLER: I would like to reiterate that while I
5 did not - - it was not in my memory at the time that we
6 signed this contract in 2005, when I was refreshed about
7 it I did remember it. I remember the day, I remember the
8 sky, I remember talking about the driveway.

9 THE COURT: Anything further?

10 MR. STREBLER: That's all I have.

11 THE COURT: All right, any Recross? Mr. Boger?

12 MR. BOGER: Just briefly, Your Honor.

13 RECROSS EXAMINATION

14 BY MR. BOGER:

15 Q You know we talked about my error when I spoke about
16 the earnest money being held by the wrong company. And
17 that really was when I sent you, Mr. Strebler, a copy of
18 all these documents. Do you remember receiving those?

19 A Sure.

20 Q And if you will look at number 20, document number 20
21 was date-stamped at the bottom number 20.

22 A You're going to have to tell me what it is.

23 Q It's the survey. It's right in front of you.

24 A Okay.

25 Q So that was in - - that was this year you had the

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1 survey.
2 A This year.
3 THE COURT: That's Plaintiff's Exhibit 4?
4 MR. BOGER: Plaintiff's Exhibit 4.
5 By MR. BOGER:
6 Q And, once again, you didn't remember that til - - you
7 didn't tell Mr. Norville til today that you remembered the
8 conversation, and the sunshine, and so forth, did you?
9 A That is correct, I did not talk to Mr. Norville
10 between Paul Mitchell's deposition and today.
11 Q And if you had remembered that and put it in the
12 contract, we wouldn't be here, would we? We wouldn't be
13 litigating this if you had put it in the contract?
14 A I don't know what you would be litigating, to be
15 honest with you.
16 Q Well, if you had told Mr. Norville about it in the
17 contract, he would have had notice of it in the contract
18 and he could have dealt with it that way, isn't that
19 correct?
20 A I think that's fairly obvious.
21 Q And the contract that you signed with him, once
22 again, did not have this agreement that you have with Mr.
23 Mitchell in it anywhere, does it?
24 A It couldn't have.
25 Q Because you forgot it?

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1 A. Because I forgot it.
2 Q And for three and a half years you forgot it?
3 A Absolutely.
4 Q Okay. And your testimony - - I noticed you hesitated
5 when Mr. Milling asked you, "What would you do about the
6 fence?" And you hesitated and said you hoped it would
7 disappear when a building got built.
8 A Is there a question in that?
9 Q Yes.
10 A What is it?
11 Q And then you added, "If I built the building." Are
12 you planning on building a building? Are you planning on
13 building a house now?
14 A I have no current plans.
15 Q Okay.
16 A My wife told me I have to keep the property.
17 Q Okay. And you would - - according to your, once
18 again, your Email of October 4, 2005 - - like to sell it
19 for more money to somebody else, is that correct?
20 A No, I would not like to; my wife told me not to.
21 Q Okay. So now you want to keep it?
22 A That is my present plan.
23 Q I don't have any further questions.
24 THE COURT: Mr. Melling, anything further?
25 MR. MELLING: No further questions.

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1 THE COURT: Okay, sir, you may come down. Watch your
2 step coming down.
3 MR. STREBLER: Thank you.
4 THE COURT: Mr. Strebler, do you have any other
5 witnesses?
6 MR. STREBLER: I do not, Your Honor.
7 THE COURT: All right. Do you rest your case?
8 MR. STREBLER: I do.
9 THE COURT: Okay, Mr. Strebler rests.
10 THE COURT: Any motions or anything? Mr. Boger?
11 MR. BOGER: A brief motion for a Directed Verdict as
12 to my client, as to Mr. Strebler, Your Honor.
13 THE COURT: I think again Mr. Strebler has offered
14 enough evidence to get past the motions stage, so
15 therefore your motion is denied.
16 MR. BOGER: Thank you.
17 THE COURT: All right, Mr. Melling?
18 MR. MELLING: No motion from us. Can I proceed with
19 our case, Your Honor?
20 THE COURT: Yes, sir.
21 MR. MELLING: The defense would like to call Mr. Fred
22 Delk.
23 THE COURT: Please put your left hand on the Bible
24 and raise your right hand.
25 (Fred Delk, being duly sworn, testified as follows:)

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1 THE COURT: Well, I thought - - you've already done
2 Direct and Redirect, haven't you?

3 MR. MELLING: I did Redirect. I apologize, Your
4 Honor.

5 THE COURT: No problem.

6 THE COURT: All right, thank you, Mr. Delk. Watch
7 your step coming down.

8 THE COURT: Mr. Melling?

9 MR. MELLING: Your Honor, next I would like to call
10 Mr. Mitchell.

11 THE COURT: Please put your left hand on the Bible
12 and raise your right hand.

13 (Paul Mitchell, being duly sworn, testified as
14 follows:)

15 DIRECT EXAMINATION

16 BY MR. MELLING:

17 Q Mr. Mitchell, when did you purchase Lot 5 of
18 Governors Hill?

19 A It was in 1999.

20 Q And Mr. Delk touched upon this, but describe the
21 makeup of your community.

22 A I mean, it's a very, very nice small community. It's
23 a Charleston style neighborhood. All the homes are custom
24 built, and many of the homes tie in together, you know.
25 But it's a very nice, very tight neighborhood.

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1 MR. BOGER: Thank you, Your Honor.
2 CROSS-EXAMINATION
3 BY MR. BOGER:
4 Q Mr. Mitchell, you are an entrepreneur, correct?
5 A That's correct.
6 Q And you are used to doing things in writing, aren't
7 you?
8 A I'm used to doing things in various ways.
9 Q Including writing?
10 A Including writing.
11 Q This agreement that you and Mr. Strebler had is not
12 in writing?
13 A No.
14 Q And you have a three-car garage?
15 A Yes.
16 Q Okay. And do you park a car in that paved area on
17 Lot 6?
18 A On Lot 6, on---
19 Q On the Strebler property?
20 A I park - - there are occasions when I park a car on
21 my pad, which does extend - - a portion of it extends into
22 Lot 6.
23 Q Okay. Now, we've used the word "temporary fence"
24 today, haven't we?
25 A Yeah, it's been called a temporary fence.

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1 Q And you are willing to move the fence, isn't that
2 right?
3 A I'm willing to rebuild the fence when I have a
4 neighbor and there is a plan to do so, so that - - yes,
5 when there is a clear plan to do so, and I can tie it into
6 his home.
7 Q You remember your deposition in June?
8 A Yes, I do.
9 Q And let me show you your deposition. If you will
10 look at page 13 of the deposition.
11 MR. BOGER: Your Honor, I've got the original here.
12 THE COURT: I'm sorry, what page?
13 MR. BOGER: Page 13.
14 By MR. BOGER:
15 Q If you will just look at line 12. And your answer
16 was - - and you can go ahead and read it, if you want,
17 starting with, "It just doesn't make---"
18 A "It just doesn't make sense to go through with that
19 multiple times, so I mean there is another reason I won't
20 do it. But I feel like I have a right to have the fence
21 where it is."
22 Q And my question was, "And not move it?"
23 A And I answered, "Correct".
24 Q Okay. And so your deposition in June is you're not
25 going to move the fence, isn't that right?

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1 A My deposition in June was that at that time I was not
2 prepared to move the fence.
3 Q Are you prepared to move the fence today?
4 A As we sit here, no.
5 Q Okay. You're going to leave it there until the Court
6 tells you to move it, or---
7 A ---or until it makes sense, and there is a neighbor,
8 or neighbor's wall for me to tie it into.
9 Q Okay. So in the time that the fence has been there,
10 has anybody else tried to buy the lot, to your knowledge,
11 other than Mr. Norville?
12 A I did submit an offer to Dana Wolfe for the property.
13 Q Okay, and how much was your offer for?
14 A I don't recall exactly.
15 Q And you were unsuccessful in your bid to get that
16 property?
17 A Correct.
18 Q At the time that the fence was built, did Mr. and
19 Mrs. Strebler own two lots?
20 A Yes.
21 Q They owned 6 and 7?
22 A Correct.
23 MR. STREBLER: Object, Your Honor. How would this
24 witness know what my assets are?
25 THE COURT: Mr. Boger?

