

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2016-CP-40-1536

RECEIVED
APR 16 2018
SC Court of Appeals

Raymond J. Malejko and Cristine Malejko, individually and in the interests of a
minor child, Appellants,

v.

Todd Corley, Janet Loper, NextGen Real Estate, LLC, Thomas Humphries, Dr.
Roofs, Inc., Ray Mooneyham, Mooneyham Solar & Electric, Professional Home
Inspections, Inc., Corley Enterprises, Inc. of South Carolina, and DBR Franchising,
LLC, Defendants,

Of whom Janet Loper and NextGen Real Estate, LLC are Respondents.

RECORD ON APPEAL
VOLUME I

Allen Bullard, Esquire
S.C. Bar No.: 64915
MONTGOMERY WILLARD, LLC
Post Office Box 11886
Columbia, South Carolina 29211
(803) 779-3500
ATTORNEYS FOR APPELLANTS

Michelle P. Kelly, Esquire
S.C. Bar No.: 75198
David A. Anderson, Esquire
S.C. Bar No. 11550
RICHARDSON, PLOWDEN & ROBINSON, PA
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
ATTORNEYS FOR RESPONDENTS

INDEX

VOLUME I

Order Denying Motion for Reconsideration dated September 8, 2017	2
Order Granting Motion for Summary Judgment dated July 31, 2017	5
Complaint.....	8
Transcript of Deposition of Carlton Segars, pp. 13-14, 71-78.....	56
Transcript of Deposition of Raymond Malejko, pp. 76-77, 121, 142-143, 150-151, 155-158, 161-162, 175-178.....	68
Appellants' Motion for Reconsideration	89
Respondents' Motion for Summary Judgment	120
Respondents' Memorandum In Support of their Motion for Summary Judgment with attached exhibits	124

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

FORM 4

JUDGMENT IN CIVIL CASE

CASE NO. 16-CP-40-480-2016-CP-40-1536

Raymond Christine
malejko
PLAINTIFF(S)

Todd Corley, et al.
DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

II R. 55(c) Motion Devel

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Refford
Circuit Court Judge

2164
Judge Code

9/8/17
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 12 day of Sept, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CA. NO.: 2015-CP-40-480 & 2016-CP-40-1536

Raymond & Christine Malejko,

Applicant,

vs.

Todd Corley, et al.,

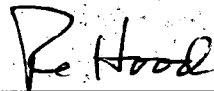
Respondent.

ORDER

After careful consideration of the submitted briefs, the applicable law and all other arguments, this Court denies Respondent's Motion to Reconsider.

Under SCRCF Rule 59(f), a Rule 59(e) motion "may in the discretion of the court be determined on the briefs filed by the parties without oral argument." Hence, the grant or denial of a Motion to Reconsider is within the discretion of the circuit court. Motions to Reconsider are limited in scope and are not to be used to repeat the same arguments previously presented. *Dockins v. Benchmark Commc'n*, 180 F.R.D. 294, 295 (D.S.C. 1998). A Motion to Reconsider cannot be granted where the moving party simply seeks to have the Court rethink its decision. *Id.*

Accordingly, Respondent's Motion to Reconsider is DENIED.



The Honorable Robert E. Hood
5th Judicial Circuit Judge

Columbia, South Carolina

This 8 day of 9, 2017

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2016CP4001536**

Raymond J Malejko

Todd Corley

Cristine Malejko

Janet Loper

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and 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 _____
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ 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:

*Δ Loper + Nextten MSJ Granted
Δ has 10 days to do order.*

ORDER INFORMATION

This order ☒ ends ☐ does not end the case. Additional Information for the Clerk:

As to Δ's Loper + Nextten only

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

B. Allen Bullard Jr:

David Allen Anderson

Mark Steven Barrow

Matthew Thomas Hemingway

James B. Lybrand Jr.

Ray Mooneyham

Mooneyham Solar & Electric

David E. Taylor

Ray Mooneyham

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond J. Malejko and Cristine Malejko,
individually and on behalf of their minor child,
Stephanie Malejko,

Plaintiffs,

v.

Todd Corley, Janet Loper, NextGen Real
Estate, LLC, Thomas Humphries, Dr. Roofs,
Inc., Ray Mooneyham, Mooneyham Solar &
Electric, Professional Home Inspections, Inc.,
Corley Enterprises, Inc. of South Carolina, and
DBR Franchising, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-40-01536

**ORDER GRANTING DEFENDANTS JANET
LOPER AND NEXTGEN REAL ESTATE,
LLC'S MOTION FOR SUMMARY
JUDGMENT AND FINDING DEFENDANTS
MOTION TO COMPEL AS MOOT**

RECEIVED
FILED
2017 AUG -3 AM 9:01
JANET LOPER
COURT

This matter came before the Court on July 26, 2017 where the Court heard Oral Arguments from Defendants Janet Loper and NextGen Real Estate, LLC regarding their Motion for Summary Judgment Pursuant to Rule 56 for all causes of action and their Motion to Compel Interrogatory # 30 as to settlement agreements of Co-Defendants. Their Counsel, Attorney David A. Anderson presented oral arguments for both of these Motions. Counsel for the Plaintiffs, Attorney Allen Bullard argued in opposition. Both Counsel submitted deposition testimony excerpts, affidavits and additional case law to support their respective positions.

The Plaintiffs' Complaint alleges Actual or Constructive Fraud, Negligent Misrepresentation, Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Negligence, and Breach of Fiduciary Duty against Defendant Realtors. After a review of the filed documentation, documentation submitted at the hearing along with Oral Argument, I find that there are no genuine issues of any material fact as to Plaintiffs' allegations and Defendant Realtors are entitled to judgment as a matter of law. Specific, alternative grounds for this Ruling

are: (1) the Plaintiffs' claims against Defendant Realtors fail to state a cause of action as a matter of law; (2) the Plaintiffs have failed to make a showing sufficient to establish the requisite elements needed to prevail on any of the causes of action levied against Defendant Realtors; (3) Plaintiff Cristine Malejko does not have the privity of contract needed to demonstrate breach of contract or breach of contract accompanied by a fraudulent act; and (4) Plaintiff Raymond Malejko waived all claims versus Defendant Realtors with the Buyer Agency Contract, Designated Agency Contract, Dual Agency Contract and the Contract for Sale that he signed.

It is therefore ORDERED that Defendant Realtors motion for summary judgment is GRANTED.

As, it relates to the Defendant Realtors Motion to Compel the Plaintiffs' settlement agreements of Corley Enterprises Inc. of South Carolina and Professional Home Inspections, Inc., I find that the matter is MOOT as a result of granting the Defendant Realtors' Motion for Summary Judgment.

AND IT IS SO ORDERED.

Re Hood

Robert E. Hood
Fifth Circuit Court Judge

July 31, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond J. Malejko, et al.,

Plaintiff(s)

vs.

Todd Corley, et al.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP-40-00480

Submitted By: Allen Bullard
Address: P.O. Box 11886
Columbia, South Carolina, 29211

SC Bar #: 604915
Telephone #: (803) 779-3500
Fax #: (803) 799-2755
Other:
E-mail: abullard@montgomerywillard.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☒ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -NI- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (610)		

Submitting Party Signature:

Date: January 23, 2015

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

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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

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

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-40-_____

Raymond J. Malejko and Cristine Malejko,)
individually and on behalf of their minor)
child, Stephanie Malejko,)

Plaintiffs,)

vs.)

SUMMONS

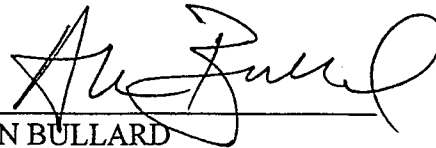
Todd Corley, Janet Loper, NextGen Real)
Estate, LLC, Thomas Humphries, Dr. Roofs,))
Inc., Ray Mooneyham, Mooneyham Solar &)
Electric, Professional Home Inspections,)
Inc., Corley Enterprises, Inc. of South)
Carolina, and DBR Franchising, LLC,)

Defendant.)

TO: Todd Corley, Janet Loper, NextGen Real Estate, LLC, Thomas Humphries, Dr. Roofs, Inc., Ray Mooneyham, Mooneyham Solar & Electric, Professional Home Inspections, Inc., Corley Enterprises, Inc. of South Carolina, and DBR Franchising, LLC, Defendants.

A lawsuit has been filed against you. Within thirty (30) days after service of this summons on you (not including the day you received it), you must serve on the plaintiffs an answer to the attached complaint or a motion under Rule 12 of the South Carolina Rules of Civil Procedure. The answer or motion must be served on the plaintiffs' attorney, Allen Bullard, whose address is Post Office Box 11886, Columbia, South Carolina, 29211. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

RICHLAND COUNTY
FILED
2015 JAN 23 AM 9:51
JEANETTE W. HARRIS
C.C.P. & C.D.



ALLEN BULLARD

Montgomery Willard, LLC

1002 Calhoun Street (29201)

Post Office Box 11886

Columbia, South Carolina 29211

(803) 779-3500

(803) 799-2755 (fax)

abullard@montgomerywillard.com

Attorneys for Plaintiffs

January 23, 2015.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-40-_____

Raymond J. Malejko and Cristine Malejko,)
individually and on behalf of their minor)
child, Stephanie Malejko,)

Plaintiffs,)

v.)

Todd Corley, Janet Loper, NextGen Real)
Estate, LLC, Thomas Humphries, Dr. Roofs,)
Inc., Ray Mooneyham, Mooneyham Solar &)
Electric, Professional Home Inspections,)
Inc., Corley Enterprises, Inc. of South)
Carolina, and DBR Franchising, LLC,)

Defendants.)

COMPLAINT
(Jury Trial Demanded)

RICHLAND COUNTY
FILED
2015 JAN 23 AM 9:51
JEANETTE W. HODRICE
C.C.P. & C.S.

The Plaintiffs, complaining of the Defendants, allege that:

1. Plaintiffs are residents of Lexington County, South Carolina.
2. Upon information and belief, Defendant Todd Corley ("Corley") is a resident of Richland County, South Carolina.
3. Upon information and belief, Defendant Janet Loper ("Loper") is a resident of Lexington County, South Carolina.
4. Upon information and belief, Defendant NextGen Real Estate, LLC ("NextGen") is a limited liability corporation duly organized and existing under the laws of the State of South Carolina, which maintains agents and conducts a real estate brokerage business in Richland County, South Carolina.
5. Upon information and belief Defendant Thomas Humphries ("Humphries") is a resident of Richland County, South Carolina.

6. Upon information and belief Defendant Dr. Roofs, Inc. ("DRI") is a corporation duly organized and existing under the laws of the State of South Carolina. Upon information and belief this defendant transacts business and maintains an office and/or agent in Richland County, South Carolina.

7. Upon information and belief, Defendant Ray Mooneyham ("Mooneyham") is a resident of Richland County, South Carolina.

8. Upon information and belief Defendant Mooneyham Solar & Electric ("MSE") is an unincorporated entity unlawfully doing business in South Carolina. Upon information and belief, this defendant transacts business and maintains an office in Richland County, South Carolina.

9. Upon information and belief Defendant Professional Home Inspections, Inc. ("PHI") is a corporation duly organized and existing under the laws of the State of South Carolina, lawfully doing business in Richland County, South Carolina.

10. Upon information and belief, Corley Enterprises, Inc. of South Carolina ("Corley Enterprises") is a corporation organized under the laws of the State of South Carolina in 1996 that was dissolved in 2004 and is, therefore, unlawfully doing business in the State of South Carolina. Upon information and belief this defendant transacts business and maintains an office and/or agent in Richland County, South Carolina.

11. Upon information and belief, Defendant DBR Franchising, LLC ("DBR") is a limited liability corporation organized and existing under the laws of the State of New Jersey doing business as HouseMaster Home Inspections in, among other places, Richland County, South Carolina. DBR Franchising, LLC is not registered to do business in the State of South Carolina.

12. This Court has jurisdiction over the parties and this action pursuant to S.C. Code Ann. § 15-7-30.

13. On or about March 8, 2014, Plaintiff Raymond Malejko ("Malejko") and Corley entered into a contract for the purchase and sale of a piece of real property located at 141 Fox Crossing Road, West Columbia, South Carolina 29170 ("the Property") whereby Corley agreed to sell the Property to Malejko for \$160,000.00. The purchase and sale contract entered into by Malejko and Corley will be referred to herein as "the Contract." The Contract is attached hereto and incorporated herein by reference.

14. Corley had owned the Property for approximately three years prior to the sale to Malejko, and had knowledge of the condition of the Property prior to that due to his familial relationship through marriage with the previous owner who owned the Property from 1998 until selling it to Corley in December 2010.

15. Maleko hired PHI to perform a home inspection of the Property. PHI did inspect the Property and issued a report which identified areas of the Property that needed to be repaired, which included, among other things, a roof leak above a bedroom in the front of the Property, decayed siding surrounding the back porch, decay surrounding the master bathroom picture window, a gap under the dinette exterior door leading to the porch, carpenter bee holes in the back den exterior door, an exposed footer at the back right portion of the Property, missing attic insulation, outlets lacking GFCI, an open spliced wire under the kitchen stove, a cracked window pane in the den, defective window seals and counterbalances in various windows throughout the Property, a non-functioning fireplace fan, wood to soil contact in two areas in the crawlspace, a missing wire lock at the panel box supply line, holes in HVAC ducts, unsupported HVAC ducts,

a leak at the hot water heater, the hot water heater not having adequate clearance from the garage floor, and inadequate clearance of the hot water heater flue pipe from the ceiling joist.

16. PHI owed Plaintiffs a duty to conduct its home inspection in a diligent, competent and workmanlike manner consistent with the standards of the home inspection industry.

17. Pursuant to the terms of the Contract, Corley agreed to repair all items listed on the home inspection report prepared by PHI at his expense prior to closing.

18. Corley owed Plaintiffs a duty to ensure that the repair work he undertook or which was undertaken on his behalf was performed in a diligent, competent and workmanlike manner consistent with construction industry standards.

19. Upon information and belief, NextGen was the listing agent for the Property and represented both Plaintiffs and Corley through its agent/employee Loper. Upon information and belief neither NextGen nor Loper informed Plaintiffs of the existence of its dual agency.

20. NextGen and Loper occupied a fiduciary relationship with Plaintiffs and owed Plaintiffs a duty of loyalty, a duty to act in compliance with Plaintiffs' instructions, a duty to discover all material information which could affect Plaintiffs' interests in the Property and Plaintiffs' transaction with Corley, a duty to disclose all material facts to Plaintiffs which were relevant and material to the transaction with Corley, and a duty to protect Plaintiffs by exercising reasonable skill and diligence in the transaction of the business entrusted to them by Plaintiffs.

21. Loper in her individual capacity and/or as an agent of NextGen and Corley arranged for Humphries and/or DRI to repair the roofing issues identified on the PHI report and to inspect the entire roof system.

22. Loper in her individual capacity and/or as an agent of NextGen and Corley arranged for Mooneyham and/or MSE to inspect the entire HVAC system.

23. Upon information and belief neither Mooneyham nor MSE holds a contractor's license.

24. Humphries and/or DRI represented themselves to Plaintiffs to be experts in roof inspection, roof repair and roof related matters.

25. Humphries and DRI were supposed to repair areas of the roof identified on the PHI report as being in need of repair. Humphries and DRI were also supposed to inspect the entire roof.

26. Humphries and DRI owed Plaintiffs a duty to perform their repairs and inspection in a diligent, competent and workmanlike manner consistent with the standards of the roofing and construction industry.

27. Humphries and DRI indicated to Plaintiffs through their representations, actions and inactions that they had properly performed the repairs undertaken by them and that the entire roof system was in proper working order and in no further need of repair.

28. After Plaintiffs moved into the Property they discovered that the repairs and inspection Humphries and/or DRI claimed to have performed had either not been performed or were not performed properly, as the roof continued to leak at the location noted in the PHI report and elsewhere. In addition, Plaintiffs discovered that the roof was not in good working order, that the shingles and roof underlayment had not been installed properly, that there was evidence of multiple pre-existing leaks, and that the roof needed substantial repairs. The pre-existing leaks had led to the formation of mold and elevated indoor mold levels. Upon information and belief, the elevated mold levels have exacerbated Plaintiffs' existing medical conditions and caused Plaintiffs to develop bronchitis and other conditions requiring medical treatment.

29. Mooneyham and/or MSE represented themselves to Plaintiffs to be experts in HVAC inspection, HVAC repair and HVAC related matters.

30. Mooneyham and MSE were supposed to inspect the Property's HVAC system.

31. Mooneyham and MSE owed Plaintiffs a duty to perform their inspection in a diligent, competent and workmanlike manner consistent with the standards of the HVAC and construction industry.

32. Mooneyham and MSE indicated to Plaintiffs through their representations, actions and inactions that the entire HVAC system was in proper working order.

33. After Plaintiffs moved into the Property they discovered that the inspection Mooneyham and/or MSE claimed to have performed had either not been performed or was not performed properly. Based upon assurances from the defendants that the HVAC was in proper working order, Plaintiffs operated the HVAC system for a period of time until they discovered the duct work had been infested with vermin. While operating the system, feces, waste by-products and other materials left by the vermin were blown into the house by the system. Upon information and belief, these materials in combination with the elevated indoor mold levels, have exacerbated Plaintiffs' existing medical conditions and caused Plaintiffs to develop bronchitis and other conditions requiring medical treatment. On the advice of health care professionals and due to the poor indoor air quality, Plaintiffs have vacated the Property. They are currently incurring cost for alternative living arrangements.

34. Upon information and belief, Corley hired Corley Enterprises to repair the remaining items listed in PHI's report which were not to be repaired by Humphries and/or DRI.

35. Prior to closing Corley and Corley Enterprises represented to Plaintiffs that all items on the PHI report had been repaired and that said repairs had been approved by PHI. Since

several items are still in need of repair, either Corley and/or Corley Enterprises did not perform the repairs, failed to perform the repairs competently, or PHI failed to adequately inspect the repairs and improperly approved them.

36. NextGen and its agent/employee Loper as agents for Corley and Plaintiffs also represented to Plaintiffs that the required repairs had been made and that Plaintiffs should proceed with the closing and take title to the Property.

37. In reliance on the representations of Corley, Corley Enterprises, Humphries, DRI, Mooneyham, MSE, NextGen and Loper Plaintiffs proceeded with the purchase of the Property.

38. Soon after Plaintiffs moved into the Property they discovered that numerous defects and conditions which Corley was required to repair and/or replace had not been remedied and that the previous representations made to them by Corley, Corley Enterprises, Humphries, DRI, Mooneyham, MSE, NextGen and Loper were false and misleading.

39. Plaintiffs also discovered that PHI had not discovered and disclosed adverse conditions with respect to the Property which were material and significant and which would have caused Plaintiffs not to purchase the Property or to renegotiate the terms of the purchase if the true state of the facts had been disclosed to them.

FOR A FIRST CAUSE OF ACTION
AS TO CORLEY
(Breach of Contract)

40. The relevant allegations of the preceding paragraphs are incorporated by reference.

41. On or about March 8, 2014, Malejko and Corley entered into a contract for the purchase and sale of the Property whereby Corley agreed to sell the Property to Malejko for \$160,000.00.

42. Corley breached the terms of the Contract by, among other things, failing to repair all items listed on a home inspection report prepared by PHI at his expense prior to closing.

43. Corey also breached the implied warranty of good faith and fair dealing by, among other things, failing to disclose to Plaintiffs other defects in the Property of which he was aware or should have been aware, misrepresenting the square footage of the Property, misrepresenting the age and condition of the roof, and misrepresenting that the Property was on public sewer.

44. As a direct and proximate result of Corley's breaches above alleged, Plaintiffs have incurred costs and expenses, and have suffered and will suffer direct, indirect, consequential, general, and special damages in an amount no less than \$62,000, which includes, but is not limited to:

- a. Costs associated with the re-inspection and repair of the roof system; and,
- b. Cost associated with the re-inspection and repair of the HVAC system; and,
- c. Costs associated with repairing the items on the PHI report which were not repaired or were inadequately repaired; and,
- d. Cost incurred by Plaintiffs for medical conditions brought on by mold and other air contaminants released into the house due to the defective condition of the HVAC system; and,
- e. Cost of alternative living arrangements; and,
- f. Lost benefit of the parties' bargain; and,
- g. Costs associated with the re-inspection of the Property by a licensed engineer; and,
- h. Costs associated with the repair of defective conditions undisclosed by Corley, including:
 1. A gas supply line run through a return air plenum; and,
 2. Termite infestation and damage in garage area of the house intentionally obstructed from view during walk through and inspection by Corley's stored material; and,

3. Water damage to exterior wood siding; and,
4. Water damage to the roof framing and sheathing in the attic at most of the roof valleys and elsewhere; and,
5. Roof framing defects, including, but not limited to, excessive cantilever lengths, insufficient diagonal bracing, and inadequate beam supports; and,
6. Inadequate connections between the floor joists and floor beams in crawlspace; and,
7. A floor hump in the south central bedroom; and,
8. Others that may be proven at trial.

FOR A SECOND CAUSE OF ACTION
AS TO CORLEY
(Negligence)

45. The relevant allegations of the preceding paragraphs are incorporated by reference.

46. Corley owed Plaintiffs a duty to ensure that the repair work he undertook or which was undertaken on his behalf pursuant to the terms of the Contract was performed in a diligent, competent and workmanlike manner consistent with construction industry standards.

47. Corley also owed Plaintiffs a duty to ascertain and disclose the true condition of the Property, including, but not limited to, those conditions and misrepresentations enumerated in this complaint.

48. Corley breached these duties by failing to disclose the defective conditions previously enumerated and by failing to ensure that the repair work he undertook was performed in a diligent, competent and workmanlike manner consistent with construction industry standards.

49. As a direct and proximate result of the breaches of these duties, Plaintiffs have incurred costs and expenses, and have suffered and will suffer direct, indirect, consequential, general, and special damages in an amount no less than \$62,000, which includes, but is not limited

to, those damages referenced above, great anxiety, worry, apprehension, unease, pain, suffering, discomfort, emotional distress and loss of use and enjoyment of their residence.

FOR A THIRD CAUSE OF ACTION

AS TO CORLEY

(Breach of Contract Accompanied by Fraudulent Act)

- 50. The relevant allegations of the preceding paragraphs are incorporated by reference.
- 51. Malejko and Corley entered into the Contract.
- 52. Corley breached the Contract in the manner enumerated above.
- 53. Corley had and maintained a fraudulent intent relating to the breach of the Contract.
- 54. Corley committed and engaged in fraudulent acts accompanying the breach of contract by, among other things, intentionally placing stored items in front of damaged areas of the house so that they obstructed certain defects from view.
- 55. As a direct and proximate result of the actions and conduct of Corley, Plaintiffs have suffered substantial damages.
- 56. Plaintiffs are informed and believe they are entitled to judgment against Corley for breach of contract accompanied by a fraudulent act.

FOR A FOURTH CAUSE OF ACTION

AS TO CORLEY, NEXTGEN AND LOPER

(Actual or Constructive Fraud)

- 57. The relevant allegations of the preceding paragraphs are incorporated by reference.
- 58. After moving into the Property, Plaintiffs discovered that the roof was older than Corley had represented it to be, that the roof shingles and roofing felt had been defectively installed, that defects existed in the roof framing and sheathing, that the Property had been severely damaged by termites, that the HVAC system had been infested with and damaged by vermin, that the floor joists were not properly attached to the floor beams, that the Property was smaller than

Corley, NextGen and Loper had represented it to be, that the Property was not on a public sewer system as represented by Corley, NextGen and Loper, and that Corley had failed to properly make all repairs he had agreed to make to the Property prior to closing.

59. All of the conditions described above, except Corley's failure to complete the contractual repairs, existed prior to parties entering into the Contract, and Corley, NextGen and Loper knew or had sufficient reason to know of their existence and despite such knowledge, failed and omitted to declare and disclose such knowledge to Plaintiffs, realizing that Plaintiffs might not purchase the Property knowing of the existence and severity of these conditions.

60. Corley, NextGen and Loper knew or had sufficient reason to know that Corley had failed to complete the contractual repairs prior to closing and despite such knowledge, failed and omitted to declare and disclose such knowledge to Plaintiffs, realizing that Plaintiffs might not purchase the Property knowing that Corley had not done so.

61. The failure of Corley, NextGen and Loper to disclose the conditions referenced in the paragraphs above amounted to a representation that the defective conditions did not exist and that the contractually mandated repairs had been completed.

62. Corley, NextGen and Loper had a duty to disclose the true condition of the Property to Plaintiffs.

63. The representations made with respect to the age of the roof, the nonexistence of the defective conditions, the completion of the contractually mandated repairs and the others enumerated elsewhere herein were dishonest, unfair and false and constitute fraudulent concealment.

64. Said representations were material to Plaintiffs' decision to purchase the Property.

65. Corley, NextGen and Loper knew the representations were false or were made with reckless disregard for their truth.

66. Corley, NextGen and Loper intended or had reason to expect that Plaintiffs would act in reliance on their representations.

67. Plaintiffs had no knowledge that the subject representations were false.

68. Plaintiffs had the right to rely on Corley's, NextGen's and Loper's representations with respect to the age of the roof, the size of the Property, the defective conditions, the completion of the contractually mandated repairs, and the others enumerated elsewhere herein and did in fact rely on the representations.

69. As a proximate result of Corley's, NextGen's and Loper's fraud as described above Plaintiffs have been damaged in an amount no less than \$62,000.

70. Plaintiffs are informed and believe that they are entitled to judgment against Corley, NextGen and Loper, jointly and severally with each other and the other defendants, for the damages enumerated herein.

FOR A FIFTH CAUSE OF ACTION
AS TO CORLEY, NEXTGEN AND LOPER
(Negligent Misrepresentation)

71. The relevant allegations of the preceding paragraphs are incorporated by reference.

72. Corley's, NextGen's and Loper's representations regarding the nonexistence of the defective conditions and the completion of the contractually mandated repairs, and other representations enumerated elsewhere herein were made negligently.

73. Corley, NextGen and Loper had a pecuniary interest in making the representations.

74. Corley, NextGen and Loper had a duty to see that only accurate information was communicated to Plaintiffs.

75. Corley, NextGen and Loper breached their duties by not accurately disclosing the true condition of the Property and by failing to complete the contractually mandated repairs.

76. Plaintiffs justifiably relied on the representations of Corley, NextGen and Loper.

77. As a proximate result of Corley's, NextGen's and Loper's negligent misrepresentation, as described above Plaintiffs have been damaged in an amount no less than \$62,000.

78. Plaintiffs are informed and believe that they are entitled to judgment against Corley, NextGen and Loper, jointly and severally with each other and the other defendants, for no less than \$62,000.

FOR A SIXTH CAUSE OF ACTION
AS TO NEXTGEN AND LOPER
(Breach of Contract)

79. The relevant allegations of the preceding paragraphs are incorporated by reference.

80. Plaintiffs and NextGen and/or Loper entered into a contract whereby NextGen and/or Loper agreed to represent Plaintiffs in their capacity as a real estate agent/broker/agency and assist them in locating and purchasing a new home. In exchange for their assistance Plaintiffs agreed to pay NextGen and/or Loper a percentage of the purchase price of the home they purchased.

81. NextGen and/or Loper breached the contract by, among other things, misrepresenting the square footage of the Property, recommending and allowing an unlicensed individual to perform inspections and recommend repairs to the Property, recommending an individual who performed the roof inspection and repairs in a substandard manner, and misrepresenting that the Property was on public sewer.

82. As a direct and proximate result of the breaches above alleged, Plaintiffs have incurred costs and expenses, and have suffered and will suffer direct, indirect, consequential, general, and special damages in an amount no less than \$62,000, which includes, but is not limited to:

- a. Costs associated with the re-inspection and repair of the roof system; and,
- b. Cost associated with the re-inspection and repair of the HVAC system; and,
- c. Cost incurred by Plaintiffs for medical conditions brought on by mold and other air contaminants released into the house due to the defective condition of the HVAC system; and,
- d. Cost of alternative living arrangements; and,
- e. Plaintiffs' lost benefit of the bargain in their purchase of the Property; and,
- f. Costs associated with the re-inspection of the Property by a licensed engineer; and,
- g. In other particulars as may be proved at trial.

FOR A SEVENTH CAUSE OF ACTION
AS TO NEXTGEN AND LOPER

(Breach of Contract Accompanied by a Fraudulent Act)

- 83. The relevant allegations of the preceding paragraphs are incorporated by reference.
- 84. Plaintiffs and NextGen and/or Loper entered into a contract.
- 85. NextGen and/or Loper breached the contract in the manner enumerated elsewhere herein.
- 86. NextGen and/or Loper had and maintained a fraudulent intent relating to the breach of the contract.
- 87. NextGen and/or Loper committed and engaged in fraudulent acts accompanying the breach of contract as enumerated elsewhere herein, including, but not limited to, advising

Plaintiffs to proceed with the purchase of the Property knowing repairs had not been properly performed.

88. As a direct and proximate result of the actions and conduct of NextGen and/or Loper, Plaintiffs have suffered substantial damages.

89. Plaintiffs are informed and believe they are entitled to judgment against NextGen and/or Loper for breach of contract by fraudulent act.

FOR AN EIGHTH CAUSE OF ACTION
AS TO NEXTGEN AND LOPER
(Negligence)

90. The relevant allegations of the preceding paragraphs are incorporated by reference.

91. Plaintiffs employed NextGen and/or Loper to act as their real estate agent in purchasing a home.

92. NextGen and/or Loper accepted said employment and agreed to act as Plaintiffs' real estate agent.

93. NextGen and/or Loper owed Plaintiffs a duty to act in compliance with Plaintiffs' instructions, to discover all material information which could affect Plaintiffs' interests in the real estate transaction with Corley, to disclose all material facts to Plaintiffs which were relevant and material to the transaction with Corley, and to protect Plaintiffs by exercising reasonable skill and diligence in the transaction of the business entrusted to them by Plaintiffs.

94. NextGen and/or Loper breached the duties they owed to Plaintiffs and were negligent, grossly negligent and careless in the following manner:

- a. by misrepresenting the square footage of the Property; and,
- b. by recommending and allowing an unlicensed individual to perform inspections and repairs on the Property; and,

- c. by recommending individuals who performed the roof inspection and repairs in a substandard manner; and,
- d. by misrepresenting that the Property was on public sewer; and,
- e. by failing to inspect and confirm the HVAC and roof repairs and inspections were performed in a proper manner; and,
- f. by recommending and advising Plaintiffs to go forward with the closing notwithstanding that they (NextGen and/or Loper) had not confirmed that Corley had satisfied his repair obligations under the contract; and,
- g. by placing their own interests (the commission) ahead of the interests of Plaintiffs in the transaction; and,
- h. by failing to use the degree of care, caution and diligence that a reasonable person acting as a real estate agent would have used under the circumstances then prevailing; and,
- i. In other particulars as may be proven at trial.

95. As a proximate result of said negligence on the part of NextGen and/or Loper Plaintiffs have been damaged in an amount no less than \$62,000.

96. Plaintiffs are informed and believe they are entitled to judgment against NextGen and/or Loper, jointly and severally with each other and the other defendants, for actual and punitive damages for negligence.

FOR A NINTH CAUSE OF ACTION
AS TO NEXTGEN AND LOPER
 (Breach of Fiduciary Duty)

97. The relevant allegations of the preceding paragraphs are incorporated by reference.

98. Plaintiff reposed a special trust and confidence in NextGen and/or Loper and they, in equity and good conscious, were bound to act in good faith and with due regard to the interest of Plaintiffs.

99. The actions and conduct of NextGen and/or Loper as enumerated elsewhere herein constitute breaches of their fiduciary duty owed to Plaintiffs.

100. As a direct and proximate result of the actions and conduct of NextGen and/or Loper, Plaintiffs have suffered substantial actual, consequential and special damages in an amount no less than \$62,000.

101. Plaintiffs are informed and believe they are entitled to judgment against NextGen and/or Loper, jointly and severally with each other and the other defendants, for breach of their fiduciary duty.

FOR A TENTH CAUSE OF ACTION
AS TO HUMPHRIES AND DRI
(Actual or Constructive Fraud)

102. The relevant allegations of the preceding paragraphs are incorporated by reference.

103. After moving into the Property, Plaintiffs discovered that the roof was older than Corley had represented it to be, that the roof shingles and roofing felt had been defectively installed, that defects existed in the roof framing and sheathing, and that Humphries and/or DRI had failed to properly make the roof repairs they had agreed to make to the Property.

104. Humphries and/or DRI knew or had sufficient reason to know the roof repair had not been properly performed and that the roof contained several defective conditions and despite such knowledge, failed and omitted to declare and disclose such knowledge to Plaintiffs, realizing that Plaintiffs might not purchase the Property knowing of the existence and severity of these conditions.

105. The failure of Humphries and/or DRI to disclose the conditions referenced in the paragraphs above amounted to a representation that the defective roof conditions did not exist and that the roof repairs had been completed.

106. Humphries and/or DRI had a duty to disclose the true condition of the Property to Plaintiffs.

107. The representations made with respect to the age of the roof, the nonexistence of the defective conditions, the completion of the roof repairs, among other things, were dishonest, unfair and false and constitute fraudulent concealment.

108. The said representations were material to Plaintiffs' decision to purchase the Property.

109. Humphries and/or DRI knew the representations were false or were made with reckless disregard for their truth.

110. Humphries and/or DRI intended or had reason to expect that Plaintiffs would act in reliance on their representations.

111. Plaintiffs had no knowledge that the subject representations were false.

112. Plaintiffs had the right to rely on Humphries and/or DRI representations with respect to the roof repairs and the condition of the roof and did in fact rely on the representations.

113. As a proximate result of Humphries' and/or DRI's fraud as described above Plaintiffs have been damaged in an amount no less than \$62,000.

114. Plaintiffs are informed and believe that they are entitled to judgment against Humphries and/or DRI, jointly and severally with each other and the other defendants, for the damages enumerated herein.

FOR AN ELEVENTH CAUSE OF ACTION
AS TO HUMPHRIES AND DRI
(Negligent Misrepresentation)

115. The relevant allegations of the preceding paragraphs are incorporated by reference.

116. Humphries' and/or DRI's representations with respect to the nonexistence of the defective conditions and the completion of the roof repairs were made negligently.

117. Humphries and/or DRI had a pecuniary interest in making the representations.

118. Humphries and/or DRI had a duty to see that only accurate information was communicated to Plaintiffs.

119. Humphries and/or DRI breached their duties by not accurately disclosing the true condition of the Property and by failing to complete the contractually mandated repairs.

120. Plaintiffs justifiably relied on the representations of Humphries and/or DRI.

121. As a proximate result of Humphries' and/or DRI's negligent misrepresentation, as described herein, Plaintiffs have been damaged in an amount no less than \$62,000.

122. Plaintiffs are informed and believe that they are entitled to judgment against Humphries and/or DRI, jointly and severally with each other and the other defendants, for no less than \$62,000.

FOR A TWELFTH CAUSE OF ACTION
AS TO HUMPHRIES AND DRI
(Negligence)

123. The relevant allegations of the preceding paragraphs are incorporated by reference.

124. Humphries and/or DRI represented themselves to Plaintiffs to be experts in roof inspection, roof repair and roof related matters:

125. Humphries and DRI were supposed to repair areas of the roof identified on the PHI report as being in need of repair. Humphries and DRI were also supposed to inspect the entire roof:

126. Humphries and DRI owed Plaintiffs a duty to perform their repairs and inspection in a diligent, competent and workmanlike manner consistent with the standards of the roofing and construction industry.

127. Humphries and DRI breached the duties owed to Plaintiffs by failing to properly complete the roof repairs and failing to properly conduct the roof inspection.

128. As a direct and proximate result of the breaches of these duties, Plaintiffs have incurred costs and expenses, and have suffered and will suffer direct, indirect, consequential, general, and special damages in an amount no less than \$62,000, which includes, but is not limited to:

- a. Costs associated with the re-inspection and repair of the roof system; and,
- b. Cost incurred by Plaintiffs for medical conditions brought on by mold and other air contaminants released into the house due to the defective condition of the roof system; and,
- c. Cost of alternative living arrangements; and,
- d. Plaintiffs' lost benefit of the bargain in their purchase of the Property; and,
- e. Costs associated with the re-inspection of the Property by a licensed engineer; and,
- f. anxiety, worry, apprehension, unease, pain, suffering, discomfort, emotional distress and loss of use and enjoyment of their residence; and,
- g. In other particulars as may be proved at trial.

129. Plaintiffs are informed and believe that they are entitled to judgment against Humphries and/or DRI, jointly and severally with each other and the other defendants, for no less than \$62,000.

FOR A THIRTEENTH CAUSE OF ACTION
AS TO MOONEYHAM AND MSE
(Actual or Constructive Fraud)

130. The relevant allegations of the preceding paragraphs are incorporated by reference.

131. After moving into the Property, Plaintiffs discovered that the HVAC system had been infested with vermin, which had left feces, waste by-products and other hazardous materials in the ductwork and that Mooneyham and/or MSE had failed to properly inspect the HVAC system.

132. Mooneyham and/or MSE knew or had sufficient reason to know the HVAC the HVAC system was in a defective and unsafe condition, and despite such knowledge, failed and omitted to declare and disclose such knowledge to Plaintiffs, realizing that Plaintiffs might not purchase the Property knowing of the existence and severity of these conditions.

133. Upon information and belief, Mooneyham and/or MSE represented to Plaintiffs that they were licensed to perform HVAC inspections and repair at the Property when they were not.

134. The failure of Mooneyham and/or MSE to disclose the conditions referenced in the paragraphs above amounted to a representation that that they were properly licensed to perform HVAC inspections and work and that the defective HVAC conditions did not exist.

135. Mooneyham and/or MSE had a duty to disclose their true licensure status and the true condition of the Property to Plaintiffs.

136. The representations made with respect to their licensure status and the condition of the HVAC system, among other things, were dishonest, unfair and false and constitute fraudulent concealment.

137. Said representations were material to Plaintiffs' decision to purchase the Property.

138. Mooneyham and/or MSE knew the representations were false or were made with reckless disregard for their truth.

139. Mooneyham and/or MSE intended or had reason to expect that Plaintiffs would act in reliance on their representations.

140. Plaintiffs had no knowledge that the subject representations were false.

141. Plaintiffs had the right to rely on Mooneyham and/or MSE representations with respect to the condition of the HVAC system and did, in fact, rely on the representations.

142. As a proximate result of Mooneyham's and/or MSE's fraud as described above Plaintiffs have been damaged in an amount no less than \$62,000.

143. Plaintiffs are informed and believe that they are entitled to judgment against Mooneyham and/or MSE, jointly and severally with each other and the other defendants, for the damages enumerated herein.

FOR A FOURTEENTH CAUSE OF ACTION
AS TO MOONEYHAM AND MSE
(Negligent Misrepresentation)

144. The relevant allegations of the preceding paragraphs are incorporated by reference.

145. Mooneyham's and/or MSE's representations with respect to their licensure status and the nonexistence of the defective HVAC conditions were made negligently.

146. Mooneyham and/or MSE had a pecuniary interest in making the representations.

147. Mooneyham and/or MSE had a duty to see that only accurate information was communicated to Plaintiffs.

148. Mooneyham and/or MSE breached their duties by not accurately disclosing their licensure status and the true condition of the Property.

149. Plaintiffs justifiably relied on the representations of Mooneyham and/or MSE.

150. As a proximate result of Mooneyham's and/or MSE's negligent misrepresentation, as described herein, Plaintiffs have been damaged in an amount no less than \$62,000.

151. Plaintiffs are informed and believe that they are entitled to judgment against Mooneyham and/or MSE, jointly and severally with each other and the other defendants, for no less than \$62,000.

FOR A FIFTEENTH CAUSE OF ACTION
AS TO MOONEYHAM AND MSE
(Negligence)

152. The relevant allegations of the preceding paragraphs are incorporated by reference.

153. Mooneyham and/or MSE represented themselves to Plaintiffs to be experts in HVAC inspection, HVAC repair and HVAC related matters.

154. Mooneyham and/or MSE were supposed to inspect the Property's entire HVAC system and make recommendations for repair.

155. Mooneyham and/or MSE owed Plaintiffs a duty to perform their inspection in a diligent, competent and workmanlike manner consistent with the standards of the HVAC and construction industry.

156. Mooneyham and/or MSE breached the duties owed to Plaintiffs by failing to properly conduct the HVAC inspection. Upon information and belief, they are not licensed contractors.

157. As a direct and proximate result of the breaches of these duties, Plaintiffs have incurred costs and expenses, and have suffered and will suffer direct, indirect, consequential, general, and special damages in an amount no less than \$62,000, which includes, but is not limited to:

- a. Costs associated with the re-inspection and repair of the HVAC system; and,
- b. Cost incurred by Plaintiffs for medical conditions brought on by mold and other air contaminants released into the house due to the defective condition of the HVAC system; and,
- c. Cost of alternative living arrangements; and,
- d. Plaintiffs' lost benefit of the bargain in their purchase of the Property; and,

- e. Costs associated with the re-inspection of the Property by a licensed engineer; and,
- f. anxiety, worry, apprehension, unease, pain, suffering, discomfort, emotional distress and loss of use and enjoyment of their residence; and,
- g. In other particulars as may be proved at trial.

158. Plaintiffs are informed and believe that they are entitled to judgment against Mooneyham and/or MSE, jointly and severally with each other and the other defendants, for no less than \$62,000.

FOR A SIXTEENTH CAUSE OF ACTION
AS TO CORLEY ENTERPRISES
(Actual or Constructive Fraud)

159. The relevant allegations of the preceding paragraphs are incorporated by reference.

160. After moving into the Property, Plaintiffs discovered that the certain repairs on the PHI report had not been completed, including, but not limited to, repairs to the HVAC system, repairs that were supposed to be made to the master bath picture window, the back den exterior door, the front yard lamp post, exterior outlets, and the water heater flue pipe.

161. Upon information and belief, Corley Enterprises was hired to complete these repairs.

162. Corley Enterprises knew or had sufficient reason to know that the repairs had not been performed and despite such knowledge, failed and omitted to declare and disclose such knowledge to Plaintiffs, realizing that Plaintiffs might not purchase the Property knowing of the existence and severity of these conditions.

163. Corley Enterprises affirmatively informed Plaintiffs that all items identified on the PHI report had been repaired.

164. Corley Enterprises had a duty to disclose the true condition of the Property to Plaintiffs.

165. The representations made with respect to the repairs were dishonest, unfair and false and constitute fraudulent concealment.

166. Said representations were material to Plaintiffs' decision to purchase the Property.

167. Corley Enterprises knew the representations were false or were made with reckless disregard for their truth.

168. Corley Enterprises intended or had reason to expect that Plaintiffs would act in reliance on their representations.

169. Plaintiffs had no knowledge that the subject representations were false.

170. Plaintiffs had the right to rely on Corley Enterprises' representations with respect to the repairs and did, in fact, rely on the representations.

171. As a proximate result of Corley Enterprises' fraud as described above Plaintiffs have been damaged in an amount no less than \$62,000.

172. Plaintiffs are informed and believe that they are entitled to judgment against Corley Enterprises', jointly and severally with the other defendants, for the damages enumerated herein.

FOR A SEVENTEENTH CAUSE OF ACTION
AS TO CORLEY ENTERPRISES
(Negligent Misrepresentation)

173. The relevant allegations of the preceding paragraphs are incorporated by reference.

174. Corley Enterprises' representations with respect to the nonexistence of the defective conditions and the completion of the repairs were made negligently.

175. Corley Enterprises had a pecuniary interest in making the representations.

176. Corley Enterprises had a duty to see that only accurate information was communicated to Plaintiffs.

177. Corley Enterprises breached their duties by not accurately disclosing the true condition of the Property and by failing to complete the repairs undertaken by them.

178. Plaintiffs justifiably relied on the representations of Corley Enterprises.

179. As a proximate result of Corley Enterprises' negligent misrepresentation, as described herein, Plaintiffs have been damaged in an amount no less than \$62,000.

180. Plaintiffs are informed and believe that they are entitled to judgment against Corley Enterprises; jointly and severally with the other defendants, for no less than \$62,000.

FOR AN EIGHTEENTH CAUSE OF ACTION

AS TO CORLEY ENTERPRISES

(Negligence)

181. The relevant allegations of the preceding paragraphs are incorporated by reference.

182. Corley Enterprises represented itself to Plaintiffs to be experts in residential construction.

183. Upon information and belief Corley Enterprises was supposed to repair certain items identified on the PHI report.

184. Corley Enterprises owed Plaintiffs a duty to perform their repairs in a diligent, competent and workmanlike manner consistent with the standards of the construction industry.

185. Corley Enterprises breached the duties owed to Plaintiffs by failing to properly perform and complete the repairs.

186. As a direct and proximate result of the breaches of these duties, Plaintiffs have incurred costs and expenses, and have suffered and will suffer direct, indirect, consequential,

general, and special damages in an amount no less than \$62,000, which includes, but is not limited to:

- a. Cost of alternative living arrangements; and,
- b. Plaintiffs' lost benefit of the bargain in their purchase of the Property; and,
- c. Costs associated with the re-inspection of the Property by a licensed engineer; and,
- d. anxiety, worry, apprehension, unease, pain, suffering, discomfort, emotional distress and loss of use and enjoyment of their residence; and,
- e. In other particulars as may be proved at trial.

187. Plaintiffs are informed and believe that they are entitled to judgment against Corley Enterprises, jointly and severally with the other defendants, for no less than \$62,000.

FOR AN NINETEENTH CAUSE OF ACTION
AS TO DBR AND PHI
(Breach of Contract)

188. The relevant allegations of the preceding paragraphs are incorporated by reference.

189. Upon information and belief, DBR operates under the trade name HouseMaster.

190. Upon information and belief, PHI is a franchisee and agent of DBR.

191. Upon information and belief, DBR/PHI contracted with Plaintiffs to make an inspection of the Property for the purpose of discovering and reporting on the condition of the Property to Plaintiffs.

192. DBR/PHI knew Plaintiffs would rely on the report in their dealings with Corley.

193. By express or implied terms of its contract with Plaintiffs DBR/PHI agreed to conduct its inspection in a thorough and workmanlike manner and to report any conditions which would adversely affect the value and/or habitability of the Property.