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1 MR. BOGER: I'm not concerned about his assets. I
2 thought he owned two lots. I think it's been brought out
3 that he owned two lots.

4 THE COURT: I was going to say, I thought I
5 remembered that from somebody's testimony.

6 THE COURT: You object, Mr. Strebler?

7 MR. STREBLER: Well, I guess the only way Paul really
8 would know is from being in court today. To say that he
9 absolutely knows what real estate holdings I own is a
10 little bit off mark.

11 THE COURT: Okay, it's not relevant or---

12 MR. STREBLER: I think it's---

13 THE COURT: ---speculation or hearsay---

14 MR. STREBLER: Speculation, hearsay, and irrelevant.

15 THE COURT: Sustained.

16 BY MR. BOGER:

17 Q If Mr. Strebler owned two lots, would it be easier to
18 give up some additional property for the fence than if he
19 owned only one, if you know?

20 A I don't know.

21 Q Okay. Now, you corresponded with Mr. Strebler about
22 this matter, isn't that correct?

23 A Yes, on a limited basis, maybe once or twice, that I
24 recall.

25 Q And that was before your deposition in June?

Official Court Reporter

*Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201*

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1 A Correct.

2 Q And you did not have copies of that correspondence in
3 your deposition in June?

4 A That's correct.

5 Q And, once again, there is nothing in writing anywhere
6 about this agreement with Mr. Strebler about the grant of
7 property?

8 A Not that I'm aware of.

9 MR. BOGER: I don't have anything else of Mr.
10 Mitchell, Your Honor.

11 THE COURT: Okay.

12 THE COURT: Mr. Strebler?

13 CROSS-EXAMINATION

14 Q I have one question for Mr. Mitchell. At anytime did
15 the Streblers attempt to rescind the agreement for the
16 driveway with you?

17 A No.

18 Q Before or after the lawsuit?

19 A No.

20 Q Thank you.

21 THE COURT: Okay.

22 THE COURT: Any Redirect?

23 MR. MELLING: One or two, Your Honor.

24 THE COURT: All right.

25 REDIRECT EXAMINATION

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1 MR. MELLING: No questions, Your Honor. I would just
2 request could we take a break before we go with on with
3 motions and closing?

4 THE COURT: Well, actually, as far as closing
5 arguments are concerned, I was going to dispense with
6 those and let everyone submit a proposed order. And I
7 think you can gauge by my rulings on the earlier motions,
8 I don't - - I think there is evidence in the record to
9 support each party's case, at least beyond the motions
10 stage. But I'll let you make your record, if you would
11 like. Do you want to take a break before we do that?

12 MR. MELLING: I would appreciate just five minutes,
13 Your Honor.

14 THE COURT: Okay, that's fine.

15 MR. BOGER: I just want to make sure we're on the
16 same page. Are we going to make a closing statement and a
17 Brief, or just do Briefs?

18 THE COURT: No, I would dispense with closing
19 arguments and ask for proposed orders - - not Briefs but
20 orders, proposed orders. And Mr. Melling wants to make a
21 motion, and I guess it is probably inappropriate to tell
22 you ahead of time that I think they've offered enough - -
23 the defense has offered enough evidence - - and you are
24 going to renew the same motion you made after the
25 plaintiff's case?

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202

1 as sanctions. And so we will hold the request for
2 sanctions in abeyance.

3 THE COURT: Anything further today? Oh, I'm sorry,
4 proposed orders. If you all can submit a proposed order
5 by November 30th - - that's roughly three weeks from today
6 - - I would appreciate it. And again, make it in the form
7 of an order, not a Brief, something that if you had your
8 druthers I would just look at it and sign - - read it and
9 sign. But again, make it an Order and not a Brief.

10 MR. STREBLER: Your Honor, may I ask a question on
11 the orders?

12 THE COURT: Yes.

13 MR. STREBLER: Does the order justify what your
14 ruling is?

15 THE COURT: Yes, the order would be as if I were
16 writing it in your favor. That's what the proposed order
17 would be. It's a proposal. I certainly may change it,
18 may toss it out, may rewrite it, or something like that.

19 MR. STREBLER: But it will say why you decided this
20 way?

21 THE COURT: Yes - - I mean, yes, that's what it
22 should say.

23 MR. STREBLER: Thank you very much.

24 MR. MELLING: Sort of in the light of proposed
25 findings of facts and conclusions of law, that kind of

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1 thing?

2 THE COURT: Right. And in accord with the Rules of
3 Civil Procedure.

4 THE COURT: Anything further today?

5 (No Response.)

6 THE COURT: All right, we stand adjourned.

7 MR. BOGER: Thank you, Your Honor.

8 MR. MELLING: Thank you, Your Honor.

9 MR. STREBLER: Thank you, Your Honor.

10 THE COURT: And make sure the court reporter has all
11 the exhibits.

12 (Thereupon, the proceedings in this matter were
13 concluded.)

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Official Court Reporter

209

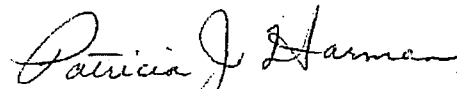
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Columbia, South Carolina 29201

1
2
3 CERTIFICATE
4

5 I certify that the foregoing is a transcript of the hearing taken before
6 me, Patricia J. Harman, the undersigned Court Reporter, at a hearing
7 without a jury held before The Honorable Joseph M. Strickland, Master in
8 Equity for Richland County, held on November 9, 2009, in the within-
9 captioned case.

10 I further certify that all witnesses were duly sworn; that verbatim
11 stenotype was used and transcribed by me; and that the foregoing pages
12 numbered from 3 through 209, inclusive, constitute a true, accurate, and
13 complete transcription of the said hearing, to the best of my skill and
14 ability.
15
16
17

18
19 June 16, 2010


PATRICIA J. HARMAN, CCR

20 MY COMMISSION EXPIRES: 3-20-2011
21
22
23

Official Court Reporter
Master in Equity, Richland County
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210

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PAGE 81/85

P. 882-883



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 Compensation: 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 entered into this 8 day of August, 2005, by James H. Rapoport & Co., Inc., Purchaser(s), to James H. Rapoport & Co., Inc., Seller(s).

2. PROPERTY DESCRIPTION

Subject to terms and conditions herein, Seller agrees to sell and Purchaser agrees to buy the following described property with improvements and fixtures thereon:

Lot Block Section Subdivision Marvin Hall
Address 6000 Highway 101
Tax Map # 00901007019 Chy Columbia Zip 29201
County of Richland State of South Carolina.

3. PRICE

The sales price is \$ 170,000.00

A. \$ 170,000.00 Earnest Money paid by cash to be paid as follows:
held in trust by James H. Rapoport & Co., Inc.
Balance of down payment at closing to be in the form of a cashier's check or certified funds.
C. 0 Loan amount type marked below to be obtained by Purchaser.

4. FINANCING

CONVENTIONAL SELLER DASH (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 no way make any representation as to the credit-worthiness of Purchaser and warrant that Seller determines for himself that Purchaser's credit is satisfactory.

B. In each installment, Purchaser agrees to provide Seller or Seller's agent, within ten (10) business days of receipt of this Contract, written verification of sufficient and available funds for the specified date of closing.

Purchaser's closing costs shall be paid by Purchaser. Purchaser's proposed terms shall be paid by Purchaser. Discount points (if any) shall be paid by Purchaser. If Seller pays closing costs, prepaid items, and/or discount points on behalf of Purchaser, Seller will pay costs of Purchaser, not to exceed \$ 0.

Purchaser agrees to apply for financing as stated above, from the institution of his choice, and agrees to provide Seller, within the (3) business days from the date of acceptance, confirmation from Lender that application has been made and funds are being advanced for credit report and appraisal. Purchaser to furnish Lender any documentation required for the processing of this loan in a timely manner. Purchaser agrees to provide Seller with any documents required above and Seller's Agent. Purchaser further hereby gives permission to Lender to disclose pertinent information concerning the Purchaser's loan to the Listing or Selling Broker or Agents. If loan is rejected by Lender, Purchaser or Purchaser's Agent must notify the Listing or Selling Broker and Seller and 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.

5. CLOSING COSTS DISCOUNT POINTS

6. LOAN PROCESSING APPLICATION FINANCING

7. ADDITIONAL CONTINGENCIES CONDITIONS

Seller warrants that this land is free of all liens and encumbrances except as shown on the plat of the land.

01/02
1 of 3

Purchaser's Agent: (Signature) DATE 8/18/05 HAVE READ THIS PAGE, SIGNED AND
Selling Broker: (Signature) DATE 8/18/05 HAVE READ THIS PAGE.

Form 101 Rev. 01/02

08/10/05 10:48AM; KILIX #325; Page 2/5

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PAGE 82/86

AUG-08-2005 16:08 FROM:

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P.083/285

**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 _____ (dimensions, acreage, etc.), Purchaser may elect to terminate the Contract by notifying Seller or Seller's Agent in writing of Purchaser's intent to terminate. Purchaser shall 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 all appropriate insurance coverage, including that required by the lender.

**9. CONDITION OF
PROPERTY**

The Seller shall not remove any timber, dirt, minerals or otherwise affect the condition of the property after the signing of this Contract. All timber, dirt, minerals, etc., shall remain with the property and be a part of the property and be transferred to the Purchaser. The Seller shall not bring any trash, refuse, debris, medical or hazardous waste, or other improper materials upon the property. In the event any contamination 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., homeowner's association) or dues. If property is subject to a mandatory fee, the fee is \$ _____ per _____ and shall be current 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 homeowner's association/region, 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 in 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 this 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 area shall be done by professional inspectors 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 response to the inspections or studies and a copy of such reports within the period twenty (20) business days after, 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 this Contract and return of Purchaser's earnest money.

B. If Purchaser elects to proceed with this sale, Purchaser has the option of accepting the property in current condition or 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 meet any defects or conditions at the 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 this 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 this 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 limits herein provided, or Purchaser's acceptance of the Seller's offer, shall constitute an acceptance of the condition of the property and a waiver of the Seller's right to object to any defects found by said reports.

**11. CONVEYANCE
DATE OF
CLOSING**

Conveyance shall be made subject to all ordinances as well as covenants of record (provided they do not violate 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 statutory warranty deed free of encumbrances, except as herein stated. All statutory deed recording fees shall be the responsibility of Seller. The deed shall be prepared in the name of _____ and delivered to the stipulated place of closing. This transaction shall be closed on or before _____.

12. POSSESSION

Absent a written agreement to the contrary, Seller shall give Purchaser possession at closing, subject to any 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) calendar days from the original closing date. In each extension, if terms and conditions of Section 4.B. have been met, both parties agree to extend this Contract for a period not to exceed ten (10) calendar days from the original closing date.

**14. BROKERAGE
FEE**

All real estate brokerage fees as specified in the Listing Agreement or in the Buyer's Brokerage Representation Agreement, if applicable, are 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 does 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 which results in the forfeiture of the earnest money, the Broker shall be the sole party, and the Broker shall be entitled to recover the earnest money from the party who is responsible for the forfeiture. The earnest money shall be the property of the Broker and shall not be subject to any claim by the Seller or the Buyer.

The South Carolina Real Estate Commission Act allows the Broker to hold the earnest money to deposit it into an interest-bearing account. Purchaser agrees to and understands that he has been informed of his right to terminate the Contract and reimbursement to the Broker by this written agreement. The earnest money as noted _____ will not be deposited into an interest-bearing account with the interest accruing to the benefit of the Broker.

SUS
2005

Purchaser's initials () DATE _____ HAVE READ THIS PAGE Seller's initials () DATE 8-8 HAVE READ THIS PAGE.

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Tables, under, some charges, fuel oil, propane, electricity, natural gas, waste when applicable, and all other expenditures involving Homeowner's association fees, regular fees or the like shall be acquired as of the date of closing. Tax provisions pursuant to said Ordinance are to be based on the tax information available on the date of closing. Tax provisions that break units otherwise stipulated in the 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.

If applicable, real estate taxes shall be the responsibility of _____.

seller agrees to comply with the provisions of South Carolina Code Section 13-8-580 (as amended) regarding withholding of sales tax for non-residents of South Carolina who are not residents of South Carolina as defined in the said statute.

[illegible][illegible]

dispute or claim arising out of or relating to this Contract, the breach of this Contract or the enforcement of this Contract, shall be submitted to mediation in accordance with the provisions of the NATIONAL ARBITRATION AND CONCILIATION BOARD.

of the NATIONAL ASSOCIATION OF REALTORS® in accordance with the Rules and Procedures of the service provided in million
any real estate broker or other person or entity in connection with the sale, purchase, financing, condition of offer, or other
the property to which this Contract pertains, including without limitation allegations of concealment, misrepresentation,
negligence and/or fraud. Any Contract signed by the parties purports to bind the signatories to the provisions of the
Uniform Real Estate Settlement Procedures Act, 12 C.F.R. 101.11, and the Uniform Real Estate Settlement Procedures Act
Code App. Section 15-40-16, et. seq. as well as the provisions of the Uniform Real Estate Settlement Procedures Act

parties agree that this written Contract supersedes the entire agreement between the parties, and that there is no other contract, oral or otherwise, modifying the terms hereinafter set forth. This Contract shall be binding on both parties, their heirs, heirs, personal representatives, successors and assigns as shall here permit.

Buyer and Seller agree that receipt of a signed contract by facsimile (FAX) will be the same as receipt of an original contract.

1. The provision herein contained herein by its nature and effect is required to be observed, kept or performed after the closing of business this day and remain binding upon and for the parties hereto until fully observed, kept or performed, except on Saturdays, Sundays and South Carolina public holidays, beginning at 12:01 noon on the day following the day of the closing.

copies of the NAD-1 statement submitted for the Commission.

[illegible]

(E) Give no warranty, express or implied, as to the fitness for a particular purpose of the property or its condition at the time of sale; and

(F) Represent and warrant that the property being purchased is in compliance with all applicable laws relating to the purchase.

Personnel and Seller should read, understand, and agree to the contents and terms of this contract before entering into the same and purchase any goods or services therefrom. The Company has the right to refuse to sell to any person who does not agree to the terms of this contract.

[illegible]

Aug 18 05 07:05a Keith Norville

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PAGE 04/06
P.085/085



ADDENDUM

CONTRACT DATED 8-8-05
BETWEEN SELLER Parent of Parent
AND PURCHASER Mountain Properties LLC
IN REFERENCE TO (PROPERTY ADDRESS) 6 Severna Park Hill

THIS ADDENDUM IS HEREBY MADE A PART OF THE ORIGINAL CONTRACT.