194. Among other things, DBR/PHI did not report the existence of mold and mildew, animal feces, animal by-products and other hazardous material in the HVAC system, a gas supply line run through a return air plenum, water damage to exterior wood siding, water damage to the roof framing and sheathing in the attic at most of the roof valleys and elsewhere, roof framing defects (excessive cantilever lengths, insufficient diagonal bracing, and inadequate beam supports), inadequate connections between the floor joists and floor beams in the crawlspace, and others that may be proven at trial.

195. DBR/PHI conducted its inspection in a negligent manner and in so doing failed to discover and report the existence of the conditions described in the preceding paragraph, thereby breaching its contract with Plaintiffs.

196. As a result of the aforesaid breach of contract by DBR/PHI, Plaintiffs have been damaged in an amount no less than \$62,000.

197. Plaintiffs are informed and believe that they are entitled to judgment against DBR/PHI, jointly and severally with the other defendants, for no less than \$62,000.

FOR A TWENTIETH CAUSE OF ACTION
AS TO DBR AND PHI
(Negligence)

198. The relevant allegations of the preceding paragraphs are incorporated by reference.

199. DBR/PHI represented themselves to Plaintiffs to be experts in home inspections.

200. DBR/PHI was to make an inspection of the Property for the purpose of discovering and reporting on the condition of the Property to Plaintiffs.

201. Upon information and belief, DBR/PHI agreed to make a re-inspection of the Property after Corley indicated that all items noted in the DBR/PHI report had been repaired to determine whether the repairs had been performed properly.

202. DBR/PHI owed Plaintiffs a duty to conduct their home inspection and re-inspection in a diligent, competent and workmanlike manner consistent with the standards of the home inspection industry.

203. DBR/PHI breached the duties they owed to Plaintiffs by failing to adequately identify significant defects and by failing to ensure that the repairs Corley was to perform were performed properly.

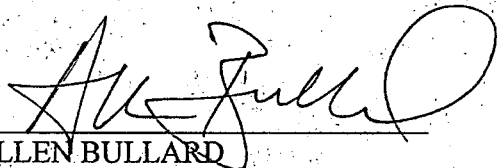
204. As a direct and proximate result of the breaches of these duties, Plaintiffs have incurred costs and expenses, and have suffered and will suffer direct, indirect, consequential, general, and special damages in an amount no less than \$62,000, which includes, but is not limited to:

- a. Costs associated with the re-inspection and repair of the roof system; and,
- b. Cost associated with the re-inspection and repair of the HVAC system; and,
- c. Costs associated with repairing the items on the PHI report which were not repaired or were inadequately repaired; and,
- d. Cost incurred by Plaintiffs for medical conditions brought on by mold and other air contaminants released into the house due to the defective condition of the HVAC and roof system; and,
- e. Cost of alternative living arrangements; and,
- f. Lost benefit of the parties' bargain; and,
- g. Costs associated with the re-inspection of the Property by a licensed engineer; and,
- h. Costs associated with the repair of defective conditions not identified by PHI, including:
 1. A gas supply line run through a return air plenum; and,
 2. Water damage to the roof framing and sheathing in the attic at most of the roof valleys and elsewhere; and,

3. Roof framing defects, including, but not limited to, excessive cantilever lengths, insufficient diagonal bracing, and inadequate beam supports; and,
4. Inadequate connections between the floor joists and floor beams in crawlspace; and,
5. Others that may be proven at trial.

205. Plaintiffs are informed and believe that they are entitled to judgment against DBR/PHI, jointly and severally with the other defendants, for no less than \$62,000.

WHEREFORE, Plaintiff prays for judgment against the defendants, jointly and severally, in the amount no less than Sixty-Two Thousand and no/100 (\$62,000.00) Dollars, prejudgment interest, costs of this litigation, including attorney's fees, punitive damages, and for such other and further relief as this Court deems just and proper.


ALLEN BULLARD
Montgomery Willard, LLC
Post Office Box 11886
Columbia, South Carolina 29211-1886
(803) 779-3500
(803) 799-2755 (fax)
abullard@montgomerywillard.com

Attorneys for Plaintiffs

January 23, 2015.



**CONTRACT OF SALE
RESIDENTIAL**
Revised June, 2011



THE BUYER SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE

1. **PARTIES:** This Contract of Sale is entered into on MARCH 5, 20 14 between
Buyer(s) Raymond J. Malejko (hereinafter called "Buyer"), and
Seller(s) Todd Corley (hereinafter called "Seller").

Seller represents that this Offer is () is not ☒ subject to approval by a Third Party (i.e. a bank, corporation or relocation company).

2. **PROPERTY:** Seller agrees to sell and Buyer agrees to buy the following real property with improvements and fixtures thereon:

Lot _____ Block _____ Phase _____ Subdivision Fox Crossing
Address 144 Fox Crossing Road Unit # _____ City West Columbia Zip 29170
TMS# 005536-01-011 County of Lexington, State of South Carolina.

3. **PRICE:** The purchase price is \$ 1160,000

4. **EARNEST MONEY:**

A. \$ 500.00 Earnest money is paid by: Check ☒ Cash () Other ()

B. \$ _____ Additional earnest money to be delivered on or before _____

C. Earnest money to be held in trust by NextGen Real Estate (Escrow Agent).

D. Escrow Agent does not guarantee payment of funds accepted as earnest money. All earnest money received will be deposited as required by South Carolina law and the South Carolina Real Estate Commission's rules and regulations. If earnest money is returned because it is a fraudulent instrument or due to insufficient funds, the Agent holding earnest money will immediately notify the other Agent and Contract may be voided at the Seller's option. Buyer agrees to and understands that earnest money may be deposited in an interest-bearing escrow account and that he has the right to ownership of any interest accrued. Buyer, through this written agreement, relinquishes ownership of the accrued interest to Escrow Agent as consideration for the expenses incurred in maintaining the account. Earnest money deposited in an escrow account will not be released to either Party until confirmation is received that funds have cleared the bank. If a dispute arises between Buyer and Seller concerning entitlement to and disposition of an earnest money deposit, the deposit will be retained in Escrow Agent's escrow account until Escrow Agent has obtained a written release signed by Buyer and Seller consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. See S.C. Code, Section 40-57-135 (1976). If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs.

BUYER [Signature] 3/5/14 SELLER [Signature] 3/8/14
Initials Date Initials Date

5. **TRANSACTION COSTS:** Buyer's Transaction Costs include all closing costs generated by the type of financing selected, pre-paid recurring items, mortgage insurance and discount points. Seller's Transaction Costs include preparation of deed, any recording charge based on value of the Property (deed stamps), all costs necessary to deliver a marketable title (including recording of satisfaction), property taxes pro-rated to the day of closing and the real estate brokerage fee. Buyer's and Seller's Transaction Costs will be paid as follows: (Select, initial and date only one of the options below)

A. BUYER () / () SELLER () / () Buyer will provide or pay for all Buyer's Transaction Costs and Seller will provide or pay for all Seller's Transaction Costs as well as pay for Buyer's non-allowable costs if the financing type selected in Paragraph 6(A) is either VA or FHA.

B. BUYER () / () SELLER () / () Seller will pay Buyer's Transaction Costs not to exceed \$2,000 which includes non-allowable costs first (for VA or FHA financing) and then allowable costs. Buyer is responsible for any Buyer's Transaction Costs exceeding this amount. If the amount Seller has agreed to pay toward Buyer's Transaction Costs exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all Seller's Transaction Costs.

6. **FINANCING:** Buyer's obligation under this Contract is () is not () contingent on Buyer obtaining financing. Buyer and Seller acknowledge that all financing contingencies herein automatically expire five (5) Business Days prior to the closing date set forth in Paragraph 7 and this Contract will become non-contingent on financing unless otherwise agreed to in writing. If Buyer subsequently fails to close because of the inability to obtain financing, the Buyer will be in default of this Contract and earnest money will be released to Seller. See Paragraph 4(D).

BUYER () / () SELLER () / ()

A. **FINANCING TYPE.** Financing type will be Conventional (X), FHA (), VA (), Seller (), Cash (no financing required) (), Other _____

Buyer or Buyer's Agent will immediately notify Seller or Seller's Agent if Buyer changes financing type. If the change in financing type modifies the terms of this Contract, then Seller will have the option of agreeing with the change or voiding this Contract. If Seller elects to void the Contract, earnest money will be released to the Buyer. See Paragraph 4(D).

Note: If Buyer utilizes FHA or VA financing, an FHA/VA Addendum signed by Buyer and Seller must accompany this Contract. Utilizing FHA or VA financing will require Seller to pay for certain loan-related closing costs termed "non-allowable costs". VA financing will additionally require Seller to pay for the cost of conducting the VA required termite (CL-100) inspection.

B. **APPLICATION FOR FINANCING.** If Lender financing is being used, Buyer will have five (5) Business Days from the date of Contract acceptance to apply for financing from Lender of their choice. Application will include advancement of any funds required by Lender and providing Lender's identity to Seller or Seller's Brokers. Buyer will also furnish Lender all documentation required for the processing of this loan in a diligent and timely manner.

1. Should Buyer fail to apply for the loan within five (5) Business Days, Buyer will be in default of this Contract and Seller will have the option of voiding this Contract with earnest money being released to Seller. Should the loan be denied while subject to a financing contingency, Contract will be voided and earnest money will be released to Buyer. See Paragraph 4(D).
2. If loan is rejected by initial lender or subsequent lenders, Buyer or Buyer's Agent must give written notice of each occurrence to the Seller or Seller's Agent immediately, and Seller will then have the option of continuing with or voiding the Contract. If Seller elects to void the Contract, the earnest money will be released to Buyer, provided it is not within (5) business days prior to closing. See Paragraph 4(D).
3. If Buyer elects to make any material change to their financial condition after Contract acceptance that negatively affects their ability to close the transaction, Buyer will be in default and earnest money will be released to Seller. See Paragraph 4(D).
4. Buyer gives permission to Lender to disclose any allowable pertinent information concerning Buyer's loan to any attorney representing Buyer or Seller and to the Buyer's and Seller's Brokers.

BUYER () / () SELLER () / ()

9. PROPERTY SOLD SUBJECT TO DUE DILIGENCE PERIOD:

(If Property being sold "As-Is" proceed to Paragraph 10 PROPERTY SOLD "AS-IS")

A. DUE DILIGENCE PERIOD INSPECTIONS: Buyer will have a ten (10) Business Day Due Diligence Period beginning at time of final Contract acceptance, as defined in Paragraph 29(B), to conduct, at Buyer's sole expense, whatever non-destructive inspections, examinations and testing of the Property that Buyer deems appropriate and necessary. This will include, but is not limited to, conducting a risk assessment/test for lead-based paint and lead-based paint hazards, testing for environmental hazards, inspecting the heating and air (HVAC) system and inspecting for active infestations of and/or damage from termites, other wood destroying organisms, fungi and for any drainage problems (CL-100 inspection). If Buyer utilizes VA financing, Seller will be required to pay for the cost of conducting the VA-required termite (CL-100) inspection. Any re-inspections that may be required will also be at Buyer's expense. If this Contract is contingent on the sale and closing of Buyer's Property (See Paragraph 16A) then the Due Diligence Period will begin on the date Seller or Seller's Broker receives written notification that this contingency is removed.

B. DUE DILIGENCE PERIOD EXTENSION: Notwithstanding other provisions to the contrary, in the event an inspector, in a written report provided to Seller or Seller's Broker prior to the expiration of the Due Diligence Period, recommends any additional study, inspection or evaluation of any product, item or condition in the Property, or the results of any tests conducted cannot be completed or produced prior to the expiration of the Due Diligence Period, then the Due Diligence Period may be extended by mutual agreement of Buyer and Seller through a written Addendum to this Contract. If Buyer and Seller cannot agree on an extension to the Due Diligence Period, then Buyer may proceed under the terms of Paragraph 9(C) based on available inspection reports or void this Contract and earnest money will be released to Buyer. See Paragraph 4(D).

C. INSPECTION OPTIONS: Buyer will have the following options during the Due Diligence Period:

1. Buyer can accept Property as inspected.

2. If Buyer, in his sole discretion, determines the result of any inspection, examination or test conducted to be unsatisfactory, Buyer may terminate this Contract by providing entire copies of all inspection reports and written notice of termination to Sellers or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed upon extension to this period and the earnest money will be released to Buyer. See Paragraph 4 (D). If Buyer fails to give such notice prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligations to make any repairs or replacements to the Property and Buyer being obligated to proceed with the transaction in accordance with the terms of this Contract.

3. If Buyer requests Seller make repairs and/or replacements to the Property, Buyer must submit complete copies of any inspection reports and an Inspection Repair Addendum, signed by the Buyer, identifying specific defects Buyer wants corrected, to Seller or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed extension to this period. If Buyer fails to submit complete copies of these reports and the Addendum to Seller or Seller's Broker prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligation to make any repairs or replacements to the Property, and Buyer will be obligated to proceed with the transaction in accordance with the terms of this Contract. If reports and Addendum are submitted within the Due Diligence Period and any extension, Buyer and Seller will then have five (5) Business Days from expiration of Due Diligence Period to negotiate the defects to be corrected by Seller, at Seller's expense, and sign the Addendum. If Buyer and Seller have not reached agreement on the Addendum by the end of this negotiation period:

a. Buyer and Seller may mutually agree to extend the negotiating period through written Addendum to this Contract, or;

b. Buyer will have one business day after the end of the negotiation period, or any extension to the period, to accept Property "As-Is" in current state with no repairs or replacements made by Seller by providing written notice to Seller or Seller's Broker, or;

c. If the negotiating period is not extended and Buyer does not accept Property "As-Is" within the time frame prescribed in the above Paragraph, then either party can terminate this Contract by providing written notice of termination to the other and earnest money will be released to Buyer. See Paragraph 4 (D). Seller's failure to respond to the Inspection Repair Addendum within the five (5) Business Day period will be deemed to be a refusal to do repairs/replacements.

BUYER

Initials

Date

SELLER

Initials

Date

C. SELLER FINANCING. If Seller financing is included in the financing of this Property, Buyer's and Seller's Brokers make no representations as to the creditworthiness of Buyer and suggest that Seller determine whether Buyer's credit is satisfactory. The terms of Seller financing should be noted in Paragraph 18 of this Contract or in a separate Addendum to this Contract.

D. CASH TRANSACTION. In a cash transaction, Buyer agrees to provide Seller or Seller's Broker, within five (5) Business Days of acceptance of this Contract, written verification of availability of funds from the source(s) of those funds. If Buyer fails to comply with the above requirement, then Seller will have the option of voiding this Contract and earnest money will be released to Seller. See Paragraph 4(D).

E. APPRAISAL CONTINGENCY. This Contract is (☒) is not (☐) contingent on lot or parcel with building and improvements thereon, if any, appraising according to Lender's appraisal, or other appraisal as agreed by Buyer and Seller for non-Lender financed transactions, for the selling price or more. If contingent, and lot or parcel with building and improvements thereon appraises for less than the selling price, the Buyer will have one business day after notification of the results of the appraisal to proceed with the consummation of this sale without regard to the appraised value or attempt to renegotiate this Contract. If after the one business day period, the Parties are unable to reach agreement on a renegotiated Contract then either party can terminate this Contract by providing written notification to the other. Upon termination, earnest money will be released to Buyer. See Paragraph 4 (D).

F. SELLER'S MORTGAGE PAYOFF. Seller gives permission to Closing Attorney to obtain Seller's mortgage payoff information. SELLER (/ /)

7. CONVEYANCE DATE OF CLOSING/POSSESSION: Conveyance will be made subject to all easements and covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a general warranty deed, if applicable, free of encumbrances, except as herein stated. The deed will be prepared in the name(s) of Raymond S. Maleyko or as otherwise stipulated by Buyer, and delivered to stipulated place of closing. The deed will be held in trust by the Closing Attorney until sales proceeds have been disbursed to Seller, at which time the Closing Attorney shall be authorized to record the deed. This transaction will be closed on or before March 28 2014, unless extended pursuant to Paragraph 7(B) or by mutual agreement.

A. BUYER (/ /) 3/5/14 SELLER (/ /) 3/8/14 Seller will be obligated to vacate and give possession of the Property (free of debris and in a clean condition) to Buyer: at closing (☒) 24 hours after closing (☐) 48 hours after closing (☐) or in accordance with attached agreement (☐)

B. If Buyer has provided written loan commitment without additional conditions, or in a cash transaction Buyer has met the terms and conditions of Paragraph 6(D), but has not closed within the stipulated time limit of this Contract, both Parties agree to extend this Contract for a period not to exceed five (5) Business Days from the original closing date.

8. RIGHT OF BUYER TO INSPECT/RE-INSPECT PROPERTY: Buyer, or Inspectors selected by Buyer at Buyer's expense, will have the right to enter Property to inspect, examine and test the Property. For the purposes of this Contract, the term "Inspector" is defined as a person or company, licensed or certified where required by law, with specific, professional expertise or knowledge in property inspections, or in an item, building product or condition contained therein for which the Inspector is inspecting, examining or testing. Seller will make the Property available for all inspections and will have all utilities operational for the inspections, any re-inspections, appraisals and final walk through. Seller agrees to allow Buyer, or Inspectors selected by Buyer, the right to re-inspect the Property at Buyer's expense to determine if agreed upon repairs and/or replacements have been made. Buyer will also be allowed to perform a walk-through prior to closing to confirm that the Property has been maintained in compliance with Paragraph 11, if applicable, and that any personal Property to be transferred or conveyed is on the premises. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages arising out of, or related to, the exercise of these rights and will repair any damages resulting from same.

BUYER

Initials

Date

SELLER

Initials

Date

D. FHA/VA APPRAISAL INSPECTIONS: If Buyer uses FHA or VA financing, the Property may be inspected by an Appraiser appointed by Lender. This inspection is not subject to time limitations or other requirements of the Due Diligence Period outlined above. If Appraiser identifies repairs to be made as a condition of loan approval and Seller elects not to make them, Buyer will have the option of paying for and completing the repairs prior to closing or voiding this Contract, with earnest money being released to Buyer. See Paragraph 4(D).

10. PROPERTY SOLD "AS-IS": (If Selected Terms of Paragraph 9 do not apply) (Select, initial and date only one of the options below)

A. BUYER (/) SELLER (/)
PROPERTY SOLD "AS-IS" WITH DUE DILIGENCE PERIOD

All Parties agree that Property is being sold "As-Is" with all defects including, but not limited to, lead-based paint, lead-based paint hazards, environmental hazards, active infestations of and/or damage from termites, other wood destroying organisms or fungi and for any drainage problems (CL-100). Buyer will have a ten (10) Business Day Due Diligence Period as stipulated in Paragraph 9(A) to have Property inspected, examined and tested to determine its condition. Seller will have no obligation to make any repairs or replacements to the Property identified as a result of inspections. Buyer may proceed under the terms of this Contract or void this Contract by providing written notice to Seller or Seller's Broker, prior to the expiration of the Due Diligence Period, with the earnest money released to Buyer. See Paragraph 4(D). Failure to provide notice of voiding this Contract prior to the expiration of the Due Diligence Period will be deemed Buyer's acceptance of the Property in "As-Is" condition with no Seller repairs or replacements.

OR

B. BUYER (/) SELLER (/)
PROPERTY SOLD "AS-IS" - NO DUE DILIGENCE PERIOD

All Parties agree that Property is being sold "As-Is", Seller will make no repairs or replacements, and Buyer elects not to have a Due Diligence Period. Buyer retains the right to inspect, examine and test the Property but waives both the right to request repairs or replacements and the right to void this Contract based on inspection results.

11. CONDITION OF PROPERTY: Except for property being sold "As-Is" per terms of Paragraph 10, after any inspections by Buyer and after repairs or replacements, if any, made as a result of any such inspections, Seller agrees to maintain the Property (including but not limited to, lawn, shrubbery, grounds and fixtures, equipment and systems that convey with the Property) and all improvements thereon in similar condition until the day of closing or the day possession is given, whichever occurs first. Seller warrants that to the best of his knowledge, information, and belief there are no conditions in the Property which would adversely affect the value when conditions are hidden by furniture, fixtures or window treatments currently in place in the Property.

12. PROPERTY CONDITION DISCLOSURE STATEMENT: (Select, initial and date only one of the options below)

A. BUYER [Signature] 3/5/14 SELLER (/) Buyer and Seller agree that a Residential Property Condition Disclosure Statement, as required by S.C. Code, as amended, Section 27-50-10, et. seq., has been provided to Buyer by Seller prior to the final acceptance of this Contract. If Seller discovers, after his delivery of the Disclosure Statement to Buyer, any material inaccuracy in the Disclosure Statement or the Disclosure Statement is rendered inaccurate, misleading, incomplete or false in a material way by the occurrence of some event or circumstance, Seller will promptly make reasonable repairs needed to eliminate the deficiency and repair the damage caused by the occurrence or correct the inaccuracy by delivering a corrected disclosure statement to Buyer before closing. Buyer understands and agrees that Seller's Property Condition Disclosure Statement is not intended to replace inspections of the Property.

OR

B. BUYER [Signature] 3/5/14 SELLER [Signature] 3/6/14 Buyer and Seller agree that Seller will not complete nor provide a Residential Property Condition Disclosure Statement in accordance with S.C. Code, as amended, Section 27-50-30, Paragraphs (1-13).

BUYER [Signature] 3/5/14 SELLER [Signature] 3/6/14
Initials Date Initials Date

13. **LEAD-BASED PAINT:** Buyer is advised that if this Property was built prior to 1978, it may contain lead-based paint and that a "Disclosure of Information and Acknowledgement Lead-Based and/or Lead-Based Paint Hazards" form is hereby made an Addendum to this Contract and will be signed by both Buyer and Seller and their Agents.

14. **HOME WARRANTY COVERAGE:** Buyer and Seller agree that a home warranty providing at least twelve (12) months of coverage for the Buyer will ☒ will not () be provided at closing. If applicable, the warranty premium will be paid by Buyer () Seller ☒ in the amount of \$ 530.00, provided by American Home Shield (home warranty company) and written by the Buyer's Agent () Seller's Agent (). If the price of the warranty exceeds the dollar amount entered in this paragraph, Buyer shall be responsible for the difference at closing.

15. **PROPERTY DOCUMENTATION:** (Initial and date after reviewing information in Paragraphs 15 A-D)

BUYER [Signature] 3/5/14 SELLER [Signature] 3/8/14 Buyer's and Seller's Brokers strongly recommend Buyer review existing Property documentation to include the most current plat, Covenants and Restrictions, and Seller's Property Condition Disclosure Statement before entering into this Contract. The Buyer's and Seller's Brokers also recommend that prior to closing on this Contract, Buyer have a survey of the subject Property made to verify land size/boundary dimensions, measure existing structures to verify square footage, have an examination as to the title to the Property, obtain owner's title insurance and the Buyer obtain appropriate hazard, flood, earthquake and wind/hail damage insurance coverage effective at the time of closing.

A. Seller represents that the Property is:

Connected to - public/community sewer system () septic tank ().

Connected to - public/community water system () well system () Other _____

B. Seller represents that to the best of Seller's knowledge, the Property is () is not (☒) partly or entirely located within a designated Special Flood Hazard Area (flood zone). If Seller's response indicates that it is in a flood zone, Buyer understands that it may be necessary to purchase flood insurance in order to obtain a loan. If Seller's response indicates that the Property is not in a flood zone and, subsequent to Contract acceptance, it is determined that permanent improvements to the Property are within a flood zone causing Lender to require Buyer to purchase flood insurance as a condition of loan approval, then Buyer can terminate this Contract. Buyer will have three (3) Business Days after receipt of Notice from Lender to provide written Notice to Seller of the decision to terminate. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D). Buyer's failure to provide written Notice to Seller within the three (3) Business Day period will be deemed Buyer's agreement to purchase flood insurance to close the transaction.

C. Seller represents that the Property is () is not () subject to a special assessment of any governing body, including, but not limited to, a homeowner's association/regime or otherwise. The special assessment fee is \$ _____.

D. Seller represents that the Property is () is not () subject to a mandatory association fee (i.e. homeowner's association/regime or otherwise). If the Property is subject to a mandatory association fee, the fee is \$ 75.00 per _____ and is payable to [Signature] 3/5/14 \$55.00

16. **ADDITIONAL CONTINGENCIES:** (Initial and date either Paragraph A or B if applicable and Paragraph C if other contingencies apply)

A. **SALE AND CLOSING CONTINGENCY**

BUYER (/) SELLER (/) This Contract is contingent on the sale and closing of the Buyer's Property not later than the closing date agreed to in Paragraph 7 of this Contract. Property is located at the following address: _____

Buyer's failure to disclose the existence of this contingency will constitute a default of this Contract and earnest money will be released to Seller. See Paragraph 4(D).

BUYER [Signature] 3/5/14 SELLER [Signature] 3/8/14
Initials Date Initials Date

1. Buyer represents that the Buyer's Property identified in Paragraph 16(A) above is () is not () currently listed with a real estate company.

2. As long as this contingency remains in effect, Seller may continue to market Seller's Property and can accept a subsequent offer to purchase under the following terms:

a. Any subsequent offer that does not contain a sale and closing contingency may be accepted as a Primary Contract, with this contingent Contract becoming a Back-up Contract upon agreement of Buyer and Seller. If agreement cannot be reached, this contingent Contract will become null and void with earnest money released to Buyer. See Paragraph 4(D).

b. Any subsequent offer that does contain a sale and closing contingency may only be accepted as a Back-Up Contract.

3. If Buyer does not remove this contingency by the closing date in Paragraph 7, this Contract will become null and void unless both Parties agree to extend the closing date. If Contract is voided, earnest money will be released to Buyer. See Paragraph 4(D).

4. Once Buyer accepts a Contract of Sale on their Property with all contingencies removed or waived (other than financing), with any Due Diligence Period and/or repair negotiations completed, and with a closing occurring prior to the date and time scheduled for this closing, Buyer will provide written notice of this acceptance to Seller. This Contract will then become contingent on completion of the closing of the sale of Buyer's Property. See Paragraph 16(B) below.

B. CLOSING CONTINGENCY

BUYER () / () SELLER () / () This Contract is contingent on completion of the closing of the sale of Buyer's Property. The Contract the Buyer has accepted on his Property must have all contingencies other than financing, removed or waived with any due diligence period and/or repair negotiations completed, on or before . Property is located at .

1. Buyer to provide documentation of sale of Buyer's Property upon request.

2. Seller may continue to market Seller's Property for sale; however, any offer received will be negotiated as a Back-up Contract.

C. OTHER CONTINGENCIES

BUYER () / () SELLER () / () This Contract is contingent on:

17. FIXTURES AND PERSONAL PROPERTY: This sale includes all fixtures, equipment and improvements of any kind which now exist and are attached to or planted on the premises such as, but not limited to: shrubbery, trees, fences, shutters, blinds, lamp posts, mail boxes, storage sheds, lawn irrigation system and all related equipment, pool and spa equipment, window and door screens, storm windows and doors, garage door openers and remotes, satellite dishes, Seller-owned security systems, smoke detectors, gas logs, central vacuum system, landscape lighting, curtain/drapery rods, ceiling fans and remotes, attached mirrors, light bulbs, switch plates, heating and air system registers and built-ins, such as equipment, appliances, cabinets, furniture and shelves, unless otherwise agreed herein. Items of personal property other than those above may be sold separately by Bill of Sale.

BUYER

Initials

Date

SELLER

Initials

Date

18. OTHER TERMS: If conflicting with pre-printed portions of this Contract, the following terms will control:

All Appliances Remain

19. ADJUSTMENTS: Real estate taxes, homeowner association/region fees, and rents when applicable, will be adjusted as of the date of closing. Tax prorrations pursuant to this Contract are to be based on the tax information available and deemed reliable by the Closing Attorney on the date of closing and to be prorated on that basis. Buyer will be responsible for applying for any applicable tax exemptions. Buyer is also responsible for any tax increases due to change in ownership. Unless otherwise agreed, Seller will pay all regular and special homeowner's association assessments and all governmental assessments levied prior to closing and Buyer will pay for those assessments levied after closing.

20. FIRE OR CASUALTY: In case the Property herein is damaged wholly or partially by fire or other casualty prior to delivery of deed, Buyer will have the right for ten (10) Business Days after notice of such damage to terminate this Contract. Upon such termination, earnest money will be released to Buyer and neither party will have any further rights hereunder. See Paragraph 4(D). If Buyer elects not to terminate this Contract or fails to provide timely Notice of Termination, the Parties will proceed according to its terms.

21. DEFAULT: If Buyer or Seller fails to perform any of the terms of this Contract, the other may elect to seek any remedy provided by law including, but not limited to, attorney fees and actual costs incurred or terminate this Contract with written notice. Actual costs incurred will include all costs and expenses incurred or obligated for by Buyer, Seller or Brokers in an effort to consummate this sale. Such costs will include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, attorney's fees and real estate brokerage fee for this sale. If Contract is terminated, both Parties will execute a written release of the other from this Contract and both will hold Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or a court of competent jurisdiction dictates legal disposition. If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs.

22. MEDIATION: Any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided in relation to this Contract, shall be submitted to mediation in accordance with the rules and procedures of the dispute resolution system of the National Association of Realtors. Disputes will include representations made by Buyer, Seller or any real estate Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the Property to which this Contract pertains, including, without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreements signed by the Parties pursuant to the mediation conference will be binding. S.C. Code, Ann. Section 15-48-10 et. seq. shall not apply to this Contract.

BUYER [Signature]
Initials

3/5/14
Date

SELLER A.C.
Initials

3/8/14
Date

23. **ENTIRE BINDING CONTRACT:** The Parties agree that this written Contract expresses the entire agreement between the Parties, that there is no other agreement, oral or otherwise, modifying the terms hereunder and that this Contract will be binding on both Parties, their principals, heirs, personal representatives, successors and assigns as state law permits.

24. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of S.C. Code, Section 12-8-580 (as amended) regarding tax withholding requirements of Sellers who are not residents of South Carolina as defined in said statute.

25. **EXPIRATION OF OFFER:** This offer from Buyer will be withdrawn at 6 o'clock P. M. (Eastern Time) on MARCH 6, 2014 unless accepted or countered by Seller in written form prior to such time.

26. **TIME IS OF THE ESSENCE:** Time is of the essence with respect to all provisions of this Contract that stipulate a specific period of time for performance. Failure of Buyer or Seller to complete any provision of this Contract within the stipulated period of time for completion of the provision will constitute, where applicable, a default of this Contract.

27. **NOTICE AND DELIVERY:** Notice means a unilateral communication, including offers, counteroffers and associated Addenda from one Party to this Contract to the other. Notice to a Broker or affiliated Agent representing a Party to this Contract will be deemed to be Notice to that Party. All Notices required under this Contract will be in writing and will be effective as of Delivery. Delivery methods may include hand-carried, sent by professional courier service, by United States mail, or by facsimile (fax) or e-mail transmission. A faxed or e-mailed signature of a Party to this Contract will constitute an original signature binding upon that Party. The Parties agree that Delivery will be deemed to have occurred either on the day and at the time Notice is delivered by hand, by a professional courier service, or by United States mail (return receipt requested) or on the day and at the time Notice is sent by facsimile or e-mail transmission provided written confirmation of receipt is received by deliverer. No Party to this Contract will refuse Delivery in order to delay or extend any deadline established in the Contract.

28. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after closing, it will survive the closing and remain binding upon and for the Parties hereto until fully observed, kept or performed.

29. **DEFINITIONS:**

A. A single Business Day is defined as a twenty-four (24) hour period beginning at 8AM of any week day (Monday through Friday). A Business Day may not begin or end on a Saturday, Sunday or Federal legal holiday. For the purposes of this Contract, the first Business Day will begin at 8AM of the Business Day following final Contract acceptance. All deadlines/timelines set forth in the Contract will begin at 8AM of the first Business Day following the date of final Contract acceptance unless otherwise agreed to by Buyer and Seller.

B. Successful negotiation of this offer will have been completed when one of the Party's to the negotiation places the final, required signatures and/or initials on this offer. Contract acceptance will occur at the date and time when this Party subsequently delivers a copy of this executed document to the other Party. The Party receiving the executed document will be responsible for filling in the final Contract acceptance date and time on the last page of this Contract. If a Party is unrepresented, they will assume responsibility for filling in the required information.

C. In this Contract, closing is defined as the date and time that the Closing Attorney disburses funds.

D. The term Broker is also deemed to include affiliated Agent(s) of the Buyer's and Seller's Brokers.

30. **HUD-1 SETTLEMENT STATEMENT RELEASE:** Seller and Buyer authorize the Closing Attorney to furnish to Buyer's and Seller's Brokers copies of the HUD-1 Settlement Statement for the transaction.

31. **MEGAN'S LAW:** Buyer and Seller agree that the Buyer's and Seller's Brokers and all affiliated Agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry and that no course of action may be brought against the Buyer's and Seller's Agents and all affiliated Agents for failure to obtain or disclose such information. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information which may be obtained from appropriate law enforcement officials.

BUYER [Signature] 3/5/14 SELLER [Signature] 3/8/14
Initials Date Initials Date

33. **DISCLAIMER:** Buyer and Seller acknowledge that Buyer's and Seller's Brokers give no warranty of any kind, expressed or implied, as to: (1) physical condition of the Property or as to condition of or existence of improvements, services or systems including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems or to structure; (2) condition of the Property, any matters which would be reflected by a current survey of the Property or the accuracy of the square footage heated or unheated; (3) title to the Property including the existence or absence of easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like; (4) fitness for a particular purpose of the Property or improvements; (5) Property being purchased being in compliance with necessary zoning ordinances and restrictions; (6) projected income, value, or other possible benefits to Buyer.

Janet Lopez, NextGen Real Estate 803-513-3444
Seller's Agent/Company acknowledges Seller is a Client () Customer (). Agent's Telephone Number

ACCEPTANCE ENTERED BY [Signature] (AGENT

Copyright© 2011 by the Central Carolina REALTORS® Association. This is a Standard Form of the Central Carolina REALTORS® Association. 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. *This form may not be edited, revised or changed without the prior written consent of the Central Carolina Realtors Association and changes must be both bolded and italicized.*

RAYMOND J MALEJKO
CRISTINE MALEJKO
PH. 732-814-0154
~~235 BONNIE VIEW CT~~
LEXINGTON, SC 29072

284

67-160/532

2/8/14

PAY

to the order of

Next Gen Real Estate

\$ 500.00

Five Hundred

Dollars



Security
Features
Printed on
Back



BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBK BBK.com

For EXPENSE # for 141 Fox Crossing Rd

⑆053 20 160 7⑆0005 22435 1803⑆00284

Machine Only



REPAIR REQUEST PROPOSAL

In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering improvements and the ☐ real property, ☐ business, ☐ premises — commonly known as:

Lot _____ Block _____ Section _____ Subdivision Fox Crossing

Address 141 Fox Crossing Road

Tax Map # DD5536-01-011 City West Columbia Zip 29170

County of Lexington State of South Carolina.

The undersigned Parties hereby agree as follows:

1. REQUESTED REPAIRS: Buyer/Tenant hereby requests Seller/Landlord to complete the following repairs to the Property (please see attached sheet if checked []):

Buyer and Seller have agreed that Seller is to address and remedy all items from the Home Inspection Report performed by Housemasters (1-16-14) except the brick lintel over HVAC which will NOT be addressed. Seller to have all repairs completed by Friday, March 21, 2014. Buyer plans to have home inspector to reinspect repairs made as early as March 24, 2014.

2. AGREEMENT: At such time as Buyer/Tenant and Seller/Landlord agree which of the repairs set forth in paragraph 1 above will be completed, Seller/Landlord shall complete the agreed upon repairs (the "Repairs") at Seller's expense and in a good and workmanlike manner. Repairs shall be requested and completed prior to closing providing reasonable time for inspection and remediation if repairs are not completed in a good and workmanlike manner.

3. NOTIFICATION AND VERIFICATION: Seller/Landlord shall notify Buyer/Tenant upon completion of the Repairs prior to closing and provide time for inspection and if necessary, remediation. Buyer/Tenant shall have the right to inspect to verify that the Repairs were completed in a good and workmanlike manner. Inspection shall at the expense of the Buyers/Tenants.

Buyer/Tenant [[Signature]] []

Seller/Landlord [[Signature]] []

HAVE READ THIS PAGE

Form 525 PAGE 1 OF 2

4. **ADDITIONAL INSPECTIONS AND REPAIRS:** Buyer/Tenant shall have the right to inspect the property until closing for a final walk-through inspection, structural inspection, wood infestation inspection, environmental inspection, structure inspection, HVAC inspection, electrical system inspection, plumbing system inspection, and equipment inspection or any inspection called for by initial inspections. Seller/Landlord at their expense shall maintain appropriate utility connections (electricity, gas, water, etc.) to allow such inspections until closing. Any additional repairs that Buyer/Tenant may request and the Seller may agree to complete as a result of such additional inspections will be added and become part of this Agreement. Inspections shall be at the expense of the Buyer/Tenant.

5. **RELEASE OF INSPECTION REPORTS:** Buyer/Tenant agrees to release any inspection reports to Seller/Landlord upon request.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER/TENANT: [Signature]

Date 3/8/14

Time 6:02 pm

WITNESS: [Signature]

Date _____

Time _____

BUYER/TENANT: _____

Date _____

Time _____

WITNESS: _____

Date _____

Time _____

SELLER/LANDLORD: [Signature]

Date 3/8/14

Time 6:28 pm

WITNESS: [Signature]

Date _____

Time _____

SELLER/LANDLORD: _____

Date _____

Time _____

WITNESS: _____

Date _____

Time _____

The foregoing 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. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

© 2007 South Carolina Association of REALTORS®. 04/07
Form 625 PAGE 2 OF 2



ADDENDUM TO PURCHASE AGREEMENT

This ADDENDUM, which is attached to and made a part of a Contract of Purchase dated 3/5/14 between the following:

SELLER

Todd Corley

BUYER

Raymond J. Malejko

PROPERTY ADDRESS: 141 Fox Crossing Road, West Columbia
SC 29170

As property taxes are pro-rated at closing based on current 6% rate, Seller agrees not to pursue a tax credit when 2014 tax bill is out to be reimbursed for being overcharged tax proration at closing of 141 Fox Crossing Road, West Columbia SC 29170

Any credit the Buyers receive as credit for the portion of seller pro-rated taxes, it is given in whole to Buyer at closing with no future refund to Seller regarding the 2014 taxes

WITNESS the following duly authorized signatures:

Todd Corley
Seller

3/8/14
Date

[Signature]
Purchaser

3/8/14
Date

Seller

Date

Purchaser

Date

In the Matter Of:

Malejko, Raymond J. and Cristine v
Corley, Todd, et al

Carlton Segars Jr

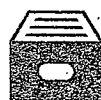
April 03, 2017



A. William Roberts, Jr. & Associates

Court Reporting & Litigation Solutions
www.scheduledepo.com | 800-743-DEPO

We're About Service ... Fast, Accurate and Friendly!



court reporting | trial presentation | document services | videography | nationwide scheduling

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF RICHLAND

3
4 RAYMOND J. MALEJKO and CRISTINE
5 MALEJKO, individually and on
6 behalf of their minor child,
7 STEPHANIE MALEJKO,

8 Plaintiffs,

9 vs.

CASE NO. 2016-CP-40-01536

10 TODD CORLEY, JANET LOPER,
11 NEXTGEN REAL ESTATE, LLC, THOMAS
12 HUMPHRIES, DR. ROOFS, INC.,
13 RAY MOONEYHAM, MOONEYHAM SOLAR
14 & ELECTRIC, PROFESSIONAL HOME
15 INSPECTIONS, INC., CORLEY
16 ENTERPRISES, INC. OF SOUTH CAROLINA,
17 and DBR FRANCHISING, LLC,

18 Defendants.

19 DEPONENT: CARLTON H. SEGARS, Jr.

20 DATE: April 3, 2017

21 TIME: 10:34 a.m.

22 LOCATION: Richardson Plowden
23 1900 Barnwell Street
24 Columbia, SC

25 TAKEN BY: Counsel for the Defendants

REPORTED BY: KIMBERLY T. POWER, CR

A. WILLIAM ROBERTS, JR. & ASSOCIATES
Fast, Accurate & Friendly

23 Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
(843) 722-8414	(843) 785-3263	(843) 839-3376

24 Columbia, SC	Greenville, SC	Charlotte, NC
(803) 731-5224	(864) 234-7030	(704) 573-3919



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

1 Raymond Cristine Malejko?

2 A. I have never met them prior to this.

3 Q. Other than Ms. Malejko sitting here today,
4 other than today have you met with them individually?

5 A. I went out to the house to see the
6 property, to see what exactly -- where the house was,
7 what it looked like, and to chat with them briefly to
8 get their side of the story and nothing other than
9 that.

10 Q. All right. Are you familiar with any of
11 the defendants in this matter?

12 A. No, sir.

13 Q. Todd Corley, Janet Loper, are you familiar
14 with any of them?

15 A. No, sir, other than seeing Ms. Loper's
16 signs and advertising for NextGen.

17 Q. Have you ever done any work with Thomas
18 Humphries or Dr. Roof or Ray Mooneyham or Mooneyham
19 Solar & Electric or Professional Home Inspections,
20 Inc.?

21 A. No, sir.

22 Q. What's your -- what's the opinions you
23 have you rendered as it relates to Mr. Loper's work
24 on this matter?

25 A. The opinion that I have come to is that

14
1 she did not exercise reasonable care and diligence in
2 her fiduciary duties to the Malejkos.

3 Q. Okay. In what way? What's an example of
4 why she did not? What do you base that assumption
5 on?

6 A. She had a duty to disclose items to them,
7 anything that she knew about. And it appears after
8 briefly going through the information that you
9 provided me this morning, that -- it's my
10 understanding that she was acting as a dual agent. I
11 have not seen the dual agency paperwork. If y'all
12 have that, I would like to see it.

13 Q. Well, you've indicated that she has
14 violated some standard of care and questioning
15 whether there was a dual agency disclosure found.
16 Did you review her file?

17 A. I saw her deposition.

18 Q. Did you review the work file that she has
19 on -- that she's maintained on this case?

20 A. No, sir, I have not seen her work file.

21 Q. Do you think that that would be -- do you
22 think that you would need to review that prior to
23 making any kind of opinion on whether or not there is
24 the appropriate paperwork done for a dual agency?

25 A. Yes, sir.

1 purchase of the home or even prior to March of 2015.

2 Would that be correct?

3 A. Yes, sir.

4 Q. And if you are at any point in time asked
5 to render an opinion with regard to those matters,
6 would you consider yourself to be an expert to do so?

7 A. No, sir. I don't hold the proper licenses
8 for that.

9 MR. TAYLOR: Thank you, sir. That's
10 all I have.

11 EXAMINATION

12 BY MR. BULLARD:

13 Q. Mr. Segars, I'm Allen Bullard. I
14 represent the Malejkos. I have some questions for
15 you. In the course of a real estate transaction, is
16 it customary for a realtor to recommend inspectors to
17 their client?

18 A. Typically we tell the agents when we're
19 going through the classes not to recommend one
20 specific person, but to provide them with a list of
21 people that they can choose from.

22 Q. In that list of people that you suggest
23 that they choose from, should those individuals be
24 licensed to do the work that they are being
25 recommended for?

1 A. Yes, sir.

2 Q. If Ms. Loper recommended an expert to
3 perform an HVAC inspection on the house, would that
4 have violated her duty of care if he was not
5 licensed?

6 A. If she recommended one individual, ideally
7 she should have presented them with a choice, a list,
8 as I mentioned, not just one specific person.

9 Q. If she recommended someone who did not
10 hold a license to perform an HVAC inspection, would
11 that have violated her duty of care?

12 A. If she knew that that person was not
13 licensed.

14 Q. Did she have a duty to determine whether
15 or not someone she's recommending is licensed or not?

16 A. That's what we tell the agents in
17 training, to be sure they check their licenses and
18 make sure they are qualified.

19 Q. So if, in fact, an HVAC inspector was
20 recommended by Ms. Loper and it turns out he was not
21 licensed, would that have violated her duty of care?

22 A. It could have.

23 Q. By the same token, if a fellow came, in
24 this particular case let's say Mr. Humphries, came to
25 do a roof repair, just to repair a roof, and while

1 he's on the roof if Ms. Loper asked him would he mind
2 doing an inspection while you're here, is it proper
3 for her to be asking somebody to do an inspection who
4 she has just met for the first time standing on the
5 roof?

6 MR. DRIGGERS: Object to the form.

7 BY MR. BULLARD:

8 Q. You can still answer.

9 A. You could ask, but there's also -- the
10 agent needs to check and make sure that the person
11 that is doing that inspection is qualified to do
12 that -- to do the inspection.

13 Q. And you would agree with me if you just
14 met somebody for the first time, you wouldn't have
15 any idea what their qualifications were, would you?

16 A. I wouldn't have any idea as to what their
17 qualifications were.

18 Q. So you think it's okay for Ms. Loper to go
19 ahead and recommend this guy to do an inspection that
20 she just met for the first time?

21 MR. DRIGGERS: Object to the form.

22 THE WITNESS: Personally, I wouldn't
23 do that.

24 BY MR. BULLARD:

25 Q. Do you think it's a violation of her duty

1 of care to do so?

2 MR. DRIGGERS: Object to the form.

3 THE WITNESS: Personally, I do.

4 BY MR. BULLARD:

5 Q. If the roofer who did the inspection sent
6 Ms. Loper an e-mail that contained a written
7 explanation of the work he had performed, would it be
8 proper for Ms. Loper to copy that e-mail into a
9 document and put her own letterhead on it purporting
10 to be from the roofer, basically creating a document
11 that didn't exist and then handing it to her clients?

12 MR. TAYLOR: Objection to form.

13 MR. DRIGGERS: Same objection.

14 MR. ANDERSON: Same.

15 THE WITNESS: I think that would be
16 improper if she created a document.

17 BY MR. BULLARD:

18 Q. Would it be a violation of her duty of
19 care?

20 MR. DRIGGERS: Object to form.

21 MR. TAYLOR: Object to the form.

22 THE WITNESS: I would consider it as
23 a violation of that.

24 BY MR. BULLARD:

25 Q. If Ms. Loper informed both the buyer and

1 the seller that the seller was exempt from filling
2 out a property disclosure form prior to them
3 contracting, would that be a proper statement for a
4 realtor to make? I mean, this seller was not
5 exempted in any way unless the parties agreed to it
6 in the contract, right?