Seller is to Pay 3% Commission to
Parent of Parent

<u>[Signature]</u> WITNESS	<u>Lisa W. Stieber</u> SELLER	<u>8/10/08</u> DATE
<u>[Signature]</u> WITNESS	<u>Mr. Stieber</u> SELLER	<u>8-10-08</u> DATE
<u>[Signature]</u> WITNESS	<u>Mountain Properties LLC</u> PURCHASER	<u>8/10/08</u> DATE
<u>[Signature]</u> WITNESS	<u>By David Norville</u> PURCHASER	<u>8/10/08</u> DATE

FORM #187
REV. 10/99

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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 the 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 8 day of August, 20 05
by Norman Properties LLC
to Owner of Record, Purchaser(s)
Seller(s).
2. PROPERTY DESCRIPTION Subject to terms and conditions herein, Seller agrees to sell and Purchaser agrees to buy the following described property with improvements and fixtures thereon:
Lot Block Section Subdivision Governors Hill
Address 6 Governors Hill
Tax Map # 00901007019 City Columbia Zip 29201
County of Rockland State of South Carolina.
3. PRICE The sales price is \$ 175,000.00 to be paid as follows:
A. \$ 5,000.00 Earnest Money paid by () cash, () check, () other
held in trust by Russell-Jeppcoat
B. \$ 170,000.00 Balance of down payment at closing is to be in the form of a cashier's check or certified funds.
C. \$ Loan amount (type 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 credit-worthiness 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 specified date of closing.
5. CLOSING COSTS DISCOUNT POINTS Purchaser's closing costs shall be paid by Purchaser. Purchaser's prepaid items shall be paid by .
Discount points (if any) shall be paid by . If Seller pays closing costs, prepaid items, and/or discount points on behalf of Purchaser, Seller will pay costs of Purchaser, not to exceed \$.
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 credit report 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 Brokers or Agents. If loan is rejected by initial 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 understands that Norman Properties LLC is a General Agent and not owner of Norman Properties LLC

01/02
1 of 3

Purchaser's Initials (N) DATE 8/8/05 HAVE READ THIS PAGE. Seller's Initials (R) DATE 8/8/05 HAVE READ THIS PAGE.

Form 101 Rev. 01/02



- 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 (dimensions, square feet, acres), Purchaser may elect to terminate the Contract by notifying Seller or Seller's Agent in writing of Purchaser's intent to terminate or Purchaser shall 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 all appropriate insurance coverage, including that required by the lender.
- 9. CONDITION OF PROPERTY**
- The Seller shall not remove any timber, dirt, minerals or otherwise affect the condition of the property after the signing of this Contract. All timber, dirt, minerals, etc., shall remain with the property and be a part of the property and be transferred to Purchaser. The Seller shall not bring 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., homeowner's association/ regime or otherwise). If property is subject to a mandatory fee, the fee is \$ _____ per _____ and shall be current 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 homeowner's association/regime, 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 in 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 Purchaser.
- 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 this 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 area shall be done by professional inspectors 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 acceptance of this Contract by both parties. If Seller or Seller's agent does not receive Purchaser's written response to the inspections or studies and a copy of such reports 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 this Contract and refund of Purchaser's earnest money.
- B. If Purchaser elects to proceed with this sale, Purchaser has the option of accepting the property in current condition as referenced by the reports or 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 the 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 this 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 this 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 limits herein provided, or Purchaser's acceptance of the deed 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 easements 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 statutory warranty deed free of encumbrances, except as herein stated. All statutory deed recording fees shall be the responsibility of Seller. The deed shall be prepared in the name of Monica R. Rappaport and delivered to the stipulated place of closing. This transaction shall be closed on or before 8-31-05 W/24 Hr. Notice.
- 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) calendar days from the original closing date. In cash transaction, if terms and conditions of Section 4.8. have been met, both parties agree to extend this Contract for a period not to exceed ten (10) calendar days from the original closing date.
- 14. BROKERAGE FEE**
- All real estate brokerage fees as specified in the Listing Agreement or in the Buyer's Brokerage Representation Agreement, if applicable, are 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 does 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 acting as 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 same to be charged and assessed against Purchaser or Seller or both as the court may decide. Earnest money shall not be refunded 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 his right to ownership of the interest and relinquishes to the Broker by this written agreement said right of ownership. The earnest money so noted ✓ will ✓ will not be deposited into an interest bearing account with the interest accruing to the benefit of the Broker."

01/02
2 of 3Purchaser's Initials (MR) DATE 8-30-05 HAVE READ THIS PAGE. Seller's Initials (MR) DATE 8-30-05 HAVE READ THIS PAGE.

- 16. 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 the like shall be adjusted as of the date of closing. Tax proration 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. ROLLBACK TAXES** If applicable, rollback taxes shall be the responsibility of Seller.
- 18. NON-RESIDENT TAXES** Seller agrees to comply with the provisions of South Carolina Code Section 12-9-580 (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 then 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, condition 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 15-46-10, et. seq. shall not apply to 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 as state law permits.
- 23. EXPIRATION OF OFFER** This offer from Purchaser shall be withdrawn at 12 o'clock P.m (ET) on 8-12-05 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 remain 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. HUD/CLOSING STATEMENT RELEASE** Seller and Purchaser authorize their respective attorneys and the settlement agent to furnish to listing 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, services or systems, thereto, including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems, or to the structure; (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 thereto; (E) Give no warranty, express or implied, that the property being purchased is in compliance with all necessary zoning ordinances and restrictions; (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 THEREOF, this Contract has been duly executed by the parties hereto.

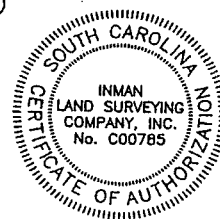
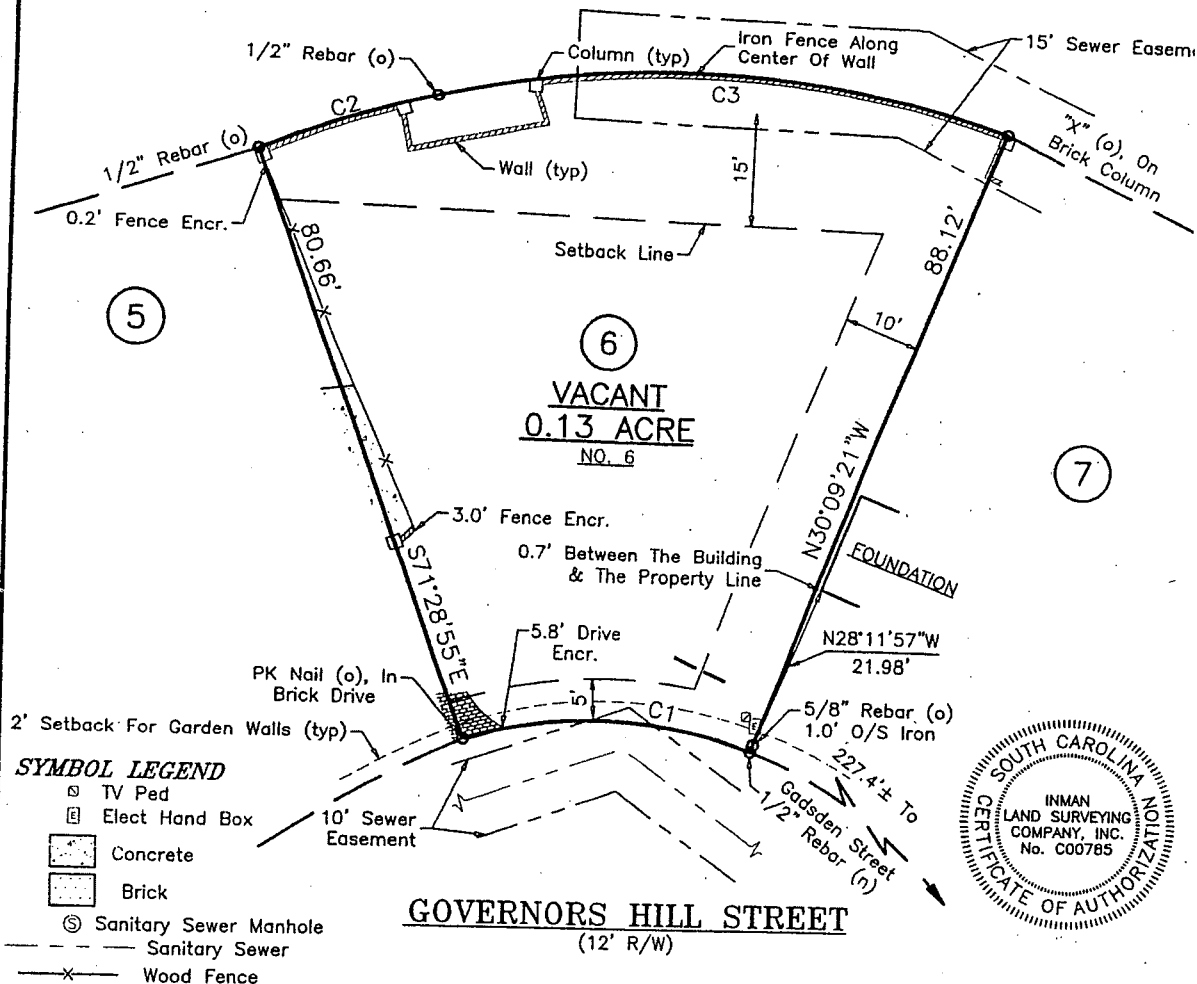
Witness as to Purchaser	<u>[Signature]</u>	Purchaser	<u>[Signature]</u>	Date	<u>8-8-05</u>	SSN	
Witness as to Seller		Seller	<u>[Signature]</u>	Date		SSN	
Witness as to Seller		Seller	<u>[Signature]</u>	Date		SSN	
Listing Agent		Office		Telephone Number			
Selling Agent		Office		Telephone Number			

FINAL CONTRACT ACCEPTED BY BOTH PARTIES AT _____ O'CLOCK _____ M. (ET) ON _____

Magnetic

**NOW OR FORMERLY
CITY OF COLUMBIA**

	C1	C2	C3	DELTA	CHORD	CH BRG
	56.50	38.68	39°13'24"	37.93	N40°20'40"	
	181.82	24.24	7°38'14"	24.22	S19°45'48"	
	125.00	75.82	34°45'12"	74.66	S40°35'35"	



PLAT PREPARED FOR: NORWEST PROPERTIES, LLC RICHLAND COUNTY, COLUMBIA, SOUTH CAROLINA		I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN. <i>Charles L. Lucas</i> CHARLES L. LUCAS, P.L.S. NO. 23567
DATE: AUGUST 29, 2005	PROJECT NO.: F08059	
SCALE: 1"=20' 	TOTAL AREA = 0.13 ACRE RATIO OF PRECISION = 1/10,000 AREA BY COORDINATE METHOD	

REFERENCE:
 THE SAME BEING SHOWN AND DESIGNATED AS LOT NO. 6, ON A FINAL PLAT OF GOVERNOR'S HILL SUBDIVISION, BY U. S. GROUP, INC., DATED JUNE 1, 1994 AND RECORDED IN THE OFFICE OF REGISTER OF DEEDS FOR RICHLAND COUNTY IN PLAT BOOK 55, PAGE 3894.

NOTES:
 1. THIS PROPERTY IS POSSIBLY SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD NOT SHOWN HEREON.
 2. THIS PROPERTY MIGHT HAVE UNDERGROUND UTILITIES THAT ARE NOT VISIBLE AT THE SURFACE.
 3. NO FLOOD ZONE INSPECTION AT THIS TIME.

Keith Norville

803-957-3374

Fax 803-957-3374

Rnorvest@aol.com

August 30, 2005

*Mr. Dana Wolfe
The Wolfe Company Inc.
1216 Pickens Street
Columbia, SC*

Re. 6 Governors Hill

The attached survey shows encroachments on the Governors Hill lot. These encroachments must be removed before we can close. Please keep me posted on the status of this matter.

Keith Norville

*I delivered this to Dana
by hand.*



002

Keith Norville

803-957-3374

fax 803-957-3374

Rnorwest@aol.com

September 19, 2005

Mr. Dana Wolfe
The Wolfe Company
1216 Pickens Street
Columbia SC

Re: #6 Governors Hill

We have scheduled another closing for October 14, 2005. Please tell Mr. Strebler so he can have the encroachments removed in time for us to have the property checked.

Keith Norville

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <i>Marian Hill</i> ☐ Agent ☐ Addressee B. Received by (Printed Name) <i>Marian Hill</i> C. Date of Delivery <i>9/16</i> D. Is delivery address different from item 1? ☐ Yes ☒ No If YES, enter delivery address below:	
1. Article Addressed to: <i>Mr. Dana Wolfe The Wolfe Co 1216 Pickens St. Columbia SC 29201</i>		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
2. Article Number (Transfer from service label) <i>7003 3110 0000 6534 6405</i>		4. Restricted Delivery? (Extra Fee) ☐ Yes	

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

Postage \$ *37*
Certified Fee *230*
Return Receipt Fee (Endorsement Required) *175*
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees \$ *442*

SEP 19 2005
POSTMARK
PASTIME
CPU 28015

OFFICIAL USE

Sample
Don't mail this. The bill is too

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-154

5064 4554 0000 0000 0000 0000



Brian

From: MIKE STREBLER [mstreble@kent.edu]
Sent: Tuesday, October 04, 2005 3:33 PM
To: brian@brianboger.com
Subject: 6 Governor's Hill

Dear Brian,

I have received your very threatening letter. Do not fear, I am out to hurt no one and would not take financial advantage of anyone. Your client discovered an encumbrance I did not know existed. If I had known there was an encumbrance I would have disclosed it from the beginning.

The problem is there isn't really anything I can do. I can't/won't sponsor litigation in South Carolina against Paul Mitchell nor can I physically remove whatever encroachment he has placed on the property due to my health. Since the property cannot be conformed without encumbrance the contract cannot be performed in your unilaterally determined time frame. I can't make silk out of a sow's ear.

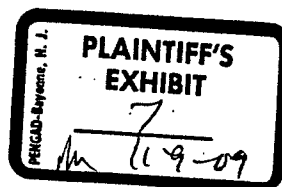
I therefore invite your client to submit any reasonably incurred expenses for consideration of payment. I will gladly instruct my realtor to release any funds deposited in consideration of the purchase. All work products for which I am reimbursing your client will then become my property and your client will be financially whole.

I'm sorry it didn't work out for your client to purchase the property. My wife and I selected that particular property before ground was broken when it was still a parking lot. We felt it to be the nicest lot in the development and spent many evenings watching the Columbia skyline from our lot. It is probably best that the sale did not work out as I have found Paul Mitchell to be a very good neighbor. Had the sale gone forward through intimidation, I can't help but to feel this whole incident would leave a bad taste for all parties. This would have made living at 6 Governors Hill an unpleasant experience for your client.

I would have liked to sell the property to your client. The property doesn't mean as much to me as my wife. I took a bit of heat from her for marketing it. It is probably one of the most unique properties remaining in Columbia. Also, there is no financial urgency for us to sell the property. We don't mind having Dana re-sell the property at a higher price with the known defect disclosed.

Hopefully this will be satisfactory to your client. All parties will be returned to their original positions.

Mike Strebler



005

1331 ELMWOOD AVENUE, SUITE 210.
P.O. BOX 65
COLUMBIA, SOUTH CAROLINA 29202

BRIAN L. BOGER
OF COUNSEL:
JILL G. MIGLIORE

TELEPHONE: (803) 252-2880
FACSIMILE: (803) 254-5025
email: brian@brianboger.com

February 6, 2007

Mr. Paul J. Mitchell
PO Box 8053
Columbia, SC 29202

RE: Encroachments onto Lot 6 Governors Hill

Dear Mr. Mitchell:

I am sure that you are aware that your neighbor's, Michael and Lisa Strebler are in litigation with my client, Keith Norville about your brick and wooden fences, the brick column along with portions of the brick drive and pool decking. that encroach upon the Strebler lands.