7 A. Right.

8 Q. So if she told them before the contract,
9 "Y'all don't have to enter into a property disclosure
10 because you're exempt," that's not proper, is it?

11 A. Would she have known that they would
12 not -- that the seller was exempt? What would she be
13 basing that on?

14 Q. Let me show you this. This is Exhibit No.
15 37. It says, "Residential Input Sheet." It's dated
16 11/30/13, isn't it?

17 A. Yes, sir.

18 Q. And it says, "Exempt from property
19 disclosure, X," doesn't it?

20 A. Yes, sir.

21 Q. So Ms. Loper had decided in November of
22 '13 that Mr. Corley was exempt from filing a property
23 disclosure, hadn't she?

24 A. That's what it appears.

25 Q. And that's not proper, is it?

1 A. No, sir.

2 Q. It's not correct, is it?

3 A. No, sir.

4 Q. And it's a violation of her duty of care
5 to tell the seller and the buyer that he's exempt,
6 isn't it?

7 A. She's to inform them of what that property
8 disclosure is and tell them what the exemptions are
9 and if they meet them, then mark this accordingly.

10 Q. But they didn't meet them. The only one
11 they met is that they voluntarily agreed not to
12 accept one, right?

13 A. Yes, sir.

14 Q. Now, if Ms. Loper was aware that the
15 person who lived in the property from 1989 to 2010
16 was a mother of one of her friends, should she have
17 disclosed that to the buyers?

18 A. If she was aware of the person that lived
19 there?

20 Q. If she was aware that -- if there was
21 information available from the prior property owner,
22 because we know that Mr. Corley didn't live there,
23 but the person who did for the past 20 years was the
24 mother of a friend, shouldn't she tell the buyers,
25 "Hey, I know who used to live here? We might be able

1 to ask her some questions"?

2 A. That might be some useful information to
3 pass on, that you know more about the property.

4 Q. Would it be proper to withhold that
5 information from the buyers?

6 A. If there were -- if there was information
7 in that knowledge that she had of anything wrong with
8 the property, material defects or anything like that,
9 then she would have had prior knowledge of it and she
10 would need to disclose that.

11 Q. But her knowledge of the fact that the
12 prior owners was living with their daughter and that
13 she knew the daughter, she should have brought that
14 to the attention of the buyers or at least mentioned
15 it to them?

16 MR. TAYLOR: Object to the form and
17 asked and answered.

18 MR. ANDERSON: Objection.

19 BY MR. BULLARD:

20 Q. You can answer.

21 A. Yeah, it's -- if she -- that would
22 indicate that she knew about the property and was
23 familiar with it.

24 Q. Knew something about the history of the
25 property, right?

1 A. Yes, sir.

2 Q. That would have been a violation of her
3 duty of care?

4 A. Yes, sir. If she knew of any issues with
5 the property and she would have had the prior
6 knowledge of, as you said, the history of the
7 property.

8 Q. Now, I think we saw that there was a dual
9 agency agreement entered into in January of 2014,
10 right?

11 A. Yes, sir.

12 Q. That's something they showed you today in
13 your deposition. And I think we talked about the
14 fact that the January 2014 contract that the parties
15 signed terminated; is that right?

16 A. Yes.

17 Q. And then I think there was another
18 contract, the one that you've been shown which is
19 Exhibit Number 5 --

20 A. Yes.

21 Q. -- this is the one that they actually
22 closed on, Exhibit No. 5?

23 MR. ANDERSON: Object to the form.

24 BY MR. BULLARD:

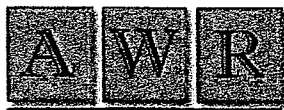
25 Q. Is it not?

In the Matter Of:

Malejko, Raymond J. and Cristine Malejk v
Corley, Todd, et al.

Raymond J. Malejko
August 26, 2015

A. William Roberts, Jr. and Associates
We're About Service... Fast, Accurate and Friendly
(800) 743-DEPO
www.scheduledepo.com



A. William Roberts, Jr. & Associates
court reporting | videography | trial presentation | nationwide scheduling
scheduledepo.com | 800-743-DEPO

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF RICHLAND
4 RAYMOND J. MALEJKO, ET AL.,
5 Plaintiff,
6 vs. CASE NO. 2015-CP-40-00480

7 TODD CORLEY; JANET LOPER; NEXTGEN REAL
8 ESTATE, LLC; THOMAS HUMPHRIES; DR. ROOFS, INC.;
9 RAY MOONEYHAM; MOONEYHAM SOLAR & ELECTRIC;
10 PROFESSIONAL HOME INSPECTIONS, INC.; CORLEY
11 ENTERPRISES, INC. OF SOUTH CAROLINA & DBR
12 FRANCHISING, LLC,
13 Defendants.

14 DEPOSITION OF: RAYMOND J. MALEJKO - VOLUME I
15 (PAGES 1 THROUGH 106)

16 DATE: August 26, 2015

17 TIME: 1:37 p.m.

18 LOCATION: Montgomery Willard, LLC
19 1002 Calhoun Street
20 Columbia, SC

21 TAKEN BY: Counsel for the Defendants

22 REPORTED BY: Susan M. Valsecchi, RPR, CRR
23 Certified Realtime Reporter

24 A. WILLIAM ROBERTS, JR., & ASSOCIATES

25 Fast, Accurate & Friendly

26 Charleston, SC Hilton Head, SC Myrtle Beach, SC
27 (843) 722-8414 (843) 785-3263 (843) 839-3376

28 Columbia, SC Greenville, SC Charlotte, NC
29 (803) 731-5224 (864) 234-7030 (704) 573-3919



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

1 that.

2 Q. Did Ms. Loper ever share with you her
3 understanding of a home inspection report or
4 represent to you the condition of the home
5 inspection report or the condition of the home?

6 A. Just through the inspection report.

7 Q. All right. You knew that Ms. Loper was
8 a dual agent with this matter?

9 A. Yes.

10 Q. In fact, you signed the Dual Agency
11 Agreement. Did you not?

12 A. I did.

13 Q. You knew that she was representing
14 Mr. Corley, as well, regarding this home?

15 A. Yeah.

16 Q. And had a full duty of disclosure as
17 far as the condition of the home?

18 A. I'm sorry?

19 Q. She had a full duty of disclosure.

20 In other words, if she knew that the
21 roof was leaking, she needed to tell you that,
22 right?

23 A. Yes.

24 Q. All right. Do you have any knowledge
25 today that she didn't share with you something that

1 she knew about?

2 A. I don't know. I don't know.

3 Q. Well, you sued her in this case. What
4 did you sue her for?

5 A. I don't know.

6 Q. Well, you received this HouseMaster
7 Home Inspection Report after the first failed
8 contract, correct?

9 A. The contract, the HouseMaster report,
10 was before -- yes -- before we cancelled out of the
11 first contract.

12 Q. Because you cancelled out of the first
13 contract based upon this report, correct?

14 A. Yes, yes.

15 Q. All right. Let's look at what's been
16 marked here as NextGen 134. This page is regarding
17 the roofing. And it's pointing out to you some
18 items of the roof that need repair, correct?

19 A. Yes.

20 Q. It's also talking about some siding
21 issues that had decay with the siding of the house
22 and the deck, correct?

23 A. Yes.

24 Q. And he's recommending that you have the
25 siding checked and repaired, right?

In the Matter Of:

Malejko, Raymond J. and Cristine Malejk v
Corley, Todd, et al

Raymond J. Malejko
September 01, 2015

A. William Roberts, Jr. and Associates
We're About Service... Fast, Accurate and Friendly
(800) 743-DEPO
www.scheduledepo.com



A. William Roberts, Jr. & Associates
court reporting | videography | trial presentation | nationwide scheduling
scheduledepo.com | 800-743-DEPO

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF RICHLAND
4 RAYMOND J. MALEJKO, ET AL.,
5 Plaintiff,
6 vs. CASE NO.2015-CP-40-00480

7 TODD CORLEY; JANET LOPER; NEXTGEN REAL
8 ESTATE, LLC; THOMAS HUMPHRIES; DR. ROOFS, INC.;
9 RAY MOONEYHAM; MOONEYHAM SOLAR & ELECTRIC;
10 PROFESSIONAL HOME INSPECTIONS, INC.; CORLEY
11 ENTERPRISES, INC. OF SOUTH CAROLINA & DBR
12 FRANCHISING, LLC,
13 Defendants.

14 DEPOSITION OF: RAYMOND J. MALEJKO - VOLUME II
15 (PAGES 107 THROUGH 316)

16 DATE: September 1, 2015

17 TIME: 10:04 a.m.

18 LOCATION: Richardson Plowden & Robinson
19 1900 Barnwell Street
20 Columbia, SC

21 TAKEN BY: Counsel for the Defendants

22 REPORTED BY: Susan M. Valsecchi, RPR, CRR
23 Certified Realtime Reporter

24 A. WILLIAM ROBERTS, JR., & ASSOCIATES

25 Fast, Accurate & Friendly

26 Charleston, SC Hilton Head, SC Myrtle Beach, SC
27 (843) 722-8414 (843) 785-3263 (843) 839-3376

28 Columbia, SC Greenville, SC Charlotte, NC
29 (803) 731-5224 (864) 234-7030 (704) 573-3919



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

1 Q. Did you have an opportunity to pick
2 your own inspectors?

3 A. I guess we could have, but she gave us
4 the names and highly recommended them, so that's
5 who we went with. We trusted her.

6 Q. Well, the items that are pointed out in
7 Paragraph 15 of your Complaint, those are items
8 that your home inspector reported to you?

9 A. These items were on here. The attorney
10 prepared this. I don't remember what was all in
11 the home inspection report at this point.

12 Q. Okay. And you have no understanding of
13 how your attorney got these items?

14 A. No.

15 Q. Well, as we sit here today, do you have
16 an understanding of what you're suing for?

17 A. I don't know.

18 Q. Do you understand why you're suing
19 Ms. Loper?

20 A. She's the one who recommended all of
21 these inspectors.

22 Q. All right. So you're suing her for,
23 I'm assuming, negligence in referring you to these
24 inspectors?

25 A. Advertising that the roof was three

1 Q. All right. Well, look at Paragraph 20¹⁴²
2 of your Complaint.

3 A. I'm reading it, but it's just words.
4 I'm sorry, I just can't -- I can't grasp it.

5 Q. Okay. Let's just take it bit by bit.
6 You're claiming that Ms. Loper or
7 NextGen had a duty of loyalty and a duty to act in
8 compliance with your instructions.

9 Do you see that?

10 Do you know what the term fiduciary
11 duty is?

12 A. (Shaking head from side to side.)

13 Q. Is it because you don't remember or
14 don't recall? Did you ever address or ever get
15 training on that when you became a licensed
16 realtor?

17 A. I don't remember.

18 Q. All right. What are you claiming
19 Ms. Loper or NextGen Realty did that was not per
20 your instructions, you or your wife's instructions?

21 A. I don't know.

22 Q. What do you claim that she did not
23 disclose to you as it relates to this property that
24 she knew or that NextGen Realty knew of?

25 A. This is all lawyer stuff. I don't

1 know. I don't know.

2 Q. Well, tell me, as you sit here today,
3 what do you want Ms. Loper to do to make you whole?

4 A. I don't know.

5 Q. All right. In Paragraph 21 it
6 indicates that NextGen -- Ms. Loper in her
7 individual capacity and as an agent of NextGen and
8 Corley arranged for Humphries and/or DRI to repair
9 the roofing issues identified in the report and
10 inspect the entire roof system.

11 Do you know whether Ms. Loper or
12 NextGen called Mr. Humphries or DRI, or was that
13 Mr. Corley?

14 A. I had no conversations with Corley, so
15 I don't know. She would know the answer to that.
16 I'm not sure. I don't know.

17 Q. All right. You claim here that
18 Ms. Loper arranged for Mooneyham and/or MSE to
19 inspect the entire HVAC system. Tell me about
20 that.

21 A. Mr. Mooneyham was one of the guys that
22 she had that she recommended, and we called him,
23 and it turns out he doesn't even have a license.

24 Q. Do you think that Ms. Loper knew that,
25 or NextGen Realty knew that?

1 Q. It's all new ductwork?

2 A. Yes.

3 Q. Do you know how old the previous system
4 was?

5 A. No.

6 Q. Do you have any knowledge or any
7 evidence, as we sit here today, or are you aware of
8 anything that Ms. Loper or NextGen Realty knew,
9 anything derogatory or negative, about
10 Mr. Mooneyham or MSE?

11 A. I'm sorry, could you repeat the
12 question?

13 Q. Do you have any evidence or information
14 today that at the time Ms. Loper suggested
15 Mooneyham and MSE to conduct the HVAC inspection,
16 did she also have other representatives or other
17 entities that could do the work as well?

18 A. We didn't have anybody else. We were
19 told that he was the guy, he was the best, so we
20 went with him.

21 Q. All right. Do you know anything that
22 Ms. Loper or NextGen -- as we sit here -- was she
23 trying to keep something from you or was she trying
24 to steer you to Mr. Mooneyham because he was not
25 going to do a good job or was going to give you a

151
1 passing grade? I mean, do you have any evidence of
2 that?

3 A. I don't know.

4 Q. You don't know. Does anybody know?

5 A. I don't know.

6 Q. You complained in Paragraph 33 about
7 having bronchitis and other conditions regarding
8 medical treatment. What other conditions besides
9 bronchitis?

10 A. I don't know.

11 Q. All right. Paragraph 33 also indicates
12 you're currently incurring costs for alternative
13 living arrangements.

14 Did you live away from the home for a
15 time?

16 A. We did.

17 Q. Where did you live?

18 A. We lived at the Comfort Inn for three
19 months, a little over three months.

20 Q. And which Comfort Inn was this?

21 A. The one in Lexington.

22 Q. The one -- I think there's several in
23 Lexington. Can you be more specific? Is this the
24 one closest to downtown Lexington?

25 A. Yeah, I think it was by 378.

1 to them by Corley, Corley Enterprises, Humphries,
2 DRI, Mooney, MSE, NextGen and Loper were false and
3 misleading.

4 What false and misleading statements
5 were made by NextGen and Ms. Loper?

6 A. I don't know.

7 Q. You don't know.

8 Would you have written them down
9 somewhere?

10 A. I don't remember. I don't know.

11 Q. I'm assuming that -- I'm not asking for
12 anything that you discussed with your attorney, but
13 I'm assuming that you met with him at some point to
14 get this Complaint put together.

15 Did you provide him a list of things at
16 that time?

17 A. I don't remember.

18 Q. There's special damages that you're
19 claiming in this Complaint.

20 It says -- if you look at Paragraph 44
21 of the Complaint, this is pertaining to
22 Mr. Corley -- but you have got the same to some of
23 the other Defendants -- and it indicates general
24 and special damages in the amount no less than
25 \$62,000 which includes but is not limited to the

1 following:

2 Are those items listed A there H, do
3 they total \$62,000?

4 A. I don't know.

5 Q. All right. Ms. Loper, I'm assuming,
6 took the word of your home inspector and the word
7 of Mr. Corley that the repairs were made to your
8 home to your home inspector's satisfaction, okay?

9 If she took that at face value, do you
10 have any information that -- are you aware of any
11 information that she had any knowledge about that
12 that was false, or that they hadn't made repairs?

13 A. I don't know. I have no idea. I don't
14 know.

15 Q. Your home inspector had made an issue
16 about what looked like feces or something
17 underneath the home.

18 And you and her actually crawled
19 underneath the home prior to closing, correct --

20 A. Yeah.

21 Q. -- to make sure that was rectified?

22 A. Yeah.

23 Q. Do you know why she did that?

24 A. I think the inspector said that it was
25 still underneath there.

1 Q. And she wanted to make sure that it was
2 removed?

3 A. Yes.

4 Q. Do you know whether it was removed or
5 not?

6 A. I don't remember.

7 Q. Well, if you do remember, can you tell
8 your attorney so we can correct this?

9 A. Okay.

10 Q. Do you have any reason to believe
11 NextGen Realty or Ms. Loper suspected any of the
12 information she was telling you was false?

13 A. I don't know.

14 Q. You didn't rely upon Ms. Loper to
15 inspect any particular issue of your home?

16 A. I'm sorry, what was your question?

17 Q. You didn't expect Ms. Loper to inspect
18 any particular issue of your home?

19 A. She didn't -- that's why we went with
20 the people that she recommended to inspect it.

21 Q. You hired various professionals to do
22 HVAC and to do termite, to do a roof, to do a home
23 inspection, all of those issues.

24 She wasn't representing any of those
25 particular trades, but she helped assist you in

1 getting professionals to do those inspections,
2 correct?

3 A. I'm sorry, I don't know.

4 Q. You don't know?

5 A. I don't know.

6 Q. You weren't holding out NextGen Realty
7 or Ms. Loper to inspect your roof?

8 A. No.

9 Q. And/or to inspect for termites?

10 A. No.

11 Q. Or to inspect your electrical?

12 A. No.

13 Q. Or to inspect plumbing?

14 A. No.

15 Q. Now, you're complaining about the size
16 of the property -- or do you know that you're
17 complaining about the size of the property?

18 A. The size of the property?

19 Q. There was a misrepresentation made
20 about the square footage of your property?

21 A. I don't know.

22 Q. You don't know whether you're
23 complaining about the size of the property being
24 misrepresented to you?

25 Let me draw your attention to Paragraph

1 Plaintiffs.

2 Do you see that, Paragraph 74, Page 12
3 of 30?

4 A. I don't know. I don't understand what
5 this means.

6 Q. Okay. All right. Let's go to the next
7 cause of action, then, as to NextGen and Loper,
8 breach of contract.

9 What contract did NextGen and Loper
10 breach with you -- with you, your wife and
11 daughter?

12 What contract did she breach with you?

13 A. The attorney filled this out, did this.
14 I don't know what these terms mean.

15 Q. You don't know what these terms mean?

16 A. No.

17 Q. What terms, breach of contract?

18 A. Yes.

19 Q. You don't know what breach of contract
20 means?

21 A. No.

22 Q. Were you ever in the service?

23 A. No, sir.

24 Q. So you don't know what contract we're
25 talking about. You know what the term contract

1 means, or agreement?

2 A. Yes.

3 Q. Is there any agreement that you had
4 with Ms. Loper or NextGen that you feel was
5 breached?

6 A. I don't remember.

7 Q. Here it says that she misrepresented
8 the square footage of the property.

9 There is a square footage on Exhibit
10 Number 10, the MLS.

11 And it says the heated square footage
12 plus or minus 10 percent is 1975. Do you see that?

13 A. Yes.

14 Q. All right. Are you saying that's in
15 error? I will represent to you your Complaint says
16 it's in error; but was there any other
17 misrepresentation that Ms. Loper made or NextGen
18 made to you as it relates to the square footage of
19 the property?

20 A. I believe it was less than that, but I
21 don't remember when it was.

22 Q. Who told you that? Was it the
23 appraiser?

24 A. It might have been.

25 Q. Did you have somebody come in and do

1 A. Yes.

2 Q. You were the sole person to enter into
3 that contract. Your wife didn't, did she?

4 A. No, she didn't sign any of this.

5 Q. All right. In fact, she didn't sign
6 the Purchase Agreement either; did she?

7 A. I don't know. She might have.

8 Q. Well, let's look at the -- designated
9 in Paragraph 2, if you look at Paragraph 2 -- I
10 mean -- correction -- Exhibit Number 2, the
11 Designated Agency Agreement, that's only your name
12 and your signature.

13 The Dual Agency Agreement is only your
14 name and your signature. And the contract of sale,
15 which is for this particular property, if you will
16 bear with me a moment -- let me find out which
17 exhibit that is -- which is Exhibit Number 7 --
18 it's just you and Mr. Corley. So none of these
19 contracts have your wife listed. Is that correct?

20 A. She's not on here, but we bought it
21 together.

22 MR. TAYLOR: I'm sorry, I couldn't hear
23 you.

24 THE WITNESS: She's not on here, but we
25 purchased the property together.

1 BY MR. ANDERSON:

2 Q. But the contracts you entered into,
3 your wife is not on any of them, correct?

4 A. I don't see her name here.

5 Q. Now, I would agree with you that the
6 HUD statement indicates that you and your wife
7 purchased the home; but as far as the contract that
8 went into existence between you and NextGen Realty,
9 it was solely you and NextGen Realty.

10 Your wife never signed any of those
11 contracts and was not a party to those contracts;
12 was she?

13 A. I don't remember. It's not on here,
14 but I don't remember.

15 Q. Well, do you have any that shows her on
16 there?

17 A. No.

18 Q. Was there any contract that your wife
19 entered into with NextGen Realty or with Ms. Loper?

20 A. I don't know.

21 Q. You don't know?

22 A. I don't know.

23 Q. Is there anything that you could do to
24 refresh your memory?

25 A. I don't know.

1 Q. Well, let's look at the 7th Cause of
2 Action, then, because it looks as if you were the
3 only one that -- you're claiming breach of contract
4 accompanied by a fraudulent act -- because I'm not
5 aware of any contract with any other Plaintiff with
6 my client. Okay?

7 So the breach of contract accompanied
8 by a fraudulent act, what act did NextGen Realty or
9 Ms. Loper do that was fraudulent?

10 I just don't think that she represented
11 us the way she was supposed to. I don't know. I'm
12 sorry, I don't remember.

13 Q. Okay. Paragraph 86 says: NextGen
14 and/or Loper had and maintained a fraudulent intent
15 relating to the breach of the contract.

16 Do you know what that -- do you have
17 any evidence or can you explain any of that?

18 A. No, I don't know.

19 Q. Okay. Paragraph 87, it says: NextGen
20 and/or Loper committed and engaged in fraudulent
21 acts --

22 A. I have no idea where you are.

23 Q. It's Page 14 of 37, Paragraph 87.

24 It states: NextGen and/or Loper
25 committed and engaged in fraudulent acts

1 accompanying the breach of contract as enumerated
2 elsewhere, herein including but not limited to
3 advising Plaintiffs to proceed with the purchase of
4 the property knowing repairs had not been properly
5 performed.

6 Do you see that?

7 A. I don't know what it means. I don't
8 know.

9 Q. So you don't know what that means?

10 A. No.

11 Q. So if I asked you how NextGen or
12 Ms. Loper proceeded in that fashion, you wouldn't
13 know?

14 A. I can't remember.

15 Q. All right. The allegation here is that
16 NextGen -- and by definition Ms. Loper -- knew that
17 repairs had not been properly performed on this
18 house, but allowed you to go ahead and purchase it.

19 Do you understand that?

20 I mean, that's what it's stating, is
21 that she knew -- or NextGen knew -- that the
22 repairs hadn't been made appropriately, but went
23 ahead and got you to purchase the home.

24 A. I don't remember.

25 Q. Is it your intent for you and your

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond J. Malejko and Christine Malejko,
Individually and on behalf of their minor
child, Stephanie Malejko

Plaintiff,

vs.

Todd Corley, Janet Loper, NextGen Real
Estate, LLC, Thomas Humphries, Dr. Roofs,
Inc., Ray Mooneyham, Mooneyham Solar &
Electric, Professional Home Inspections, Inc.,
Corley Enterprises, Inc. of South Carolina,
and DBR Franchising, LLC

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-40-480 & 2016-CP-40-1536

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

2017 AUG 18 PM 11:02
JEANETTE W. HODGINS
C.C.P. & C.S.
FILED

Plaintiff's Attorney:

B. Allen Bullard, Bar No. 64915

Address:

P.O. Box 11886, Columbia, SC 29211-1886

Phone: 803-779-3500 Fax 803-779-2755

E-mail: abullard@montgomerywillard.com

Other:

Defendant's Attorney:

David A. Anderson, Bar No. _____

Address:

P.O. Drawer 7788, Columbia, SC 29202

Phone: 803-576-3702 Fax 803-779-0016

E-mail: danderson@richardsonplowden.com

Other:

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

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

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

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider

Estimated Time Needed: 30 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

August 18, 2017

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

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

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

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

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

JUDGE CODE _____

☐ Other: _____	Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: \$ _____	
☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
2015-CP-40-480 & 2016-CP-40-1536

Raymond J. Malejko and Cristine Malejko,)
individually and on behalf of their minor)
child, Stephanie Malejko,)
Plaintiffs,)

v.)

PLAINTIFFS' MOTION
FOR RECONSIDERATION

Todd Corley, Janet Loper, NextGen Real)
Estate, LLC, Thomas Humphries, Dr. Roofs,)
Inc., Ray Mooneyham, Mooneyham Solar &)
Electric, Professional Home Inspections,)
Inc., Corley Enterprises, Inc. of South)
Carolina, and DBR Franchising, LLC,)
Defendants.)

RECEIVED
FILED
2017 AUG 18 PM 4:02
JEANNETTE W. MCBRIDE
C.C.P. 2 C.S.

Plaintiffs hereby request, pursuant to Rule 59(e), SCRCP, that the Court alter, amend or otherwise reconsider its order granting summary judgment to Defendants Janet Loper and NextGen Real Estate, LLC ("Defendants") dated July 31, 2017.

I. PROCEDURAL BACKGROUND

Defendants filed a motion for summary judgment as to all Plaintiffs' causes of actions on April 10, 2017. A hearing on the motion was convened on July 26, 2017 at the Richland County Courthouse before the Honorable Robert E. Hood. Plaintiffs were represented by Allen Bullard, Esquire. Defendants were represented by David Anderson, Esquire. The Court granted Defendants' motion by order dated July 31, 2017. The order was filed on August 3, 2017. Plaintiffs received written notice of the order on August 10, 2017.

In its order the Court provided four grounds for granting summary judgment. They were:
(1) the Plaintiffs' claims against [Defendants] fail to state a cause of action as a matter of law; (2)

the Plaintiffs have failed to make a showing sufficient to establish the requisite elements needed to prevail on any of the causes of action levied against [Defendants]; (3) Plaintiff Cristine Malejko does not have privity of contract needed to demonstrate breach of contract or breach of contract accompanied by a fraudulent act; and, (4) Plaintiff Raymond Malejko waived all claims versus [Defendants] with the Buyer Agency Contract, Designated Agency Contract, Dual Agency Contract and the Contract for Sale that he signed. For the reasons that follow, Plaintiffs request that the Court reconsider the matter and alter or amend its order to deny Defendants' motion for summary judgment.

II. RULE 59

"The purpose of Rule 59(e), SCRPC, to alter or amend the judgment[,] is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (quoting Budinich v. Becton Dickinson and Co., 486 U.S. 196, 200, 108 S. Ct. 1717, 100 L. Ed. 2d 178 (1988)). Pye v. Estate of Fox, 369 S.C. 555, 633 S.E.2d 505 (2006). It is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court "alter or amend the judgment," but also as a vehicle to seek "reconsideration" of issues and arguments. A motion under Rule 59(e) long has been viewed as "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. See, e.g., Curcio v. Caterpillar, Inc., 355 S.C. 316, 585 S.E.2d 272 (2003) (an example of the many cases in which trial and appellate courts describe a Rule 59(e) motion as a "motion to reconsider" or "motion for reconsideration"); James Flanagan, *South Carolina Civil Procedure* 474-475 (2d ed. 1996). There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an

earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity. Elam v. S.C. DOT, 361 S.C. 9, 602 S.E.2d 772 (2004).

III. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002); Rule 56(c), SCRPC. "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Fleming, 350 S.C. at 493-94, 567 S.E.2d at 860 (citation omitted). Because summary judgment is a drastic remedy, it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial. Spence v. Wingate, 395 S.C. 148, 716 S.E.2d 920 (2011). Consequently, summary judgment is proper when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004), but not when further fact inquiry is desirable to clarify the law's application. Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). "Summary judgment should not be granted even when there is no dispute as to the evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." Baugus v. Wessinger, 303 S.C. 412, 415, 401 S.E.2d 169, 171 (1991).

In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In cases requiring a heightened burden of proof, the non-moving party must submit

more than a mere scintilla of evidence to withstand a motion for summary judgment. Turner v. Milliman, 392 S.C. 116, 708 S.E.2d 766 (2011).

IV. DISCUSSION

A. Factual Background

Plaintiffs purchased the residence located at 141 Fox Crossing Road, West Columbia, South Carolina from Todd Corley on March 31, 2014. This purchase was a result of a contract the parties entered into on or about March 8, 2014. Prior to the March 2014 contract the parties had previously entered into a contract for the sale of the same property “as-is” sometime in January 2014. In contemplation of fulfilling the January 2014 contract, Plaintiff had the home inspected on or about January 16, 2014 by Professional Home Inspections. Because of the numerous items identified in the home inspection report as being in need of repair and their associated costs, Plaintiffs decided not to purchase the property. Plaintiffs and Mr. Corley mutually agreed to terminate the January 2014 contract on January 29, 2014.¹ After several weeks of looking for other potential homes, Plaintiffs again approached Mr. Corley regarding purchasing Fox Crossing, because they observed repairs to the house being undertaken by Mr. Corley. Unlike the January 2014 contract between the parties, the March 2014 was not an “as-is” contract. The March 2014 contract contained an addendum titled “Repair Request Proposal” obligating Mr. Corley to repair all the items identified in the January 16, 2014 home inspection, save one. Corley Enterprises was hired for that purpose. Mr. Corley also hired Dr. Roofs to repair roof leaks identified in the inspection report. Although not initially hired by Mr. Corley for that purpose, Dr. Roofs agreed to conduct a roof inspection at the request of Defendants while on site for the repairs. Defendants

¹ Both parties executed a document titled Release of Agreement to Buy and Sell Real Estate on January 29, 2014.

called in Ray Mooneyham to perform an inspection of the HVAC system. The parties closed on the purchase on March 31, 2014, and the Malejkos took possession of the property.

Shortly after moving into the property Plaintiffs began experiencing respiratory problems, headaches, bouts of sneezing and coughing, runny noses, and other health problems. They also began having difficulty with roof leaks and noticed strange, foreign materials being blown into the home through the HVAC registers. Although they attempted to have Dr. Roofs remedy the roof leaks, their efforts were unsuccessful. Upon calling HVAC vendors to the house to diagnose their HVAC problems, they learned that the HVAC system contained animal feces and mold. Both the roof and HVAC system were then inspected by qualified experts and found to be in defective condition. Replacement of both was recommended and eventually accomplished.

Unfortunately, in the intervening months between their purchase of the property and the discovery of the defective conditions of the roof and HVAC systems, the Malejkos were exposed to elevated levels of mold and particulates from animal feces in the indoor air. These toxins exacerbated Mr. Malejko's existing breathing problems and caused other deleterious health effects for both him and his wife, some of which persist today due to the length and degree of exposure. In conjunction with the elevated mold and harmful particulate levels discovered in the home, the Malejkos were also required to replace contaminated household items and furnishings and live elsewhere while the home was remediated. These alternative living arrangements included living in an RV in the driveway at Fox Crossing for approximately five months. The illnesses and displacement experienced by the family naturally led to elevated stress levels which, in turn, caused mental health conditions for which the Malejkos required counseling, psychiatric treatment and medication.

B. Defendants' Duties

Defendants owed Plaintiffs statutory, contractual and common laws duties of care requiring, among other things, the exercise of reasonable skill in discharging their duties and the exercise of care not to pass along misleading information. Further, as fiduciaries, Defendants were bound to refrain from acting adversely to Plaintiffs' interests.

There are three statutory provision which speak to the duties owed by Defendants to Plaintiffs that are relevant to this matter. Pursuant to S.C. Code Ann. § 40-57-137(A) a real estate brokerage company, such as NextGen, that provides services through an agency agreement for a client is bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting. Likewise, a licensee, such as Mrs. Loper, who represents a seller shall treat all prospective buyers honestly and may not knowingly give them false or misleading information about the condition of the property which is known to the licensee or, when acting in a reasonable manner, should have been known to the licensee. S.C. Code Ann. § 40-57-137(F). Further, on reaching a written agreement to provide brokerage services to a potential buyer of real estate, a buyer's agent shall disclose to the buyer all relevant facts concerning the transaction which are actually known to the licensee or, if acting in a reasonable manner, should have been known to the licensee. S.C. Code Ann. § 40-57-137(H)(c).

Under the common law real estate agents occupy a fiduciary relationship with their clients and are under a legal obligation as well as a high moral duty to give loyal service to the principal. Darby v. Furman Co., 334 S.C. 343, 513 S.E.2d 848 (1999); Hamby v. St. Paul Mercury Indemnity Co., 217 F.2d 78, 80 (4th Cir. 1954). The duty of an agent to make full disclosure to his principal of all material facts relevant to the agency is fundamental to the fiduciary relationship of principal and agent. Darby v. Furman Co., 334 S.C. 343, 513 S.E.2d 848 (1999); Bost v. Bankers Fire &

Marine Ins. Co., 242 S.C. 274, 283, 130 S.E.2d 907, 911-12 (1963); Designer Showrooms, Inc. v. Kelley, 304 S.C. 478, 405 S.E.2d 417 (Ct. App. 1991). Parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material, and when this duty to disclose is triggered, silence may constitute fraud. Ellie, Inc. v. Miccichi, 358 S.C. 78, 594 S.E.2d 485 (Ct. App. 2004); Anthony v. Padmar, Inc., 320 S.C. 436, 449, 465 S.E.2d 745, 752 (Ct. App. 1995). Nondisclosure is fraudulent when there is a duty to speak. Ardis v. Cox, 314 S.C. 512, 517, 431 S.E.2d 267, 270 (Ct. App. 1993).

Contractually, Defendants agreed to use their professional real estate knowledge and skills to represent Plaintiffs in a diligent and effective manner. (Exclusive Right to Buy Buyer Agency Contract, ¶3). Defendants also undertook to disclose to Plaintiffs any known material facts concerning the property or the transaction. (Dual Agency Agreement, ¶2(c)). In addition, Defendants agreed to take no action adverse or detrimental to Plaintiff's interest in the transaction. (Designated Agency Agreement). Finally, there exists in every contract an implied covenant of good faith and fair dealing. Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC, 414 S.C. 635, 780 S.E.2d 263 (Ct. App. 2015); Commercial Credit Corp. v. Nelson Motors, Inc., 247 S.C. 360, 367, 147 S.E.2d 481, 484 (1966).

C. Evidence Supporting Plaintiffs' Causes of Action

Despite Defendants' claims to the contrary, Plaintiffs presented more than a scintilla of evidence to support their claims that Defendants' actions and inactions breached their statutory, common law and contractual duties to them. Plaintiff presented testimony from an expert in real estate, Carlton Segars, who testified concerning a realtor's duty of care. Mr. Segars testified that Mrs. Loper violated the duty of care she owed to Plaintiffs by recommending Ray Mooneyham as

an HVAC inspector without ensuring that he was licensed and qualified to perform such inspections.

Q: Mr. Segars, I'm Allen Bullard. I represent the Malejkos. I have some questions for you. In the course of a real estate transaction, is it customary for a realtor to recommend inspectors to their client?

A: Typically we tell the agents when we're going through the classes not to recommend one specific person, but to provide them with a list of people that they can choose from.

Q: In that list of people that you suggest that they choose from, should those individuals be licensed to do the work that they are being recommended for?

A: Yes, sir.

Q: If Ms. Loper recommended an expert to perform an HVAC inspection on the house, would that have violated her duty of care if he was not licensed?

A: If she recommended one individual, ideally she should have presented them with a choice, a list, as I mentioned, not just one specific person.

Q: If she recommended someone who did not hold a license to perform an HVAC inspection, would that have violated her duty of care?

A: If she knew that that person was not licensed.

Q: Did she have a duty to determine whether or not someone she's recommending is licensed or not?

A: That's what we tell the agents in training, to be sure they check their licenses and make sure they are qualified.

Q: So if, in fact, an HVAC inspector was recommended by Ms. Loper and it turns out he was not licensed, would that have violated her duty of care?

A: It could have.

(Deposition of Carlton Segars, p. 71, line 13 - p. 72, line 22). Mr. Segars also testified that Mrs. Loper violated her duty of care by requesting that Thomas Humphries perform a roof inspection without first determining whether he was licensed and qualified to perform such an inspection.

Q: By the same token, if a fellow came, in this particular case let's say Mr. Humphries, came to do a roof repair, just to repair a roof, and while he's on the roof if Ms. Loper asked him would he mind doing an inspection while you're here, is it proper for her to be asking somebody to do an inspection who she has just met for the first time standing on the roof?

...

A: You could ask, but there's also -- the agent needs to check and make sure that the person that is doing that inspection is qualified to do that -- to do the inspection.

Q: And you would agree with me if you just met somebody for the first time, you wouldn't have any idea what their qualifications were, would you?

A: I wouldn't have any idea as to what their qualifications were.

Q: So you think its okay for Ms. Loper to go ahead and recommend this guy to do an inspection that she just met for the first time?

...

A: Personally, I wouldn't do that.

Q: Do you think it's a violation of her duty of care to do so?

...

A: Personally, I do.

(Deposition of Carlton Segars, p. 72, line 23 - p. 74, line 3). Furthermore, Mr. Segars testified that Mrs. Loper violated her duty of care when she presented the Plaintiffs with a document which purported to be a letter from the roof inspector on the roofer's letterhead, which was not, in fact, from the roof inspector, but was, in reality, a document which she had created herself.

Q: If the roofer who did the inspection sent Ms. Loper an e-mail that contained a written explanation of the work he had performed, would it be proper for Ms. Loper to copy that e-mail into a document and put her own letterhead on it purporting to be from the roofer, basically creating a document that didn't exist and then handing it to her clients?

...

A: I think that would be improper if she created a document.

Q: Would it be a violation of her duty of care?

...

A: I would consider it as a violation of that.

(Deposition of Carlton Segars, p. 74, lines 5 - 23). In addition, Mr. Segars testified that Mrs. Loper violated her duty of care when she erroneously informed Plaintiffs that they were not entitled to a Property Condition Disclosure Statement from the seller.

Q: If Ms. Loper informed both the buyer and the seller that the seller was exempt from filling out a property disclosure form prior to them contracting, would that be a proper statement for a realtor to make? I mean, this seller was not exempted in any way unless the parties agreed to it in the contract, right?

A: Right.

Q: So if she told them before the contract, "Y'all don't have to enter into a property disclosure because you're exempt," that's not proper, is it?

A: Would she have known that they would not -- that the seller was exempt? What would she be basing that on?

Q: Let me show you this. This is Exhibit No. 37. It says, "Residential Input Sheet." It's dated 11/30/13, isn't it?

A: Yes, sir.

Q: And it says, "Exempt from property disclosure, X," doesn't it?

A: Yes, sir.

Q: So Ms. Loper had decided in November of '13 that Mr. Corley was exempt from filing a property disclosure, hadn't she?

A: That's what it appears.

Q: And that's not proper, is it?

A: No, sir.

Q: It's not correct, is it?

A: No, sir.

Q: And it's a violation of her duty of care to tell the seller and the buyer that he's exempt, isn't it?

A: She's to inform them of what that property disclosure is and tell them what the exemptions are and if they meet them, then mark this accordingly.

(Deposition of Carlton Segars, p. 74, line 25 - p. 76, line 11). Moreover, Mr. Segars testified that it was a violation of her duty of care for Mrs. Loper to withhold the fact she knew that the person who lived in the property for the twenty years prior to the seller, Todd Corley, was the mother of a friend and former business associate of hers, Lori Corley, was currently living with Lori Corley.

Q: Now, if Ms. Loper was aware that the person who lived in the property from 1989 to 2010 was a mother of one of her friends, should she have disclosed that to the buyers?

A: If she was aware of the person that lived there?

Q: If she was aware that -- if there was information available from the prior property owner, because we know that Mr. Corley didn't live there, but the person who did for the past 20 years was the mother of a friend, shouldn't she tell the buyers, "Hey, I know who used to live here? We might be able to ask her some questions"?

A: That might be some useful information to pass on, that you know more about the property.

Q: Would it be proper to withhold that information from the buyers?

A: If there were -- if there was information in that knowledge that she had of anything wrong with the property, material defects or anything like that, then she would have had prior knowledge of it and she would need to disclose that.

Q: But her knowledge of the fact that the prior owners was living with their daughter and that she knew the daughter, she should have brought that to the attention of the buyers or at least mentioned it to them?

...

A: Yeah, it's -- if she -- that would indicate that she knew about the property and was familiar with it.

Q: Knew something about the history of the property, right?

A: Yes, sir.

Q: That would have been a violation of her duty of care?

A: Yes, sir. If she knew of any issues with the property and she would have had the prior knowledge of, as you said, the history of the property.

(Deposition of Carlton Segars, p. 76, line 14 - p. 78, line 7).

In addition to Mr. Segars' deposition testimony, Plaintiffs also presented the Court with an affidavit from Mr. Segars summarizing and clarifying his deposition testimony.² In that affidavit Mr. Segars again confirmed that Mrs. Loper breached her duty to Plaintiffs by (1) failing to ensure Ray Mooneyham was licensed to perform HVAC inspections prior to recommending him; (2) erroneously informing Plaintiffs the seller, Todd Corley, was not required to complete a Residential Property Condition Disclosure Statement; (3) creating a false and misleading document designed to entice Plaintiffs to go through with the transaction; (4) asking a roofer with whom she was unfamiliar to perform a roof inspection without verifying he was qualified to perform such a task; (5) representing to Plaintiffs that the roof was in good condition; and, (6) failing to inform Plaintiffs that a personal friend and business associate had knowledge of the home's condition.

In addition to Mr. Segars deposition testimony and affidavit, both Mrs. Loper and Thomas Humphries confirmed in their depositions that Mrs. Loper fabricated the letter from Commercial Services. (Deposition of Janet Loper, p. 188, line 10 - p. 189, line 12; p. 189, line 22 - p. 189, line 5; Deposition of Thomas Humphries, p. 52, line 13 - p. 53, line 5). Mrs. Loper also confirmed that

² Although Defendants implied some impropriety in the timing of the filing of Mr. Segars' affidavit, Plaintiffs note that his affidavit was filed and served on July 20, 2017, in full compliance with Rule 6(d), SCRCP, six days before the hearing. It was also filed two days before the close of discovery pursuant to the parties' original, outdated scheduling order, and nearly two months prior to the then-operative discovery deadline, which was September 18, 2017.

she was aware that the property had recently been owned for twenty years by the mother of her friend and former business associate, Lori Corley. (Deposition of Janet Loper, p. 103, line 24 - p. 104, line 9; p. 104, line 23 - p. 205, line 5). Mrs. Loper further acknowledged that she informed Plaintiffs that the seller, Todd Corley, did not have to complete a property disclosure statement. (Deposition of Janet Loper, p. 76, lines 9-22).

Plaintiffs also testified during their depositions that Mrs. Loper did not offer them a list of names of inspectors to perform the various inspections necessary to determine the condition of the property whom they could choose or reject, but, instead, pushed for and arranged for inspectors of her choosing whose competency for which she vouched. For example:

Q: Okay. You and your husband made—did Ms. Loper tell you to have the home inspected?

A: Ms. Loper was – **she was the one that gave us the name of the inspectors. We didn't ask, she voluntarily gave us the names and there wasn't a list,** here you go, here's the names of a great inspector. She gave us the number on the list. She gave us who he was and that he was the best.

Q: **But she gave you a list and she suggested somebody off of the list?**

A: **No, she didn't give us the list. She gave us a name, she contacted him and made the appointment for the inspection.**

Q: Okay. Did you ask her to do that?

A: Voluntarily did it. And the exact words that I can give it to you today is: I have a guy.

Q: All right. She knows of a home inspector?

A: I have a guy, was her answer.

Q: Okay.

A: I have a good guy and the number on the South Carolina list.³

³ Deposition of Cristine Malejko, p. 60, line 12 - p. 61, line 9.

Q: Why is it that you sued NextGen Realty and Ms. Loper in this matter? I want to know what your beef is. What are you going to tell a Richland County jury that NextGen Realty or Ms. Loper did against the Malejkos?

A: Well, she had the guys, she had the inspectors. We didn't need to contact anybody because she had the best. She made it very clear to my husband and I, she was the one that had the guy. She's got the best HVAC inspector. She had the guy, I didn't need to call anybody else because she had the best. If you had the best, why would you dispute it with the realtor that has integrity? That's what she said, I have integrity, I have the best, so....⁴

Q: Did she make any actual representations to you about the HVAC unit?

A: She told me that she had a great guy to inspect the home, and she called out Mr. Mooneyham, an unlicensed and uninsured HVAC gentleman.⁵

(Additional testimonial examples: p. 288, line 20 - p. 289, line 2; p. 420, lines 8-25; Deposition of Raymond Malejko, p. 121, lines 18-21; p. 124, lines 3-17; p. 143, line 17 - p. 144, line 13; p. 144, line 22 - p. 145, line 11; p. 150, lines 13-20; p. 236, lines 1-5). Mrs. Loper affirmed that she did not and never does check to ensure that inspectors she recommends are licensed. (Deposition of Janet Loper, p. 203, lines 12-20; p. 255, lines 6-9).

Plaintiffs also repeatedly testified that Mrs. Loper misled them into thinking that the roof was newer than it actually was and assured them that it was in good condition. Examples of such testimony are as follows:

A: What I'm telling you is that when I pulled up and Mr. Humphries was on the roof repairing the roof and I said, well, did he do the inspection already? She said, **oh, that was all done, everything is fine with the roof, you got a great roof. Everything is fine with the roof.**⁶

⁴ Deposition of Cristine Malejko, p. 158, line 20 - p. 159, line 9.

⁵ Deposition of Cristine Malejko, pg. 307, lines 2-6.

⁶ Deposition of Cristine Malejko, pg. 183, lines 3-8.

A: And Mrs. Loper answered and said, that was already done already. You've got a great roof here. You have nothing to worry about. Everything is fine.⁷

A: No. As I said before, I didn't feel they needed to. The realtor said there was nothing wrong with the roof.⁸

Q: So did she ever tell you that it was a three-year-old roof?

A: Absolutely she told us it was a three-year-old roof.⁹

(Addition testimonial examples: Deposition of Cristine Malejko, p. 115, lines 7-10; p. 116, line 23 - p. 117, line 5; p. 124, lines 15-20; Deposition of Raymond Malejko, p. 130, line 25 - p. 131, line 4; p. 141, lines 2-12; p. 246, lines 4-16).

In addition to his deposition testimony, Ray Malejko also submitted an affidavit in which he reiterated his testimony regarding the claims of impropriety he makes against Defendants.¹⁰ In that affidavit Mr. Malejko identified the following conduct of Mrs. Loper to which he objected:

[Mrs. Loper] erroneously advised us that the seller, Defendant Todd Corley, was not required to provide us with a property disclosure statement. We agreed in the purchase and sale contract not to require him to fill one out based upon her erroneous advice that he was not required to do so. Had we known he was required to fill one out, we would not have agreed to that term in the purchase and sale contract.