In preparing for trial, we felt that an estimate of the actual cost to remove these items was necessary. We were pleasantly surprised to find that the removal of all of these things will cost less than \$3,000.00. I have attached a copy of the proposal for your review. We wondered if you would be open to meeting with Richard Rogers so that you and he can discuss the best way to take care of these encroachments. We would like to get this taken care of as soon as possible so that Mr. Norville can move forward with his purchase of Lot 6.

I look forward to your reply. Thank you in advance for your consideration of this request.

Most Sincerely,



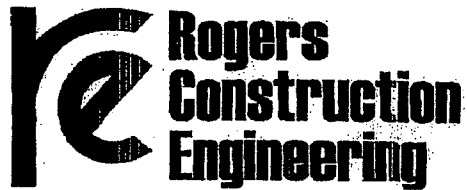
Brian L. Boger

BLB/sp

cc: Norwest Properties



011



November 29, 2006

Mr. Michael Haigler
[Redacted Address]

Re: Governors Hill - Lot 6 Encroachment

Dear Michael,

Per your request, we have examined the above lot using a survey provided by Inman Land Surveying dated August 29, 2005.

There are a few items encroaching on the north boundary of the lot. The items are a 3' section of brick fence, a 50' section of wood fence, a brick column, a portion of the adjacent concrete pool deck, and a portion of the adjacent brick paver driveway.

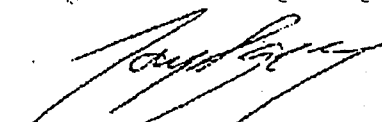
We can remove these items from the site for \$1,500. This includes saw cutting the pool deck and driveway to create a straight edge on the property line.

We can replace the wooden fence and the brick column on the other side of the property line for an additional \$1,400.

We appreciate the opportunity to submit this proposal. Please feel free to contact us with any questions or comments.

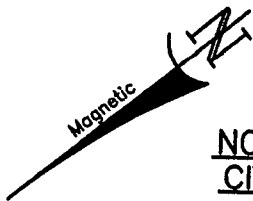
Sincerely,

Rogers Construction Engineering, Inc.


Richard J. Rogers, PE
President

My Commission Expires 12/31/2008
I am a Licensed Professional Engineer
in the State of Georgia
License No. 1000000000000000

C:\Documents and Settings\jay.Rogers\My Documents\Estimates\Governors Hill - Lot 6.doc



**NOW OR FORMERLY
CITY OF COLUMBIA**

CURVE TABLE					
CURVE	RADIUS	LENGTH	DELTA	CHORD	CH BRG
C1	56.50	38.68	39°13'24"	37.93	N40°20'40"E
C2	181.82	24.24	7°38'14"	24.22	S19°45'48"W
C3	125.00	75.82	34°45'12"	74.66	S40°35'35"W

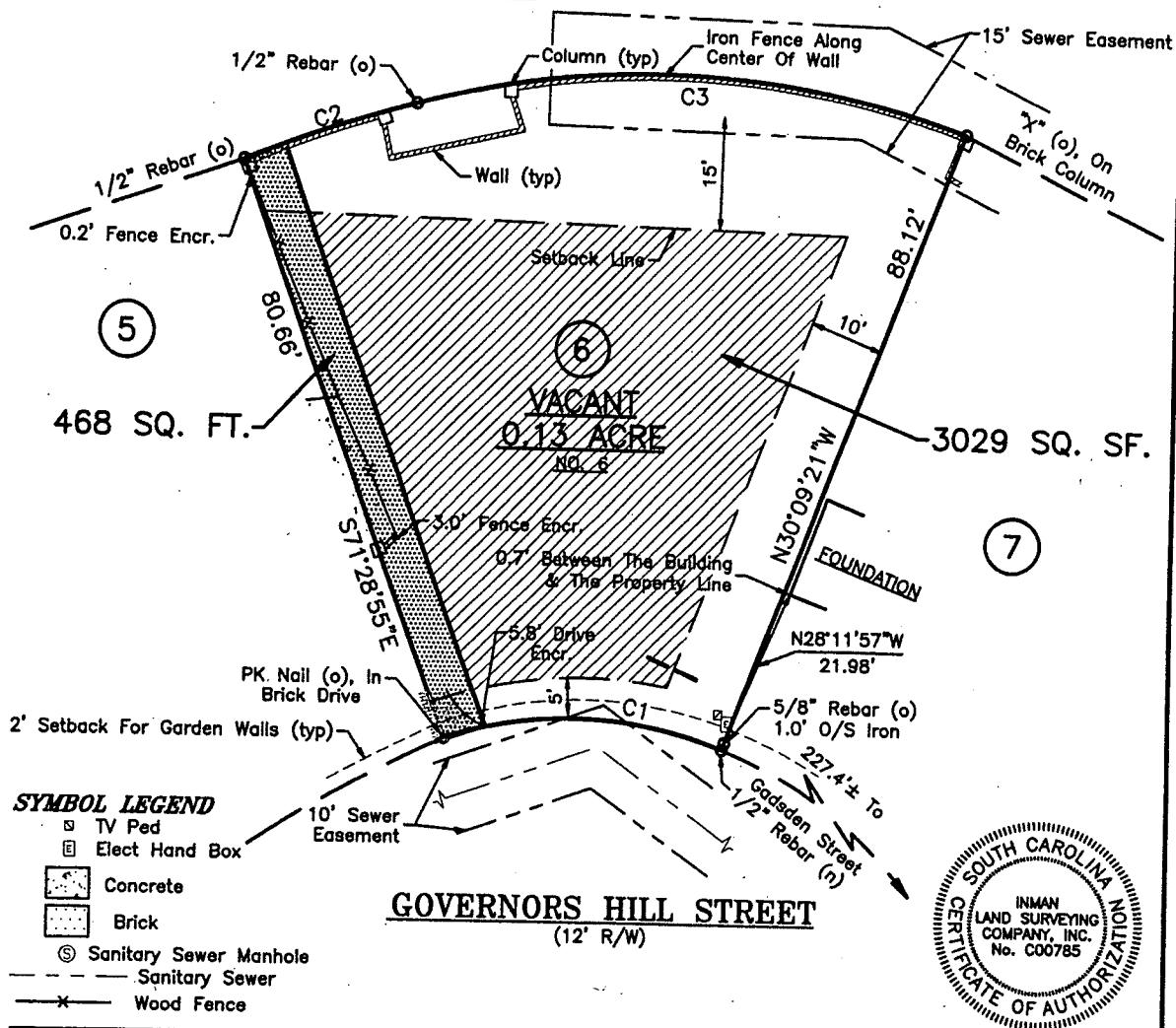


EXHIBIT PREPARED FOR:

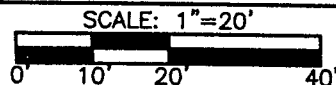
NORWEST PROPERTIES, LLC

RICHLAND COUNTY, COLUMBIA, SOUTH CAROLINA



DATE: NOVEMBER 9, 2009

PROJECT NO.: J11005



TOTAL AREA = 0.13 ACRE
RATIO OF PRECISION = 1/10,000
AREA BY COORDINATE METHOD

REFERENCE:

THE SAME BEING SHOWN AND DESIGNATED AS LOT NO. 6 ON A FINAL PLAT OF GOVERNORS HILL SUBDIVISION, SOUTH CAROLINA

U.S. 13

E.1328

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Michael T. Strebler, Plaintiff,

-vs-

Norwest Properties, LLC and
Keith Norville, Defendants.

IN THE COURT OF COMMON PLEAS

CA#:

EM328
(09-2239)

LIS PENDENS

JEANETTE W. McBRIDE
C.C.P. & Q.S.

2009 MAR 26 AM 10:28

RICHLAND COUNTY
FILED

NOTICE IS HEREBY GIVEN that an action has been or will be commenced in the Court of Common Pleas for Richland County upon the complaint of the Plaintiff above named. For a dispute concerning the sale and purchase of the property at 6 Governors Hill Street.