[Mrs. Loper] arranged for the home inspector, air conditioning/heating system inspector, and termite inspector to perform the inspections at the property. She did not provide us choices of people to perform each inspection. She called in who she wanted, and they all performed substandard work.

[Mrs. Loper] did not inform us that she did not check to make sure the inspectors she called in were licensed. Had she told us that, we would have made

⁷ Deposition of Cristine Malejko, p. 278, lines 13-16.

⁸ Deposition of Raymond Malejko, p. 239, lines 1-4.

⁹ Deposition of Cristine Malejko, p. 58, lines 12-15.

¹⁰ Mr. Malejko's affidavit in opposition to summary judgment was filed on July 24, 2017 in full compliance with Rule 6(d), SCRCP, two days before the hearing. It was also filed nearly two months prior to the discovery deadline, September 18, 2017.

certain all inspections were performed by licensed individuals. Instead, Mrs. Loper made comments making it appear that Mr. Mooneyham was highly rated on some sort of list of inspectors. I have since learned that he was not licensed to perform air conditioning/heating work of any kind. Had we known that we would not have relied on his inspection, and would, instead, have employed a licensed air conditioning/heating inspector. At the time we had no reason to think an additional inspection was needed.

[Mrs. Loper] asked Defendant Dr. Roofs/Thomas Humphries to perform a roof inspection without checking his licensure status or his experience as a roof inspector. She did not inform us she lacked this knowledge of him, but instead praised his efforts and made comments regarding his inspection and the condition of the roof that persuaded us there was no need to seek any further examination of the roof's condition. I have since learned that Mr. Humphries is not personally licensed and neither he nor his company had ever performed a roof inspection at the time.

Mrs. Loper knew that Lori Corley's mother was the person from whom Defendant Todd Corley had purchased the property, and that she had owned the property for approximately 20 years. She also knew that Lori Corley had been taking care of the property for her mother for several years prior to Todd Corley purchasing it, and had arranged the sale of the property to Todd Corley to secure a personal loan to herself, not her mother. Mrs. Loper knew how to contact Lori Corley and, in fact, contacted her at times during this process. She did not share this information with my wife and I, thereby depriving us of the ability to contact Lori Corley to ask her questions about the condition of the house.

[Mrs. Loper] copied portions of an email from Thomas Humphries and pasted its contents into a document which she created and presented to my wife and I as a roof inspection letter on the letterhead of Mr. Humphries' company. She did not disclose this information to us. I did not learn about this until her deposition and Mr. Humphries' deposition in this case.

[Mrs. Loper] and I reviewed the home inspection report together. Many times when I had a question about repairs to items identified by the home inspector, she would make comments to me indicating that the home inspector had been overly thorough, and that I did not need to worry about them.

When the home inspector came to the house to determine whether all the items the seller had agreed to repair had been repaired, Mrs. Loper directed him to the items for him to review. After the re-inspection and shortly prior to closing we were told that the seller had repaired all items he was supposed to repair. After moving in we discovered that not all of the items had been repaired.

D. Plaintiffs' Causes of Action

In order to prove [actual] fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. Pitts v. Jackson National Life Insurance Company, 352 S.C. 319, 574 S.E.2d 502 (Ct. App. 2002). Defendants argued that Plaintiffs failed to present evidence as to elements (1), (5), (6) and (8). However, Plaintiffs presented evidence that Defendants misrepresented the age of the roof, misrepresented the condition of the roof, fraudulently created and presented them with document purporting to be a roofing letter from the roof inspector, withheld the existence and identity of a known, readily available source of information regarding the condition of the property and led Plaintiffs to believe that Defendants had vetted the inspectors they brought to the transaction.

The condition of the property was of paramount importance to Plaintiffs in this transaction, especially given Defendants had informed them the seller was not required to provide them with a property disclosure statement.¹¹ So much so that they had walked away from the property on one occasion due to concerns over the amount of repairs needs, and, then, only agreed to purchase the property when a repair addendum was included in the contract. Defendants' actions were taken in an effort to dispel any concerns Plaintiffs had regarding the condition of the property. The two areas of the home that the home inspector recommended Plaintiffs have inspected further, the roof and the HVAC, were negligently inspected by individuals of questionable competence. Defendants praised the quality of the HVAC inspector and assured Plaintiffs that the roof was

¹¹ What constitutes a material term to an agreement depends on what the parties deem material and, thus, is largely a question of fact. Georgetown Entertainment Corp. v. District of Columbia, 496 A.2d 587, 590 (D.C. 1985).

relatively new (three years old) and in good condition, rather than take the minimal step to ensure the inspectors were licensed to perform the important tasks with which they were charged, which, it turns out, they were not. These statements compounded the poorly performed inspections, because they left Plaintiffs with the impression that there was no need to question the inspection results or to seek further inspections. Each action was taken with the intent to discourage Plaintiffs from further inquiry and encourage Plaintiffs to proceed with the purchase the property, thereby securing a sales commission for Defendants upon closing. Plaintiffs did rely on and had a right to rely on Defendants misrepresentations given that Defendants owed them statutory duties of loyalty, obedience, disclosure, reasonable care, diligence, and honesty; contractual duties of diligence, effectiveness, disclosure, good faith and fair dealing; and, fiduciary common law duties.

Plaintiffs must allege and prove the following elements to establish liability for negligent misrepresentation: (1) Defendants made a false representation to them; (2) Defendants had a pecuniary interest in making the statement; (3) Defendants owed a duty of care to see that they communicated truthful information to Plaintiffs; (4) Defendants breached that duty by failing to exercise due care; (5) Plaintiff justifiably relied on the representation; and (6) Plaintiff suffered a pecuniary loss as the proximate result of their reliance upon the representation. AMA Management Corp. v. Strasburger, 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992); Winburn v. Insurance Co. of North America, 287 S.C. 435, 339 S.E.2d 142 (Ct. App. 1985). Defendants claim that they are entitled to summary judgment because Plaintiffs failed to present evidence of any affirmative statement made by them. However, as discussed above, there is ample evidence in the record of misrepresentations made by Defendants. Plaintiffs have adduced evidence that Defendants misrepresented the age of the roof, misrepresented the condition of the roof, incorrectly informed Plaintiffs that they were not entitled to a property disclosure statement from the seller,

misrepresented the authorship of the letter Mrs. Loper created and presented to Plaintiffs which purported to be a roofing letter from the roof inspector, and misrepresented the qualifications of the inspectors they brought to the transaction. Again, each of these actions was taken with the intent to encourage Plaintiffs to proceed with the purchase the property, a transaction in which Defendants had a pecuniary interest.

The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach. Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC, 414 S.C. 635, 780 S.E.2d 263 (Ct. App. 2015); S. Glass & Plastics Co. v. Kemper, 399 S.C. 483, 491-92, 732 S.E.2d 205, 209 (Ct. App. 2012). The general rule is that for a breach of contract the [breaching party] is liable for whatever damages follow as a natural consequence and a proximate result of such breach. Id. at 492, 732 S.E.2d at 209 (quoting Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)). Defendants do not deny the existence of a contract between the parties or that Plaintiffs have sustained damages. Rather, they claim Plaintiffs failed to present evidence of a breach. However, there is evidence in the record that in that Defendants erroneously advised Plaintiffs that the seller did not have to provide a property disclosure statement, failed to ensure that the HVAC and roof inspectors, which they unilaterally brought into the transaction, were properly licensed and qualified, misrepresented the age of the roof, misrepresented the condition of the roof, fraudulently created and presented them with document purporting to be a roofing letter from the roof inspector, and withheld the existence and identity of a known, readily available source of information regarding the condition of the property. These acts and omissions breached Defendants contractual duty to represent Plaintiffs in a diligent and effective manner (Exclusive Right to Buy Buyer Agency Contract, ¶3), their contractual duty to disclose any known material facts concerning the property or the transaction (Dual Agency

Agreement, ¶2(c)), their duty to take no action adverse or detrimental to Plaintiff's interest in the transaction (Designated Agency Agreement, section (b) of first paragraph), and breached their warranty of good faith and fair dealing.

Defendants also claim that Cristine Malejko cannot maintain an action for breach of contract against them because she lacks privity of contract. While Mrs. Malejko is not a signatory of the Exclusive Right to Buy Buyer Agency Contract, the Dual Agency Agreement nor the Designated Agency Agreement, she is, nevertheless a third-party beneficiary of those contracts, and can, therefore, maintain an action against Defendants for their breach on that basis. "Generally, one not in privity of contract with another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of a contract between the defendant and a third-party is not, as such, recoverable by the plaintiff." Windsor Green Owners Association v. Allied Signal, Inc., 362 S.C. 12, 17, 605 S.E.2d 750, 752 (Ct. App. 2004) (citation omitted). "However, if a contract is made for the benefit of a third person, that person may enforce the contract if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such third person." Id. (citation omitted); Fabian v. Lindsay, 410 S.C. 475, 765 S.E.2d 132 (2014). Here, it is undisputed that Ray and Cristine Malejko were contemplating the purchase of a home which they would both live in, along with their daughter. There is no question that Defendants were aware that Cristine Malejko would be directly benefitted by their services in assisting Ray Malejko in procuring a home. It would strain credulity to argue otherwise. Since Cristine Malejko is a direct beneficiary of Defendants' services and the contracts upon which they were based, she has third-party beneficiary status to maintain a breach of contract action against Defendants.¹²

¹² Cristine Malejko is listed on the deed to 141 Fox Crossing. In addition, she is listed as a purchaser on the Settlement Statement (HUD-1) and other associated closing documents which are filed with the Court.

In order to maintain a claim for breach of contract accompanied by fraudulent act, a plaintiff must prove three elements: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract, not merely to its making; and (3) a fraudulent act accompanying the breach. Floyd v. Country Squire Mobile Homes, Inc., 287 S.C. 51, 53-54, 336 S.E.2d 502, 503-04 (Ct. App. 1985) (citations omitted); Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC, 414 S.C. 635, 780 S.E.2d 263 (Ct. App. 2015). Defendants claim Plaintiffs have not presented evidence of an independent fraudulent act. Plaintiffs have presented ample evidence of incidents of fraudulent conduct by Defendants, which would serve as independent fraudulent acts to support a breach of contract accompanied by fraudulent act cause of action. Rather than restate them again here, Plaintiffs would incorporate herein by reference their discussion of those acts contained above.

To establish a cause of action in negligence, three essential elements must be proven: (1) duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 468 S.E.2d 292 (1996); Bishop v. S.C. Department of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998). Defendants claim Plaintiffs failed to identify any standards of care that was breached or any action, conduct or omission by Defendants that constitute a breach. In doing so, Defendants cherry pick deposition questions in which Plaintiffs provided answers to support such a theory. However, Defendants ignore the deposition testimony of Carton Segars and the contents of his affidavit, recounted above, which provide evidence of both. In addition, Defendants cite to Plaintiffs inability to answer certain questions inviting them to opine on how certain facts support the elements of this, and other, causes of action, as if it were some failing or attempt at subterfuge. Plaintiffs are not attorneys and are not skilled enough nor qualified to provide an analysis of how

their factual allegations provide support to elements of various legal causes of action and legal terms which they did not understand. Plaintiff's attempted to explain that to defense counsel several times throughout their depositions, but such questions persisted, nonetheless. The following are examples:

Q: Do you personally have any knowledge or will give any testimony as to what Corley Enterprises did to engage in either actual or constructive fraud?

A: I don't understand what that means.¹³

Q: You say that he had sufficient reason to know that the system was in a defective and unsafe condition. What do you mean by that?

A: I don't know. That's terms that the attorney drew up, and I don't know.¹⁴

Q: Do you understand any other particulars that you're going to prove at trial against NextGen or Ms. Loper?

A: I don't know.

Q: And I'm assuming you don't know what the standards for actual and punitive damages are for negligence?

A: No.

Q: That's no?

A: No, I don't know.¹⁵

Q: Do you see that, Paragraph 74, page 12 of 30?

A: I don't know. I don't understand what this means.

¹³ Deposition of Raymond Malejko, p. 512, lines 11-15.

¹⁴ Deposition of Raymond Malejko, p. 269, lines 19-24.

¹⁵ Deposition of Raymond Malejko, p. 183, line 22 - p. 184, line 6.

Q: Okay. All right. Let's go to the next cause of action, then, as to NextGen and Loper, breach of contract. What contract did NextGen and Loper breach with you - with you, your wife, and daughter? What contract did she breach with you?

A: The attorney filled this out, did this. I don't know what these terms mean.

Q: You don't know what these terms mean?

A: No.

Q: What terms, breach of contract?

A: Yes.

Q: You don't know what breach of contract means?

A: No.¹⁶

Q: All right. What's 82 (e)? Can you explain to me what that means? Plaintiffs lost the benefit of the bargain in their purchase of the property.

A: Where is this?

Q: It's paragraph 82 (e).

A: Again, this is a legal document. I don't know. I'm not the attorney.¹⁷

Q: Do you know what the term fiduciary duty is?

A: (Shaking head from side to side.)¹⁸

Further examples can be found in Mr. Malejko's deposition at p. 142, lines 1-4; p. 142, line 25 - p. 143, line 1; p. 177, line 23 - p. 178, line 10 and p. 271, line 9. Although there were many times that Mr. Malejko could not remember or provide answer to certain questions, there were other times throughout the course of his four day deposition in which he could and did. While those

¹⁶ Deposition of Raymond Malejko, p. 161, lines 2-21.

¹⁷ Deposition of Raymond Malejko, p. 173, lines 11-18.

¹⁸ Deposition of Raymond Malejko, p. 142, lines 10-12.

unenlightening answers may provide Defendants with fodder for cross-examination at trial, at this stage of the proceedings in the face of evidence to the contrary, they must be cast aside, and the evidence viewed in the light most favorable to Plaintiffs. Defendants are essentially asking the Court to make credibility determinations regarding the conflicting testimony. Again, since the testimony of Mr. Segars, Mr. Malejko and Mrs. Malejko regarding the duties owed by Defendants and the breaches thereof is exhaustively presented above, Plaintiffs would incorporate it here by reference, rather than restate it again, in support of their contention that they have presented more than a scintilla of evidence to support their claims of negligence against Defendants.

To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant. It is well settled that real estate agents occupy a fiduciary relationship with their clients and are under a legal obligation as well as a high moral duty to give loyal service to the principal. Darby v. Furman Co., 334 S.C. 343, 513 S.E.2d 848 (1999); Hamby v. St. Paul Mercury Indemnity Co., 217 F.2d 78, 80 (4th Cir. 1954). Defendants do not deny they owe Plaintiffs a fiduciary duty, but rather claim that Plaintiffs failed to identify any material facts withheld by Defendant. However, Defendants duty to make full disclosure of material facts was only one aspect of their fiduciary duty to Plaintiffs, for Defendants were also bound to act in good faith and with due regard to the interests of Plaintiffs. Spence v. Wingate, 395 S.C. 148, 716 S.E.2d 920 (2011); O'Shea v. Lesser, 308 S.C. 10, 416 S.E.2d 629 (1992). Plaintiffs have presented ample evidence of both Defendants' nondisclosure of material facts and their failure to act in good faith and with due regard to their interests. Defendants failed to pass along personally known information regarding the former owner of the house, who could have provided valuable information regarding the condition of the house, which was otherwise

lacking. Defendants' failure to ensure the inspectors they brought to the transaction were qualified and competent, fabrication of a roofing letter, and misrepresentation regarding their entitlement to a property disclosure statement were not made with due regard to Plaintiffs interests.

Defendants point to language in the Exclusive Right to Buy Buyer Agency Contract, the Designated Agency Agreement and the Dual Agency Agreement for the proposition that Mr. Malejko has waived his claims against them. Defendants' claim is incorrect as a matter of law and is, likewise, not supported by the evidence before the Court. Contracts that seek to exculpate a party from liability for the party's own negligence are not favored by the law. Pride v. Southern Bell Tel. & Tel. Co., 244 S.C. 615, 619, 138 S.E.2d 155, 157 (1964). An exculpatory clause is to be strictly construed against the party relying thereon. Id. An exculpatory clause will never be construed to exempt a party from liability for his own negligence in the absence of explicit language clearly indicating that such was the intent of the parties. McCune v. Myrtle Beach Indoor Shooting Range, Inc., 364 S.C. 242, 612 S.E.2d 462 (Ct. App. 2005); South Carolina Elec. & Gas Co. v. Combustion Engineering, Inc., 283 S.C. 182, 191, 322 S.E.2d 453, 458 (Ct. App. 1984) (quoting Hill v. Carolina Freight Carriers Corp., 235 N.C. 705, 71 S.E.2d 133, 137 (N.C. 1952)). None of the language cited by Defendants attempts to exempt Defendants from their own negligence. Thus, their claim of waiver as to Plaintiffs' negligence cause of action fails as a matter of law.

Furthermore, the exculpatory language referenced by Defendants' does not pertain to the claims made by Plaintiffs in this action. Defendants point to the following language in the parties' Exclusive Right to Buy Buyer Agency Contract in support of their argument:

Buyer agrees to work exclusively with Broker and its affiliated licensees during the term of this agreement by: ... (4) holding Broker harmless from liability *as a result of incomplete/inaccurate information provided to Broker by Buyer or Seller*; (5)

holding Broker harmless from liability *as a result of Seller's failure to provide a complete Seller's Property Condition Disclosure* statement....

(Exclusive Right to Buy Buyer Agency Contract, ¶ 4(A)). Plaintiffs' claims are not based on Defendants not being provided with complete information from the seller or for the seller's failure to provide a property disclosure statement. Rather, they are based upon Defendants' fraudulent, negligent and intentional misleading conduct and non-disclosure of material facts. Plaintiffs' claim against Defendants relating to the lack of a property disclosure statement is not a claim that seller willingly failed to provide the disclosure, but that Defendant's erroneously advised both the seller and them that the seller was not required to provide one. The cited exculpatory language is simply not applicable to the claims in this matter.

Defendants also point to the following language in the Designated Agency Agreement:

Seller and Buyer agree to indemnify and hold Broker harmless against all claims, damages, losses, expenses, or liabilities, *other than violations of the South Carolina Real Estate License law and intentional wrongful acts*, arising from Broker's role under the terms of this Designated Agency Agreement.

(Designated Agency Agreement, ¶ 1(j)). As discussed above, pursuant to the South Carolina Real Estate License Law found in S.C. Code Ann. § 40-57-137(A), (F) and (H)(c), Defendants owed Plaintiffs duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, honesty and accounting. It is the violation of these very duties, and, thus, violation of South Carolina Real Estate License Law, through Defendants' intentional acts upon which Plaintiffs base their claims. Thus, this provision provides Defendants no protection.

Defendants cite to similar exculpatory language contained in the parties' Dual Agency Agreement:

Seller and Buyer agree to indemnify and hold Broker harmless against all claims, damages, losses, expenses, or liabilities, *other than violations of the South Carolina Real Estate License Law and intentional wrongful acts*, arising from Broker's role as a Dual Agent.

(Dual Agency Agreement, ¶ 3(d)). This provision is unavailing for the same reasons its counterpart in the Designated Agency Agreement is unavailing.

Defendants also claim the following language in the Dual Agency Agreement acts as a waiver to the claims brought by Mr. Malejko:

Broker is required by law to disclose to Seller and Buyer any known material facts concerning the property or the transaction. Seller and Buyer agree that Broker shall not be liable to either party for (1) disclosing known material facts concerning the property required by law to be disclosed and (2) refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but could benefit the other party.

(Dual Agency Agreement, ¶ 2(c)). Plaintiffs' claims against Defendants are not based on Defendants' disclosure of material facts to the seller which they were required by law to disclose, so reliance on section (1) is misplaced. Plaintiff's claims are, in part, based upon Defendant's failure to disclose material facts which they had statutory, contractual and common law duties to disclose. Since the law requires them to be disclosed, Defendants' reliance on section (2) is also misplaced. Furthermore, Plaintiffs have other claims against Defendants that do not involve non-disclosure, and, therefore, are not impacted by this provision.

Finally, Defendants claim that Plaintiffs waived the claims they brought in this litigation by entering into the Contract for Sale. Specifically, they reference the following provision:

Buyer and Seller acknowledge that Buyer's and Seller's Brokers give no warranty of any kind, expressed or implied, as to: (1) physical condition of the Property or as to condition of or existence of improvements, services or systems including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems or to structure; (2) condition of the Property, any matters which would be reflected by a current survey of the Property or the accuracy of the square footage heated or unheated....

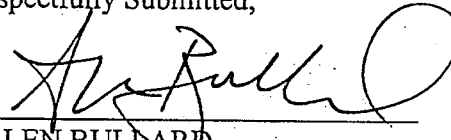
(Contract of Sale, ¶ 33). One of Plaintiffs' claims against Defendants does involve a representation by Defendants concerning the condition of the roof. However, this provision only protects

Defendants in situations where Defendants remain silent. Here Defendants affirmatively represented to Plaintiffs that the roof was three years old and made affirmative statements regarding the condition of the roof. Where, as here, Defendants voluntarily undertook to advise Plaintiffs on the condition of the roof, they had a duty to exercise due care in doing so. Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992) (At common law, where there is no duty to act, but an act is voluntarily undertaken, the actor assumes a duty to use due care); Sherer v. James, 290 S.C. 404, 351 S.E.2d 148 (1986). They did not do so as the roof was not three years old and was not, as represented, in good condition. Moreover, where there are factual issues regarding whether a defendant was in fact a volunteer, summary judgment is not appropriate as the existence of a duty becomes a mixed question of law and fact to be resolved by the fact finder. Vaughan v. Town of Lyman, 370 S.C. 436, 635 S.E.2d 631 (2006), quoting Miller v. City of Camden, 329 S.C. 310, 494 S.E.2d 813 (1997). Even were this not the case, those of Plaintiffs' claims which do not allege Defendants made representations regarding the condition of the property would remain unaffected by this provision.

CONCLUSION

For the foregoing reasons, Plaintiffs request the Court reconsider and amend its order and deny Defendants' motion for summary judgment.

Respectfully Submitted,



ALLEN BULLARD

Montgomery Willard, LLC

Post Office Box 11886

Columbia, South Carolina 29211

(803) 779-3500

abullard@montgomerywillard.com

August 18, 2017.

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond J. Malejko and Cristine Malejko,
individually and on behalf of their minor
child, Stephanie Malejko,

Plaintiffs,

v.

Todd Corley, Janet Loper, NextGen Real
Estate, LLC, Thomas Humphries, Dr. Roofs,
Inc., Ray Mooneyham, Mooneyham Solar &
Electric, Professional Home Inspections,
Inc., Corley Enterprises, Inc. of South
Carolina, and DBR Franchising, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-40-480

CERTIFICATE OF SERVICE

2017 AUG 18 PM 4:02
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
FILED

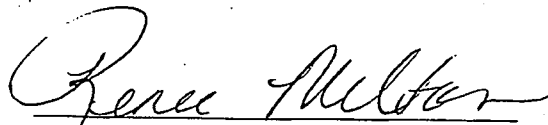
I, S. Renee Melton, employee with the law firm of MONTGOMERY WILLARD, LLC, do hereby certify that I have served counsel with a copy of the Plaintiffs' Motion for Reconsideration by mailing a copy of the same via First Class Mail with the proper postage affixed thereto to the addresses below:

David A. Anderson, Esq.
Richardson Plowden
1900 Barnwell Street
Columbia, SC 29201
*Counsel for Defendants Janet Loper
and NextGen Real Estate, LLC*

James B. Lybrand, Jr., Esq.
McDonald, McKenzie, Rubin,
Miller & Lybrand, LLP
1704 Main Street
Columbia, SC 29201
Counsel for Defendant Todd Corley

Columbia, South Carolina
August 18, 2017

Benson H. Driggers, Esq.
Sweeny Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201
*Counsel for Defendants Dr. Roofs, Inc.
and Thomas Humphries*


S. Renee Melton

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

RAYMOND J. MALEJKO AND CRISTINE)
MALEJKO, ET AL.)

☐ Plaintiff)

v.)

TODD CORLEY, JANET LOPER, ET AL.)

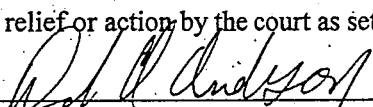
☐ Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2016-CP-40-1536

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Allen Bullard, Esquire Montgomery Willard, LLC P.O. Box 11886, Columbia, SC 29211-1886 phone: 803-779-3500 fax: e-mail: abullard@montgomerywillard.com		Defendant's Attorney: David A. Anderson, Bar No. 11550 Richardson Plowden & Robinson P.O. Drawer 7788, Columbia, SC 29202 phone: 803-771-4400 fax: 803-779-0016 e-mail: danderson@richardsonplowden.com	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion for Summary Judgment Estimated Time Needed: 20 mins Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for Defendant Loper & NextGen April 7, 2017 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond J. Malejko and Cristine Malejko,
individually and on behalf of their minor child,
Stephanie Malejko,

Plaintiffs,

v.

Todd Corley, Janet Loper, NextGen Real
Estate, LLC, Thomas Humphries, Dr. Roofs,
Inc., Ray Mooneyham, Mooneyham Solar &
Electric, Professional Home Inspections, Inc.,
Corley Enterprises, Inc. of South Carolina, and
DBR Franchising, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-40-01536

DEFENDANTS JANET LOPER AND NEXTGEN
REAL ESTATE, LLC'S
NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT

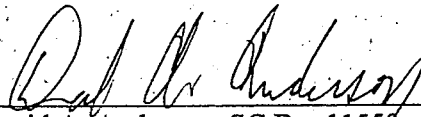
Please take notice that Defendants Janet Loper ("Loper") and NextGen Real Estate, LLC ("NextGen") hereinafter collectively referred to as "Defendant Realtors", will move before the Presiding Judge at 10:00 a.m. on the tenth (10th) day after the service hereof, or as soon thereafter as counsel may be heard, for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

The Plaintiffs' Complaint alleges Actual or Constructive Fraud, Negligent Misrepresentation, Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Negligence, and Breach of Fiduciary Duty against Defendant Realtors. There are no genuine issues of any material fact as to Plaintiffs' allegations and Defendant Realtors are entitled to judgment as a matter of law. The specific, alternative grounds for this Motion are: (1) the Plaintiffs' claims against Defendant Realtors fail to state a cause of action as a matter of law; (2) the Plaintiffs have failed to make a showing sufficient to establish the requisite elements needed to prevail on any of the causes of action levied against Defendant Realtors; (3) Plaintiff Cristine

Malejko does not have the privity of contract needed to demonstrate breach of contract or breach of contract accompanied by a fraudulent act; and (4) Plaintiff Raymond Malejko waived all claims versus Defendant Realtors.

This Motion is based upon the pleadings, affidavits, depositions, South Carolina Rules of Civil Procedure, statutes, applicable law, memoranda, and such other evidence as may be accepted by the Court.

Defendant Realtors request that this Motion be granted, that this Court render judgment in its favor and that it recover its costs incurred herein. Defendants pray for such other relief, both general and special, legal or equitable to which it may be justly entitled.



David A. Anderson, SC Bar 11550
RICHARDSON, PLOWDEN,
& ROBINSON, P.A.
1900 Barnwell Street, P.O. Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
danderson@richardsonplowden.com
**ATTORNEYS FOR JANET LOPER AND
NEXTGEN REAL ESTATE, LLC**

April 7, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE

The undersigned, an employee of Richardson Plowden & Robinson, P.A., do hereby certify that I served the foregoing **DEFENDANTS JANET LOPER AND NEXTGEN REAL ESTATE, LLC'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT** on the following counsel by causing a copy of same to be mailed in the United States Mail, Postage Prepaid, First Class, addressed as follows:

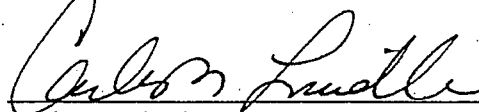
Allen Bullard, Esquire
Montgomery Willard, LLC
P.O. Box 11886
Columbia, SC 29211-1886
Attorney for Plaintiff

James B. Lybrand, Jr., Esquire
McDonald McKenzie, Rubin
Miller & Lybrand
P.O. Box 58
Columbia, SC 29202
Attorney for Todd Corley

Mark S. Barrow, Esquire
Benson Driggers, Esquire
Sweeny Wingate & Barrow, PA
P.O. Box 12129
Columbia, SC 29211
*Attorney for Dr. Roofs, Inc. and Thomas
Humphries*

David E. Taylor, Esquire
P.O. Box 21744
Columbia, SC 29221-1744
*Attorney for Ray D. Mooneyham
d/b/a Mooneyham Solar & Electric*

Anthony Livoti, Esquire
Murphy & Grantland, PA
P.O. Box 6648
Columbia, SC 29260
*Attorneys for Corley Enterprises, Inc. of South
Carolina*



Carla M. Lindler
Legal Assistant to David A. Anderson

April 7, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond J. Malejko and Cristine Malejko,
individually and on behalf of their minor child,
Stephanie Malejko,

Plaintiffs,

v.

Todd Corley, Janet Loper, NextGen Real
Estate, LLC, Thomas Humphries, Dr. Roofs,
Inc., Ray Mooneyham, Mooneyham Solar &
Electric, Professional Home Inspections, Inc.,
Corley Enterprises, Inc. of South Carolina, and
DBR Franchising, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2015-CP-40-00480

**DEFENDANTS JANET LOPER AND NEXTGEN
REAL ESTATE, LLC'S MEMORANDUM OF
LAW IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

Defendants Janet Loper ("Loper") and NextGen Real Estate, LLC ("NextGen") hereinafter collectively referred to as "Defendant Realtors," have moved for an order granting summary judgment on all of the Plaintiffs' claims against Defendant Realtors pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Specifically, Defendant Realtors assert that the Plaintiffs have failed to state a viable cause of action where the Plaintiffs cannot demonstrate, as a matter of law, their allegations of Actual or Constructive Fraud, Negligent Misrepresentation, Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Negligence, or Breach of Fiduciary Duty.

FACTUAL AND PROCEDURAL BACKGROUND

The Plaintiffs filed this lawsuit alleging twenty causes of action, six of which were levied against Defendant Realtors. The causes of action specific to Defendant Realtors are as follows:

1 *CM*

(1) Actual or Constructive Fraud; (2) Negligent Misrepresentation; (3) Breach of Contract; (4) Breach of Contract Accompanied by a Fraudulent Act; (5) Negligence; and (6) Breach of Fiduciary Duty. (Exhibit A, Complaint)

The Plaintiffs were experienced home buyers. They had recently bought and "returned" a home and Plaintiff Raymond Malejko was a licensed real estate agent. In December 2013, the Plaintiffs purchased a new construction home. After one year, the builder bought the home back from the Plaintiffs due to the Plaintiffs' continued complaints that the new construction home was making Plaintiff Christine Malejko ill. During this time, the Plaintiffs also filed a complaint against the builder with the Department of Labor, Licensing, and Regulation. (Exhibit B, Christine Malejko Depo., p. 36- p. 40). Subsequently, the Plaintiffs moved into an apartment and resumed house hunting. They found the 141 Fox Crossing Road home, the home at issue, and contacted Raymond's referral agency. The agency sent out an agent who showed them the home. After being shown the home, the Plaintiffs contacted the listing agent directly regarding the home. They obtained the listing agent's information from the listing sign in front of the home. The listing agent was Defendant Loper. (*Id.*, p. 48- p. 51) The Plaintiffs decided to hire Defendant Loper, the seller's listing agent, as their real estate agent and began to pursue a contract on the home. Raymond was a licensed real estate agent in New Jersey. As a result, he negotiated with Defendant Loper to receive a percentage of her commission as a referral fee. (Exhibit C, Raymond Malejko Depo., p. 405, ll. 6-18; Exhibit D, Broker Confirmation of Referral)

The Plaintiffs knowingly initiated hiring Defendant Realtors as a dual agent where they obtained Defendant Realtor's information from the sale sign and Raymond understands dual agency through his work as a licensed real estate agent. Also, Christine testified that she knew

2 

Defendant Loper was the listing agent for 141 Fox Crossing Road when the Plaintiffs called her and asked Defendant Loper to show them Fox Crossing. (Exhibit B, Cristine Malejko Depo., pp. 54-56) Raymond also admitted that, contrary to the Complaint allegation in opposition, he was informed of the dual agency relationship. (Exhibit C, Raymond Malejko Depo., p. 404, ll. 2-8)

Raymond entered into numerous contractual agreements retaining Defendant Realtors as his real estate agent and agreeing to a designated and dual agency relationship. Raymond signed the Buyer Agency Contract on January 9, 2014. (Exhibit E, Buyer Agency Contract) On that same day, Raymond also signed a Designated Agency Agreement and a Dual Agency Agreement, authorizing Loper to serve as the agent for both the buyer and the seller for the property at issue. (Exhibit F, Designated Agency Agreement; Exhibit G, Dual Agency Agreement)

Subsequently, Raymond entered into a contract on 141 Fox Crossing Road and began to undergo the inspection process for the property. The seller had not completed a property disclosure for the property because he had no knowledge of the property condition. Defendant Corley, the seller, purchased the property strictly for investment. He never lived in the property nor did he have the property inspected prior to purchase. Plaintiff Raymond Malejko agreed via the Contract of Sale that Defendant Corley would not provide a property condition disclosure statement. (Exhibit H, Contract of Sale, p. 5, para 12(b); Exhibit I, Todd Corley Depo, p. 108, ll. 3-24; Exhibit J, Loper Depo., p.78, l. 12- p. 79, l. 19) Defendant Loper presented the Plaintiffs with a list of numerous recommendations for third parties to hire during the inspections process. Defendant Loper advised the Plaintiffs that they could use one of the recommended companies or someone else that they were comfortable with. (Exhibit J, Loper Depo., p. 178, l. 20- p. 179, l. 7; p. 197, l. 22- p. 198, l. 4)

Inspector Joe Boyle completed an inspection report dated January 16, 2014 which outlined numerous property defects. The report noted that the roof was actively leaking and also had prior repairs that "could fail with time." The report stated, "Recommend having the roofing checked by a licensed roofing contractor." The inspection report also noted "multiple termite tunnels on garage foundation walls" and recommended having the entire house and garage checked by a termite company. (Exhibit K, HouseMaster Inspection Report)

The inspection report further noted holes in the HVAC lines and HVAC lines that were lying on the ground. Boyle recommended having the HVAC lines checked and repaired by an HVAC company. The inspection report additionally advised of problems with the "framed floors," noting a "hump" in the floor and suggesting that a licensed contractor inspect the floors.

The inspection report cautioned that "[a]ll repairs needs or recommendations for further evaluation should be addressed prior to closing. It is the client's responsibility to perform a final inspection to determine the conditions of the dwelling and property at the time of closing." (Exhibit K, HouseMaster Inspection Report, p. 2)

After reviewing the inspection report, the Plaintiffs decided NOT to go forward with the purchase of 141 Fox Crossing Road. (Exhibit B, Cristine Malejko Depo., p. 71, ll. 18-23; p. 349, ll. 4-7) Cristine testified that after receiving the inspection report, Defendant Loper went through the inspection report with them "page-for-page." (*Id.*, pp. 71-72) When Cristine was asked which inspection report issues caused them to back out of the contract. She stated that "all of them" did. "The home inspection report talks about many issues that were wrong with this home and we didn't feel comfortable." (*Id.*, p. 73, ll. 8-21)

Due to the inspection report results, the Plaintiffs backed out of the original contract for 141 Fox Crossing Road and resumed their house search. Raymond entered into a contract for

another property on February 8, 2014, but withdrew in the midst of negotiations because it had a pond behind it and Plaintiffs' daughter is allegedly allergic to mosquitos. (Id., p. 83, l. 13- p. 84, l. 7) On February 23, 2014, Raymond submitted an offer on another property, but the seller declined the offer based on conditions contained within the contract. (Id., pp. 85-86) In March of 2014, the Plaintiffs decided to revisit the home at 141 Fox Crossing Road because "[i]t was a beautiful home, we liked the house." (Id., p. 88, ll. 9-10) At some point, the Plaintiffs found tax records revealing that the home had been purchased for substantially less than the sale price, so they contacted the seller and offered a low verbal offer. This offer was not accepted. (Id., p. 89, l. 14- p. 91, l. 22) The Plaintiffs contacted Defendant Loper about the property and went back for another showing. Cristine claimed that Defendant Loper said changes and repairs had been made to the property and the Plaintiffs observed some of these changes during this follow-up showing. The Plaintiffs decided to proceed with another offer. (Id., pp. 92-93) The seller, Defendant Corley, accepted the offer on March 8, 2014 and the Plaintiffs engaged in a second round of contract negotiations for the house.

On March 8, 2014, Raymond entered into a second contract with Todd Corley for 141 Fox Crossing Road. The contract allowed for the buyer to inspect the property during the due diligence period and also allowed for possible extensions of the due diligence period to allow for additional inspections. The contract also gave the buyer the right to reinspect the property following repairs. Raymond also initialed next to the Property Condition Disclosure Statement paragraph stating that "Buyer understands and agrees that Seller's Property Condition Disclosure Statement is not intended to replace inspections of the Property." (Exhibit H, Contract of Sale, page 3-5)

5 

Additionally, the Contract for Sale contained paragraph 33 entitled "Disclaimer," which stated:

Buyer and Seller acknowledge that Buyer's and Seller's Brokers give no warranty of any kind, expressed or implied, as to: (1) physical condition of the Property or as to condition of or existence of improvements, services, or systems including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems or to structure; (2) condition of the Property, any matters which would be reflected by a current survey of the Property or the accuracy of the square footage heated or unheated....

(Exhibit H, Contract of Sale, page 10)

They subsequently had Joe Boyle, the original inspector, return for a reinspection of the property. The Plaintiffs claim they cannot recall the results of the reinspection, but Plaintiff Cristine Malejko admitted that following the reinspection, they were advised that there was "still work that needed to be done to the home." (Exhibit B, Cristine Malejko Depo., p. 109, ll. 2-20). Cristine also admitted her husband said that the only item from the inspection report he felt needed to be addressed prior to closing was the animal feces under the house. (*Id.*, p. 110, ll. 6-10)

In the weeks prior to closing, the Plaintiffs were told by a neighbor that the house was not on the city's sewer system, but had a septic tank instead. On March 26, 2014, prior to closing, the Plaintiffs had the septic tank system inspected. (*Id.*, p. 131, ll. 2-9; Exhibit C, Raymond Malejko Depo., p. 165, l. 16- p. 166, l. 3)

They closed on March 31, 2014. (Exhibit B, Cristine Malejko Depo., p. 110, l. 2) After they moved into the home, the Plaintiffs testified they began to discover numerous defects with the home. A close review of these alleged defects reveal, however, that these defects were noted in the original inspection report and/or were discovered prior to closing.

6 

Raymond testified that although Defendant Loper reviewed the inspection report with them, he did not read the inspection report prior to his purchase of the property. Raymond admitted he had the inspection report for six weeks in between the first and second contracts on the property, but he did not read the report because he went over it with the realtor and relied on her impressions of the report. (Exhibit C, Raymond Malejko Depo., p. 78, l. 21- p. 79, l. 22; p. 335, l. 20- p. 343, l. 12)

Plaintiffs further admitted that they had been advised to hire experts to inspect the property related to specific issues found, but they declined to do so. Prior to closing, Defendant Mooneyham advised the Plaintiffs that there were problems with the ducts, but Plaintiffs declined to hire him, or anyone, to fix them. (Id., p. 410, l. 3-12) Raymond acknowledged the inspection report stated it did not evaluate mold and another inspector would be required for a mold evaluation. Raymond admitted that he did not hire anyone to inspect for mold. (Id., p. 485, ll. 3-11)

The Plaintiffs make several allegations regarding the condition of the roof. Cristine claimed that Defendant Loper told her "[I]t was a great looking roof." (Exhibit B, Cristine Malejko Depo., p. 149, ll. 9-17) Cristine also testified that Defendant Loper knew she had been told the roof was three years old. (Id., p. 273, ll. 17-23) However, Raymond testified that although the inspection report advised of roof defects and recommended that they have a licensed roofing contractor inspect the roof, they did not do so. (Exhibit C, Raymond Malejko Depo., p. 78, ll. 2-7) Cristine acknowledged that the inspection reported noted roof issues. (Exhibit B, Cristine Malejko Depo., p. 333, ll. 3-25) Despite the inspection report advising him to hire a roofing contractor to inspect the roof, Plaintiffs did not hire a roofing inspector. When the seller hired a roofer to make some repairs, the Plaintiffs did not hire a roofer to inspect the

7 

roof or check the repairs made. (Id., p. 238, l. 22- p. 240, l. 13) The seller, Defendant Corley, testified he hired the roofing contractor to make repairs and that he contacted the roofer directly without recommendation from Defendant Realtors. (Exhibit I, Todd Corley Depo., p. 105, ll. 3-12)

Raymond admitted that prior to closing he knew that termites had been found and treated in the garage. (Exhibit C, Raymond Malejko Depo., p. 83, ll. 2-5) He also admitted being aware of a litany of other issues identified in the inspection report and that his awareness pre-dated the closing. These issues included an active water stain in the front left bedroom, potential ventilation and insulation problems in the roof, defective framing in the floors, and various issues with the exterior windows. (Id., pp. 83-84) Raymond additionally admitted that the inspection report recommended having an exterior window checked where there was decay and that was not done prior to closing. He said he did not know why it wasn't done. (Id., p. 78, l. 21- p. 79, l. 22)

LEGAL STANDARD

Rule 56(c) of the South Carolina Rules of Civil Procedure provides a motion for summary judgment shall be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." See Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 42, 747 S.E.2d 178, 181 (2013). "In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment." Id.; Wachovia Bank, N.A. v. Coffey, 404 S.C. 421, 425, 746 S.E.2d 35, 38 (2013).

8 

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (citations omitted). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004). Furthermore, the "construction and enforcement of an unambiguous contract is a question of law for the court, and thus can be properly disposed of at summary judgment." Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A., 320 S.C. 470, 477, 465 S.E.2d 765, 770 (Ct. App. 1995).

ARGUMENT

The following memorandum will outline case law supporting the conclusion that the Plaintiffs will not be able to demonstrate, as a matter of law, their claims for Actual or Constructive Fraud, Negligent Misrepresentation, Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Negligence, and Breach of Fiduciary Duty. For the reasons discussed below, Defendant Realtors respectfully request this Court grant their Motion for Summary Judgment.

A. The Plaintiffs cannot demonstrate fraud as a matter of law.

Even if one assumes all allegations contained in the Complaint are true, the Plaintiffs cannot meet the burden of proof for actual or constructive fraud against Defendant Realtors. The Complaint states that after moving into the home at issue, the Plaintiffs discovered the roof was older than Defendant Corley had represented, the roof had construction defects, the property had termite damage, the HVAC system had vermin damage and infestation, the floor joists were not properly affixed to the floor beams, the property "was smaller" than represented, the property

was not on public sewer as represented and Defendant Corley failed to properly repair the property prior to closing. The Plaintiffs state that the conditions listed above existed prior to closing, Defendant Realtors knew of these conditions and Defendant Realtors failed to disclose this knowledge to the Plaintiffs. The Plaintiffs additionally claim that Defendant Realtors knew or had sufficient reason to know that Defendant Corley had failed to complete contractual repairs prior closing. Further, the Plaintiffs claim Defendant Realtors failed to disclose such knowledge to the Plaintiffs, which amounts to a representation that the defective conditions did not exist and the repairs had been completed. The Plaintiffs contend that they had no knowledge the representations were false, they had a right to rely on the representations, and they relied on the representations in purchasing the property.

"Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence....Further, Rule 9(b), SCRPC provides: 'In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.'" Ardis v. Cox, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993)

It is well settled that, in order to recover in an action for fraud and deceit, based upon representation, the following elements must be shown by clear, cogent and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury. Failure to prove any one of the foregoing elements is fatal to recovery. Carter v. Boyd Construction Company, 255 S.C. 274, 178 S.E.2d 536; Moye v. Wilson Motors, Inc., 254 S.C. 471, 176 S.E.2d 147.

O'Shields v. S. Fountain Mobile Homes, Inc., 262 S.C. 276, 281, 204 S.E.2d 50, 52 (1974).

The Plaintiffs cannot show the most basic elements of fraud. First, they have not identified an affirmative false representation made by Defendant Realtors. Instead, they argue that Defendant Realtors failed to disclose material information, which amounted to a false representation. However, when asked what material fact Defendant Realtors failed to disclose, Plaintiff Raymond Malejko stated that he did not know. (Exhibit C, Raymond Malejko Depo., p. 142, l. 18- p. 143, l.1) Secondly, they have not provided any evidence that Defendant Realtors intended for the Plaintiffs to act upon the alleged, unspecified representations.

Plaintiffs also cannot meet prong (6) of the above test for fraud. The Complaint outlines numerous issues that the Plaintiffs claim were not known to them prior to closing. However, at their depositions, the Plaintiffs admit to knowing that the roof had construction defects, the property had termite damage, and the HVAC system had holes requiring further inspection. Additionally, the Plaintiffs admit receiving the inspection report which clearly identified these issues. The inspection report also noted an issue with the "framed floors" and advised that a hump in the floor indicated a problem that should be checked by a licensed contractor. As a result, the Plaintiffs were also on notice of a potential issue with the floor joists as alleged in the Complaint. (*Id.*, p. 78, ll. 2-7; pp. 83-84; p. 410, l. 3-12; Exhibit B, Cristine Malejko Depo., p. 333, ll. 3-25; p. 238, l. 22- p. 240, l. 13)

The Complaint states that Defendant Realtors presented inaccurate square footage of the property, though the exact discrepancy is not specified. The home's MLS description had a square footage disclaimer stating that the home's square footage estimate could vary by ten percent greater or less. (Exhibit L, Property Listing) Plaintiff Cristine Malejko acknowledged the disclaimer, but maintained at her deposition that the square footage varied from the estimate. She was not able to say, however, what the variance was and whether or not the actual square

footage was more or less than the estimate. (Exhibit B, Cristine Malejko Depo., p. 173, l. 11- p. 175, l. 12) She simply claimed "there's a difference," but she didn't know how she obtained information regarding the difference. (Id., p. 309, l. 7- p. 310, l. 3) Plaintiff Raymond Malejko also did not know what was inaccurate in the listing regarding the size of the property. (Exhibit C, Raymond Malejko Depo., p. 160, ll. 3-6)

The Plaintiffs additionally admit that they were made aware that the property operated on a septic tank, rather than the city sewer system, prior to the closing. (Exhibit B, Cristine Malejko Depo., p. 131, ll. 2-9) Moreover, Plaintiff Cristine Malejko testified that she didn't believe Defendant Loper intentionally tried to mislead the Plaintiffs about the septic system, but rather felt it was Defendant Loper's duty to verify the seller's representations about the property's septic system. (Id., p. 132, l. 11- p. 133, l. 15)

Where each representation alleged by the Plaintiffs was presented to them prior to closing, they cannot recover for fraud. They claim Defendant Realtors made a representation that these issues did not exist by failing to bring them to the Plaintiffs' attention. If one assumes that Defendant Realtors did make such a representation via omission, which is highly disputed, then the Plaintiffs would have to be ignorant of the representation's falsity to recover. Here, the inspection report, coupled with Plaintiffs' testimony, clearly indicate that they were aware of these issues prior to closing. Therefore, even if they were able to prove that Defendant Realtors made a representation to the contrary, they cannot show that they were not aware of the representation's falsity. Where they cannot meet this prong of the fraud test, their claim of fraud must be dismissed.