Michael T. Strebler

Michael T. Strebler
6157 Burr Oak Way
Hudson, OH 44236
330.310.1687

Hudson, Ohio
March 13, 2009



01362 P 0451

012097(F:\Accl\ghill\Bnts_deed)



FILED
JAN 30 AM 9:03

RUBY H. DITMER

GRANTEE'S ADDRESS:

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

DEED

KNOW ALL MEN BY THESE PRESENTS, that COLUMBIA DEVELOPMENT CORPORATION ("Grantor"), for and in consideration of the sum of Fifty-seven Thousand Dollars (\$57,000.00), to it paid by MICHAEL T. STREBLER and [illegible] STREBLER (collectively, the "Grantees"), the receipt of which is hereby acknowledged, subject to the conditions, matters, and/or reservations herein set forth, if any, has granted, conveyed, sold and released, and by these presents does grant, bargain, sell, and release unto the said Grantees, the following described property:

ALL that certain piece, parcel, or lot of land, together with any improvements thereon, situate, lying, and being in Columbia, Richland County, South Carolina, being more fully shown and delineated as Lot 26 on plat of Governor's Hill Subdivision prepared by U.S. Group, Inc. dated June 1, 1994, recorded in the Office of the RMC for Richland County in Plat Book 55 at page 3804, said property having such courses, metes, measurements, and boundaries as shown on the aforesaid plat, which plat is incorporated herein by reference.

DERIVATION: This being a portion of the property conveyed to Columbia Development Corporation by deed of The City of Columbia, South Carolina, dated May 5, 1993, recorded in the Office of the RMC for Richland County on June 23, 1993, in Deed Book D-1147 at page 580, as amended by Correction of Deed and Release dated July 13, 1994, recorded on July 29, 1994, in Deed Book D-1211 at page 115.

TMS # 09010-07-19 Address: 1 Bourne's Hill St

TOGETHER WITH all and singular, the rights, members, hereditaments, and appurtenances to the said premises belonging or in any wise incident or appertaining.

PLAINTIFF'S
EXHIBIT
14
1/11/97

JAN 30 1997 70323

D 1362 P 0452

THIS CONVEYANCE is made subject to easements, conditions, and restrictions of record, including matters appearing on plats of record.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantees, their heirs and assigns forever.

AND Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantees, their heirs and assigns, against itself and its successors and assigns, and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof through or under the Grantor, but not otherwise.

WITNESS Grantor's hand and seal this 14 day of January, 1997.

WITNESSES:

Shannon M. Moke
Shannon M. Moke

COLUMBIA DEVELOPMENT CORPORATION
(SEAL)

By: Frederick M. Delk
Frederick M. Delk, Executive Director

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

ACKNOWLEDGEMENT

I, Sharon A. Madlin, a Notary Public of the county and state aforesaid, do hereby certify that Frederick M. Delk personally appeared before me this day and acknowledged that he is the Executive Director of COLUMBIA DEVELOPMENT CORPORATION, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name and sealed with its corporate seal.

Witness my hand and seal this 14 day of January, 1997.

[notarial seal]

Sharon A. Madlin
Notary Public

My commission expires: 12-26-97

KEITH G. NORVILLE

5314

DATE 8-11-05

PAY TO THE
ORDER OF

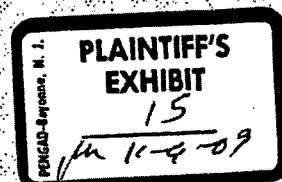
Russell A. Giffert \$ 5,000.00
five thousand 00/100
DOLLARS

Bank of America



Premier Banking

Keith G. Norville



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) CASE #: 2005-CP-40-6132

Norwest Properties, LLC,)
Plaintiff,)
v.)
Michael T. Strebler, Lisa)
W. Strebler and Paul)
Mitchell,)
Defendants.)

HEARING

Friday, July 29, 2011
10:07 a.m. - 10:20 a.m.

The hearing before the Honorable Joseph M. Strickland, Master in Equity for Richland County, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 29th day of July, 2011, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

APPEARANCES

Brian L. Boger, Esquire

Brian Boger Law Offices
1331 Elmwood Avenue, #210
Columbia, South Carolina 29201
Attorney for the Plaintiff

Michael T. Strebler

6157 Burr Oak Way,
Hudson, Ohio 44236
Pro Se Defendant

Andrew G. Melling, Esquire

McNair Law Firm, PA
1221 Main Street, Suite 1800
Columbia, South Carolina 29201
Attorney for the Defendant, Paul Mitchell

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Mr. Strebler.....	9
Certificate.....	12

1 **THE COURT:** The next case is Civil Action Number 2005-CP-
2 40-6132, Norwest Properties against Michael
3 Strebler.
4 **MR. STREBLER:** Good morning, Your Honor.
5 **THE COURT:** Good morning. Let me make sure I get
6 everybody's name and who represents whom. You're
7 representing yourself today, correct?
8 **MR. STREBLER:** Michael Strebler, sir, pro se.
9 **THE COURT:** You came all the way from Ohio for this?
10 **MR. STREBLER:** I did, and hopefully it's my last trip.
11 **THE COURT:** Okay.
12 **MR. MELLING:** Your Honor, Andrew Melling. I am
13 representing Paul Mitchell, and I really don't have
14 much of a role in this motion here today. Just
15 wanted to be here in attendance in case I could
16 offer anything to the Court.
17 **THE COURT:** All right. Mr. Strebler, again, you're
18 familiar ... let me point out you're pro se in this.
19 All right. Mr. Boger?
20 **MR. BOGER:** Your Honor, I guess, for the record I need to
21 state my name. Brian Boger, attorney for the
22 plaintiff, who is here along with me. Along with me
23 is my law clerk, Thomas Kirkpatrick. Since it's the
24 defendant's motion ...
25 **THE COURT:** All right. One moment please. I apologize.

1 I've forgotten your name, sir?

2 **MR. NORVILLE:** It's Keith Norville.

3 **THE COURT:** Okay. You're ...

4 **MR. NORVILLE:** I'm here ...

5 **THE COURT:** On behalf of Norwest Properties?

6 **MR. NORVILLE:** Yes.

7 **THE COURT:** Okay. All right. Mr. Strebler, you may
8 proceed.

9 **MR. STREBLER:** Good morning, Your Honor. I have requested
10 this hearing in compliance with your order of May
11 19th, 2010, which represented the final order after
12 five years of litigation. That order stated that
13 Strebler be awarded his costs and damages in this
14 case in accordance with paragraph 20 of the
15 contract. Strebler shall submit those actual
16 amounts with supporting documentation to the Court
17 for a final determination of the amount of this
18 award. At this time I am requesting the Court to
19 make a determination of the amount of the award.

20 **THE COURT:** Okay.

21 **MR. STREBLER:** The damages requested are included in the
22 body of the motion filed with the Clerk's Office.
23 The amount of the damages are the subject of this
24 hearing. The elements of the damages had already
25 been predetermined at trial and have been included

1 at order. The elements were attested to ...
2 testified to at trial and were not disputed by the
3 plaintiff. One more thing here.

4 **THE COURT:** Yes, sir.

5 **MR. STREBLER:** Those elements are the costs resulting from
6 the plaintiff's breach of contract. The first item
7 was the carrying costs of the property for five
8 years, the property taxes, homeowner's association
9 fees and assessments, and costs to defend this
10 litigation. Also, I would ask that the cost of the
11 litigation be ... or cost of collection be included
12 in the order, if there are any. Only by awarding
13 the damages in the amounts requested by the
14 defendant ... requested by the defendant, will he be
15 returned to his position prior to the breach by the
16 plaintiff. Thank you, Your Honor.

17 **THE COURT:** Yes, sir. All right, Mr. Boger, any response?