Further, the Plaintiffs cannot meet prong (8) of the test for fraud, i.e. the right to rely on the representation, where the inspection report, as well as numerous disclaimers in all of

Defendant Realtors' contracts, preclude them from relying on Defendant Realtors' commentary regarding the condition of the property. When asked what false representation Defendant Realtors made, the Plaintiffs were not able to identify any representations, other than Defendant Loper's casual commentary that it was an attractive roof and the roof was three years old. (*Id.*, p. 149, ll. 9-17; p. 273, ll. 17-23) However, South Carolina case law has found that a real estate agent's comments on seriousness of inspection report issues and an allegedly incomplete disclosure statement do not raise issues of fact where the inspection report clearly indicated additional problems required investigation. McLaughlin v. Williams, 379 S.C. 451, 665 S.E.2d 667 (Ct. App. 2008). In McLaughlin, the Court found that the Plaintiff could not rely on real estate agent's comments or the disclosure statement when he had the benefit of an inspection report advising him of the property's condition. As a result, the Court granted a Motion for Summary judgment and dismissed Plaintiff's claims of negligent misrepresentation and fraud.

In the matter at hand, if the Plaintiffs decided to disregard the inspection findings and rely upon Defendant Realtors for information regarding the home's condition, this reliance would have been misplaced. In Schnellman v. Roettger, both the South Carolina Court of Appeals and the South Carolina Supreme Court examined an issue where a homeowner sued over a real estate agent's alleged misrepresentation of the home's square footage during the sale negotiations. Both courts held that the buyers' reliance on the agent's square footage representations was unreasonable. Schnellmann v. Roettger, 368 S.C. 17, 627 S.E.2d 742 (Ct. App. 2006), aff'd as modified, 373 S.C. 379, 645 S.E.2d 239 (2007). In making this determination, the court examined the listing disclaimers, which stated that the buyers should measure the home's square footage and that square footage estimates were deemed reliable, but not guaranteed. *Id.*

The Court found that the buyers' reliance on the square footage listed was not justifiable where disclaimers advised them against relying upon it and the buyers neglected to avail themselves of several methods of independently verifying the square footage. The Court noted that "It is well established that 'there can be no liability for casual statements, representations as to matters of law, or matters which plaintiff could ascertain on his own in the exercise of due diligence.'" Id. (citing Robertson v. First Union Nat'l Bank, 350 S.C. 339, 348, 565 S.E.2d 309, 314 (Ct.App.2002) (quoting West v. Gladney, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct.App. 2000))

The Buyer Agency Contract explicitly outlined Defendant Realtors' role as an agent and not an inspector, engineer or other professional service provider. Moreover, by signing the contract Plaintiff Raymond Malejko agreed to hire more appropriate professionals for advice concerning the condition of the property.

12. Professional Counsel: Buyer acknowledges that Broker is being retained solely as a real estate agent and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, home inspector or other professional service provider. Buyer agrees to seek professional advice concerning the condition of the property, legal, tax and other professional service matters.

(Exhibit E, Buyer Agency Contract, p. 2)

Defendant Realtors' role as a broker and not an advisor as to the condition of the property was also emphasized in the contract disclaimers. Plaintiffs agreed to hold the Broker "harmless from liability as a result of incomplete/inaccurate information provided to Broker by Buyer or Seller" and "harmless from liability as a result of Seller's failure to provide a complete Seller's Property Condition Disclosure statement." (Exhibit E, Buyer Agency Contract, p. 1) These disclaimers alerted the Plaintiffs to their obligation to obtain inspections and the fact that they could not rely on information provided by Seller.

Plaintiffs cannot show actual fraud where they have not shown false representations that they relied upon and, even if they could show these things, they would have no right to rely upon them where the inspection report clearly advises them of the defective property conditions. As a result, this cause of action should be dismissed.

The Plaintiffs also allege constructive fraud, which requires the same elements as actual fraud minus the intent. The South Carolina Court of Appeals differentiated constructive fraud from actual fraud and set forth the following:

To establish constructive fraud, all elements of actual fraud except the element of intent must be established. *O'Quinn v. Beach Associates*, 272 S.C. 95, 249 S.E.2d 734 (1978). Neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud while intent to deceive is an essential element of actual fraud. The presence or absence of such an intent distinguishes actual fraud from constructive fraud. *Giles v. Lanford & Gibson, Inc.*, 285 S.C. 285, 328 S.E.2d 916 (Ct.App.1985). However, in a constructive fraud case, where there is no confidential or fiduciary relationship, and an arm's length transaction between mature, educated people is involved, there is no right to rely. *Poco-Grande Investments v. C & S Family Credit, Inc.*, 301 S.C. 322, 391 S.E.2d 735 (Ct.App.1990). This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests. *Id.*

Ardis v. Cox, 314 S.C. 512, 516-17, 431 S.E.2d 267, 269-70 (Ct. App. 1993)

Regardless of whether or not they can prove intent, the Plaintiffs cannot meet the remaining burdens of the test for fraud. The Plaintiffs have failed to offer any evidence that Defendant Realtors presented false representations or that the falsity of these alleged statements were not known to the Plaintiffs. The Plaintiffs do not claim that Defendant Realtors affirmatively made false representations about the issues identified in this cause of action, but allege that false statements were made by omission. Even if that were true, evidence indicates that the Plaintiffs were aware of all the issues identified and, therefore, cannot claim they were unaware of the alleged falsity of the representations. The inspection report definitively refutes any allegations of fraud as a matter of law, which is supported by the above-discussed case law.

Therefore, Defendant Realtors respectfully request this Court grant their Motion for Summary Judgment as to this cause of action.

B. The Plaintiffs cannot demonstrate Negligent Misrepresentation as a matter of law.

The Plaintiffs claim that Defendant Realtors negligently misrepresented that defective conditions did not exist and that appropriate repairs had been made.

As reflected below, under South Carolina law, Negligent Misrepresentation is a six prong test, which the Plaintiffs fail as a matter of law.

To state a claim for negligent misrepresentation a plaintiff must show (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to communicate truthful information to the plaintiff; (4) the defendant breached that duty; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as a result of such reliance. *Redwend Ltd. P'ship v. Edwards*, 354 S.C. 459, 473, 581 S.E.2d 496, 504 (Ct.App.2003).

Schnellmann v. Roettger, 368 S.C. 17, 20–21, 627 S.E.2d 742, 744 (Ct. App. 2006), aff'd as modified, 373 S.C. 379, 645 S.E.2d 239 (2007).

The Plaintiffs cannot demonstrate negligent misrepresentation where they have not alleged any affirmative false statements made by Defendant Realtors. Additionally, the property condition defects raised by the Plaintiffs in the Complaint are noted in the inspection report as potential problem areas requiring further inspection. For the remaining issues of square footage and sewer system not addressed in the inspection report, the Plaintiffs conceded these issues were brought to their attention prior to closing.

The Plaintiffs attempt to expand the scope of negligent misrepresentation by claiming the Defendant Realtors had a "duty to see that only accurate information was communicated to Plaintiffs." (Exhibit A, Complaint p. 12, Para. 74) The Plaintiffs' position that Defendant

Realtors were responsible for verifying the accuracy of inspection reports and the effectiveness of repairs is refuted by South Carolina law. S.C. Code Ann. § 27-50-80 makes it clear that inspection obligations fall squarely with the buyers.

SECTION 27-50-80. Obligation of purchaser to inspect.

This article does not limit the obligation of the purchaser to inspect the physical condition of the property and improvements that are the subject of a contract covered by this article. The real estate licensee, whether acting as listing agent or selling agent, has no duty to inspect the onsite or offsite conditions of the property and any improvements.

The Plaintiffs also claim, in essence, that Defendant Realtors had an obligation to verify whether or not the seller adequately remedied items on the inspection report and also had an obligation to verify the veracity of the disclosed conditions. Again, South Carolina law refutes the Plaintiffs' belief that Defendant Realtors could or should be tasked with vetting the property's condition or the effectiveness of repairs made during the sale process.

SECTION 27-50-70. Listing agent to notify owner of disclosure obligations; liability for refusal or inaccuracy of disclosure statement.

(A) A listing agent or any real estate licensee operating for any party in a residential real estate transaction must inform in writing each owner covered by the listing agreement of the owner's obligations prescribed in this article. If the listing agent performs this duty, he is not liable for the owner's refusal or failure to provide a prospective purchaser with a disclosure statement.

(B) This article does not conflict with or alter the duties of the real estate licensee pursuant to the regulations of the commission. The real estate licensee, whether acting as the listing agent or selling agent, is not liable to a purchaser if:

(1) the owner provides the purchaser with a disclosure form that contains false, incomplete, or misleading information; and

(2) the real estate licensee did not know or have reasonable cause to suspect the information was false, incomplete, or misleading.

Like Schnellman, the Plaintiffs' reliance on any alleged assertions by Defendant Realtors is unjustified and their claim for negligent misrepresentation must fail. The Plaintiffs cannot demonstrate that Defendant Realtors made a false representation to the Plaintiffs. The inspection report clearly advises the Plaintiffs of the problems outlined in the Complaint. Further, the Buyer Agency Contract advised the Plaintiffs that Defendant Realtors could not offer professional engineering advice and professionals should be consulted by buyers. Additionally, South Carolina statutes protect Defendant Realtors by assigning the buyers with the responsibility to obtain and verify the accuracy of inspection reports and repairs. The above-statutes also insulate Defendant Realtors from the Plaintiffs' claims that Defendant Realtors had a "duty to see only accurate information was communicated to Plaintiffs." (Exhibit A, Complaint, p. 12)

Plaintiff Raymond Malejko also admitted that Defendant Realtors "representations" amounted to providing the inspection report to the Plaintiff.

Q: Did Ms. Loper ever share with you her understanding of a home inspection report or represent to you the condition of the home inspection report or the condition of the home?

A. Just through the inspection report.

Q. All right. You knew that Ms. Loper was a dual agent with this matter?

A. Yes.

Q. In fact, you signed the Dual Agency Agreement. Did you not?

A. I did.

Q. You knew that she was representing Mr. Corley, as well, regarding this home?

A. Yeah.

Q. And had a full duty of disclosure as far as the condition of the home?

A. I'm sorry?

Q. She had a full duty of disclosure. In other words, if she knew that the roof was leaking, she needed to tell you that, right?

A. Yes.

Q. All right. Do you have any knowledge today that she didn't share with you something that she knew about?

A. I don't know. I don't know.

Q. Well, you sued her in this case. What did you sue her for?

A. I don't know.

Q. Well, you received this HouseMaster Home Inspection Report after the first failed contract, correct?

A. The contract, the HouseMaster report, was before -- yes -- before we cancelled out of the first contract.

Q. Because you cancelled out of the first contract based upon this report, correct?

A. Yes, yes.

(Exhibit C, Raymond Malejko Depo., p. 76, l. 2- p. 77, l. 14)

In order to prevail on their claim of Negligent Misrepresentation, the Plaintiffs must be able to demonstrate all six prongs discussed above. The Plaintiffs cannot demonstrate, as a matter of law, Defendant Realtors made any representations to the Plaintiffs, false or otherwise, or that Plaintiffs had no knowledge as to the truth of these statements. However, even if all of these things were demonstrated, which Defendant Realtors assert they cannot be, pursuant to Schnellman and McLaughlin, the Plaintiffs could not have justifiably relied on these statements where the inspection report definitely refuted the same. For the foregoing reasons, therefore, Defendant Realtors respectfully request this Court grant its Motion for Summary Judgment as to the claim for negligent misrepresentation.

C. The Plaintiffs cannot demonstrate Breach of Contract as a matter of law.

The Plaintiffs contend that they entered into a contract with Defendant Realtors whereby Defendant Realtors agreed to assist them in purchasing a new home in exchange for a percentage of the purchase price of the home. The Complaint does not specify which contract or underlying contractual provision was breached. Additionally, during their depositions, the Plaintiffs were unable to identify which contract or contractual provision was breached. When asked what contract Defendant Realtors breached with the Plaintiffs, Plaintiff Cristine Malejko stated that she didn't know what the term breach of contract meant and was not able to specify either a specific contract or contractual term that had been breached. (Exhibit B, Cristine Malejko Depo., p. 154, l. 4- p. 158, l. 16) Similarly, at his deposition Plaintiff Raymond Malejko could not identify the contract or contract term that Defendant Realtors allegedly breached. (Exhibit C, Raymond Malejko Depo., p. 161, ll. 6-21)

Though this cause of action is difficult to respond to without identification of the offending contractual provision, Defendant Realtors attempt to address the allegations contained within the Complaint. The Plaintiffs state that Defendant Realtors breached the contract by "misrepresenting the square footage of the Property, recommending and allowing an unlicensed individual to perform inspections and recommend repairs to the Property, recommending an individual who performed the roof inspection and repairs in a substandard manner, and misrepresenting that the Property was on public sewer."

Plaintiff Raymond Malejko signed the Buyer Agency Contract, Designated Agency Agreement, Dual Agency Agreement, and Contract of Sale. Plaintiff Cristine Malejko did not sign any of these contracts. As Christine Malejko did not enter into a contractual relationship with Defendant Realtors, she lacks the privity required to maintain this cause of action.

"Generally, one not in privity of contract with another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of a contract between the defendant and a third party is not, as such, recoverable by the plaintiff." *Bob Hammond Constr. Co. v. Banks Constr. Co.*, 312 S.C. 422, 424, 440 S.E.2d 890, 891 (Ct.App.1994). "However, if a contract is made for the benefit of a third person, that person may enforce the contract if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such third person." *Id.*

Windsor Green Owners Ass'n, Inc. v. Allied Signal, Inc., 362 S.C. 12, 17, 605 S.E.2d 750, 752 (Ct. App. 2004).

In their depositions, the Plaintiffs could not identify any square footage discrepancies. They also admitted that they were aware the house had a septic tank, rather than city sewer access, prior to closing. The remaining allegations regarding breach of contract state that Defendant Realtors breached one of the contracts by recommending inspectors and repairmen that were unlicensed or substandard.

South Carolina has found that contracts are primarily governed by the language contained therein.

"The main guide in contract interpretation is to ascertain and give legal effect to the intentions of the parties as expressed in the language of the lease." *Gilbert v. Miller*, 356 S.C. 25, 30, 586 S.E.2d 861, 864 (Ct.App.2003) (holding it was clear the lease language evidenced no intent to make the plaintiff, either as a guest or a tenant, a third-party beneficiary by imposing a duty in tort on the landlord to prevent a tenant's dog from injuring another). "If a contract's language is clear and capable of legal construction, this Court's function is to interpret its lawful meaning and the intent of the parties as found in the agreement." *Id.* at 30-31, 586 S.E.2d at 864. "A clear and explicit contract must be construed according to the terms the parties have used, with the terms to be taken and understood in their plain, ordinary, and popular sense." *Id.* at 31, 586 S.E.2d at 864.

Id.

The contracts specifically contain language releasing Defendant Realtors from all claims related to Defendant Realtors' role as a designated and dual agent. The Designated Agency Agreement stated that the "Seller and Buyer agree to indemnify and hold Broker harmless

against all claims, damages, losses, expenses, or liabilities, other than violations of the South Carolina Real Estate License law and intentional wrongful acts, arising from Broker's role under the terms of this Designated Agency Agreement." Likewise, the Dual Agency Agreement stated "Seller and Buyer agree to indemnify and hold Broker harmless against all claims, damages, losses, expenses, or liabilities, other than violations of the South Carolina Real Estate License Law and intentional wrongful acts, arising from Broker's role as a Dual Agent." (Dual Agency Agreement, p. 1)

Additionally, the Contract for Sale contained paragraph 33 entitled "Disclaimer," which stated:

Buyer and Seller acknowledge that Buyer's and Seller's Brokers give no warranty of any kind, expressed or implied, as to: (1) physical condition of the Property or as to condition of or existence of improvements, services, or systems including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems or to structure; (2) condition of the Property, any matters which would be reflected by a current survey of the Property or the accuracy of the square footage heated or unheated....

(Exhibit H, Contract of Sale, page 10)

Further, S.C. Code Ann. § 27-50-80 states that that the buyer has the obligation to inspect the property and improvements. Any recommendations that may or may not have been made by Defendant Realtors would not alleviate the Plaintiffs' statutory obligation.

Defendant Realtors ask that the Breach of Contract claim levied by Plaintiff Christine Malejko be dismissed for lack of privity. Where the Plaintiffs failed to identify the contract and/or contractual provision that was breached, Plaintiff Raymond Malejko cannot support a claim for Breach of Contract. Additionally, Plaintiff Raymond Malejko released Defendant Realtors from claims arising from their role as designated and dual agent. Further, Plaintiffs cannot show, as a matter of law, that recommendations for inspectors and/or repairmen breached

the contract where Defendant Realtors had not contractually agreed to assume responsibility for the work of third parties and South Carolina law explicitly states that property repairs and improvements are the buyer's, and not the agent's, responsibility. As a result, Defendant Realtors respectfully request this Court grant their Motion for Summary Judgment as to the Breach of Contract claim.

D. The Plaintiffs cannot demonstrate Breach of Contract Accompanied by a Fraudulent Act as a matter of law.

The Plaintiffs claim that Defendant Realtors fraudulently intended to breach the contract and advised the Plaintiffs to proceed with the purchase of the property with the knowledge that the repairs had not been properly performed.

In order to recover for breach of contract accompanied by a fraudulent act, a plaintiff must establish: (1) a breach of contract; (2) that the breach was accomplished with a fraudulent intention, and (3) that the breach was accompanied by a fraudulent act. *Smith v. Canal Ins. Co.*, 275 S.C. 256, 269 S.E.2d 348 (1980).

Minter v. GOCT, Inc., 322 S.C. 525, 529-30, 473 S.E.2d 67, 70-71 (Ct. App. 1996)

In Minter, the Court found there was no evidence of an independent fraudulent act to accompany the breach of contract where defendant opened a new location after being advised by plaintiff that action would be a breach of contract. The Court found this could evidence fraudulent intent, but not an independent fraudulent act.

When asked to identify the fraudulent act required to support this claim, Plaintiff Cristine Malejko could not identify any fraudulent act or fraudulent assertion, but simply referred the allegations in the Complaint, which she conceded she did not understand. (Exhibit B, Cristine Malejko Depo., p. 165, l. 5- p. 167, l. 15) Likewise, when asked to explain this cause of action

23 

against Defendant Realtors, Plaintiff Raymond Malejko could not explain the cause of action or identify a fraudulent act. (Exhibit C, Raymond Malejko, p. 177, l. 1- p. 178, l. 10)

As detailed above, the Plaintiffs cannot show a breach of contract occurred, so this claim must fail. Also, Plaintiff Cristine Malejko has no privity to maintain this cause of action. Additionally, though the Plaintiffs attempt to shift the burden to verify the effectiveness of property repairs to Defendant Realtors, this is a duty assigned to the Plaintiffs by statute. However, even if the Plaintiffs could demonstrate breach of contract and that Defendant Realtors knowingly concealed information regarding the repairs, which is denied, the Plaintiffs still have not alleged an independent fraudulent act. The act of allegedly advising Plaintiffs to purchase of the property with the knowledge that the repairs had not been done properly would be possible evidence of fraudulent intent, but not evidence of an independent fraudulent action. As a result, the Plaintiffs cannot meet multiple necessary elements of Breach of Contract with Fraudulent Intent and Defendant Realtors request this cause of action be dismissed.

E. The Plaintiffs cannot demonstrate Negligence as a matter of law.

The Plaintiffs claim that Defendant Realtors owed the Plaintiffs "a duty to act in compliance with Plaintiffs' instructions, to discover all material information which could affect Plaintiffs' interests in the real estate transaction with Corley, to disclose all material facts to Plaintiffs which were relevant and material to the transaction with Corley, and to protect Plaintiffs by exercising reasonable skill and diligence in the transaction of the business entrusted to them by Plaintiffs." Specifically, Plaintiffs contend Defendant Realtors committed negligence in the following manner:

- (1) Misrepresented the square footage of the property,

- (2) Recommended and allowed an unlicensed person to perform inspections and repairs,
- (3) Recommended a roofer who performed a substandard inspection and repair,
- (4) Misrepresented that the property was on public sewer,
- (5) Failed to inspect and confirm the HVAC and roof repairs and inspections were done properly,
- (6) Advised Plaintiff to close on the house without confirming Corley had completed his obligations,
- (7) Placed the interest in the commission ahead of the Plaintiffs' interest, and
- (8) Failed to use a reasonable degree of care, caution and diligence.

(Exhibit A, Complaint, p. 9)

In Nelson v. Piggly Wiggly, the South Carolina Court of Appeals set forth that in order to prevail on a negligence claim, a Plaintiff must show: the defendants owed her a duty of care; the defendants breached that duty by a negligent act or omission; and she suffered damage as a proximate result of that breach. Nelson v. Piggly Wiggly Cent., Inc., 390 S.C. 382, 391, 701 S.E.2d 776, 780 (Ct. App. 2010) (citing Bloom v. Ravoira, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000)).

Defendant Realtors note that they did not have a contractual or fiduciary duty to "to act in compliance with Plaintiff's instructions" as the scope of this alleged duty is too wide to be reasonable. Additionally, South Carolina Code Ann. § 27-50-80 refutes Plaintiffs' notion that an agent has a duty to discover all material information related to the real estate transaction. Rather, it is the buyer's statutory duty to arrange for and evaluate inspections and improvements. Plaintiffs' claim that Defendant Realtors had a duty to disclose all material facts to Plaintiffs which were relevant and material to the transaction with Corley, but, again, this exceeds the

scope of Defendant Realtors' contractual or statutory duties. The Plaintiffs have tried to expand the scope of Defendant Realtors' obligations from known material facts to all material facts without supporting authority.

The Plaintiffs allege that Defendant Realtors failed to use a reasonable degree of care, caution and diligence, but the Plaintiffs fail to identify standards of care, caution or diligence that were breached. In opposition, Defendants present the attached affidavit from Real Estate Expert Donald "Frankie" Griffin. (Exhibit M, Griffin Affidavit) Griffin states that he has reviewed the file maintained by Defendant Realtors and examined the allegations in the Complaint. He has also reviewed the South Carolina Code of Laws Title 40, Chapter 57 governing real estate brokers and Title 27, Chapter 50 entitled the Residential Property Condition Disclosure Act. After a review of the file in comparison with South Carolina law, Griffin found Defendant Realtors complied with both bodies of law. Additionally, Griffin reviewed the contracts signed by Plaintiff Raymond Malejko and Defendant Realtors and found that Defendant Realtors "complied with the lawful terms of the Dual Agency Agreement." Griffin's affidavit additionally states,

It appears from a review of the file maintained by Defendants Loper and NextGen, as well as the applicable South Carolina statutes, that Defendants Loper and NextGen used a reasonable degree of care, caution and diligence in representing the Plaintiffs. Additionally, it appears that Defendant Loper and NextGen's representation of the Plaintiffs met customary real estate standards regarding duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting. Moreover, it appears that Defendant Loper and NextGen's representation of the Plaintiffs complied with South Carolina law.

I did not detect any negligence on behalf of Defendants Loper and NextGen Real Estate, LLC, as it related to the manner in which this transaction occurred and was documented.

(Exhibit M, Griffin Affidavit, p. 2)

When asked how Defendant Realtors failed to use the degree of care, caution and diligence that a reasonable real-estate agent would have used, Plaintiff Raymond Malejko testified he did not know how Defendant Realtors were negligent. (Exhibit C, Raymond Malejko Depo., p. 183, ll. 1-6) Raymond admitted that he did not read the inspection report in its entirety. Further, he acknowledged, "No, I didn't expect Ms. Loper to inspect any of the repairs." (Id., p. 78, l. 21- p. 79, l. 22)

Defendant Loper testified that she did not advise the Plaintiff to proceed with the purchase of the property, nor did she have any knowledge of any defective repairs performed on the property. She further testified that her representation of the Plaintiffs and Defendant Corley was done in good faith and fair dealings with both parties' best interests in mind. (Loper Depo., p. 259, ll. 10- 23)

The Plaintiffs have failed to provide sufficient support for their claim of negligence and, as such, this claim must be dismissed as a matter of law. They have attempted to create duties that do not exist (ie. Comply with all of client's instructions and discover all material facts and then provide those facts to buyer). Plaintiffs have also made general allegations of breached duties without support for the same. They have not identified any action, conduct or omission by Defendant Realtors that constitutes a breach of duty. Consequently, Defendant Realtors respectfully request this Court grant their Motion for Summary Judgment as to this Cause of Action.

F. The Plaintiffs cannot demonstrate Breach of Fiduciary Duty as a matter of law.

The Plaintiffs claim that Defendant Realtors did not act in good faith or with due regard to the interest of the Plaintiffs. The South Carolina Supreme Court outlined a real estate agent's fiduciary duty in Darby v. Furman Co.

Real estate agents occupy a fiduciary relationship with their clients and are under a legal obligation as well as a high moral duty to give loyal service to the principal. *Hamby v. St. Paul Mercury Indemn. Co.*, 217 F.2d 78, 80 (4th Cir.1954). The duty of an agent to make full disclosure to his principal of all material facts relevant to the agency is fundamental to the fiduciary relationship of principal and agent. *Bost v. Bankers Fire & Marine Ins. Co.*, 242 S.C. 274, 283, 130 S.E.2d 907, 911-12 (1963); *see also Designer Showrooms, Inc. v. Kelley*, 304 S.C. 478, 405 S.E.2d 417 (Ct.App.1991) ("A broker owes a duty to its principal to keep it fully and properly informed of all material facts.").

Darby v. Furman Co., 334 S.C. 343, 346-47, 513 S.E.2d 848, 849-50 (1999)

The Complaint does not provide specific support for the breach of fiduciary duty claim, but merely refers to the larger Complaint in general for actions constituting breach of fiduciary duty. When asked to explain the support for the breach of fiduciary duty claim, Plaintiff Cristine Malejko could not identify a breach, but simply implied that Ms. Loper had an obligation to verify the condition of the home. (Exhibit B, Cristine Malejko, pp. 184-185) She conceded that she did not know whether or not Defendant Realtors had any knowledge of the property having a mold condition. (*Id.*, p. 273, ll. 4-13) When asked for his support of the breach of fiduciary duty accusation, Raymond Malejko stated he did not know and it was "all lawyer stuff." (Exhibit C, Raymond Malejko Depo., p. 142, ll. 1-25)

Where the Plaintiffs have failed to substantiate this claim or identify any material facts knowingly withheld by Defendant Realtors, this cause of action should be dismissed.

G. Plaintiff Raymond Malejko released Defendant Realtors from Liability

Plaintiff Raymond Malejko, a licensed real estate agent, signed three different contracts in which he pledged to indemnify and hold harmless Defendant Realtors from all claims such as the ones at issue in this suit. These contracts are binding and amount to a release of the claims brought herein.

South Carolina has held that releases are contracts and are governed by contract principles. Bowers v. Dep't of Transp., 360 S.C. 149, 153–54, 600 S.E.2d 543, 545 (Ct. App. 2004) As such, “[i]n construing terms in contracts, this Court must first look at the language of the contract to determine the intentions of the parties.” Id. at 153 (quoting C.A.N. Enterprises, Inc. v. South Carolina Health & Human Services Fin. Comm'n, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988)).

In Bowers, the Plaintiffs settled a car accident and signed a general release that released ALL other persons or entities that may be liable. Following the settlement, the Plaintiffs attempted to sue the South Carolina Department of Transportation. The South Carolina Court of Appeals held that SCDOT was covered in the prior general release. The Court found release language was unambiguous and precluded the examination of additional extrinsic evidence. In analyzing this, the Court stated the following:

Since the Release unambiguously sets forth the contracting parties' intent, we are bound by that clearly expressed intent without resort to extrinsic evidence. “Extrinsic evidence giving the contract a different meaning from that indicated by its plain terms is inadmissible.” Accordingly, the circuit court applied the proper summary judgment standard and correctly determined Appellants' unmistakable intent from the terms of the Release without resort to affidavits and deposition excerpts....

The terms of the Release here are clear and unambiguous: Appellants released “all other persons, firms or corporations liable or, who might be claimed to be liable” and the settlement was accepted as a “full and final compromise ... precluding

forever any further or additional claims arising out of the aforesaid accident." The Release, by its unmistakable terms, establishes Appellants' intent as a matter of law, and forecloses the need for any further inquiry regarding both its scope and the presence of "full compensation amounting to a satisfaction." The explicit, plain language of the Release permits no other finding. We therefore find the Release bars Appellants' actions against SCDOT.

Id. at 153-154, 156.

In McCune, the South Carolina Court of Appeals examined a liability release where a customer of a recreational paintball playground released the facility from liability stemming from injuries sustained while paintballing. The Court examined the contract and found, "The release in the instant case explicitly and unambiguously limited the Range's liability." McCune v. Myrtle Beach Indoor Shooting Range, Inc., 364 S.C. 242, 248, 612 S.E.2d 462, 465 (Ct. App. 2005).

The Court additionally stated:

Exculpatory contracts, such as the one in this case, have previously been upheld by the courts of this state. *See Huckaby v. Confederate Motor Speedway, Inc.*, 276 S.C. 629, 630, 281 S.E.2d 223, 224 (1981) (finding plaintiff's action against speedway for injuries sustained during a race was barred by "waiver and release" voluntarily signed by plaintiff prior to entering the race track); *Pride v. Southern Bell Tel. & Tel. Co.*, 244 S.C. 615, 619-22, 138 S.E.2d 155, 157-58 (1964) (holding it was not violative of public policy for telephone company to legally limit its liability by contract for negligence in the publication of a paid advertisement in the yellow pages of its telephone directory). "However, notwithstanding the general acceptance of exculpatory contracts, '[s]ince such provisions tend to induce a want of care, they are not favored by the law and will be strictly construed against the party relying thereon.'" *Fisher v. Stevens*, 355 S.C. 290, 295, 584 S.E.2d 149, 152 (Ct.App.2003) (quoting *Pride*, 244 S.C. at 619, 138 S.E.2d at 157).

Id. at 247-48.

The Court concluded:

The agreement was voluntarily signed and specifically stated: (1) she assumed the risks, whether known or unknown; and (2) she released the Range from liability, even from injuries sustained because of the Range's own negligence. It is clear McCune voluntarily entered into the release in exchange for being allowed to participate in the paintball match.

Id. at 249.

As stated, under South Carolina law, this Agreement is governed by contract law. "To determine the intention of the parties, the court 'must first look at the language of the contract.' The construction of a clear and unambiguous contract presents a question of law for the court." S. Carolina Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 655, 667 S.E.2d 7, 12-13 (Ct. App. 2008)(internal citations omitted).

As part of the Exclusive Right to Buy Buyer Agency Contract ("Buyer Agency Contract"), Plaintiff Raymond Malejko agreed to hold the Broker "harmless from liability as a result of incomplete/inaccurate information provided to Broker by Buyer or Seller" and "harmless from liability as a result of Seller's failure to provide a complete Seller's Property Condition Disclosure statement." (Exhibit E, Buyer Agency Contract, p. 1)

The Designated Agency Agreement stated that the "Seller and Buyer agree to indemnify and hold Broker harmless against all claims, damages, losses, expenses, or liabilities, other than violations of the South Carolina Real Estate License law and intentional wrongful acts, arising from Broker's role under the terms of this Designated Agency Agreement." (Exhibit F, Designated Agency Agreement, p. 2) Likewise, the Dual Agency Agreement stated "Seller and Buyer agree to indemnify and hold Broker harmless against all claims, damages, losses, expenses, or liabilities, other than violations of the South Carolina Real Estate License Law and intentional wrongful acts, arising from Broker's role as a Dual Agent." (Exhibit G, Dual Agency Agreement, p. 1)

The Dual Agent contract also stated the following: "Broker is required by law to disclose to Seller and Buyer any known material facts concerning the property or the transaction. Seller

and Buyer agree that Broker shall not be liable to either party for (1) disclosing known material facts concerning the property required by law to be disclosed and (2) refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but could benefit the other party." (Id., p. 1)

Additionally, the Contract for Sale contained paragraph 33 entitled "Disclaimer," which stated:

Buyer and Seller acknowledge that Buyer's and Seller's Brokers give no warranty of any kind, expressed or implied, as to: (1) physical condition of the Property or as to condition of or existence of improvements, services, or systems including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems or to structure; (2) condition of the Property, any matters which would be reflected by a current survey of the Property or the accuracy of the square footage heated or unheated....

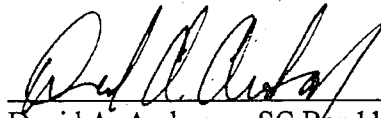
(Exhibit H, Contract of Sale, page 10)

Plaintiff Raymond Malejko knowingly released Defendant Realtors from all claims herein when he signed the above contracts. As a result, the Motion for Summary Judgment should be granted.

CONCLUSION

The Plaintiffs cannot, as a matter of law, demonstrate Actual or Constructive Fraud, Negligent Misrepresentation, Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Negligence, or Breach of Fiduciary Duty. For the above-reasons, Defendant Realtors respectfully request this Court grant their Motion for Summary Judgment as to all claims against Defendant Realtors.

Respectfully submitted,



David A. Anderson, SC Bar 11550

RICHARDSON, PLOWDEN,

& ROBINSON, P.A.

1900 Barnwell Street, P.O. Drawer 7788

Columbia, South Carolina 29202

(803) 771-4400

danderson@richardsonplowden.com

ATTORNEY FOR DEFENDANT NEXTGEN AND

DEFENDANT LOPER

June 7, 2017

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond J. Malejko and Cristine Malejko,
individually and on behalf of their minor child,
Stephanie Malejko,

Plaintiffs,

v.

Todd Corley, Janet Loper, NextGen Real
Estate, LLC, Thomas Humphries, Dr. Roofs,
Inc., Ray Mooneyham, Mooneyham Solar &
Electric, Professional Home Inspections, Inc.,
Corley Enterprises, Inc. of South Carolina, and
DBR Franchising, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-40-01536

CERTIFICATE OF SERVICE

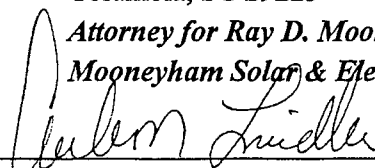
The undersigned, an employee of Richardson Plowden & Robinson, P.A., do hereby certify that I served the foregoing DEFENDANTS JANET LOPER AND NEXTGEN REAL ESTATE, LLC'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT on the following counsel by causing a copy of same to be mailed in the United States Mail, Postage Prepaid, First Class, addressed as follows:

Allen Bullard, Esquire
Montgomery Willard, LLC
P.O. Box 11886
Columbia, SC 29211-1886
Attorney for Plaintiff

James B. Lybrand, Jr., Esquire
McDonald McKenzie, Rubin
Miller & Lybrand
P.O. Box 58
Columbia, SC 29202
Attorney for Todd Corley

Mark S. Barrow, Esquire
Benson Driggers, Esquire
Sweeny Wingate & Barrow, PA
P.O. Box 12129
Columbia, SC 29211
*Attorney for Dr. Roofs, Inc. and Thomas
Humphries*

David E. Taylor, Esquire
P.O. Box 21744
Columbia, SC 29223
*Attorney for Ray D. Mooneyham d/b/a
Mooneyham Solar & Electric*


Carla M. Lindler
Legal Assistant to David A. Anderson

June 2, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond J. Malejko and Cristine Malejko,
individually and on behalf of their minor
child, Stephanie Malejko,

Plaintiffs,

v.

Todd Corley, Janet Loper, NextGen Real
Estate, LLC, Thomas Humphries, Dr. Roofs,
Inc., Ray Mooneyham, Mooneyham Solar &
Electric, Professional Home Inspections,
Inc., Corley Enterprises, Inc. of South
Carolina, and DBR Franchising, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO. 2015-CP-40-_____

COMPLAINT
(Jury Trial Demanded)

FILED
2015 JUN 23 10:05 AM
RICHLAND COUNTY, SOUTH CAROLINA

The Plaintiffs, complaining of the Defendants, allege that:

1. Plaintiffs are residents of Lexington County, South Carolina.
2. Upon information and belief, Defendant Todd Corley ("Corley") is a resident of Richland County, South Carolina.
3. Upon information and belief, Defendant Janet Loper ("Loper") is a resident of Lexington County, South Carolina.
4. Upon information and belief, Defendant NextGen Real Estate, LLC ("NextGen") is a limited liability corporation duly organized and existing under the laws of the State of South Carolina, which maintains agents and conducts a real estate brokerage business in Richland County, South Carolina.
5. Upon information and belief Defendant Thomas Humphries ("Humphries") is a resident of Richland County, South Carolina.



6. Upon information and belief Defendant Dr. Roofs, Inc. ("DRF") is a corporation duly organized and existing under the laws of the State of South Carolina. Upon information and belief this defendant transacts business and maintains an office and/or agent in Richland County, South Carolina.

7. Upon information and belief, Defendant Ray Mooneyham ("Mooneyham") is a resident of Richland County, South Carolina.

8. Upon information and belief Defendant Mooneyham Solar & Electric ("MSE") is an unincorporated entity unlawfully doing business in South Carolina. Upon information and belief, this defendant transacts business and maintains an office in Richland County, South Carolina.

9. Upon information and belief Defendant Professional Home Inspections, Inc. ("PHI") is a corporation duly organized and existing under the laws of the State of South Carolina, lawfully doing business in Richland County, South Carolina.

10. Upon information and belief, Corley Enterprises, Inc. of South Carolina ("Corley Enterprises") is a corporation organized under the laws of the State of South Carolina in 1996 that was dissolved in 2004, and is, therefore, unlawfully doing business in the State of South Carolina. Upon information and belief this defendant transacts business and maintains an office and/or agent in Richland County, South Carolina.

11. Upon information and belief, Defendant DBR Franchising, LLC ("DBR") is a limited liability corporation organized and existing under the laws of the State of New Jersey doing business as HouseMaster Home Inspections in, among other places, Richland County, South Carolina. DBR Franchising, LLC is not registered to do business in the State of South Carolina.

12. This Court has jurisdiction over the parties and this action pursuant to S.C. Code Ann. § 15-7-30.

13. On or about March 8, 2014, Plaintiff Raymond Malejko ("Malejko") and Corley entered into a contract for the purchase and sale of a piece of real property located at 141 Fox Crossing Road, West Columbia, South Carolina 29170 ("the Property") whereby Corley agreed to sell the Property to Malejko for \$160,000.00. The purchase and sale contract entered into by Malejko and Corley will be referred to herein as "the Contract." The Contract is attached hereto and incorporated herein by reference.

14. Corley had owned the Property for approximately three years prior to the sale to Malejko, and had knowledge of the condition of the Property prior to that due to his familial relationship through marriage with the previous owner who owned the Property from 1998 until selling it to Corley in December 2010.

15. Malejko hired PHI to perform a home inspection of the Property. PHI did inspect the Property and issued a report which identified areas of the Property that needed to be repaired, which included, among other things, a roof leak above a bedroom in the front of the Property, decayed siding surrounding the back porch, decay surrounding the master bathroom picture window, a gap under the dinette exterior door leading to the porch, carpenter bee holes in the back den exterior door, an exposed footer at the back right portion of the Property, missing attic insulation, outlets lacking GFCI, an open spliced wire under the kitchen stove, a cracked window pane in the den, defective window seals and counterbalances in various windows throughout the Property, a non-functioning fireplace fan, wood to soil contact in two areas in the crawlspace, a missing wire lock at the panel box supply line, holes in HVAC ducts, unsupported HVAC ducts,

a leak at the hot water heater, the hot water heater not having adequate clearance from the garage floor, and inadequate clearance of the hot water heater flue pipe from the ceiling joist.

16. PHI owed Plaintiffs a duty to conduct its home inspection in a diligent, competent and workmanlike manner consistent with the standards of the home inspection industry.

17. Pursuant to the terms of the Contract, Corley agreed to repair all items listed on the home inspection report prepared by PHI at his expense prior to closing.

18. Corley owed Plaintiffs a duty to ensure that the repair work he undertook or which was undertaken on his behalf was performed in a diligent, competent and workmanlike manner consistent with construction industry standards.

19. Upon information and belief, NextGen was the listing agent for the Property and represented both Plaintiffs and Corley through its agent/employee Loper. Upon information and belief neither NextGen nor Loper informed Plaintiffs of the existence of its dual agency.

20. NextGen and Loper occupied a fiduciary relationship with Plaintiffs and owed Plaintiffs a duty of loyalty, a duty to act in compliance with Plaintiffs' instructions, a duty to discover all material information which could affect Plaintiffs' interests in the Property and Plaintiffs' transaction with Corley, a duty to disclose all material facts to Plaintiffs which were relevant and material to the transaction with Corley, and a duty to protect Plaintiffs by exercising reasonable skill and diligence in the transaction of the business entrusted to them by Plaintiffs.

21. Loper in her individual capacity and/or as an agent of NextGen and Corley arranged for Humphries and/or DRI to repair the roofing issues identified on the PHI report and to inspect the entire roof system.

22. Loper in her individual capacity and/or as an agent of NextGen and Corley arranged for Mooneyham and/or MSE to inspect the entire HVAC system.

23. Upon information and belief neither Mooneyham nor MSE holds a contractor's license.

24. Humphries and/or DRI represented themselves to Plaintiffs to be experts in roof inspection, roof repair and roof related matters.

25. Humphries and DRI were supposed to repair areas of the roof identified on the PHI report as being in need of repair. Humphries and DRI were also supposed to inspect the entire roof.

26. Humphries and DRI owed Plaintiffs a duty to perform their repairs and inspection in a diligent, competent and workmanlike manner consistent with the standards of the roofing and construction industry.

27. Humphries and DRI indicated to Plaintiffs through their representations, actions and inactions that they had properly performed the repairs undertaken by them and that the entire roof system was in proper working order and in no further need of repair.

28. After Plaintiffs moved into the Property they discovered that the repairs and inspection Humphries and/or DRI claimed to have performed had either not been performed or were not performed properly, as the roof continued to leak at the location noted in the PHI report and elsewhere. In addition, Plaintiffs discovered that the roof was not in good working order; that the shingles and roof underlayment had not been installed properly, that there was evidence of multiple pre-existing leaks, and that the roof needed substantial repairs. The pre-existing leaks had led to the formation of mold and elevated indoor mold levels. Upon information and belief, the elevated mold levels have exacerbated Plaintiffs' existing medical conditions and caused Plaintiffs to develop bronchitis and other conditions requiring medical treatment.

29. Mooneyham and/or MSE represented themselves to Plaintiffs to be experts in HVAC inspection, HVAC repair and HVAC-related matters.

30. Mooneyham and MSE were supposed to inspect the Property's HVAC system.

31. Mooneyham and MSE owed Plaintiffs a duty to perform their inspection in a diligent, competent and workmanlike manner consistent with the standards of the HVAC and construction industry.

32. Mooneyham and MSE indicated to Plaintiffs through their representations, actions and inactions that the entire HVAC system was in proper working order.

33. After Plaintiffs moved into the Property they discovered that the inspection Mooneyham and/or MSE claimed to have performed had either not been performed or was not performed properly. Based upon assurances from the defendants that the HVAC was in proper working order, Plaintiffs operated the HVAC system for a period of time until they discovered the duct work had been infested with vermin. While operating the system, feces, waste by-products and other materials left by the vermin were blown into the house by the system. Upon information and belief, these materials in combination with the elevated indoor mold levels, have exacerbated Plaintiffs' existing medical conditions and caused Plaintiffs to develop bronchitis and other conditions requiring medical treatment. On the advice of health care professionals and due to the poor indoor air quality, Plaintiffs have vacated the Property. They are currently incurring cost for alternative living arrangements.

34. Upon information and belief, Corley hired Corley Enterprises to repair the remaining items listed in PHI's report which were not to be repaired by Humphries and/or DRI.

35. Prior to closing Corley and Corley Enterprises represented to Plaintiffs that all items on the PHI report had been repaired and that said repairs had been approved by PHI. Since

several items are still in need of repair, either Corley and/or Corley Enterprises did not perform the repairs, failed to perform the repairs competently, or PHI failed to adequately inspect the repairs and improperly approved them.

36. NextGen and its agent/employee Loper as agents for Corley and Plaintiffs also represented to Plaintiffs that the required repairs had been made and that Plaintiffs should proceed with the closing and take title to the Property.

37. In reliance on the representations of Corley, Corley Enterprises, Humphries, DRI, Mooneyham, MSE, NextGen and Loper Plaintiffs proceeded with the purchase of the Property.

38. Soon after Plaintiffs moved into the Property they discovered that numerous defects and conditions which Corley was required to repair and/or replace had not been remedied and that the previous representations made to them by Corley, Corley Enterprises, Humphries, DRI, Mooneyham, MSE, NextGen and Loper were false and misleading.

39. Plaintiffs also discovered that PHI had not discovered and disclosed adverse conditions with respect to the Property which were material and significant and which would have caused Plaintiffs not to purchase the Property or to renegotiate the terms of the purchase if the true state of the facts had been disclosed to them.

FOR A FIRST CAUSE OF ACTION
AS TO CORLEY
(Breach of Contract)

40. The relevant allegations of the preceding paragraphs are incorporated by reference.

41. On or about March 8, 2014, Malejko and Corley entered into a contract for the purchase and sale of the Property whereby Corley agreed to sell the Property to Malejko for \$160,000.00.

42. Corley breached the terms of the Contract by, among other things, failing to repair all items listed on a home inspection report prepared by PHI at his expense prior to closing.

43. Corey also breached the implied warranty of good faith and fair dealing by, among other things, failing to disclose to Plaintiffs other defects in the Property of which he was aware or should have been aware, misrepresenting the square footage of the Property, misrepresenting the age and condition of the roof, and misrepresenting that the Property was on public sewer.

44. As a direct and proximate result of Corley's breaches above alleged, Plaintiffs have incurred costs and expenses, and have suffered and will suffer direct, indirect, consequential, general, and special damages in an amount no less than \$62,000, which includes, but is not limited to:

- a. Costs associated with the re-inspection and repair of the roof system; and,
- b. Cost associated with the re-inspection and repair of the HVAC system; and,
- c. Costs associated with repairing the items on the PHI report which were not repaired or were inadequately repaired; and,
- d. Cost incurred by Plaintiffs for medical conditions brought on by mold and other air contaminants released into the house due to the defective condition of the HVAC system; and,
- e. Cost of alternative living arrangements; and,
- f. Lost benefit of the parties' bargain; and,
- g. Costs associated with the re-inspection of the Property by a licensed engineer; and,
- h. Costs associated with the repair of defective conditions undisclosed by Corley, including:
 1. A gas supply line run through a return air plenum; and,
 2. Termite infestation and damage in garage area of the house intentionally obstructed from view during walk through and inspection by Corley's stored material; and,

3. Water damage to exterior wood siding; and,
4. Water damage to the roof framing and sheathing in the attic at most of the roof valleys and elsewhere; and,
5. Roof framing defects, including, but not limited to, excessive cantilever lengths, insufficient diagonal bracing, and inadequate beam supports; and,
6. Inadequate connections between the floor joists and floor beams in crawlspace; and,
7. A floor hump in the south central bedroom; and,
8. Others that may be proven at trial.

FOR A SECOND CAUSE OF ACTION
AS TO CORLEY
(Negligence)

45. The relevant allegations of the preceding paragraphs are incorporated by reference.
46. Corley owed Plaintiffs a duty to ensure that the repair work he undertook or which was undertaken on his behalf pursuant to the terms of the Contract was performed in a diligent, competent and workmanlike manner consistent with construction industry standards.
47. Corley also owed Plaintiffs a duty to ascertain and disclose the true condition of the Property, including, but not limited to, those conditions and misrepresentations enumerated in this complaint.
48. Corley breached these duties by failing to disclose the defective conditions previously enumerated and by failing to ensure that the repair work he undertook was performed in a diligent, competent and workmanlike manner consistent with construction industry standards.
49. As a direct and proximate result of the breaches of these duties, Plaintiffs have incurred costs and expenses, and have suffered and will suffer direct, indirect, consequential, general, and special damages in an amount no less than \$62,000, which includes, but is not limited

to, those damages referenced above, great anxiety, worry, apprehension, unease, pain, suffering, discomfort, emotional distress and loss of use and enjoyment of their residence.

FOR A THIRD CAUSE OF ACTION
AS TO CORLEY

(Breach of Contract Accompanied by Fraudulent Act)

50. The relevant allegations of the preceding paragraphs are incorporated by reference.
51. Malejko and Corley entered into the Contract.
52. Corley breached the Contract in the manner enumerated above.
53. Corley had and maintained a fraudulent intent relating to the breach of the Contract.
54. Corley committed and engaged in fraudulent acts accompanying the breach of contract by, among other things, intentionally placing stored items in front of damaged areas of the house so that they obstructed certain defects from view.

55. As a direct and proximate result of the actions and conduct of Corley, Plaintiffs have suffered substantial damages.

56. Plaintiffs are informed and believe they are entitled to judgment against Corley for breach of contract accompanied by a fraudulent act.

FOR A FOURTH CAUSE OF ACTION
AS TO CORLEY, NEXTGEN AND LOPER
(Actual or Constructive Fraud)

57. The relevant allegations of the preceding paragraphs are incorporated by reference.
58. After moving into the Property, Plaintiffs discovered that the roof was older than Corley had represented it to be, that the roof shingles and roofing felt had been defectively installed, that defects existed in the roof framing and sheathing, that the Property had been severely damaged by termites, that the HVAC system had been infested with and damaged by vermin, that the floor joists were not properly attached to the floor beams, that the Property was smaller than

Corley, NextGen and Loper had represented it to be, that the Property was not on a public sewer system as represented by Corley, NextGen and Loper, and that Corley had failed to properly make all repairs he had agreed to make to the Property prior to closing.

59. All of the conditions described above, except Corley's failure to complete the contractual repairs, existed prior to parties entering into the Contract, and Corley, NextGen and Loper knew or had sufficient reason to know of their existence and despite such knowledge, failed and omitted to declare and disclose such knowledge to Plaintiffs, realizing that Plaintiffs might not purchase the Property knowing of the existence and severity of these conditions.

60. Corley, NextGen and Loper knew or had sufficient reason to know that Corley had failed to complete the contractual repairs prior to closing and despite such knowledge, failed and omitted to declare and disclose such knowledge to Plaintiffs, realizing that Plaintiffs might not purchase the Property knowing that Corley had not done so.

61. The failure of Corley, NextGen and Loper to disclose the conditions referenced in the paragraphs above amounted to a representation that the defective conditions did not exist and that the contractually mandated repairs had been completed.

62. Corley, NextGen and Loper had a duty to disclose the true condition of the Property to Plaintiffs.

63. The representations made with respect to the age of the roof, the nonexistence of the defective conditions, the completion of the contractually mandated repairs and the others enumerated elsewhere herein were dishonest, unfair and false and constitute fraudulent concealment.

64. Said representations were material to Plaintiffs' decision to purchase the Property.

65. Corley, NextGen and Loper knew the representations were false or were made with reckless disregard for their truth.

66. Corley, NextGen and Loper intended or had reason to expect that Plaintiffs would act in reliance on their representations.

67. Plaintiffs had no knowledge that the subject representations were false.

68. Plaintiffs had the right to rely on Corley's, NextGen's and Loper's representations with respect to the age of the roof, the size of the Property, the defective conditions, the completion of the contractually mandated repairs, and the others enumerated elsewhere herein and did in fact rely on the representations.

69. As a proximate result of Corley's, NextGen's and Loper's fraud as described above Plaintiffs have been damaged in an amount no less than \$62,000.

70. Plaintiffs are informed and believe that they are entitled to judgment against Corley, NextGen and Loper, jointly and severally with each other and the other defendants, for the damages enumerated herein.

FOR A FIFTH CAUSE OF ACTION
AS TO CORLEY, NEXTGEN AND LOPER
(Negligent Misrepresentation)

71. The relevant allegations of the preceding paragraphs are incorporated by reference.

72. Corley's, NextGen's and Loper's representations regarding the nonexistence of the defective conditions and the completion of the contractually mandated repairs, and other representations enumerated elsewhere herein were made negligently.

73. Corley, NextGen and Loper had a pecuniary interest in making the representations.

74. Corley, NextGen and Loper had a duty to see that only accurate information was communicated to Plaintiffs.

75. Corley, NextGen and Loper breached their duties by not accurately disclosing the true condition of the Property and by failing to complete the contractually mandated repairs.

76. Plaintiffs justifiably relied on the representations of Corley, NextGen and Loper.

77. As a proximate result of Corley's, NextGen's and Loper's negligent misrepresentation, as described above Plaintiffs have been damaged in an amount no less than \$62,000.

78. Plaintiffs are informed and believe that they are entitled to judgment against Corley, NextGen and Loper, jointly and severally with each other and the other defendants, for no less than \$62,000.

FOR A SIXTH CAUSE OF ACTION
AS TO NEXTGEN AND LOPER
(Breach of Contract)

79. The relevant allegations of the preceding paragraphs are incorporated by reference.

80. Plaintiffs and NextGen and/or Loper entered into a contract whereby NextGen and/or Loper agreed to represent Plaintiffs in their capacity as a real estate agent/broker/agency and assist them in locating and purchasing a new home. In exchange for their assistance Plaintiffs agreed to pay NextGen and/or Loper a percentage of the purchase price of the home they purchased.

81. NextGen and/or Loper breached the contract by, among other things, misrepresenting the square footage of the Property, recommending and allowing an unlicensed individual to perform inspections and recommend repairs to the Property, recommending an individual who performed the roof inspection and repairs in a substandard manner, and misrepresenting that the Property was on public sewer.

82. As a direct and proximate result of the breaches above alleged, Plaintiffs have incurred costs and expenses, and have suffered and will suffer direct, indirect, consequential, general, and special damages in an amount no less than \$62,000, which includes, but is not limited to:

- a. Costs associated with the re-inspection and repair of the roof system; and,
- b. Cost associated with the re-inspection and repair of the HVAC system; and,
- c. Cost incurred by Plaintiffs for medical conditions brought on by mold and other air contaminants released into the house due to the defective condition of the HVAC system; and,
- d. Cost of alternative living arrangements; and,
- e. Plaintiffs' lost benefit of the bargain in their purchase of the Property; and,
- f. Costs associated with the re-inspection of the Property by a licensed engineer; and,
- g. In other particulars as may be proved at trial.

FOR A SEVENTH CAUSE OF ACTION
AS TO NEXTGEN AND LOPER
(Breach of Contract Accompanied by a Fraudulent Act)

- 83. The relevant allegations of the preceding paragraphs are incorporated by reference.
- 84. Plaintiffs and NextGen and/or Loper entered into a contract.
- 85. NextGen and/or Loper breached the contract in the manner enumerated elsewhere herein.
- 86. NextGen and/or Loper had and maintained a fraudulent intent relating to the breach of the contract.
- 87. NextGen and/or Loper committed and engaged in fraudulent acts accompanying the breach of contract as enumerated elsewhere herein, including, but not limited to, advising

Plaintiffs to proceed with the purchase of the Property knowing repairs had not been properly performed.

88. As a direct and proximate result of the actions and conduct of NextGen and/or Loper, Plaintiffs have suffered substantial damages.

89. Plaintiffs are informed and believe they are entitled to judgment against NextGen and/or Loper for breach of contract by fraudulent act.

FOR AN EIGHTH CAUSE OF ACTION
AS TO NEXTGEN AND LOPER
(Negligence)

90. The relevant allegations of the preceding paragraphs are incorporated by reference.

91. Plaintiffs employed NextGen and/or Loper to act as their real estate agent in purchasing a home.

92. NextGen and/or Loper accepted said employment and agreed to act as Plaintiffs' real estate agent.

93. NextGen and/or Loper owed Plaintiffs a duty to act in compliance with Plaintiffs' instructions, to discover all material information which could affect Plaintiffs' interests in the real estate transaction with Corley, to disclose all material facts to Plaintiffs which were relevant and material to the transaction with Corley, and to protect Plaintiffs by exercising reasonable skill and diligence in the transaction of the business entrusted to them by Plaintiffs.

94. NextGen and/or Loper breached the duties they owed to Plaintiffs and were negligent, grossly negligent and careless in the following manner:

- a. by misrepresenting the square footage of the Property; and,
- b. by recommending and allowing an unlicensed individual to perform inspections and repairs on the Property; and,

- c. by recommending individuals who performed the roof inspection and repairs in a substandard manner; and,
- d. by misrepresenting that the Property was on public sewer; and,
- e. by failing to inspect and confirm the HVAC and roof repairs and inspections were performed in a proper manner; and,
- f. by recommending and advising Plaintiffs to go forward with the closing notwithstanding that they (NextGen and/or Loper) had not confirmed that Corley had satisfied his repair obligations under the contract; and,
- g. by placing their own interests (the commission) ahead of the interests of Plaintiffs in the transaction; and,
- h. by failing to use the degree of care, caution and diligence that a reasonable person acting as a real estate agent would have used under the circumstances then prevailing; and,
- i. In other particulars as may be proven at trial.

95. As a proximate result of said negligence on the part of NextGen and/or Loper Plaintiffs have been damaged in an amount no less than \$62,000.

96. Plaintiffs are informed and believe they are entitled to judgment against NextGen and/or Loper, jointly and severally with each other and the other defendants, for actual and punitive damages for negligence.

FOR A NINTH CAUSE OF ACTION
AS TO NEXTGEN AND LOPER
(Breach of Fiduciary Duty)

97. The relevant allegations of the preceding paragraphs are incorporated by reference.

98. Plaintiff reposed a special trust and confidence in NextGen and/or Loper and they, in equity and good conscience, were bound to act in good faith and with due regard to the interest of Plaintiffs.

99. The actions and conduct of NextGen and/or Loper as enumerated elsewhere herein constitute breaches of their fiduciary duty owed to Plaintiffs.

100. As a direct and proximate result of the actions and conduct of NextGen and/or Loper, Plaintiffs have suffered substantial actual, consequential and special damages in an amount no less than \$62,000.

101. Plaintiffs are informed and believe they are entitled to judgment against NextGen and/or Loper, jointly and severally with each other and the other defendants, for breach of their fiduciary duty.

FOR A TENTH CAUSE OF ACTION
AS TO HUMPHRIES AND DRI
(Actual or Constructive Fraud)

102. The relevant allegations of the preceding paragraphs are incorporated by reference.

103. After moving into the Property, Plaintiffs discovered that the roof was older than Corley had represented it to be, that the roof shingles and roofing felt had been defectively installed, that defects existed in the roof framing and sheathing, and that Humphries and/or DRI had failed to properly make the roof repairs they had agreed to make to the Property.

104. Humphries and/or DRI knew or had sufficient reason to know the roof repair had not been properly performed and that the roof contained several defective conditions and despite such knowledge, failed and omitted to declare and disclose such knowledge to Plaintiffs, realizing that Plaintiffs might not purchase the Property knowing of the existence and severity of these conditions.

105. The failure of Humphries and/or DRI to disclose the conditions referenced in the paragraphs above amounted to a representation that the defective roof conditions did not exist and that the roof repairs had been completed.

106. Humphries and/or DRI had a duty to disclose the true condition of the Property to Plaintiffs.

107. The representations made with respect to the age of the roof, the nonexistence of the defective conditions, the completion of the roof repairs, among other things, were dishonest, unfair and false and constitute fraudulent concealment.

108. The said representations were material to Plaintiffs' decision to purchase the Property.

109. Humphries and/or DRI knew the representations were false or were made with reckless disregard for their truth.

110. Humphries and/or DRI intended or had reason to expect that Plaintiffs would act in reliance on their representations.

111. Plaintiffs had no knowledge that the subject representations were false.

112. Plaintiffs had the right to rely on Humphries and/or DRI representations with respect to the roof repairs and the condition of the roof and did in fact rely on the representations.

113. As a proximate result of Humphries' and/or DRI's fraud as described above Plaintiffs have been damaged in an amount no less than \$62,000.

114. Plaintiffs are informed and believe that they are entitled to judgment against Humphries and/or DRI, jointly and severally with each other and the other defendants, for the damages enumerated herein.

FOR AN ELEVENTH CAUSE OF ACTION
AS TO HUMPHRIES AND DRI
(Negligent Misrepresentation)

115. The relevant allegations of the preceding paragraphs are incorporated by reference.

116. Humphries' and/or DRI's representations with respect to the nonexistence of the defective conditions and the completion of the roof repairs were made negligently.

117. Humphries and/or DRI had a pecuniary interest in making the representations.

118. Humphries and/or DRI had a duty to see that only accurate information was communicated to Plaintiffs.

119. Humphries and/or DRI breached their duties by not accurately disclosing the true condition of the Property and by failing to complete the contractually mandated repairs.

120. Plaintiffs justifiably relied on the representations of Humphries and/or DRI.

121. As a proximate result of Humphries' and/or DRI's negligent misrepresentation, as described herein, Plaintiffs have been damaged in an amount no less than \$62,000.

122. Plaintiffs are informed and believe that they are entitled to judgment against Humphries and/or DRI, jointly and severally with each other and the other defendants, for no less than \$62,000.

FOR A TWELFTH CAUSE OF ACTION
AS TO HUMPHRIES AND DRI
(Negligence)

123. The relevant allegations of the preceding paragraphs are incorporated by reference.

124. Humphries and/or DRI represented themselves to Plaintiffs to be experts in roof inspection, roof repair and roof related matters.

125. Humphries and DRI were supposed to repair areas of the roof identified on the PHI report as being in need of repair. Humphries and DRI were also supposed to inspect the entire roof.

126. Humphries and DRI owed Plaintiffs a duty to perform their repairs and inspection in a diligent, competent and workmanlike manner consistent with the standards of the roofing and construction industry.

127. Humphries and DRI breached the duties owed to Plaintiffs by failing to properly complete the roof repairs and failing to properly conduct the roof inspection.

128. As a direct and proximate result of the breaches of these duties, Plaintiffs have incurred costs and expenses, and have suffered and will suffer direct, indirect, consequential, general, and special damages in an amount no less than \$62,000, which includes, but is not limited to:

- a. Costs associated with the re-inspection and repair of the roof system; and,
- b. Cost incurred by Plaintiffs for medical conditions brought on by mold and other air contaminants released into the house due to the defective condition of the roof system; and,
- c. Cost of alternative living arrangements; and,
- d. Plaintiffs' lost benefit of the bargain in their purchase of the Property; and,
- e. Costs associated with the re-inspection of the Property by a licensed engineer; and,
- f. anxiety, worry, apprehension, unease, pain, suffering, discomfort, emotional distress and loss of use and enjoyment of their residence; and,
- g. In other particulars as may be proved at trial.

129. Plaintiffs are informed and believe that they are entitled to judgment against Humphries and/or DRI, jointly and severally with each other and the other defendants, for no less than \$62,000.

FOR A THIRTEENTH CAUSE OF ACTION
AS TO MOONEYHAM AND MSE
(Actual or Constructive Fraud)

130. The relevant allegations of the preceding paragraphs are incorporated by reference.

131. After moving into the Property, Plaintiffs discovered that the HVAC system had been infested with vermin, which had left feces, waste by-products and other hazardous materials in the ductwork and that Mooneyham and/or MSE had failed to properly inspect the HVAC system.

132. Mooneyham and/or MSE knew or had sufficient reason to know the HVAC the HVAC system was in a defective and unsafe condition, and despite such knowledge, failed and omitted to declare and disclose such knowledge to Plaintiffs, realizing that Plaintiffs might not purchase the Property knowing of the existence and severity of these conditions.

133. Upon information and belief, Mooneyham and/or MSE represented to Plaintiffs that they were licensed to perform HVAC inspections and repair at the Property when they were not.

134. The failure of Mooneyham and/or MSE to disclose the conditions referenced in the paragraphs above amounted to a representation that that they were properly licensed to perform HVAC inspections and work and that the defective HVAC conditions did not exist.

135. Mooneyham and/or MSE had a duty to disclose their true licensure status and the true condition of the Property to Plaintiffs.

136. The representations made with respect to their licensure status and the condition of the HVAC system, among other things, were dishonest, unfair and false and constitute fraudulent concealment.

137. Said representations were material to Plaintiffs' decision to purchase the Property.

138. Mooneyham and/or MSE knew the representations were false or were made with reckless disregard for their truth.

139. Mooneyham and/or MSE intended or had reason to expect that Plaintiffs would act in reliance on their representations.

140. Plaintiffs had no knowledge that the subject representations were false.

141. Plaintiffs had the right to rely on Mooneyham and/or MSE representations with respect to the condition of the HVAC system and did, in fact, rely on the representations.

142. As a proximate result of Mooneyham's and/or MSE's fraud as described above Plaintiffs have been damaged in an amount no less than \$62,000.

143. Plaintiffs are informed and believe that they are entitled to judgment against Mooneyham and/or MSE, jointly and severally with each other and the other defendants, for the damages enumerated herein.

FOR A FOURTEENTH CAUSE OF ACTION
AS TO MOONEYHAM AND MSE
(Negligent Misrepresentation)

144. The relevant allegations of the preceding paragraphs are incorporated by reference.

145. Mooneyham's and/or MSE's representations with respect to their licensure status and the nonexistence of the defective HVAC conditions were made negligently.

146. Mooneyham and/or MSE had a pecuniary interest in making the representations.

147. Mooneyham and/or MSE had a duty to see that only accurate information was communicated to Plaintiffs.

148. Mooneyham and/or MSE breached their duties by not accurately disclosing their licensure status and the true condition of the Property.

149. Plaintiffs justifiably relied on the representations of Mooneyham and/or MSE.

150. As a proximate result of Mooneyham's and/or MSE's negligent misrepresentation, as described herein, Plaintiffs have been damaged in an amount no less than \$62,000.

151. Plaintiffs are informed and believe that they are entitled to judgment against Mooneyham and/or MSE, jointly and severally with each other and the other defendants, for no less than \$62,000.

FOR A FIFTEENTH CAUSE OF ACTION
AS TO MOONEYHAM AND MSE
(Negligence)

152. The relevant allegations of the preceding paragraphs are incorporated by reference.

153. Mooneyham and/or MSE represented themselves to Plaintiffs to be experts in HVAC inspection, HVAC repair and HVAC related matters.

154. Mooneyham and/or MSE were supposed to inspect the Property's entire HVAC system and make recommendations for repair.

155. Mooneyham and/or MSE owed Plaintiffs a duty to perform their inspection in a diligent, competent and workmanlike manner consistent with the standards of the HVAC and construction industry.

156. Mooneyham and/or MSE breached the duties owed to Plaintiffs by failing to properly conduct the HVAC inspection. Upon information and belief, they are not licensed contractors.

157. As a direct and proximate result of the breaches of these duties, Plaintiffs have incurred costs and expenses, and have suffered and will suffer direct, indirect, consequential, general, and special damages in an amount no less than \$62,000, which includes, but is not limited to:

- a. Costs associated with the re-inspection and repair of the HVAC system; and,
- b. Cost incurred by Plaintiffs for medical conditions brought on by mold and other air contaminants released into the house due to the defective condition of the HVAC system; and,
- c. Cost of alternative living arrangements; and,
- d. Plaintiffs' lost benefit of the bargain in their purchase of the Property; and,

e. Costs associated with the re-inspection of the Property by a licensed engineer, and,

f. anxiety, worry, apprehension, unease, pain, suffering, discomfort, emotional distress and loss of use and enjoyment of their residence; and,

g. In other particulars as may be proved at trial.

158. Plaintiffs are informed and believe that they are entitled to judgment against Mooneyham and/or MSE, jointly and severally with each other and the other defendants, for no less than \$62,000.

FOR A SIXTEENTH CAUSE OF ACTION
AS TO CORLEY ENTERPRISES
(Actual or Constructive Fraud)

159. The relevant allegations of the preceding paragraphs are incorporated by reference.

160. After moving into the Property, Plaintiffs discovered that the certain repairs on the PHI report had not been completed, including, but not limited to, repairs to the HVAC system, repairs that were supposed to be made to the master bath picture window, the back den exterior door, the front yard lamp post, exterior outlets, and the water heater flue pipe.

161. Upon information and belief, Corley Enterprises was hired to complete these repairs.

162. Corley Enterprises knew or had sufficient reason to know that the repairs had not been performed and despite such knowledge, failed and omitted to declare and disclose such knowledge to Plaintiffs, realizing that Plaintiffs might not purchase the Property knowing of the existence and severity of these conditions.

163. Corley Enterprises affirmatively informed Plaintiffs that all items identified on the PHI report had been repaired.

164. Corley Enterprises had a duty to disclose the true condition of the Property to Plaintiffs.

165. The representations made with respect to the repairs were dishonest, unfair and false and constitute fraudulent concealment.

166. Said representations were material to Plaintiffs' decision to purchase the Property.

167. Corley Enterprises knew the representations were false or were made with reckless disregard for their truth.

168. Corley Enterprises intended or had reason to expect that Plaintiffs would act in reliance on their representations.

169. Plaintiffs had no knowledge that the subject representations were false.

170. Plaintiffs had the right to rely on Corley Enterprises' representations with respect to the repairs and did, in fact, rely on the representations.

171. As a proximate result of Corley Enterprises' fraud as described above Plaintiffs have been damaged in an amount no less than \$62,000.

172. Plaintiffs are informed and believe that they are entitled to judgment against Corley Enterprises', jointly and severally with the other defendants, for the damages enumerated herein.

FOR A SEVENTEENTH CAUSE OF ACTION
AS TO CORLEY ENTERPRISES
(Negligent Misrepresentation)

173. The relevant allegations of the preceding paragraphs are incorporated by reference.

174. Corley Enterprises' representations with respect to the nonexistence of the defective conditions and the completion of the repairs were made negligently.

175. Corley Enterprises had a pecuniary interest in making the representations.

176. Corley Enterprises had a duty to see that only accurate information was communicated to Plaintiffs.

177. Corley Enterprises breached their duties by not accurately disclosing the true condition of the Property and by failing to complete the repairs undertaken by them.

178. Plaintiffs justifiably relied on the representations of Corley Enterprises.

179. As a proximate result of Corley Enterprises' negligent misrepresentation, as described herein, Plaintiffs have been damaged in an amount no less than \$62,000.

180. Plaintiffs are informed and believe that they are entitled to judgment against Corley Enterprises, jointly and severally with the other defendants, for no less than \$62,000.

FOR AN EIGHTEENTH CAUSE OF ACTION
AS TO CORLEY ENTERPRISES
(Negligence)

181. The relevant allegations of the preceding paragraphs are incorporated by reference.

182. Corley Enterprises represented itself to Plaintiffs to be experts in residential construction.

183. Upon information and belief Corley Enterprises was supposed to repair certain items identified on the PHI report.

184. Corley Enterprises owed Plaintiffs a duty to perform their repairs in a diligent, competent and workmanlike manner consistent with the standards of the construction industry.

185. Corley Enterprises breached the duties owed to Plaintiffs by failing to properly perform and complete the repairs.

186. As a direct and proximate result of the breaches of these duties, Plaintiffs have incurred costs and expenses, and have suffered and will suffer direct, indirect, consequential,

general, and special damages in an amount no less than \$62,000, which includes, but is not limited to:

- a. Cost of alternative living arrangements; and,
- b. Plaintiffs' lost benefit of the bargain in their purchase of the Property; and,
- c. Costs associated with the re-inspection of the Property by a licensed engineer; and,
- d. anxiety, worry, apprehension, unease, pain, suffering, discomfort, emotional distress and loss of use and enjoyment of their residence; and,
- e. In other particulars as may be proved at trial.

187. Plaintiffs are informed and believe that they are entitled to judgment against Corley Enterprises, jointly and severally with the other defendants, for no less than \$62,000.

FOR AN NINETEENTH CAUSE OF ACTION
AS TO DBR AND PHI
(Breach of Contract)

188. The relevant allegations of the preceding paragraphs are incorporated by reference.
189. Upon information and belief, DBR operates under the trade name HouseMaster.
190. Upon information and belief, PHI is a franchisee and agent of DBR.
191. Upon information and belief, DBR/PHI contracted with Plaintiffs to make an inspection of the Property for the purpose of discovering and reporting on the condition of the Property to Plaintiffs.
192. DBR/PHI knew Plaintiffs would rely on the report in their dealings with Corley.
193. By express or implied terms of its contract with Plaintiffs DBR/PHI agreed to conduct its inspection in a thorough and workmanlike manner and to report any conditions which would adversely affect the value and/or habitability of the Property.

194. Among other things, DBR/PHI did not report the existence of mold and mildew, animal feces, animal by-products and other hazardous material in the HVAC system, a gas supply line run through a return air plenum, water damage to exterior wood siding, water damage to the roof framing and sheathing in the attic at most of the roof valleys and elsewhere, roof framing defects (excessive cantilever lengths, insufficient diagonal bracing, and inadequate beam supports), inadequate connections between the floor joists and floor beams in the crawlspace, and others that may be proven at trial.

195. DBR/PHI conducted its inspection in a negligent manner and in so doing failed to discover and report the existence of the conditions described in the preceding paragraph, thereby breaching its contract with Plaintiffs.

196. As a result of the aforesaid breach of contract by DBR/PHI, Plaintiffs have been damaged in an amount no less than \$62,000.

197. Plaintiffs are informed and believe that they are entitled to judgment against DBR/PHI, jointly and severally with the other defendants, for no less than \$62,000.

FOR A TWENTIETH CAUSE OF ACTION
AS TO DBR AND PHI
(Negligence)

198. The relevant allegations of the preceding paragraphs are incorporated by reference.

199. DBR/PHI represented themselves to Plaintiffs to be experts in home inspections.

200. DBR/PHI was to make an inspection of the Property for the purpose of discovering and reporting on the condition of the Property to Plaintiffs.

201. Upon information and belief, DBR/PHI agreed to make a re-inspection of the Property after Corley indicated that all items noted in the DBR/PHI report had been repaired to determine whether the repairs had been performed properly.

202. DBR/PHI owed Plaintiffs a duty to conduct their home inspection and re-inspection in a diligent, competent and workmanlike manner consistent with the standards of the home inspection industry.

203. DBR/PHI breached the duties they owed to Plaintiffs by failing to adequately identify significant defects and by failing to ensure that the repairs Corley was to perform were performed properly.

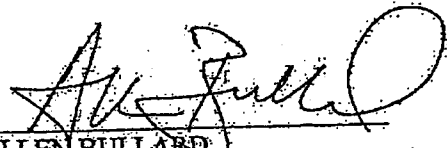
204. As a direct and proximate result of the breaches of these duties, Plaintiffs have incurred costs and expenses, and have suffered and will suffer direct, indirect, consequential, general, and special damages in an amount no less than \$62,000, which includes, but is not limited to:

- a. Costs associated with the re-inspection and repair of the roof system; and,
- b. Cost associated with the re-inspection and repair of the HVAC system; and,
- c. Costs associated with repairing the items on the PHI report which were not repaired or were inadequately repaired; and,
- d. Cost incurred by Plaintiffs for medical conditions brought on by mold and other air contaminants released into the house due to the defective condition of the HVAC and roof system; and,
- e. Cost of alternative living arrangements; and,
- f. Lost benefit of the parties' bargain; and,
- g. Costs associated with the re-inspection of the Property by a licensed engineer; and,
- h. Costs associated with the repair of defective conditions not identified by PHI, including:
 1. A gas supply line run through a return air plenum; and,
 2. Water damage to the roof framing and sheathing in the attic at most of the roof valleys and elsewhere; and,

3. Roof framing defects, including, but not limited to, excessive cantilever lengths, insufficient diagonal bracing, and inadequate beam supports; and,
4. Inadequate connections between the floor joists and floor beams in crawlspace; and,
5. Others that may be proven at trial.

205. Plaintiffs are informed and believe that they are entitled to judgment against DBR/PHL jointly and severally with the other defendants, for no less than \$62,000.

WHEREFORE, Plaintiff prays for judgment against the defendants, jointly and severally, in the amount no less than Sixty-Two Thousand and no/100 (\$62,000.00) Dollars, prejudgment interest, costs of this litigation, including attorney's fees, punitive damages, and for such other and further relief as this Court deems just and proper.


ALLEN BULLARD
Montgomery Willard, LLC
Post Office Box 11886
Columbia, South Carolina 29211-1886
(803) 779-3500
(803) 799-2755 (fax)
abullard@montgomerywillard.com

Attorneys for Plaintiffs

January 23, 2015.

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF RICHLAND

3 RAYMOND J. MALEJKO, ET AL.,

4 Plaintiffs,

5 vs.

CASE NO. 2015-CP-40-00480

6 TODD CORLEY; JANET LOPER; NEXTGEN REAL ESTATE, LLC;
7 THOMAS HUMPHRIES; DR. ROOFS, INC.; RAY MOONEYHAM;
8 MOONEYHAM SOLAR & ELECTRIC; PROFESSIONAL HOME
INSPECTIONS, INC.; CORLEY ENTERPRISES, INC. OF
SOUTH CAROLINA & DBR FRANCHISING, LLC,

9 Defendants.

10 DEPOSITION OF: CRISTINE T. MALEJKO

11 DATE: September 17, 2015

12 TIME: 9:42 AM

13 LOCATION: Richardson Plowden & Robinson
14 1900 Barnwell Street
Columbia, SC

15 TAKEN BY: Counsel for the Defendant,
16 Janet Loper, Nextgen Real Estate

17 REPORTED BY: AMY R. COPE,
18 Court Reporter

19 A. WILLIAM ROBERTS, JR., & ASSOCIATES

20 Fast, Accurate & Friendly

21 Charleston, SC Hilton Head, SC Columbia, SC
22 (843) 722-8414 (843) 785-3263 (803) 731-5224

23 Greenville, SC Myrtle Beach, SC Charlotte, NC
24 (864) 234-7030 (843) 839-3376 (704) 573-3919

25
A W R

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

EXHIBIT

B

1 Q. So you closed on that house?

2 A. We did.

3 Q. And what happened next?

4 A. Well, from your discussion with my
5 husband, we started having problems with the home.

6 Q. Had you and your husband ever had or
7 your daughter ever had problems with allergies or
8 mold or being allergic to mold before?

9 A. No.

10 Q. And the contract for sale for that
11 particular home was in December of 2013; does that
12 sound right?

13 A. If that's what you have. I don't know
14 the exact date.

15 Q. Does that sound correct, December 23rd
16 of 2013, being the contract of sale?

17 A. Well, I would have to say that I don't
18 know the exact date.

19 Q. Okay. So you started exhibiting
20 problems -- or getting problems while you were in
21 the home. What types of problems were those that
22 you first noticed?

23 A. First problem that we had was up in the
24 upstairs master bathroom, there was water leaking
25 through the inside of the wall down into the

1 bathroom. And what we found out that Ray did not
2 understand the name of that is called an inverted
3 boot. The contractors that built the home, instead
4 of the boot being put on the correct way, it was
5 put on incorrectly. So each time that it rained,
6 the water leaked down so it would leak into the
7 roof, down through the shafts of the walls, and
8 down into the bathroom.

9 Q. All right. And so how was that
10 manifesting itself within the home? Did you see a
11 spot on the wall or --

12 A. Well, Mungo was out immediately and
13 then they took care of the issues by bringing
14 Servpro in, doing their -- they were all in suits,
15 they closed that whole room off, it was almost like
16 a zipper that they used and they closed it all off.
17 And told us we were not allowed in that room until
18 then and that's how that was resolved.

19 Q. Okay. So they rectified the problem?

20 A. That particular problem, yes, they did.

21 Q. Were there other problems with that
22 home?

23 A. There was.

24 Q. What were those?

25 A. We had a leak in our kitchen that the

1 water -- well, let me back up.

2 General Electric was the one that
3 actually put in the dishwasher. And there was a
4 pipe that was crimped and was put in wrong, so that
5 actually was broken behind the dishwasher. And
6 that created a leak through the kitchen cabinets,
7 down into the flooring, and in the back of the
8 dishwasher.

9 So when they pulled that all out, it
10 was all wet, mold, and that all -- they just ripped
11 it all out that same day when they found it all.

12 Q. Were you living in the home at the
13 time?

14 A. We were.

15 Q. Okay. So they corrected the vent boot
16 and they corrected the leak with the dishwasher.
17 What other problems did you have with that house?

18 A. Well, that correction with the
19 dishwasher wasn't an easy fix. There was all kinds
20 of machines that were out throughout the whole
21 entire home. So there was no kitchen to be used --

22 Q. These machines were, I'm assuming,
23 dehumidifiers and dryers?

24 A. That's correct.

25 Q. So once they completed that, did they

1 replace the flooring in that affected area?

2 A. Oh, there was cabinets that were all
3 ripped out. The new cabinets needed to be ordered.
4 It was months and months of process. It wasn't
5 just, you know, fix it and everything was fine. We
6 had no kitchen to use, we had no kitchen floor, we
7 had no sink. The whole entire kitchen was
8 completely ripped apart.

9 Q. Do you know what timeframe that was?

10 A. I do not, I don't know the timeframe.

11 Q. But sometime in 2013?

12 A. Correct.

13 Q. And Mungo Homes was the builder for
14 that particular home, correct?

15 A. That's correct.

16 Q. Did you come to some resolution with
17 them on repairs?

18 A. Well, Mungo took care of all of the
19 repairs.

20 Q. Why didn't y'all remain in the home?

21 A. Excuse me?

22 Q. Why didn't you remain in that home, in
23 the 233 Bonnie View Court home?

24 A. Why didn't we remain in the home as far
25 as living there?

1 Q. Right.

2 A. Well, I was getting violent headaches
3 while living in the home.

4 Q. And you attributed those headaches to
5 something in the home?

6 A. It's called VOCs, vocitile(sic) organic
7 combustion(sic)... So what we were told by -- his
8 name is Chris Condon --

9 Q. Who is Chris Condon?

10 A. He is the vice president of Mungo.
11 That they came through with the company, I believe
12 it was ABS, Applied Building Science, and they were
13 doing all kinds of testing throughout the home.
14 And they came to the conclusion that there was some
15 form of a vocitile(sic) organic compound. I said
16 combustion, I apologize, it's vocitile(sic) organic
17 compound. And that is when they put that together
18 that that was what was causing my headaches.

19 Q. Now, is mold a vocitile(sic) organic
20 compound?

21 A. No, it is not.

22 Q. So what makes a vocitile(sic) organic
23 compound?

24 A. Well, I looked it up online and it's
25 pages and pages long. I couldn't sit here and tell

1 developments.

2 Q. Did you call Carole Woodlief and ask
3 her to assist you again?

4 A. She was very busy at the time and just
5 was not available to come and start showing homes
6 to us. So we started doing that on our own.

7 Q. And looking around, looking at for sale
8 signs or looking at ads or --

9 A. Correct.

10 Q. -- were you looking on the computer too
11 for homes?

12 A. Yes, we were.

13 Q. And were you looking for the same
14 parameters, as far as style home, location, and
15 cost?

16 A. At that time it really didn't matter,
17 we were just looking for a home that was three
18 bedrooms, fenced-in yard, Lexington 1 School
19 District.

20 Q. Okay. So what -- in this process, what
21 next took place?

22 A. Well, we drove around in that timeframe
23 and we came across this house here on Fox Crossing.

24 Q. And what do you mean by you came
25 across?

1 A. We were driving around and we saw a
2 sign, for sale sign outside. So before we called
3 on that home, Ray contacted his referral agent --
4 referral service, excuse me. And they sent a lady
5 by the name of Judy to meet with me, I don't know
6 her last name, but it was through Russell &
7 Jeffcoat. So Judy through Russell & Jeffcoat was
8 the first one that showed us 141 Fox Crossing Road.

9 Q. And did she meet with y'all and say,
10 hey, I'll be glad to help you find a home, et
11 cetera?

12 A. Well, the first day that we met with
13 Judy, we spent, I would say, a good hour to two
14 hours for Judy to try to get into the home. Judy
15 was having a problem with her key, made several
16 phone calls. So, you know, let me draw a picture
17 for you, a six-year-old running around the house,
18 running around the outside of the home.

19 After about two hours we were pretty
20 much done and never really got to see the house,
21 but she did finally get in. We were able to see
22 the house that evening. And she showed us the
23 home. We had some discussion on the home. And she
24 didn't really know a lot about the home and that --
25 we left that evening and said, you know, we'll get

1 back to you.

2 Q. Was this Judy Murphy, does that sound
3 right, with Russell & Jeffcoat?

4 A. Yeah, I don't know her last name.

5 Q. All right. So you finally go into the
6 141 Fox Crossing home, the home we're here today to
7 discuss about?

8 A. Correct.

9 Q. And she didn't know much about the
10 home, but you looked at it. And did you establish
11 any relationship with this Judy as far as helping
12 you find another home or look at others --

13 A. We did not.

14 Q. What did you think of that first
15 initial look through the home? Was it something
16 that you felt like, hey, this may be a possibility
17 for us?

18 A. The appearance of the home is a
19 beautiful home. Now, I'm using the word,
20 appearance, because it's very important in this
21 case to understand that the appearance is not
22 always the reality.

23 Q. But getting back to my question to you
24 though: When you first saw this home that you felt
25 that this is a home that could potentially be on

1 your list to purchase; is that right?

2 A. It appeared to be a nice home, okay.
3 So the look of the home appeared to be a beautiful
4 home, it was laid out very nicely, it's a very
5 beautiful open-plan home. The bedrooms are
6 spacious. It was some of what we were looking for.
7 Didn't have all of what we were looking for, but we
8 were willing to compromise on certain things.

9 It had a yard, a fenced-in yard, it
10 needed some work on that yard. We've done a lot
11 since then. So it appeared to be a beautiful home.

12 Q. Okay. Take me through this kind of
13 step-by-step chronology-wise, what happened next?

14 A. We continued to look at other homes.

15 Q. Was Judy helping you during that time?

16 A. She was not.

17 Q. Did you establish any kind of
18 relationship with Judy?

19 A. We did not.

20 Q. Did you ever contact Ms. Loper
21 regarding that home?

22 A. Yes, we did.

23 Q. Tell me about that.

24 A. We contacted Ms. Loper because her
25 picture and name and number were on the sign.

1 A. But did I actually discuss it with her
2 on the first day, I would have to say that I don't
3 know.

4 Q. Well, as a result of that first
5 conversation with her, did you and your husband
6 make a decision to try to have her assist you in
7 finding another home?

8 A. We did. We called the referral agency,
9 I thought she was very friendly enough, like I
10 said. Felt like I had known her forever in our
11 conversation that we had. And we moved forward
12 with the referral agency and Ray contacted the
13 referral agency. And then her and Ray agreed on
14 that referral agency.

15 Q. Okay. So let me be clear now, you've
16 already worked with the previous Realtor and that
17 didn't work out, Ms. Woodlief, Carole Woodlief.
18 And you decided not to go back with her because she
19 was busy?

20 A. Worked out fine, there was no problems
21 that we had with Ms. Woodlief.

22 Q. Well, I don't understand why you
23 wouldn't have continued with her to find another
24 home?

25 A. Well, I contacted Fox Crossing due to

1 the sign that was outside the house, which was
2 Ms. Loper's sign.

3 Q. Okay. But I understand that they sent
4 a lady by the name of Judy from Russell & Jeffcoat?

5 A. Right.

6 Q. So that was through your referral
7 agency?

8 A. That's correct.

9 Q. Did the referral agency first refer you
10 to Ms. Woodlief?

11 A. I'm not sure what you're asking me.
12 I'm sorry.

13 Q. Well, I would think that if you had an
14 established relationship with a Realtor, you would
15 have stayed with that Realtor until you left for
16 whatever reasons. So the first Realtor you had in
17 South Carolina was Carole Woodlief, correct?

18 A. That's correct.

19 Q. And she found you a home and it didn't
20 work out?

21 A. That's correct.

22 Q. And you made the conscious decision not
23 to go back with her, right?

24 A. Well, I didn't make that decision.

25 Q. Well, who made that decision?

1 A. Well, we just decided, like I told you,
2 that we were going to go and look at houses on our
3 own, okay. There was no decision, we didn't say we
4 had a problem with Carole and we're not going with
5 her anymore; that was never the case.

6 Q. So then you contacted -- you contacted
7 Ms. Loper --

8 A. That's correct.

9 Q. -- on the phone? And you had already
10 looked at her house that she had listed. So you
11 knew that she was listing that house for someone?

12 A. Well, her sign is outside, right?

13 Q. Right.

14 A. So she's listing the home, right?

15 Q. Right.

16 A. Right.

17 Q. So you would agree with me you knew
18 that she had that home listed, so you called her?

19 A. Right.

20 Q. And did you go back to that home and
21 look at that home?

22 A. With Ms. Loper, yes.

23 Q. And what did she tell you at that time?

24 A. Well, she said it's a beautiful home.
25 And I agreed it was a beautiful home.

1 or you need to always have a HVAC inspection and
2 termite inspection and home inspection all done at
3 different times?

4 A. After reviewing all of the facts that
5 are before us today, I would have to say it was
6 wrong.

7 Q. Okay. But you don't have anything -- I
8 mean, you feel it's wrong or perhaps you and your
9 husband feel that it was wrong?

10 A. Well, absolutely I feel it was wrong,
11 definitely.

12 Q. But you haven't talked with anyone to
13 say that's out of the norm or improper?

14 A. I haven't talked to anyone else to say
15 it's out of the realm because I don't know what the
16 realm is, I'm not a Realtor. I don't know what
17 that would be.

18 Q. Well, as a result of this home
19 inspection report and once you and your husband had
20 a chance to discuss about the inspections, y'all
21 decided to back out of this and not go forward,
22 correct?

23 A. That's correct. We contacted Ms. Loper
24 when we received this report and the answer that we
25 were given was that it's not as bad as it looks.

1 Q. All right. From Ms. Loper?

2 A. That's correct, sir.

3 Q. But you didn't challenge her with that,
4 did you?

5 A. We went page-for-page.

6 Q. You went page --

7 A. She went through this home inspection
8 with us, page-for-page.

9 Q. Okay.

10 A. And said that lot of inspectors -- like
11 he's a perfectionist, so he had to pick out
12 everything that was wrong with the house. But I
13 was told that it's not as bad as it looks.

14 Q. Okay. Meaning that these items could
15 be corrected, right?

16 A. Well, when you look at them they sure
17 look bad. So if it's not as bad as it looks, I
18 would think that they weren't as bad as it looks.

19 Q. All right. But --

20 A. Some of the pictures look terrible.

21 Q. And so you and your husband went over
22 this report page-by-page with Ms. Loper?

23 A. That's correct.

24 Q. When did that take place?

25 A. I couldn't give you an exact date of

1 when it took place.

2 Q. And you're sure that you and your
3 husband were there going over the report with her,
4 or was it just your husband?

5 A. Well, Ray had times with her when he
6 was with her and there were times where I was just
7 there, but...

8 Q. Was there anything in item 16, the home
9 inspection report done by Mr. Boyle, was there any
10 particular item in that that said -- that
11 brought -- that you said to your husband, hey, I
12 just don't feel comfortable going forward with this
13 home?

14 A. Yes. And that's why we backed out of
15 the contract.

16 Q. Tell me what those items were.

17 A. All of them.

18 Q. All of them?

19 A. Yes. The home inspection report talks
20 about many issues that were wrong with this home
21 and we didn't feel comfortable.