18 **MR. BOGER:** Yes, sir. I do, Your Honor. Let me pass Your
19 Honor a memorandum in opposition to the motion,
20 which I will briefly go over. First of all, the
21 damages, the damages in a real estate contract are
22 to be strictly pled in the pleading. In this
23 particular case, the damages simply say damages,
24 they do not say specific damages. And they must be
25 pled specifically, first of all. It's well settled,

1 well settled law. So the pleadings are ... only
2 allow general damages. The damages that the
3 defendant has requested are, in our view,
4 inappropriate. First of all, the measure of damages
5 in a breach of contract action is the difference
6 between the price that was to be made between the
7 parties and the future or subsequent price that the
8 property was sold for. This property was contracted
9 for \$175,000 by the plaintiff, and it was just sold
10 for exactly the same amount just two months ago, May
11 of '11. It was sold to the co-defendant, Paul
12 Mitchell, for the exact same price that the
13 plaintiff contracted to buy it for. So the measure
14 of damages, in general damages, is zero. So then we
15 come to ... if you understand my argument; it's the
16 two differences, there are none. It's exactly the
17 same price. So then we come to what would be
18 considered the specific damages or special damages,
19 and those, once again, were not pled. But let's
20 look at them individually. First of all, the cost
21 of the taxes and homeowner's dues are something that
22 inures to the benefit of the defendant while he owns
23 the property. I have included in the ... and you
24 can see, it's sort of ... it has several exhibits in
25 it, Your Honor. I have included the testimony of

1 the defendant wherein he says at trial that he
2 wanted to keep the property and that it was one of
3 the best scenes of Columbia in the city and that he
4 enjoyed, he and his wife, enjoyed being up there on
5 that place and looking out over the city. And that
6 ... and once again, he testified that he wanted to
7 keep it. That was his goal, was to keep the
8 property. So certainly, in November of '09, when
9 the trial took place, his testimony was he wanted to
10 keep the property, and so ... I would assume, it
11 makes sense that he wanted to keep it from '05 to
12 '09, because he kept it all that time. So then we
13 come to the ... so those, the taxes that he is
14 alleging are damages, are simply inured to his
15 benefit. He owned the property. He could have
16 enjoyed it. I understand he lived in Ohio, but that
17 really doesn't matter in the law. He could have
18 enjoyed that property. And then the same thing, of
19 course, applies to the homeowner's dues, that that
20 was something he had to pay, that it inured to his
21 benefit. The biggest cost that he has in here is
22 \$30,000 in what he calls carrying costs, and that
23 is, first of all, speculative. The carrying cost is
24 sort of "give me interest on my money if it had been
25 invested somewhere else". Nowhere in the law does

1 it allow those damages to be, first of all,
2 speculative damages; secondly, to let me have my
3 cake and eat it too. Meaning, I want my property,
4 but I want to have whatever I could have invested in
5 the stock market or wherever, even in a CD, and have
6 those as damages. So then we ultimately come down
7 two more elements, and all this is in my memorandum,
8 Your Honor. Then we come to the cost of ... for his
9 time. It's unknown because it just says, I think it
10 says professional time at 111 hours at \$75 an hour.
11 If we ... let's look at that as, if that was
12 attorney's fees, then that would be something that
13 might have been a damage, except he never had an
14 attorney. And it's well settled and it's all ...
15 I've got all the cases listed in there, that a pro
16 se litigant can't get attorney's fees when he didn't
17 hire an attorney. So then we say, well, that's not
18 what he meant. He meant for his time, his time as a
19 professional in his job at \$75 an hour. It's also
20 well settled that litigants can't get compensated
21 for their time to litigate. These are all well
22 settled rules, I'm sure Your Honor knows. So then
23 we come ... those are the elements, those are the
24 damages that have been alleged. Finally, the last
25 damages is \$350 in costs, and I don't know what

1 those costs are but they're probably, those probably
2 are legitimate costs. I mean, I've got at least
3 \$350 in my own costs. So we would argue that the
4 only damages would be the \$350. And once again,
5 it's in our memorandum which I passed up, it's seven
6 pages. I have the exhibits A through E, which go
7 through the motion, and then purportedly on exhibit
8 D is a copy of the deed where the defendant sold the
9 property to the co-defendant, Mitchell, which was
10 recorded in May of this year, May 3rd, 2011, for the
11 \$175,000. And I also attached a partial transcript
12 of the record, where it indicates that the defendant
13 wanted to keep the property. You'll probably take
14 this under advisement, but if Your Honor reads the
15 memo, I think it sort of outlines what I've argued.

16 **THE COURT:** I have to read it.

17 **MR. BOGER:** Yes.

18 **THE COURT:** Mr. Strebler, any response?

19 **MR. STREBLER:** Your Honor, clearly I intended to sell the
20 property. I intended to sell it to the plaintiff's
21 client over five years ago for \$175,000. When the
22 client breached the contract, refused to speak with
23 me on this matter and said ... I believe in my letter
24 I described it as intended to bully me. We went
25 through five years of litigation. He filed a lis

1 pendens against my property, making it totally
2 unmarketable. For five years I could not sell my
3 property, until we reached the point at which the
4 litigation had ended. When it did end, I minimized
5 my damages by selling it as soon as possible. During
6 that time, I financed the property with a personal
7 line of credit. I brought the ... I have the note.
8 I have the amounts. During that time that I could
9 not sell my property due to the plaintiff's actions,
10 I incurred real estate fees, I had to pay homeowner's
11 fees. I could do nothing with the property;
12 plaintiff controlled the timing on the case. All I
13 could do was react and wait until the day that I
14 could finally sell my property. With regards to
15 professional time, I'm sure Mr. Boger did not do this
16 for free, and I assure him that in my lifetime I do
17 not work for free unless I intend to work for a
18 worthwhile or charitable organization.. What I am
19 asking for is what has come out of my pocket during
20 the period of this time. I have not inflated any
21 numbers. I gave him the most reasonable costs that I
22 had, which was how I financed this at three percent
23 for five years. Without these costs, I am suffering
24 the loss from this litigation which after five years
25 and your order, plaintiff breached the contract. And

1 as I mentioned before, the elements were testified to
2 at trial. What the elements and the damages were at
3 that time, plaintiff provided no testimony to dispute
4 them. And in fact, I think that it's highly
5 inappropriate that at this time, where we're here
6 solely to set the amount of the damages, he is
7 continuing the litigation. Thank you, Your Honor.

8 **THE COURT:** Mr. Melling, anything to add?

9 **MR. MELLING:** Nothing to add on Mr. Mitchell's behalf.

10 **THE COURT:** All right. Anything further, Mr. Boger?

11 **MR. BOGER:** Nothing further, Your Honor.

12 **THE COURT:** Okay. I'll take this under advisement, mainly
13 so I can read your memo, Mr. Boger, and re-read
14 yours, Mr. Strebler. Also to make sure I know what
15 the law is in this area.

16 **MR. MELLING:** Thank you.

17 **THE COURT:** So I'll take it under advisement.

18 **MR. BOGER:** Thank you, Your Honor.

19

20 (There being nothing further, the hearing was concluded at
21 10:20 a.m.)

CERTIFICATE

I certify that the foregoing transcript, consisting of 11 pages, is a true, accurate and complete transcript of the hearing taken before me, Robin K. Reibold, the undersigned Court Reporter. This hearing was held without a jury before The Honorable Joseph M. Strickland, Master in Equity for Richland County, on July 29, 2011, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.

August 11, 2011

ROBIN K. REIBOLD

MY COMMISSION EXPIRES: 4-28-2021

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master in Equity

Case No. 2016-000636

RECEIVED
SEP 28 2016
SC Court of Appeals

Norwest Properties, LLC, ... Appellant,

v.

Michael T. Strebler, Lisa W. Strebler, and Paul J. Mitchell, ... Defendants,

Of Whom, Michael T. Strebler and Lisa W. Strebler 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.

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September 27, 2016