22 Q. Okay. Now, did you have an opportunity
23 to talk with Mr. Boyle, the home inspector?

24 A. Did I have an opportunity to speak to
25 Mr. Boyle? Yes, I did, I had an opportunity to

1 understand you brought some additional documents to
2 your attorney, so we may get those at a later
3 point. But after this confusing day with all the
4 inspectors, y'all backed out or did not want to go
5 forward ostensibly because there were too many
6 repairs to be made?

7 A. Correct.

8 Q. Ms. Loper helped you in finding
9 additional properties, correct?

10 A. Correct.

11 Q. Look to Exhibit Number 5.

12 A. Okay.

13 Q. This is regarding a home that's on
14 Parkside Road. Do you recall making a contract on
15 that?

16 A. I remember seeing the location.

17 Q. Did you discuss it with your husband
18 before you entered into this contract to purchase
19 that home?

20 A. Yeah, we were there together.

21 Q. And what happened with that home?

22 A. Well, if I remember correctly, this is
23 the home that had the leech field in the back.
24 Stephanie, being allergic to mosquitos, we chose
25 that it wasn't a very good location for us to live

1 in back of a -- whether it's called leech field or
2 a pond, whatever the case may be, that we chose not
3 to purchase this home.

4 Q. So your husband entered into the
5 contract, but shortly afterwards y'all mutually
6 decided this was not the home for you?

7 A. That is correct.

8 Q. Now, you don't know where this contract
9 was written, do you, when Ms. Loper met with your
10 husband to make the contract out for this
11 particular purchase? Could she have met your
12 husband at McDonald's to complete this contract?

13 A. There was a McDonald's place that they
14 met. It was a place that they met at Rush's at one
15 point.

16 Q. And you indicated her meeting your
17 husband at different locations, but this was
18 basically to facilitate a place to meet while you
19 took care of your child, right?

20 A. That's correct.

21 Q. You're not trying to say there's
22 anything ulterior about meeting at these
23 restaurants to do business?

24 A. Oh, no, she actually said that she was
25 very happy that I trusted her with my husband. And

1 I said, absolutely, because I trust my husband. So
2 I didn't have any doubt at all that they would be
3 meeting anywhere. There was no problem with that
4 myself.

5 Q. Exhibit Number 6, here's another
6 contract for another home that your husband entered
7 into, and I'm assuming with your approval, to
8 purchase this home on Dusty Court Road?

9 A. Yes, I remember this.

10 Q. And y'all made some offers with this
11 particular home, correct, or some particular
12 contingencies? If you look at NextGen 120 on that
13 page, there's contingencies. Did you discuss those
14 contingencies with your husband to make sure that
15 these were made prior to making the offer?

16 A. Okay, you're asking me if I made --
17 could you repeat the question, please?

18 Q. Yeah. Your husband is the only one
19 that entered into this contract, but I want to make
20 sure that you were aware of this contract --

21 A. Yes.

22 Q. -- did you discuss these contingencies
23 with your husband?

24 A. Yes.

25 Q. So you saw this contract at some point

1 or knew about it?

2 A. Well, we looked at the home together.
3 We chose not to buy the home.

4 Q. Right. But you made a contract on the
5 home, if the seller would have met all these
6 contingencies or accepted your offer, you would
7 have bought that home, right, the Dusty Court home
8 on Exhibit 5?

9 A. I'm just not quite sure what you're
10 asking me, I apologize.

11 Q. Well, I want to make sure that I
12 understand your role in this offer that was made.
13 The offer made on the Dusty Court property, this
14 Exhibit Number 6 --

15 A. Right.

16 Q. -- and there's a number of
17 contingencies made, sale contingent on seller
18 making all repairs as a result of all inspections,
19 to include home inspection, termite inspection, et
20 cetera, et cetera. All repairs would be
21 reinspected by the home inspector prior to closing.
22 That's a contingency that you and your husband
23 wrote in there, right?

24 A. Right, we decided not to purchase the
25 home.

1 Q. Did the house not get sold? They had
2 multiple offers on this home, right? They -- the
3 seller never came back to you because they accepted
4 another offer?

5 A. Oh, I don't know that.

6 Q. You didn't know that?

7 A. No. I'm not the Realtor so I wouldn't
8 know that. They made an offer for someone else to
9 purchase the home?

10 Q. There were multiple offers made, your
11 offer is one, it's Exhibit Number 6 --

12 A. Okay.

13 Q. -- and other offers are made --

14 A. Right.

15 Q. -- and they accepted someone else's?

16 A. Okay, and that would be something that
17 I would have known?

18 Q. Well, you should have known. At the
19 time when I would have thought that you would have
20 said, Ray, why didn't -- you know, what's happened
21 to our offer to John and Heather Padget on this
22 Dusty Court Road house?

23 A. Right.

24 Q. And wouldn't he have said, well, Janet
25 Loper told us that it had sold, they accepted

1 another offer?

2 A. If Ms. Loper said that it sold and that
3 it didn't go through, then that's what happened.

4 Q. Okay. That took place in February, so
5 you're still looking for a home, right?

6 A. Correct.

7 Q. Did you -- why did you come back to the
8 Fox Crossing Road home?

9 A. It was a beautiful home, we liked the
10 house. It appeared to be a very beautiful home.

11 Q. And you knew that the homeowner,
12 Mr. Corley, had now the benefit of the home
13 inspection that you paid to have done, correct? He
14 was on notice of those things on the home
15 inspection report to repair those items, right?

16 A. What is the question you're asking me?
17 I'm sorry, I don't know what the question is you're
18 asking me.

19 Q. Well, did you know that Mr. Corley, who
20 owned that Fox Crossing Court property, had now the
21 benefit of your home inspection report and a list
22 of items that needed to be addressed; did you know
23 that?

24 A. Well, what I was told is that Corley
25 Enterprising was fixing all of the items on the

1 home inspection report.

2 Q. All right. Who told you that?

3 A. Well, I met with Ms. Loper and Lori
4 Corley in the home -- in the driveway of 141 Fox
5 Crossing, March of 2014. And Lori, herself, and
6 with Ms. Loper, told me that all of the items were
7 being addressed and everything was going to be
8 fixed. And I was promised that they were all going
9 to be addressed.

10 Q. Okay. So did you make a verbal offer
11 on the home at that time?

12 A. I believe we were already in contract
13 at that time. This is three weeks before closing.

14 Q. No, no, did you make a verbal offer
15 on -- didn't you and your husband find out that
16 what Mr. Corley paid for the home, at some point?
17 Didn't you go on the tax rolls and find out that he
18 paid like \$75,000 for the home?

19 A. I guess I'm getting confused on what
20 you're asking me. I'm not sure what you're asking
21 me.

22 Q. Did you and your husband look at tax
23 records and find out what Mr. Corley had paid for
24 that property?

25 A. Oh, yes.



1 Q. And after you found out what that price
2 was, did you ask Ms. Loper, hey, let's make a
3 verbal offer to try to see if he would accept it?

4 A. Well, let me bring you back. I was
5 told -- my husband and I were told by Ms. Loper
6 regarding this situation, and I remember it very
7 correctly, that the offer that we made was too low
8 for that development. And that it would be a way
9 lower offer than what that development had as far
10 as the value of the homes at the Fox Crossing
11 location.

12 Q. Okay. But did you -- did you approach
13 Ms. Loper about saying, hey, we would like to make
14 a verbal offer of, like, \$120,000 or so to purchase
15 this home?

16 A. I remember an offer being made that was
17 too low. And we couldn't understand why it was too
18 low because there was so many repairs that needed
19 to be made. But we were told that all of the
20 repairs were going to be made from the home
21 inspection report and Mr. Corley had a duty to fix
22 them all.

23 Q. Okay. And -- but at some point in
24 roughly March of 2014, did you make -- did you and
25 your husband make a verbal offer to purchase a

1 home?

2 A. When you say, verbal, what does that
3 mean?

4 Q. Well, it wasn't a written contract, it
5 was saying, hey, Ms. Loper, will you check with
6 Mr. Corley and see if he will take \$120,000 for the
7 house?

8 A. Okay, I remember this conversation in
9 -- I'm going to call Mr. Corley -- I remember this
10 now, I'm going to call Mr. Corley and we're going
11 to ask if they will accept this offer. I don't
12 know what the number was, but I remember --

13 Q. You don't know what the number was, but
14 it was a number that you, I'm assuming, had agreed
15 upon?

16 A. I just know that we were told by
17 Ms. Loper that it was a low offer because the value
18 of the homes were higher in that area than what
19 he -- Ms. Loper told us that it was too low for
20 that area. And that the neighbors -- it would be
21 like -- it just wasn't the right offer, it was too
22 low.

23 Q. Okay. And the homes in the area were
24 going for about \$160,000; would you agree with
25 that?

1 A. Well, I wouldn't agree with that
2 because there's a home right now being sold for
3 \$118,500 in that area, right around the block from
4 us. So, no, I wouldn't agree with that.

5 Q. All right. Well, at some point tell me
6 about how you came about going back to Mr. Corley
7 to make another offer on purchasing the property?

8 A. Well, we contacted Ms. Loper and she
9 said that there was many changes and many repairs.
10 And we went back to visit the location.

11 Q. All right. And did you see those
12 changes and repairs?

13 A. I seen a cabinet in the kitchen that
14 was cut down and a vent that was put up above the
15 stove.

16 Q. Were there windows being repaired?

17 A. There were three windowpanes that were
18 fixed, yes, I believe, three. Let's see, there was
19 one in Stephanie's bedroom, the bedroom that didn't
20 have the mold in the -- so that's Stephanie's
21 bedroom, that was that window. And then there was
22 another window in the -- in our bedroom, there were
23 actually two windows that were replaced in the
24 master bedroom. So I would have to say there was
25 at least four that I know that were replaced.

1 Q. Okay. So you went back and you saw the
2 property again and you saw that there had been some
3 repairs being made or ongoing or at least had been
4 made. And at some point, you and your husband
5 decided to make another run at trying to purchase
6 this property, correct?

7 A. Correct.

8 Q. So Exhibit Number 7, if you'll refer to
9 that, please. Do you see Exhibit Number 7?

10 A. I do.

11 Q. Had you seen that before?

12 A. This is the contract of sale on
13 March 5th of 2014.

14 Q. Right. You're familiar with that?

15 A. The contract of the sale, is the
16 contract of sale.

17 Q. You're not on it, but you saw it at
18 some point, you discussed this with your husband?

19 A. We discuss everything, yes. Did I see
20 this at the time? Again, I'm not going to know
21 whether or not I was there that day.

22 Q. All right. Let me --

23 (C. MALEJKO DEFENDANT EXHIBIT 17,
24 Property search results by Janet Loper, was marked
25 for identification.)

1 A. Could you repeat that again, please?

2 Q. The reinspection by Mr. Boyle, when he
3 came back out and reinspected --

4 A. Right.

5 Q. -- you weren't there, but your husband
6 was there and Ms. Loper was there. What was the
7 result of that?

8 A. I don't know, I wasn't there.

9 Q. Well, your did husband tell you, well,
10 that the house passed or these things have been
11 done or, hey, we still got problems or -- when he
12 came home, what did he say?

13 A. Well, I remember him saying that there
14 was still work that needed to be done to the home.
15 And that Ms. Loper was to contact Mr. Corley to
16 find out when the rest of the repairs were going to
17 be done.

18 Q. Okay. So there were some repairs that
19 were still in the progress of being made?

20 A. That's correct.

21 Q. Did your husband get assurance that was
22 going to take place or those repairs were going to
23 be completed by closing?

24 A. I believe that we were told that it was
25 March -- I don't know why this date reminds me of

1 March 21st, as that the date was going to be about
2 a week before closing. We closed on March 31st.
3 It was March 21st and that is when it was about ten
4 days before the closing is when I met Ms. Loper and
5 Ms. Lori Corley.

6 Q. Okay. So did your husband tell you or
7 do you recall him saying, well, listen, the only
8 item that I think needs to be addressed is the
9 feces under the house?

10 A. I recall that.

11 Q. What do you recall?

12 A. I recall that he came home and said
13 that there was still feces underneath the house. I
14 remember getting on the phone and speaking to
15 Ms. Loper that afternoon and she said that she
16 didn't want the contract to fall through because of
17 this. And that she reassured us that she would get
18 with Mr. Corley and find out who was it that they
19 paid to go out there and take care of feces.

20 And I said, you know, it's really
21 disgusting that the feces are still underneath the
22 house. And her and Ray met, if I'm correct, the
23 next morning and they had a little bit of a dispute
24 in the driveway and that she did not want the
25 home to -- the contract to fall through because of

1 but had a septic tank system?

2 A. We did not find out from a utility
3 company, no, we did not. We did not find out from
4 Ms. Loper. We found out from our neighbor.

5 Q. When did you find that out?

6 A. March 26th is when we paid for the
7 septic system to be inspected and that was just a
8 few days before closing. So I believe we found out
9 a few days prior to March 25th.

10 Q. And who was the neighbor?

11 A. He works for SCE&G. And he was looking
12 at our home and his house is to the right of us.

13 Q. What's his name?

14 A. Jim.

15 Q. Do you know his last name?

16 A. I do not.

17 Q. Okay.

18 A. He actually was(sic) asked not to be a
19 part of this lawsuit or he would have been here to
20 testify for us today. But the fact is, is that
21 we're the eleventh house, the sewers -- the septic
22 starts at the first house on the left and city
23 sewer doesn't start until the twelfth house, so it
24 ends at our house.

25 So they started doing city water, I

1 don't know the date, but they started doing that
2 city -- whenever they started it, then they started
3 at the twelfth house. And the rest of the
4 neighborhood is on city except for the first eleven
5 houses.

6 Q. All right. Well, that caught everyone
7 off guard, correct?

8 A. Well, Ms. Loper said that Mr. Corley
9 didn't know because he owned so many homes that he
10 got very confused as to this house.

11 Q. Okay. Do you think Ms. Loper
12 intentionally said in the MLS listing or
13 represented that this house was on public sewer
14 when she knew it wasn't on public sewer?

15 A. Well, as a Realtor you would make sure
16 that you check your facts.

17 Q. Well, a Realtor relies on its clients
18 and the professionals they deal with to provide
19 them accurate information, correct?

20 A. Well, as a dual agent that's what you
21 would do, you would correct and make sure that the
22 information that you're getting from both of your
23 clients is correct.

24 Q. Well, I want to be clear here, you're
25 claiming that -- are you saying that Ms. Loper

1 intentionally tried to mislead you about whether.
2 the house was hooked up to sewer water? If
3 Mr. Corley, the owner of the house, tells her this
4 is public utilities and she took that for face
5 value, you think she has some duty to do an
6 inspection on that to verify that?

7 A. No. I thought that her obligation as a
8 dual agent is to check out the information that's
9 given to her. If the house is on city septic -- if
10 it's on septic and the one thing that we told
11 Ms. Loper is we didn't want to buy a home on
12 septic, well, then that's misleading information.

13 Q. Well, prior to closing and you've --
14 you became aware that the house was on septic --

15 A. Right.

16 Q. -- and Ms. Loper assisted you in
17 getting the system checked out, correct?

18 A. Correct.

19 Q. She helped in trying to find somebody
20 to come out there and inspect the system?

21 A. I'll tell you what the truth is,
22 okay --

23 Q. Well, I want you to tell me the truth
24 in everything that you're saying.

25 A. Oh, absolutely. Ms. Loper got this

1 aesthetically it was a good looking roof or was she
2 talking about the way the roof was originally
3 constructed? Or was she talking about the curves
4 of roof? Or how the roof is presented from the
5 road?

6 A. She was talking about her and her
7 husband building homes and that they know a lot
8 about all of this stuff.

9 Q. So that was in the conversation when
10 you asked her about the roof, she was explaining to
11 you, well, me and my husband have built several
12 homes and we know how roofs are built?

13 A. No, that's not what she said.

14 Q. Well, tell me exactly how -- what you
15 recall that she said to you?

16 A. Well, I recall her saying to me that it
17 was a great looking roof.

18 Q. And you could have an automobile
19 outside that's a great looking automobile, but it
20 could be missing an engine. So if you look at a
21 flat roof and say it's a great looking roof, but it
22 leaks like a sieve. You know, what was the context
23 of that conversation when you said it's a great
24 looking roof?

25 A. I'm not a Realtor. So if I was a

1 Q. All right. And your attorney has a
2 list of that that will equal \$62,000?

3 A. I'm sure he does.

4 Q. What contract did Ms. Loper or NextGen
5 Realty breach with you or your husband?

6 A. I have to be honest with you, I don't
7 know even know what the word breach of contract is.
8 My attorney prepared these documents, so he's the
9 one that put all these words in here. And I don't
10 know what all those words mean, but he does.

11 Q. Let's say that a breach of contract is
12 like a breach of an agreement, two parties had an
13 agreement and that agreement was dishonored by one
14 party; they breached the agreement. They breached
15 the contract.

16 How did Ms. Loper or NextGen Realty
17 breach any contract; is what my question is to you?
18 Are you aware of that?

19 A. I am aware of that, yes.

20 Q. What contract was breached?

21 A. Well, we had a HVAC inspection done,
22 Ms. Loper contacted the HVAC. That HVAC, yes, was
23 operable, but it was filled with black mold and
24 feces that my family breathed in for six months.
25 My husband suffered extensive health issues, as

1 well as Stephanie and myself. And as we discussed,
2 there was two lines that were down. It's in the
3 report.

4 Now, as the inspector knew, he said
5 that the two lines were down, but he didn't know
6 that the feces were in the HVAC system, but the
7 lines were down. And he was going to repair the
8 two lines, which we didn't have him repair.

9 How would he not know that the feces
10 were inside the heating system when every other
11 person that came to the house that was the first
12 thing that they said, is that you have feces in
13 your heating system. And I'm like, what does that
14 mean for us as homeowners? It means problems.

15 Q. Well, do you have photographs of this
16 feces that was in your system?

17 A. We sure do.

18 Q. And what kind of feces was it, is it
19 rodent?

20 A. Rat and rodent feces.

21 Q. And who took the pictures?

22 A. Let's see, we have a -- Mr. Bullard, we
23 have myself. We have the HVAC system, the EF
24 Martin, they have their own pictures. There's many
25 a photographs. And we even have the system too

1 that we saved so you can see the feces too.

2 Q. And would that have been -- where was
3 it located in the system?

4 A. Everywhere.

5 Q. Well, specifically --

6 A. In every one of the ducts, rat and
7 rodent feces and black mold throughout every one of
8 the heating ducts.

9 Q. Did you ever tell Ms. Loper that you're
10 extremely allergic to mold and that you needed to
11 have an air quality test or the HVAC air quality
12 test completed before you purchased the home?

13 A. I was never tested for mold.

14 Q. You've never been tested for mold?

15 A. No, because I have a heart condition.
16 So in order for me to be taken off the medication,
17 I have to go in the hospital to be able to get
18 tested for the medication(sic). And I have not
19 been stabilized enough to be able to have those
20 tests done for myself.

21 Q. Have tests been made on your husband?

22 A. That's correct.

23 Q. They have been?

24 A. They have been.

25 Q. Who did those testings?

1 A. Dr. Bykowsky, Carolina Allergy.

2 Q. And did Dr. Bykowsky also do the
3 testing for your daughter?

4 A. He did.

5 Q. Did he refer you to anyone else or has
6 he taken care of everything within his practice?

7 A. No, he's taken care of everything in
8 his practice except for Ray.

9 Q. Okay. So the fact that Ms. Loper or
10 NextGen Realty provided a HVAC inspector for your
11 home, that's a contract that you indicate that she
12 broached or NextGen Realty as getting Mr. Mooneyham
13 or Mooneyham Solar and Electric to do an HVAC
14 system?

15 A. Can you repeat that, please?

16 Q. Do you need to take a break?

17 A. No.

18 Q. I'm talking about breach of contract.
19 And you indicated that Ms. Loper or NextGen
20 breached the contract because of hiring
21 Mr. Mooneyham and his company to do the HVAC
22 inspection?

23 A. That's correct.

24 Q. And do you know what contract that was
25 that she -- that indicated she was going to hire

1 them for you?

2 A. No, that would -- something that my
3 attorney would have to -- he's the one that
4 prepared all this. I don't know anything about it.

5 Q. Well, as we sit here today -- and this
6 is my only opportunity to have a conversation with
7 you, Mrs. Malejko, why did you sue Ms. Loper and
8 NextGen Realty?

9 A. Well, for all of the reasons that are
10 here in front of us today.

11 Q. Well, there are a lot of reasons here.
12 I mean, tell me in your own words. You evidently
13 don't know what breach of contract is or you said
14 you weren't familiar with that, that it was your
15 attorney who wrote that up.

16 A. That's right.

17 Q. It's also in your Complaint, a failure
18 to have a dual agency disclosure, of which one has
19 within been provided and shown where your husband
20 signed. Why is it that you sued NextGen Realty and
21 Ms. Loper in this matter? I want to know what your
22 beef is. What are you going to tell a Richland
23 County jury that NextGen Realty or Ms. Loper did
24 against the Malejkos?

25 A. Well, she had the guys, she had the

1 A. Well, because -- yes, because we didn't
2 pay for the bond. Ms. Loper paid for the bond.

3 Q. All right. Paragraph 82.

4 A. Okay.

5 Q. Again, are you claiming that the
6 \$62,000 is a result of the costs associated from A
7 through G?

8 A. Again, I didn't prepare this. And this
9 is the attorney that prepared this and I'm only
10 reading what he says because he prepared it. And I
11 don't understand it all.

12 Q. Okay. But you've had an opportunity to
13 read this?

14 A. I have.

15 Q. The breach of -- going on to your
16 seventh Cause of Action with NextGen Realty, your
17 breach of contract accompanied by a fraudulent act.
18 What fraudulent act did Ms. Loper or NextGen
19 perform or do that you're claiming?

20 A. She put my family at risk. My family
21 was put at severe risk with this home.

22 Q. Well, you and your family had a due
23 diligence period to inspect this home and if you
24 weren't happy with an inspector or anything, you
25 could have walked away, as you did multiple times

1 before --

2 MR. BULLARD: Object to the form.

3 BY MR. ANDERSON:

4 Q. -- so did Ms. Loper or NextGen Realty
5 hold a gun to your head and say you got to close on
6 this home or try to pressure you into closing on
7 this home?

8 A. Absolutely she did. And I have to -- I
9 would like to state before we had lunch, I answered
10 a question to you that she had a disagreement with
11 my husband regarding the feces underneath the
12 house, but the argument was not about the feces, it
13 was about the vapor barrier.

14 So there was always conversation with
15 Ms. Loper that she did not want this deal to fall
16 through. She didn't want to lose the deal. She
17 didn't want to lose the deal, okay. There were
18 many a times that we wanted to pull out and she
19 didn't want to lose the deal. And when you don't
20 want to lose the deal, you will do everything that
21 you can to make the deal go through. You will say
22 anything to make the deal go through and that is
23 what happened here.

24 Q. Okay. What fraudulent comment or
25 statement did NextGen Realty or Ms. Loper make that

1 -- or fraudulent act that -- made in conjunction
2 with this breach of contract, accompanied by a
3 fraudulent act, that you're claiming Ms. Loper did?

4 A. All of the things that are listed here.

5 Q. All of the things listed here. Well,
6 you don't know what breach of contract -- you don't
7 know what contracts she breached, right?

8 A. No, because I'm not a Realtor and I'm
9 not an attorney. And I didn't prepare these forms,
10 but I'm going by the advice of Counsel.

11 Q. Okay. Well, I'm not aware of any
12 contract that they entered into with you. And the
13 contract that they've entered into with your
14 husband, I've asked him and he did not know what
15 contract was breached.

16 Your Complaint complains about the fact
17 that there wasn't a dual agency agreement made. Do
18 you see that?

19 A. I do.

20 Q. And you know now that there was a dual
21 agency agreement that was made?

22 A. Correct.

23 Q. And so that's in error?

24 A. No, we went -- we entered into a dual
25 agent agreement.

1 Stephanie, as a minor for her father being
2 permanently disabled. And there's a pension, which
3 that pension is from the New Jersey state of
4 pensions because of his disability. He was with
5 the same job for 20-plus years and when he became
6 disabled, he had enough years in where he had a
7 pension.

8 Q. So those are the three sources of
9 income that you presently have now?

10 A. That is correct.

11 Q. The eighth Cause of Action is to
12 negligence against NextGen Realty and Ms. Loper.
13 It talks about misrepresenting the square footage
14 of the property. Do you have any information
15 regarding that?

16 A. Okay, what page were you on?

17 Q. 15 of 30.

18 A. Page 15.

19 Q. Of 30.

20 A. I know that the square footage is
21 incorrect as to what the listing was. And the only
22 knowledge that I have of it and how we came up with
23 that is through --

24 Q. Was the home appraised?

25 A. Yeah, the appraisal. And the -- I

1 believe Palmetto -- the restoration company, the
2 square footage is incorrect.

3 Q. Okay. So do you know whether the --
4 what you're claiming the square footage to be?

5 A. I don't know the exact square footage
6 of the house at this time, no. I just know that
7 whatever the square footage was that was on the MLS
8 is incorrect as to what it is today.

9 Q. And there's a disclaimer on the MLS.
10 And I'll draw your attention to Exhibit Number 10.

11 A. In here?

12 Q. Exhibit 10, tab 10.

13 A. Oh...

14 Q. You see where it says the heated square
15 footage in the middle of the page? (Indicating).

16 A. Okay, 1,975.

17 Q. And you see where it says plus or minus
18 10 percent before that?

19 A. Plus or minus 10 percent.

20 Q. So you're claiming that that is -- was
21 misrepresented by Ms. Loper?

22 A. That's correct.

23 Q. What are you claiming the square
24 footage to be or where can I get that information
25 from?

1 A. You can get it from several documents.
2 If you don't have them, I'll have my attorney get
3 them for you.

4 Q. All right. What documents have been
5 provided that show that?

6 A. I'll have to discuss it with my
7 attorney and have him get it to you. I just know
8 that there's documents showing that the square
9 footage is incorrect.

10 Q. Is it short or over or what? How is it
11 incorrect?

12 A. I don't know.

13 Q. Okay. And the unlicensed individual,
14 to perform inspections by recommending and allowing
15 an unlicensed individual to perform inspections and
16 repairs on the property. Who are you referring to
17 there?

18 A. Mr. Mooneyham.

19 Q. Anyone else?

20 A. No, he was the only unlicensed
21 individual that inspected the home that did not
22 have a license.

23 Q. Okay. C, by recommending individuals
24 who performed the roof inspection and repairs in a
25 substandard manner. Do you know whether or not

1 NextGen and Loper.

2 A. Okay.

3 Q. Breach of fiduciary duty, do you see
4 that?

5 A. No, I see --

6 Q. Do you see where it says --

7 A. -- 16 of 30, ninth Cause of Action.

8 Q. Do you see in parentheses?

9 A. Breach of -- all right.

10 Q. And that Cause of Action is supported
11 by these numbered paragraphs 97 through 101.

12 A. Right. That's right. We had special
13 trust and confidence in NextGen and Loper that in a
14 good conscious, she bound in good act and good
15 faith and with due regard to the interest of the
16 Plaintiffs. I do not believe that she had good
17 faith. I don't believe that she bonded in good act
18 and good conscious. I don't believe any of that
19 was done because if it was she would have made sure
20 that in speaking with Mr. Corley -- because as a
21 dual agent that's what you do, and she would have
22 found out that the problems that were arising in
23 this house would have been discussed with
24 Ms. Loper.

25 Ms. Loper was a dual agent. So as a

1 dual agent she talks to Mr. Corley. So Mr. Corley
2 should have been very aware of the problems that
3 were arising in this home. And if Ms. Loper did
4 her job and she acted in good conscious and if she
5 had good faith, then she would have made sure that
6 everything that Mr. Corley was discussing with
7 her -- I mean, there was many things wrong with the
8 home.

9 The home sat for way longer than we
10 knew about it. She said it just sat for very a
11 short time. And the house sat for years.

12 Q. Well, the house may have sat for years
13 because a previous tenant died or moved or what
14 have you, but do you know actually how long that
15 house was on the MLS listing?

16 A. I think Ms. Loper would know, I don't
17 know.

18 Q. Okay. Well, if I represented to you
19 that it was listed for approximately six months and
20 no longer; does that surprise you?

21 A. Well, I know it was longer than that.

22 Q. Well, the house could have been there,
23 I'm not saying the house was there. The house has
24 been there since it's been built. But you don't
25 have knowledge of how long the house was on -- was

CRISTINE MALEJKO - EX. BY MR. OATES

1 Q. What's the termite damage? Can you
2 describe the damage?

3 A. Have you seen the pictures?

4 Q. I'm just asking if you can describe the
5 damage. I don't know the answer to your question.

6 A. So you don't know if you've seen the
7 pictures of the termite damage.

8 Q. I'm not sure I know what pictures
9 you're talking about. Can you just describe the
10 damage?

11 A. It is wood that has been mutilated. It
12 looks like completely rotted, completely deformed.
13 You know, I have had another company come out and
14 say this has been going on for years, you're not
15 talking one or two or three or four years, this is
16 lengthy damage. It's throughout the whole entire
17 garage, it goes all the way up through the ceiling
18 into the roof, into attic. So it's been going on
19 for years, is what I was told.

20 Q. By what company?

21 A. Oh, who did we use? It's called Home
22 Pest Control, that's who we have service in our
23 home now. I have had them come out, as well as
24 another company called Super Exterminators, they
25 have looked at the termite damage.

CRISTINE MALEJKO - EX. BY MR. OATES

1 Q. Has anyone told you -- well, let me ask
2 you this first: Did Mr. Baer look at any of these
3 conditions or did he merely focus on the roof?

4 A. Mr. Baer only focused on the roof. And
5 I cannot tell you that we knew -- I don't believe
6 that we knew about the extent of the termite damage
7 before we started exploring the roof issues.

8 Q. This termite damage that you've been
9 describing, is it localized at the garage area on
10 that wall that we've been talking about?

11 A. It's not localized to the one wall,
12 it's the whole garage.

13 Q. But it's in the garage, it's all in the
14 garage?

15 A. That's correct.

16 Q. Any of the experts that you've retained
17 or any of the experts that you've identified, have
18 any of those experts told you that there's a
19 structural problem with the wall?

20 A. The structural problems with the walls
21 were taken care of, whoever repaired and put in all
22 of the new boards. So whoever put in the new
23 boards were the ones that fixed the problems at the
24 back door. But the structure is on -- if you're
25 looking at the garage, to the left when you open

CRISTINE MALEJKO - EX. BY MR. OATES
1 the garage, you can hit it and it will just fall
2 apart. So, yes, there's structural problems with
3 it.

4 Q. And my question was: Who told you that
5 or gave you that opinion?

6 A. The two companies that I just gave you.
7 And Palmetto -- I'm going to leave my answer as the
8 two termite companies.

9 Q. And that is Home Pest Control and Super
10 Exterminators?

11 A. Correct.

12 Q. Did any of the employees or the
13 technicians or inspectors associated with either of
14 those companies, hold themselves out to you as
15 being a structural engineer?

16 A. Have either one of those companies said
17 they were a structural engineer?

18 Q. Yes, ma'am.

19 A. No.

20 Q. Do you know if they are structural
21 engineers or have any structural engineers on
22 staff?

23 A. I don't know.

24 Q. Okay. Do you have any connection with
25 the Frisina Group?

1 prior to you seeing it?

2 A. Could you please repeat that question.

3 Q. Sure, probably inartfully asked.

4 Do you have any knowledge or
5 information or evidence that Ms. Loper or NextGen
6 Realty had any knowledge of any type of mold
7 condition at your home?

8 And when I say at your home, I'm
9 talking about the 141 Fox Crossing Road home.

10 A. Well, I don't know if Ms. Loper had any
11 knowledge of it. We didn't discuss whether she
12 knew that or not. So I wouldn't know if Mrs. Loper
13 had any knowledge of that.

14 Q. Do you blame NextGen Realty and
15 Ms. Loper for your family's having to move out of
16 the home due to mold allergies?

17 A. Well, sir, as you know, we had a bad
18 roof, so I would like to say that Mrs. Loper sold
19 us the house knowing that we were told that the
20 house had a three-year-old roof.

21 And as we sit here today, we know that
22 that roof was not three years old. So I don't know
23 the real answer to that question.

24 Q. Did Ms. Loper tell you that it was a
25 three-year-old roof?

1 A. Yes, sir.

2 Q. And do you recall the name of this
3 individual --

4 A. No.

5 Q. -- or the company that he worked for?

6 A. No, I don't, sir.

7 Q. The square footage of the home, you
8 indicate, was misrepresented to you. What do you
9 mean by that?

10 A. There's just a difference of some
11 square footage.

12 Q. And that was determined by who?

13 A. Well, I don't know what a realtor does
14 when they figure out the square footage of the
15 home, but just through all of this, we found out
16 that the square footage is off.

17 Q. Who found out for you, or who said,
18 Hey, there's a discrepancy in what the MLS stated
19 and what we have?

20 A. I don't recall where the information
21 actually came from. I just know that there's a
22 difference.

23 Q. You and your husband haven't put a tape
24 measurer to rooms?

25 A. Oh, no, no, no.

1 Q. Do you know whether the square footage
2 was more or less than what was represented?

3 A. I believe it was less.

4 MR. ANDERSON: Okay, thanks,
5 Ms. Malejko. I think that's all I have. I will
6 pass you off to Dr. Roofs' counsel.

7 EXAMINATION

8 BY MR. DRIGGERS:

9 Q. Ms. Malejko, again, I'm Benson Driggers
10 and I'm here on behalf of Dr. Roofs.

11 Can you hear me okay?

12 A. Yes.

13 Q. All right. First, how did you come to
14 hear of HISCO, this mold remediation group that's
15 looking at your house right now?

16 A. How did I find them?

17 Q. Yes.

18 A. The owner of the company is a friend
19 of -- let's see. He goes to the same church that
20 we go to right now.

21 Q. Okay. And is that -- what's that
22 person's name?

23 I think you gave us the name of Scotty
24 Saltzer and Ron Stevenson. Or is there someone
25 else?

1 Q. So you don't know what they would have
2 done in terms of looking at the roof?

3 A. Home inspection doesn't take care of
4 roofs.

5 Q. They had obviously mentioned issues
6 with the roof in their inspection report, correct?

7 A. And to get a licensed contracting
8 roofer.

9 Q. Sure.

10 A. That's correct.

11 Q. So they had obviously noticed issues
12 with the roof that needed to be looked at, correct?

13 A. That's what it says in the home
14 inspection.

15 Q. And that is what prompted Dr. Roofs to
16 be contacted in this case in the first place,
17 because this inspection report noted roofing
18 issues, correct?

19 A. That's correct.

20 Q. And then when they came out and did
21 their re-inspection, you don't know what
22 HouseMaster or Joe Boyle did in terms of looking
23 back at the roof?

24 A. That wasn't his job, to look back at
25 the roof. That's why we had a licensed contracting

1 as-is.

2 Q. Sure. And I'm just going by what
3 you've testified earlier.

4 As a result of the home inspection
5 report and once you and your husband had a chance
6 to discuss these inspections, you decided to back
7 out of this and not go forward, correct?

8 A. Correct.

9 Q. But then obviously you ultimately
10 closed on the home and moved into the home,
11 correct?

12 A. That's correct.

13 Q. And do you recall in May of last year
14 going to see someone with the University Specialty
15 Clinics or the Department of Neuropsychiatry and
16 Behavioral Science?

17 A. That was the doctor that I was seeing.
18 That's correct.

19 Q. Okay. And I believe it's Dr. Ashley
20 Quick; is that right?

21 A. No, that's not correct. That's
22 Dr. Williamson.

23 Q. Okay. And do you recall discussions
24 with this particular doctor as to why you were
25 there?

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF RICHLAND

3 RAYMOND J. MALEJKO, ET AL.,

4 Plaintiff,

5 vs.

CASE NO. 2015-CP-40-00480

6 TODD CORLEY; JANET LOPER; NEXTGEN REAL
7 ESTATE, LLC; THOMAS HUMPHRIES; DR. ROOFS, INC.;
8 RAY MOONEYHAM; MOONEYHAM SOLAR & ELECTRIC;
9 PROFESSIONAL HOME INSPECTIONS, INC.; CORLEY
ENTERPRISES, INC. OF SOUTH CAROLINA & DBR
FRANCHISING, LLC,

10 Defendants.

11 DEPOSITION OF: RAYMOND J. MALEJKO - VOLUME I
12 (PAGES 1 THROUGH 106)

13 DATE: August 26, 2015

14 TIME: 1:37 p.m.

15 LOCATION: Montgomery Willard, LLC
16 1002 Calhoun Street
Columbia, SC

17 TAKEN BY: Counsel for the Defendants

18 REPORTED BY: Susan M. Valsecchi, RPR, CRR
19 Certified Realtime Reporter

20 A. WILLIAM ROBERTS, JR., & ASSOCIATES

21 Fast, Accurate & Friendly

22 Charleston, SC Hilton Head, SC Myrtle Beach, SC
23 (843) 722-8414 (843) 785-3263 (843) 839-3376

24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com



1 that.

2 Q. Did Ms. Loper ever share with you her
3 understanding of a home inspection report or
4 represent to you the condition of the home
5 inspection report or the condition of the home?

6 A. Just through the inspection report.

7 Q. All right. You knew that Ms. Loper was
8 a dual agent with this matter?

9 A. Yes.

10 Q. In fact, you signed the Dual Agency
11 Agreement. Did you not?

12 A. I did.

13 Q. You knew that she was representing
14 Mr. Corley, as well, regarding this home?

15 A. Yeah.

16 Q. And had a full duty of disclosure as
17 far as the condition of the home?

18 A. I'm sorry?

19 Q. She had a full duty of disclosure.

20 In other words, if she knew that the
21 roof was leaking, she needed to tell you that,
22 right?

23 A. Yes.

24 Q. All right. Do you have any knowledge
25 today that she didn't share with you something that

1 she knew about?

2 A. I don't know. I don't know.

3 Q. Well, you sued her in this case. What
4 did you sue her for?

5 A. I don't know.

6 Q. Well, you received this HouseMaster
7 Home Inspection Report after the first failed
8 contract, correct?

9 A. The contract, the HouseMaster report,
10 was before -- yes -- before we cancelled out of the
11 first contract.

12 Q. Because you cancelled out of the first
13 contract based upon this report, correct?

14 A. Yes, yes.

15 Q. All right. Let's look at what's been
16 marked here as NextGen 134. This page is regarding
17 the roofing. And it's pointing out to you some
18 items of the roof that need repair, correct?

19 A. Yes.

20 Q. It's also talking about some siding
21 issues that had decay with the siding of the house
22 and the deck, correct?

23 A. Yes.

24 Q. And he's recommending that you have the
25 siding checked and repaired, right?

1 A. Yes.

2 Q. And also recommends that you have the
3 roofing checked by a licensed roofing contractor,
4 correct?

5 A. Yes.

6 Q. Did you do that?

7 A. No, we did not.

8 Q. But you knew at that time, before the
9 closing, that there were roof issues with this
10 home?

11 A. We knew that there was and we were told
12 that they were being remedied, because they had to
13 be if there was going to be another -- any other
14 contracts put on the house.

15 Q. Okay. And, in fact, you indicated on
16 this contract, which is marked as Exhibit Number 7,
17 that you were going to go back out and have your
18 home inspector go back out and make sure these
19 repairs were made, correct?

20 A. Yes.

21 Q. All right. And NextGen 135, there's
22 some exterior elements: Windows, decay noted to
23 the master bath picture window. Recommend having
24 checked and repaired.

25 Do you see that?

1 A. Yes.

2 Q. To your knowledge, was that done?

3 A. That was not done.

4 Q. That was not done?

5 A. That was not done.

6 Q. Well, why did you close on the house if
7 it was not done?

8 A. I don't know.

9 Q. Who does know?

10 A. When that issue came up with this
11 window, I was told that -- I was told that unless
12 Mr. Boyle called it out, it didn't need to be
13 addressed. Obviously, on this, he called it back
14 out, and I failed to pursue that, read this in its
15 entirety.

16 Q. You failed to read the inspection
17 report in its entirety?

18 A. Yes.

19 Q. You didn't expect Ms. Loper to go and
20 check on these repairs?

21 A. No, I didn't expect Ms. Loper to
22 inspect any of the repairs. But when I mentioned
23 it to her, she got upset with me and said, Not
24 unless he calls it out. So at that time, I thought
25 that it was something that I wasn't entitled to.

1 A. Yes.

2 Q. And so you knew that there was an
3 existence of those and you knew that a termite
4 company came out and treated them.

5 A. Yes.

6 Q. All right. Roof framing on the bottom
7 of 137. It says, Heavy water stain noted at the
8 top plate and beam below the active water stain in
9 the front left bedroom, recommend having checked by
10 a licensed contractor.

11 So there was an active water stain in
12 the front left bedroom at that time?

13 A. That's correct.

14 Q. All right. NextGen 138, the next page,
15 they're talking about some potential ventilation
16 problems with the roof and some insulation in the
17 roofing area.

18 Those were all brought to your
19 attention?

20 A. Yes.

21 Q. All right. Let's turn to the next
22 page. In the kitchen there is electric -- the
23 overhead light over the sink did not come on. Bulb
24 missing. Have checked. There were some open
25 spliced lines underneath the kitchen stove.

1 Did Mr. Corley indicate that he was
2 doing some additional work in the kitchen above the
3 stove?

4 A. Well, I never had a conversation with
5 Mr. Corley, but it appeared that way when we looked
6 at the house again.

7 Q. Okay. In fact, he added a kitchen
8 stove and a hood over the stove, right?

9 A. He did.

10 Q. The kitchen is a continuation and then
11 on NextGen 140 it's talking about some interior
12 elements about an exhaust vent noted. Those issues
13 were brought to your attention, correct?

14 A. Yes.

15 Q. And a water stain in the ceiling there
16 and the issue of an active leak noted in the
17 roofing section, that was brought to your
18 attention, bottom of the page of NextGen 140.

19 A. Yes.

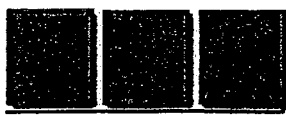
20 Q. All right. The following page, NextGen
21 141, there's some framed floors. It talks about a
22 hump in one of the doors and then a cracked window
23 pane noted in the den and then some defective seals
24 noted in some pane glass windows in the front right
25 bedroom and master bedroom and then some issues

In the Matter Of:

Malejko, Raymond J. and Cristine Malejk v
Corley, Todd, et al

Raymond J. Malejko
September 01, 2015

A. William Roberts, Jr. and Associates
We're About Service... Fast, Accurate and Friendly
(800) 743-DEPO
www.scheduledepo.com



A. William Roberts, Jr. & Associates
court reporting | videography | trial presentation | nationwide scheduling
scheduledepo.com | 800-743-DEPO

1 Q. All right. Well, look at Paragraph 20
2 of your Complaint.

3 A. I'm reading it, but it's just words.
4 I'm sorry, I just can't -- I can't grasp it.

5 Q. Okay. Let's just take it bit by bit.
6 You're claiming that Ms. Loper or
7 NextGen had a duty of loyalty and a duty to act in
8 compliance with your instructions.

9 Do you see that?

10 Do you know what the term fiduciary
11 duty is?

12 A. (Shaking head from side to side.)

13 Q. Is it because you don't remember or
14 don't recall? Did you ever address or ever get
15 training on that when you became a licensed
16 realtor?

17 A. I don't remember.

18 Q. All right. What are you claiming
19 Ms. Loper or NextGen Realty did that was not per
20 your instructions, you or your wife's instructions?

21 A. I don't know.

22 Q. What do you claim that she did not
23 disclose to you as it relates to this property that
24 she knew or that NextGen Realty knew of?

25 A. This is all lawyer stuff. I don't

1 know. I don't know.

2 Q. Well, tell me, as you sit here today,
3 what do you want Ms. Loper to do to make you whole?

4 A. I don't know.

5 Q. All right. In Paragraph 21 it
6 indicates that NextGen -- Ms. Loper in her
7 individual capacity and as an agent of NextGen and
8 Corley arranged for Humphries and/or DRI to repair
9 the roofing issues identified in the report and
10 inspect the entire roof system.

11 Do you know whether Ms. Loper or
12 NextGen called Mr. Humphries or DRI, or was that
13 Mr. Corley?

14 A. I had no conversations with Corley, so
15 I don't know. She would know the answer to that.
16 I'm not sure. I don't know.

17 Q. All right. You claim here that
18 Ms. Loper arranged for Mooneyham and/or MSE to
19 inspect the entire HVAC system. Tell me about
20 that.

21 A. Mr. Mooneyham was one of the guys that
22 she had that she recommended, and we called him,
23 and it turns out he doesn't even have a license.

24 Q. Do you think that Ms. Loper knew that,
25 or NextGen Realty knew that?

1 old?

2 A. Yes.

3 Q. The size of the property, are you
4 talking about the platted size, the square foot
5 size? What are we talking about?

6 A. I don't know.

7 Q. Who do you think would know? Do you
8 think your wife would know?

9 A. She might.

10 Q. All right. The defective
11 conditions -- there are a number of conditions that
12 are written in here, but are those all of the
13 conditions you're aware of that are listed in the
14 Complaint?

15 A. I don't know.

16 Q. Next Paragraph, 69, there's that
17 \$62,000 figure again. Do you have any itemized
18 listing of where that \$62,000 came from?

19 A. I don't remember. I don't remember.

20 Q. All right. Let's look at the next
21 negligent misrepresentation, the Fifth Cause of
22 Action, as to Corley, NextGen and Loper.

23 You have indicated that NextGen and
24 Loper had a duty to see that only accurate
25 information was communicated to you or to

1 Plaintiffs.

2 Do you see that, Paragraph 74, Page 12
3 of 30?

4 A. I don't know. I don't understand what
5 this means.

6 Q. Okay. All right. Let's go to the next
7 cause of action, then, as to NextGen and Loper,
8 breach of contract.

9 What contract did NextGen and Loper
10 breach with you -- with you, your wife and
11 daughter?

12 What contract did she breach with you?

13 A. The attorney filled this out, did this.
14 I don't know what these terms mean.

15 Q. You don't know what these terms mean?

16 A. No.

17 Q. What terms, breach of contract?

18 A. Yes.

19 Q. You don't know what breach of contract
20 means?

21 A. No.

22 Q. Were you ever in the service?

23 A. No, sir.

24 Q. So you don't know what contract we're
25 talking about. You know what the term contract

1 A. She told me that Mr. Corley owns
2 several pieces of property and he didn't know.

3 Q. Mr. Corley never had actually lived in
4 that home, had he?

5 A. That's what I was told.

6 Q. All right. So you had an opportunity
7 at that point, because it concerned you, to back
8 out of the contract if you so desired?

9 A. I did not have that conversation.

10 Q. You didn't have that conversation?

11 A. No, we did an inspection, but I don't
12 remember having the conversation that we could have
13 backed out at that point.

14 Q. Did it concern you enough to consider
15 backing out?

16 A. I remember the issue, but I don't
17 remember having that conversation. I remember
18 having the inspection done, it was a basic
19 inspection.

20 Q. Of the septic system?

21 A. Of the septic system.

22 Q. Paid for by Mr. Corley?

23 A. No, we paid for it, I believe.

24 Q. You paid for it?

25 A. I think so.

1 Q. And this was prior to closing?

2 A. Yes, I believe it was before closing,
3 absolutely.

4 Q. Who did you get to go out and do the
5 inspection?

6 A. I don't remember. I remember that
7 there was two companies. I called someone and they
8 couldn't come out until the next day.

9 And Ms. Loper recommended someone else
10 and she spoke with him and he came out within -- I
11 guess it was like an hour or something. I'm not
12 sure.

13 Q. Was this C.E. Taylor Septic? Does that
14 sound right?

15 A. It's possible, yes.

16 Q. And, in fact, he came out and did the
17 inspection of the septic system?

18 A. I believe so.

19 Q. And that cost about 160 dollars?

20 A. I don't remember. I don't remember.

21 Q. Are you sure that you and your wife
22 paid for that?

23 A. I'm not sure. I thought I did, but I'm
24 not sure.

25 Q. Would you have a cancelled check or a

1 Q. Well, let's look at the 7th Cause of
2 Action, then, because it looks as if you were the
3 only one that -- you're claiming breach of contract
4 accompanied by a fraudulent act -- because I'm not
5 aware of any contract with any other Plaintiff with
6 my client. Okay?

7 So the breach of contract accompanied
8 by a fraudulent act, what act did NextGen Realty or
9 Ms. Loper do that was fraudulent?

10 I just don't think that she represented
11 us the way she was supposed to. I don't know. I'm
12 sorry, I don't remember.

13 Q. Okay. Paragraph 86 says: NextGen
14 and/or Loper had and maintained a fraudulent intent
15 relating to the breach of the contract.

16 Do you know what that -- do you have
17 any evidence or can you explain any of that?

18 A. No, I don't know.

19 Q. Okay. Paragraph 87, it says: NextGen
20 and/or Loper committed and engaged in fraudulent
21 acts --

22 A. I have no idea where you are.

23 Q. It's Page 14 of 37, Paragraph 87.

24 It states: NextGen and/or Loper
25 committed and engaged in fraudulent acts

1 accompanying the breach of contract as enumerated
2 elsewhere, herein including but not limited to
3 advising Plaintiffs to proceed with the purchase of
4 the property knowing repairs had not been properly
5 performed.

6 Do you see that?

7 A. I don't know what it means. I don't
8 know.

9 Q. So you don't know what that means?

10 A. No.

11 Q. So if I asked you how NextGen or
12 Ms. Loper proceeded in that fashion, you wouldn't
13 know?

14 A. I can't remember.

15 Q. All right. The allegation here is that
16 NextGen -- and by definition Ms. Loper -- knew that
17 repairs had not been properly performed on this
18 house, but allowed you to go ahead and purchase it.

19 Do you understand that?

20 I mean, that's what it's stating, is
21 that she knew -- or NextGen knew -- that the
22 repairs hadn't been made appropriately, but went
23 ahead and got you to purchase the home.

24 A. I don't remember.

25 Q. Is it your intent for you and your

1 Q. (h), by failing to use the degree of
2 care, caution and diligence that a reasonable
3 person acting as a real-estate agent would have
4 used under the circumstances then prevailing.

5 Do you have any example of that?

6 A. I don't. I don't know.

7 Q. Are you going to be able to -- are you
8 going to testify as to what the standards of a real
9 estate agent is?

10 A. I have no idea.

11 Q. You're licensed?

12 A. I was licensed over 20 years ago. I
13 don't remember. I drove a truck for seven years,
14 but I don't remember the standards of that either.
15 I don't know.

16 Q. All right. Do you plan to associate
17 any realtor to evaluate this and see whether the
18 standards were met?

19 A. I don't know.

20 Q. And, finally, "and other particulars as
21 may be proven at trial."

22 Do you understand any other particulars
23 that you're going to prove at trial against NextGen
24 or Ms. Loper?

25 A. I don't know.

In the Matter Of:

Malejko, Raymond J. and Cristine Malejk v
Corley, Todd, et al

Raymond Malejko
October 13, 2015

A. William Roberts, Jr. and Associates
We're About Service... Fast, Accurate and Friendly
(800) 743-DEPO
www.scheduledepo.com



A. William Roberts, Jr. & Associates
court reporting | videography | trial presentation | nationwide scheduling
scheduledepo.com | 800-743-DEPO

1 A. Yes.

2 Q. And so as I read this -- and you've had
3 a chance to read that particular portion of the
4 contract that I've handed you of Exhibit 7; is that
5 correct?

6 A. Yes.

7 Q. It says here, and I'm going to quote
8 this verbatim, quote -- and this is from the repair
9 request proposal -- buyer and seller have agreed
10 that seller is to address and remedy all items from
11 the home inspection report performed by
12 HouseMasters, January 16, 2014, except the brick
13 lintel over the HVAC, which will not be addressed.

14 Seller to have all repairs completed by
15 Friday, March 21, 2014. Buyer plans to have home
16 inspector to reinspect repairs made as early as
17 March 24, 2014, end quote.

18 Is that what I have read there, sir?

19 A. Yes.

20 Q. Okay. So in essence, when you came
21 back to Mr. Corley for the second contract, the one
22 that was actually signed, you had already had the
23 benefit of the home inspection report since mid
24 January; is that right?

25 A. That's correct.

1 Q. And you had, as the buyer, since it was
2 exclusively prepared for you, you had ample time
3 and opportunity to go over Mr. Boyle's report with
4 a fine-tooth comb thoroughly; is that correct?

5 A. I had the opportunity, I guess.

6 Q. And you would have had the opportunity
7 to ask him questions about anything that he put in
8 the exclusive report for you; is that right?

9 A. Yeah, first time -- any questions I
10 asked, he had an attitude, but we're not here for
11 him.

12 Q. Well --

13 A. I just want to answer your question
14 with when I went in to do a second contract, I seen
15 that your client was doing work on the house. And
16 he was making it to where it was -- I believed that
17 he was making a conscious effort to remedy the
18 things that were done, whether I was buying the
19 house or someone else. And that's what I was told
20 by the Realtor. So that's when I made the other
21 offer.

22 Q. All right. So it would be your
23 impression that because of the inspection that was
24 done by Mr. Boyle in January, Mr. Corley, my
25 client, was addressing those issues that were found

1 whether you came back and bought the house or not?

2 A. That's correct, that's what I was told.

3 Q. He had to do something to sell the
4 house to anybody; is that correct?

5 A. That's correct, that's what I was told.

6 Q. So back to my question about the home
7 inspection report, when you went back or when you
8 learned that my client was addressing issues or
9 correcting or remedying problems that may have been
10 disclosed in Mr. Boyle's report, would it be fair
11 to say then that piqued your interest to possibly
12 get back in the deal?

13 A. It piqued my interests, yes.

14 Q. So in January, mid January, when you
15 first got that report, until you entered this
16 contract on March 5, 2014, that was roughly a month
17 and a half, you had about a month and a half where
18 you had possession of the house report from
19 Mr. Boyle and had every opportunity to review it in
20 detail?

21 A. I had opportunity. I felt like I
22 didn't need to because, as I said before, I went
23 over it with the Realtor, she downplayed
24 everything. I didn't realize all the other -- all
25 the issues with it to depth. And when I went back

1 into contract, I was thinking that everything was
2 going to be taken care of.

3 Q. Well now, Mr. Malejko, what I hear you
4 telling me is you had the report, you had the
5 opportunity to review the report, correct?

6 A. Yeah.

7 Q. You had the opportunity to ask
8 questions of the inspector about what he found in
9 the January report; is that correct?

10 A. I didn't know that -- I guess so, I
11 don't know.

12 Q. Well, Mr. Malejko, if you were looking
13 -- you had this report for roughly six weeks before
14 you entered into the contract. This was a big
15 investment, correct?

16 A. Yes.

17 Q. It was an important decision, correct?

18 A. Yes.

19 Q. Something one doesn't enter into
20 lightly or naively or cavalierly, correct?

21 A. Yes.

22 Q. And you're a Realtor or were a
23 Realtor and --

24 A. A long time ago.

25 Q. Well, you had some knowledge of how the

1 real estate business worked, correct?

2 A. Yes.

3 Q. And you were borrowing a considerable
4 sum of money to purchase this house, correct?

5 A. Yes.

6 Q. So obviously one would assume that
7 given that major a decision, one would want to know
8 as a buyer if there were any flaws or any defects
9 or any problems with a property they were getting
10 ready to spend \$160,000 on; is that a fair
11 statement?

12 A. Well, that's the whole problem. I
13 assumed.

14 Q. Okay. So what I hear you, and correct
15 me if I'm wrong, is you didn't take the time to
16 read that document, did you?

17 A. As I said, I went over with the
18 Realtor. I had confidence that she was taking over
19 everything and that's what I believed.

20 Q. I understand what you say about what
21 you were relying on and what you had confidence in.
22 But what I'm asking you as the buyer -- Ms. Loper
23 was not buying this house, you were buying this
24 house, and you were spending a lot of money on this
25 house. So the question I have for you is after you

1 got Exhibit 19 which is the -- excuse me,
2 Exhibit 16, the report, did you ever -- did you
3 ever, yourself, Mr. Malejko, go through it,
4 independent of talking to Ms. Loper, but once you
5 got this by e-mail from Mr. Boyle, did you ever
6 take the time to go through and sit down and
7 comprehensively read the findings and everything on
8 this report? Because it's 45 pages, it's pretty
9 lengthy and pretty detailed; would you agree?

10 A. It's pretty lengthy, yes.

11 Q. And so did you ever sit down, once you
12 got this report in mid-January of 2014, did you
13 ever sit down yourself and go through it
14 page-by-page, line-by-line, paragraph-by-paragraph
15 before you even asked Ms. Loper any questions about
16 it?

17 A. She told me not to.

18 Q. She told you not to?

19 A. She told me not to. She said wait to
20 go over it with her.

21 Sorry.

22 Q. No, that's not a problem at all. Okay.
23 So your --

24 (The proceedings were interrupted.)

25 BY MR. LYBRAND:

1 Q. -- so your answer to my last question
2 was when you got the HouseMasters inspection report
3 in January of 2014, you did not independently on
4 your own go through or read or review this document
5 because you contend Ms. Loper told you not to, that
6 she would go over it with you?

7 A. That's correct.

8 Q. And so was there a time where you got
9 with Ms. Loper and the two of you or more people
10 went through this document page-by-page,
11 line-by-line, paragraph-by-paragraph to look at
12 what the inspector found?

13 A. I don't remember the whole
14 conversation, but I distinctly remember her telling
15 me that we needed to go to a certain page that was
16 highlighted and go through that. And everything
17 that we went through was everything that we -- she
18 downplayed and when it came to going back to the
19 contract and I was told that everything was being
20 addressed, I really didn't think that that was
21 going to -- that report -- that everything was
22 going to be remedied.

23 Q. So your answer to my question is no; is
24 that correct, you didn't go through page-by-page,
25 line-by-line --

1 A. No.

2 Q. -- in detail and review Mr. Boyle's
3 contract(sic) before closing; is that correct?

4 A. No.

5 Q. Is that correct?

6 A. Yes.

7 Q. But you had the opportunity to do that,
8 correct?

9 A. Yes.

10 Q. Just because Ms. Loper allegedly said,
11 you don't need to do this, we'll do it together, if
12 that occurred --

13 A. It did.

14 Q. -- you still could have looked at it
15 independent of her telling you that; couldn't you?

16 A. Yes.

17 Q. Because it was exclusively prepared for
18 you; wasn't it?

19 A. Yes.

20 Q. And you could have made some notes or
21 had some questions written out or had some concerns
22 that you could have in advance been ready to ask
23 Ms. Loper about in the report, didn't you --
24 couldn't you?

25 A. I could have. There were some

1 questions that I had and I was told not if
2 Mr. Boyle didn't point it out. And there are some
3 things that are in there that Mr. Boyle did point
4 out that weren't highlighted. And like I said, I
5 just trusted in the Realtor.

6 Q. Okay.

7 A. My mistake.

8 Q. So your essentially -- your testimony
9 is you didn't take full advantage of your right and
10 obligation to read this document, the inspection
11 report; is that correct?

12 A. Yes.

13 Q. Sir?

14 A. Yes.

15 Q. Now, the contract that I asked you
16 about that, I believe is Exhibit 7, that had the
17 repair request proposal, contained in there that
18 the items found in the report were going to be
19 addressed by Mr. Corley, my client. And then after
20 that, you and the inspector, Mr. Boyle, could go
21 back to the house and confirm, double-check,
22 satisfy yourself that everything that was pointed
23 out as a problem, had in fact been fixed; isn't
24 that correct?

25 A. I'm sorry.

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF RICHLAND

3 RAYMOND J. MALEJKO, ET AL.,

4 Plaintiff,

5 CASE NO. 2015-CP-40-00480

6 vs.

2016-CP-40-01536

7 TODD CORLEY; JANET LOPER; NEXTGEN REAL
8 ESTATE, LLC; THOMAS HUMPHRIES; DR. ROOFS, INC.;
9 RAY MOONEYHAM; MOONEYHAM SOLAR & ELECTRIC;
PROFESSIONAL HOME INSPECTIONS, INC.; CORLEY
ENTERPRISES, INC. OF SOUTH CAROLINA & DBR
FRANCHISING, LLC,

10 Defendants.

11 DEPOSITION OF: RAYMOND J. MALEJKO - VOLUME IV
12 (PAGES 385 THROUGH 533)

13 DATE: April 26, 2016

14 TIME: 10:04 a.m.

15 LOCATION: Richardson Plowden & Robinson
16 1900 Barnwell Street
Columbia, SC

17 TAKEN BY: Counsel for the Defendants

18 REPORTED BY: Susan M. Valsecchi, RPR, CRR
19 Certified Realtime Reporter

20 A. WILLIAM ROBERTS, JR., & ASSOCIATES

21 Fast, Accurate & Friendly

22 Charleston, SC Hilton Head, SC Myrtle Beach, SC
23 (843) 722-8414 (843) 785-3263 (843) 839-3376

24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

1 A. Not to my knowledge.

2 Q. Okay. So back to my earlier question,
3 then. When your Complaint alleges that you were
4 never informed of a dual agency relationship before
5 purchasing the home owned by my client, Mr. Corley,
6 that's an inaccurate and incorrect allegation; is
7 that right?

8 A. Based on this information, yes.

9 Q. Okay. Now, we're going back to Exhibit
10 Number 7 which is the contract between you and
11 Mr. Corley for the sale of this house at 141 Fox
12 Crossing Road.

13 This contract is dated March 5, 2014.
14 Is that right?

15 A. Yes, sir.

16 Q. And you have some prior -- as you have
17 told us -- experience. You were a licensed
18 realtor, I believe, in the state of New Jersey. Is
19 that right?

20 A. Yes, many years ago.

21 Q. So in order to get a license, you had
22 to take tests and what have you, right?

23 A. Yes.

24 Q. You have to pass an examination?

25 A. Yes.

1 Q. And then you were licensed to represent
2 people in buying and selling homes. Is that
3 correct?

4 A. From the state of New Jersey many years
5 ago.

6 Q. Well, in this particular transaction,
7 as I understand it, you were still involved to such
8 an extent in the real estate business that you were
9 able to claim a part -- I believe it was called a
10 finder's fee -- as part of the commission on this
11 transaction. Isn't that right?

12 A. It's for like a referral fee for
13 finding -- for my name to go to another realtor.
14 It was a referral, nothing more than that.

15 Q. But in order for that to have happened,
16 it had to be that you were a real-estate agent.
17 You had to have a real-estate license, correct?

18 A. Yes.

19 Q. If I had been in this transaction and I
20 had no real-estate license, I couldn't have asked
21 for a referral fee, could I?

22 A. No.

23 Q. So although you say it was many years
24 ago that you were involved in buying and selling,
25 and what have you, real estate, at the very time

1 Q. Do you see that?

2 A. Yes.

3 Q. Now, I'm going to read that, and tell
4 me if I'm reading it correctly, okay?

5 Paragraph 9C.

6 Inspection options.

7 Buyer -- that's you -- will have the
8 following options during the due diligence period.

9 Is that right?

10 A. Yes.

11 Q. And then it lists a number of options
12 that you have during the due diligence period.

13 Is that correct?

14 A. I'm sorry, can you repeat the question?

15 Q. That is simply a paragraph in the
16 contract that gives you certain rights or options
17 as the buyer during the due diligence period,
18 correct, until the contract and the sale and the
19 closing is had, correct?

20 A. That's the options that are put in
21 here. I didn't necessarily understand it, but,
22 yes.

23 Q. Well, you entered into a contract,
24 didn't you, Mr. Malejko?

25 A. Yes.

1 A. No.

2 Q. It did not. Okay, thank you.

3 And that report specifically told you,
4 as the recipient of the report, that if you wanted
5 to have the home inspected for issues related to
6 mold, that you needed to hire another inspector,
7 correct?

8 A. That's what the paper says.

9 Q. Right. And that was never done prior
10 to you closing on the home, correct?

11 A. No.

12 Q. So that report, that inspection report
13 did not address any issues with respect to mold,
14 and the only thing that Mr. Corley agreed to do
15 were making any repairs that were contained in that
16 report.

17 And that report, again, did not address
18 anything having to do with mold, correct?

19 MR. BULLARD: Object to form.

20 THE WITNESS: I'm sorry, but I'm like
21 losing you in the question. I'm sorry.

22 BY MR. LIVOTI:

23 Q. Well, let's just get back to the
24 essence of this.

25 Mr. Corley agreed to make the repairs

**PLEASE SIGN TODAY and
E-MAIL to info@referralcenter.net
or FAX to (317) 577-9548**

Attention: Janet Loper
NextGen Real Estate LLC
144 Harbra Court
Lexington SC 29072

Wednesday, January 08, 2014
Broker Fax: (803) 317-2174

BROKER CONFIRMATION OF REFERRAL

This is a confirmation of the following referral your firm received through the Referral Center.

CUSTOMER: Raymond J. Malejko
Cristine Malejko
233 Bonnie View Court
Lexington SC 29072

*Buyer IS A Real Estate
agent Licensed in
New Jersey.
SEE HUD where
he got \$1,440.00*

We accept this referral customer for the next 14 month period, agree to provide the ~~commission~~ highest service and to respond to status update requests. We also agree to pay, within 7 days after closing, a referral fee as described below and to provide a copy of the closing statement.

REFERRAL TYPE: BUY

Referral was accepted by Janet Loper for NextGen Real Estate LLC at 10:54 AM, January 6, 2014, with a referral fee based on 30.00% of the brokerage company's commission earned for representing the side referred.

Property Address:

NextGen Real Estate LLC

SIGNED:

BY:

DATE:

1-8-14

Agent Assigned: Janet Loper

Office Assigned:

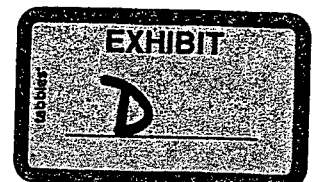
REFERRAL CENTER

7202 N. Shadeland Avenue, Suite 115
Indianapolis, IN 46250-2031

(317) 841-8100 / toll free (877) 841-8100 / fax (317) 577-9548

website: www.referralcenter.net federal id: 35-1422713

[for office use only: C: 2022136 R: 28961 P: 40915 B: 4012679]





EXCLUSIVE RIGHT TO BUY BUYER AGENCY CONTRACT

1. APPOINTMENT OF BROKER: By this contract Raymond J. Malejko ("Buyer") appoints Broker in Charge of NextGen Real Estate Company ("Broker") as Buyer's exclusive agent, subject to the terms and conditions stated in this Contract. By appointing Broker as Buyer's exclusive agent, Buyer agrees to conduct all negotiations for the types of property described in Section 2 below through Broker, and refer to Broker all inquiries made to Buyer about such properties from other brokers, salespersons, sellers and others during the term of this contract. "Negotiation" as used in this agreement shall mean property shown, negotiated, or information requested by Buyer through Broker.

2. PURPOSE OF AGENCY: Buyer desires to purchase or lease real property (which may include items of personal property) described as follows:

Type: ☒ Residential ☐ Commercial ☐ Industrial ☐ Vacant Land ☐ Other

General Description: Loxington Country

Approximate Price Range: \$100,000 - 110,000

General Location: Lex one Schools

Preferred Terms: _____

Other: _____

3. BROKER'S DUTIES: (a) The Broker shall provide to Buyer a meaningful explanation of agency and shall use Broker's professional real estate knowledge and skills to represent the Buyer in a diligent and effective manner and to locate property which is available for purchase or lease and suitable to the Buyer; (b) If the Broker is not representing the seller, the Broker shall represent solely the interest of the Buyer in all negotiations and transactions regarding the acquisition of real property, and repudiate any agency or subagency relationship with the seller or the company representing the seller and shall not claim the subagency compensation offered to the selling broker in the Multiple Listing Service; (c) if the Broker represents the seller as well as the Buyer (i.e., disclosed dual agency), the Broker shall not disclose to the Buyer information obtained within the confidentiality and trust of the fiduciary relationship with the seller, nor disclose to the seller information similarly obtained from the Buyer, without the consent of the party adversely affected by the disclosure; (d) the Broker may represent other buyers who may be interested in the same property as the Buyer. Upon the termination or completion of this agreement, Broker shall keep confidential all information received during the course of this agreement which was made confidential by written request or instructions from the client, except as provided for under South Carolina law.

Broker represents that Broker is duly licensed under the laws of the State of South Carolina as a real estate broker. Broker will use his best efforts as Buyer's agent to locate property of the type described in Section 2 of this contract and to negotiate acceptance of any offer by Buyer to purchase or lease such property. During the term of this Contract, Broker will give Buyer information describing and identifying properties that appear to Broker to substantially meet the conditions set forth in Section 2.

4. BUYER'S DUTIES. BUYER AGREES TO:

(A) Work exclusively with Broker and its Affiliated licensees during the term of this agreement by: (1) viewing any property (previewing, etc.) only with Broker or Broker's designated representative and not with another real estate broker, salesperson or seller; and (2) exclusively allowing Broker or Salesperson to identify property, negotiate for Buyer and otherwise to represent Buyer; and (3) referring to Broker all inquiries received in any form from any other real estate broker or affiliated licensees; and (4) holding Broker harmless from liability as a result of incomplete/inaccurate information provided to Broker by Buyer or Seller; (5) holding Broker harmless from liability as a result of Seller's failure to provide a complete Seller's Property Condition Disclosure statement; and (6) indemnifying Broker against all claims, damages, losses, expenses, or liability arising from the handling of earnest money by anyone other than Broker.

(B) Assist Broker and its Affiliated Licensees in the process of identifying, negotiating and contracting to purchase, lease or otherwise acquire by: (1) providing Broker with reliable information (including financial information and written authorization to obtain verification of funds) that Broker deems necessary for the performance of this Agreement; and (2) making himself available to meet with Broker and to see properties, in order that the Broker will be able to perform the promises of the Brokerage Engagement.

(C) Provide Broker and its Affiliated Licensees the following information: (1) general nature, location, and requirements of desired property; and (2) price range, and other terms and conditions relating to desired property.

(D) To authorize Buyer's attorneys and the settlement agent to furnish to Broker copies of the final HUD-1 settlement statement for the transaction prior to the closing date.

[Signature] BUYER ☐ BUYER ☐ BROKER HAVE READ THIS PAGE

Form 130
PAGE 1 OF 4

Produced with ZipForm® by zipLogic 18070 Fifteen Mile Road, Fraser, Michigan 48028 www.zipLogic.com



5. **COMPENSATION OF BROKER:** Brokers fees will be deemed earned when Buyer is under contract to purchase any property presented by Broker or negotiated by Buyer. This fee will be due and payable at closing or upon Buyer's default. If Buyer defaults, the total compensation that would have been due Broker will be due and payable immediately in cash from the Buyer. In consideration of the services performed by Broker under the terms of this Contract, Buyer agrees to pay Broker the following fee(s): (CHECK ALL APPLICABLE SECTIONS)

☐ a. **Retainer Fee:** Buyer will pay Broker a nonrefundable retainer fee of \$ _____ due and payable upon the signing of this contract. This fee ☐ shall or ☐ shall not be credited against the Brokerage fee.

☐ b. **Service Fee:** Buyer shall pay Broker a Service Fee of \$ _____ to be paid on _____, whether or not Buyer purchases any property. (Check applicable sub-section.)

☐ This Service Fee shall be the only fee due Broker from Buyer under the terms of this Contract.

☐ This Service Fee shall be credited against the Brokerage Fee described in subsection (c) below and shall be kept by Broker whether or not a Brokerage Fee is earned.

☐ This Service Fee shall be credited against the Brokerage Fee described in subsection (c) below and shall be kept by Broker whether or not a Brokerage Fee is earned, unless Buyer enters into a purchase and sale agreement. In the event that Buyer enters into a purchase and sale agreement, Buyer and Broker agree that the above Service Fee will be credited against the Brokerage Fee as defined below.

☒ c. **Brokerage Fee:** Buyer shall pay Broker a Brokerage Fee which is the greater of \$ _____ or _____ % of the purchase or total lease price (renewal, if applicable) of any property purchased or leased by Buyer, including "For Sale by Owner" properties. If within 180 days after the expiration of this Contract Buyer purchases or leases any property which Broker has negotiated during the term of this Contract, Buyer will pay Broker the Brokerage Fee stated above. Broker shall use his best efforts to obtain payment of the Brokerage Fee out of the transaction, but Buyer shall have the obligation to pay Broker the Brokerage Fee set forth in this Contract if Broker cannot obtain payment of such fee out of the transaction. Any fees paid by the seller or seller's agent shall be credited against the Brokerage fee.

☒ d. **Brokerage Fee:** Broker shall obtain payment of the Brokerage Fee out of the transaction. Broker shall be paid by the cooperating broker as stated in the Multiple Listing Service or as agreed to by the Broker and cooperating broker, or as agreed to by the Broker and Seller in a "For Sale By Owner" transaction. Buyer shall not be responsible for paying Broker the Brokerage fee.

6. **TERM OF AGENCY:** Broker's authority to act as Buyer's exclusive agent under the terms of this Contract shall begin on January 9 2014 and shall end at 11:59 p.m. on April 2014.

7. **CONSENT TO DISCLOSED DUAL AGENCY/DESIGNATED AGENCY: (INITIAL APPLICABLE CHOICES)**

☒ Buyer acknowledges receiving an explanation of the types of agency relationships that are offered by brokerage and an Agency Disclosure Form at the first practical opportunity at which substantive contact occurred between the Broker and Buyer.

Buyer acknowledges that after entering into this written agency contract, agent might request a modification in order to act as a dual agent or a designated agent in a specific transaction. If asked:

☒ Permission to act as a dual agent will not be considered.

☒ Permission to act as a dual agent may be considered at the time I am provided with information about the other party to a transaction. If Buyer agrees, Buyer will execute a separate written **Dual Agency Agreement**.

☒ Permission to act as a designated agent will not be considered.

☒ Permission to act as a designated agent may be considered at the time I am provided with information about the other party to a transaction. If Buyer agrees, Buyer will execute a separate written **Designated Agency Agreement**.

8. **OTHER POTENTIAL BUYERS:** Buyer understands that other potential buyers have entered into similar agency contracts with Broker which may involve the purchase or lease, through Broker of the same or similar property or properties as Buyer is attempting to purchase or lease. Buyer consents to Broker's representation of such other buyers.

☒ BUYER ☐ BUYER ☐ BROKER HAVE READ THIS PAGE

Form 130
PAGE 2 OF 4

Produced with ZipForms by zipLogic 18070 Fifteen Mile Road, Fraser, Michigan 48028 www.ziplogic.com

NEXTGEN 093

9. INDEMNIFICATION OF BROKER: Buyer promises to disclose to Broker whether Buyer has signed any agency agreement with any other Broker, or has been given prior information about any property that is the subject of this Contract by any other Broker or salesperson, or has previously been shown any such property by any other broker or salesperson. If Buyer fails to tell Broker about such other broker's or salesperson's involvement, and Broker incurs any loss or damage as a result of any claim being brought against him on account of such involvement, due to no fault of Broker, then Buyer shall pay Broker all such losses and damages incurred by Broker because of such claim.

10. DISCLOSURE OF BUYER'S IDENTITY/CONFIDENTIALITY: The Broker ☐ does or ☐ does not have the Buyer's permission to disclose Buyer's identity to all property owners and other third parties. The Buyer is advised of the possibility that seller or seller's agent may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by confidentiality agreement of the parties.

11. NONDISCRIMINATION: Broker and Buyer agree that all actions carried out under this contract shall be in full compliance with local, state, and federal fair housing laws against discrimination on the basis of race, creed, color, religion, national origin, sex, familial status, marital status, age or disabilities.

12. PROFESSIONAL COUNSEL: Buyer acknowledges that Broker is being retained solely as a real estate agent and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, home inspector or other professional service provider. Buyer agrees to seek professional advice concerning the condition of the property, legal, tax and other professional service matters.

13. MEDIATION CLAUSE: Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, 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 Buyer or Broker in connection with the services to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

14. SEX OFFENDER REGISTRY INFORMATION: The Buyer and Broker agree that during the course of the agency relationship, referred to in the above mentioned agreement, the Broker and all affiliated agents shall not be responsible for obtaining or disclosing any information contained in the official South Carolina Sex Offender Registry. The Buyer understands that no course of action may be brought against the Broker or his affiliates for failing to obtain and disclose information contained in the official South Carolina Sex Offender Registry. The Buyer understands and agrees that the Buyer shall be responsible for obtaining any such information. The Buyer understands that Sex Offender Registry information may be obtained from the local Sheriff's Department or other appropriate law enforcement officials.

15. ENTIRE BINDING AGREEMENT: This written instrument, including the additional terms and conditions set forth on the reverse, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Broker. It can be changed only by a subsequently written instrument signed by both parties.

16. CONTINGENCIES: _____

17. FACSIMILE AND OTHER ELECTRONIC MEANS: The parties agree that this Agreement may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

☒ BUYER ☐ BUYER ☐ BROKER HAVE READ THIS PAGE

Form 130
PAGE 3 OF 4

Produced with ZipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48028 www.ziplogix.com

NEXTGEN 094

THIS IS A LEGALLY BINDING AGREEMENT. BUYER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BUYER AND BROKER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. BUYER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

X R 11/9/14 4:52 Email: blessed5507@gmail.com
BUYER Date Time Phone: 732 314 0154
Fax: _____

BUYER Date Time Email: _____
Phone: _____
Fax: _____

BUYER Address: _____

Nextgen Real Estate By: [Signature] 11/9/14
BROKER/BUYER'S AGENT COMPANY Broker/ licensee Date Time

The foregoing 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. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

© 2008 South Carolina Association of REALTORS®. 1/08
Form 130
PAGE 4 OF 4



DESIGNATED AGENCY AGREEMENT

THIS DOCUMENT IS A MODIFICATION TO THE SELLER'S LISTING AGREEMENT AND THE BUYER'S AGENCY REPRESENTATION AGREEMENT.

This Designated Agency Agreement is entered into between Raymond J. Malejko Buyer, and

NextGen Real Estate Real Estate Company

Jack Corley Seller, and

NextGen Real Estate Real Estate Company

for Property located at 141 Fox Crossing Rd, West Columbia SC 29170

The term "Broker" shall mean the broker-in-charge of the Brokerage, or the broker-in-charge's duly authorized real estate licensed representative. Broker shall designate one or more associated licensees from the Brokerage to represent Seller and one or more associated licensees from the Brokerage to represent Buyer. The designated agents of the Seller and Buyer shall have the duties as listed and described in the previous signed listing agreement and buyer's representation agreement and as required in Section 40-57-137(P) of the South Carolina Code of Laws. In designated agency, Broker, shall be a dual agent and have the additional duties of:

- a) Reasonable care to protect any confidential information disclosed to the licensee, and
- b) Responsibility to direct and supervise the business activities of the associated licensees who represent the Seller and Buyer while taking no action that is adverse or detrimental to either party's interest in the transaction. The Broker reserves the right to substitute designated agents and if so shall notify the parties in writing.

A Seller or Buyer under this designated agency agreement is represented only by associated licensees specifically named by the broker. The named "designated" associated licensee(s) acts solely on behalf of the client he or she is designated to represent and may only share confidential information about the client with the associated licensees' supervisory broker who is also named in this agreement.

1. **DESIGNATED AGENCY:** Seller and Buyer agree, understand and authorize the following:

- (a) Seller and Buyer have determined that the advantages of entering into this Designated Agency Agreement, with Broker acting as Agent for both, outweigh the disadvantages.
- (b) Broker shall designate an associated licensee(s) as the agent to represent Seller, to the exclusion of any other licensees associated with Broker. The associated licensee(s) shall not be so designated and shall not undertake to represent only the interests of the Seller if the associated licensee has actually received confidential information concerning the Buyer in connection with the transaction. The designated agent shall represent only the interests of Seller to the extent permitted by law.
- (c) Broker shall designate an associated licensee(s) as the agent to represent Buyer, to the exclusion of any other licensees associated with Broker. The associated licensee(s) shall not be so designated and shall not undertake to represent only the interests of the Buyer if the agent has actually received confidential information concerning the Seller in connection with the transaction. The designated agent shall represent only the interests of the Buyer to the extent permitted by law. If Buyer desires to view a property that was personally listed by Broker or if Buyer is personally represented by Broker, Broker shall act as a dual agent with the written consent of the buyer and seller and shall represent the Seller and Buyer in a Dual Agency Agreement as required by law and not use Designated Agency.
- (d) Seller and Buyer agree and consent that in this designated agency transaction where both Seller and Buyer are represented by designated agents and the designated agents are supervised by the same Broker, the Broker shall act as a dual agent.
- (e) Seller and Buyer agree that a designated agent may disclose to the designated agent's Broker confidential information of a client for the purpose of seeking advice or assistance for the benefit of the Seller or Buyer in regard to a transaction.
- (f) When Broker appoints different associated licensees as designated agents to represent Seller and Buyer, the Broker, all remaining associated licensees, and the real estate brokerage will be dual agents, except for the associated licensees acting as designated agents and those licensees in the firm's branch offices so long as those branch offices have a separate Broker.
- (g) Designated agents must not disclose, except to the designated agent's Broker, information made confidential by written request or instruction of the Seller or Buyer whom the designated agent is representing, except information allowed to be disclosed by law. Unless required to be disclosed by law, Broker may not reveal confidential information received from either the designated agent or the Seller or Buyer with whom the designated agent is working. For the purposes of this agreement, confidential information is information, the disclosure of which, has



not been consented to by the client and that could harm the negotiating position of the client. The designation of one or more of Broker's associated licensees as designated agents does not permit the disclosure by Broker or associated licensees of any information made confidential by an express written request or instruction by Seller or Buyer before or after the creation of the designated agency. Broker and associated licensees shall continue to maintain this confidential information unless the Seller or Buyer from whom the confidential information was obtained permits its disclosure by written agreement or disclosure is required by law.

- (h) Broker shall not be liable to either party for (1) disclosing known material facts concerning the property or the transaction required by law to be disclosed and (2) refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but could benefit the other party.
- (i) Seller and Buyer are fully aware of, and understand, the implications and consequences of Broker's Designated Agency role as expressed herein.
- (j) Seller and Buyer agree to indemnify and hold Broker harmless against all claims, damages, losses, expenses, or liabilities, other than violations of the South Carolina Real Estate License law and intentional wrongful acts, arising from Broker's role under the terms of this Designated Agency Agreement.

2. **PREVIOUS AGENCY AGREEMENTS:** The parties agree that this Agreement shall modify any agency agreements previously entered into between Seller and Broker or between Buyer and Broker. If those previous agency agreements contain expiration or termination dates prior to the termination date for this Agreement as set forth below, the expiration or termination dates of the previous agency agreements are hereby extended until the termination of this Agreement. If this Agreement terminates prior to the termination date of any previous agency agreement, the previous agency agreement shall remain in force and effect in accordance with its terms. In any areas where this Agreement contradicts or conflicts with those agency agreements, this Designated Agency Agreement shall control.

3. **DURATION OF DESIGNATED AGENCY:** The term of this Agreement shall commence when this document is executed by Seller, Buyer and Broker, and unless extended by written agreement of all parties, shall terminate upon the closing of the sale of the property.

4. **FAIR HOUSING:** The Broker shall conduct all brokerage activities in regard to this Agreement without regard to race, color, religion, sex, handicap, familial status, or national origin and shall conduct business in full compliance with local, state, and federal fair housing laws.

5. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the execution of this designated agency agreement may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

6. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument, and in pleading or proving any provision of this Agreement it shall not be necessary to produce more than one such counterpart.

7. **REPRESENTATION:** The associated licensee(s) supervisory broker is _____
The associated licensee(s) designated to represent Seller is _____
The associated licensee(s) designated to represent Buyer is _____

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A SIGNED COPY OF THIS DESIGNATED AGENCY AGREEMENT.

Seller

Date

Time

Seller

Date

Time

Buyer

Date

Time

Buyer

Date

Time

Real Estate Brokerage (Name of Real Estate Co.)

By: Broker/ Assoc. Licensee

Date

(Rev. 10/04)

2

Personal information provided in this application may be subject to public scrutiny or release under the South Carolina Freedom of Information Act or other provisions of federal and state law.



DUAL AGENCY AGREEMENT

THIS DOCUMENT IS A MODIFICATION TO THE SELLER'S LISTING AGREEMENT AND THE BUYER'S AGENCY REPRESENTATION AGREEMENT.

This Dual Agency Agreement is entered into between Raymond J. Malejko Buyer, and
Next Gen Real Estate Real Estate Company
Todd Corley Seller, and
Next Gen Real Estate Real Estate Company
 for Property located at 141 Fox Crossing Rd, West Gt R SC 29170

The term "Broker" includes the real estate firm, broker-in-charge and associated licensees.

1. **DUAL AGENCY:** Seller and Buyer agree that Broker shall serve as both Seller's agent and Buyer's agent in the sale of Seller's property to Buyer in accordance with Section 40-57-137(M)(1) of the South Carolina Code of Laws, which provides in part that "...in acting as a dual agent, a licensee represents clients whose interest may be adverse and that agency duties are limited." The parties agree that without permission from the party about whom the information pertains, Broker shall not disclose to the other party the following information:

- That a party may agree to a price, terms, or any conditions of sale other than those offered;
- The motivation of a party for engaging in the transaction, unless disclosure is otherwise provided by state law or regulation; and
- Any information about a party which that party has identified as confidential unless disclosure is otherwise required by state law or regulation.

2. **BROKER'S DUAL AGENCY ROLE:** Because Broker is serving as Agent for both Seller and Buyer in this transaction, Broker shall make every reasonable effort to represent Seller and Buyer in a balanced and fair manner. Broker shall also make every reasonable effort to encourage and effect communication and negotiation between Seller and Buyer. Seller and Buyer understand and acknowledge that:

- Prior to the time this agreement was entered into, Broker acted as the exclusive Agent of Seller and acted as exclusive Agent of Buyer.
- In those separate roles Broker may have obtained information which, if disclosed, could harm the bargaining position of the party providing such information to Broker.
- Broker is required by law to disclose to Seller and Buyer any known material facts concerning the property or the transaction. Seller and Buyer agree that Broker shall not be liable to either party for (1) disclosing known material facts concerning the property required by law to be disclosed and (2) refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but could benefit the other party.

3. **SELLER'S AND BUYER'S ROLES:** Because of Broker's Dual Agency relationship, Seller and Buyer understand and acknowledge that:

- Seller and Buyer have determined that the advantages of entering into this Dual Agency Agreement, with Broker acting as Agent for both, outweigh the disadvantages.
- Seller and Buyer each have the responsibility of making their own decisions as to what terms are to be included in any agreement to buy and sell between the Seller and Buyer.
- Seller and Buyer are fully aware of, and understand, the implications and consequences of Broker's Dual Agency role as expressed herein to provide balanced and fair representation of Seller and Buyer and to encourage communication between Seller and Buyer rather than acting as an advocate or exclusive agent.
- Seller and Buyer agree to indemnify and hold Broker harmless against all claims, damages, losses, expenses, or liabilities, other than violations of the South Carolina Real Estate License Law and intentional wrongful acts, arising from Broker's role as a Dual Agent.
- Seller and Buyer may seek independent legal counsel to assist them with the negotiation and preparation of a buy and sell agreement or with any matter relating to the transaction which is the subject matter of a buy and sell agreement.

4. **PREVIOUS AGENCY AGREEMENTS:** The parties agree that this Agreement shall modify any agency agreements previously entered into by Seller and Broker or between Buyer and Broker. If those previous agency agreements contain expiration or termination dates prior to the termination date for this Agreement as set forth below, the expiration or termination dates of the previous agency agreements are hereby extended until the termination of this Agreement. If this Agreement terminates prior to the termination date of any previous agency agreement, the previous agency agreement shall remain in force and effect in accordance with its terms. In any areas where this Agreement contradicts or conflicts with those agency agreements, this Dual Agency Agreement shall control.

5. **DURATION OF DUAL AGENCY:** The term of this Agreement shall commence when this document is executed by Seller, Buyer and Broker, and unless extended by written agreement of all parties, shall terminate upon the closing of the sale of the property.

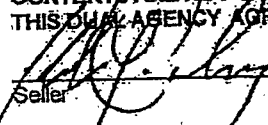


6. **FAIR HOUSING:** The Broker shall conduct all brokerage activities in regard to this Agreement without regard to race, color, religion, sex, handicap, familial status, or national origin and shall conduct business in full compliance with local, state, and federal fair housing laws.

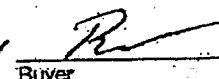
7. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the execution of this dual agency agreement or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

8. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument, and in pleading or proving any provision of this Agreement it shall not be necessary to produce more than one such counterpart.

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A SIGNED COPY OF THIS DUAL AGENCY AGREEMENT.

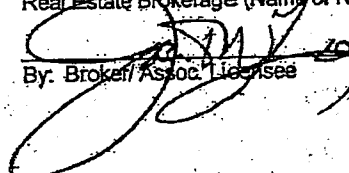
 _____
Seller Date 1/10/14 Time _____

Seller Date _____ Time _____

 _____
Buyer Date 1/9/14 Time 4:55 PM

Buyer Date _____ Time _____

Next Gen Real Estate
Real Estate Brokerage (Name of Real Estate Co.)

 _____
By: Broker/Assoc. Licensee Date _____



CONTRACT OF SALE
RESIDENTIAL
Revised June, 2011



THE [] BUYER [] SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. PARTIES: This Contract of Sale is entered into on MARCH 5, 20 14 between
Buyer(s) Raymond J. Malejko (hereinafter called "Buyer"), and
Seller(s) Todd Corley (hereinafter called "Seller").
Seller represents that this Offer is () is not (X) subject to approval by a Third Party (i.e. a bank, corporation or relocation company).

2. PROPERTY: Seller agrees to sell and Buyer agrees to buy the following real property with improvements and fixtures thereon:

Lot _____ Block _____ Phase _____ Subdivision FOX CROSSING
Address 141 FOX CROSSING ROAD Unit # _____ City WEST COLUMBIA Zip 29170
TMS# 005536-01-011 County of LEXINGTON State of South Carolina.

3. PRICE: The purchase price is \$ 112,000

4. EARNEST MONEY:

A. \$ 500.00 Earnest money is paid by: Check (X) Cash () Other ()

B. \$ _____ Additional earnest money to be delivered on or before _____

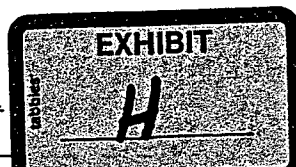
C. Earnest money to be held in trust by Northern Real Estate (Escrow Agent).

D. Escrow Agent does not guarantee payment of funds accepted as earnest money. All earnest money received will be deposited as required by South Carolina law and the South Carolina Real Estate Commission's rules and regulations. If earnest money is returned because it is a fraudulent instrument or due to insufficient funds, the Agent holding earnest money will immediately notify the other Agent and Contract may be voided at the Seller's option. Buyer agrees to and understands that earnest money may be deposited in an interest-bearing escrow account and that he has the right to ownership of any interest accrued. Buyer, through this written agreement, relinquishes ownership of the accrued interest to Escrow Agent as consideration for the expenses incurred in maintaining the account. Earnest money deposited in an escrow account will not be released to either Party until confirmation is received that funds have cleared the bank. If a dispute arises between Buyer and Seller concerning entitlement to and disposition of an earnest money deposit, the deposit will be retained in Escrow Agent's escrow account until Escrow Agent has obtained a written release signed by Buyer and Seller consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. See S.C. Code, Section 40-57-135 (1976). If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs.

BUYER [Signature] 3/5/14
Initials Date

SELLER [Signature] 3/8/14
Initials Date

05/20/11
10/10



5. TRANSACTION COSTS: Buyer's Transaction Costs include all closing costs generated by the type of financing selected, pre-paid recurring items, mortgage insurance and discount points. Seller's Transaction Costs include preparation of deed, any recording charge based on value of the Property (deed stamps), all costs necessary to deliver a marketable title (including recording of satisfaction), property taxes pro-rated to the day of closing and the real estate brokerage fee. Buyer's and Seller's Transaction Costs will be paid as follows: (Select, initial and date only one of the options below)

A. BUYER () SELLER () Buyer will provide or pay for all Buyer's Transaction Costs and Seller will provide or pay for all Seller's Transaction Costs as well as pay for Buyer's non-allowable costs if the financing type selected in Paragraph 6(A) is either VA or FHA.

B. BUYER () SELLER () Seller will pay Buyer's Transaction Costs not to exceed \$2,000 which includes non-allowable costs first (for VA or FHA financing) and then allowable costs. Buyer is responsible for any Buyer's Transaction Costs exceeding this amount. If the amount Seller has agreed to pay toward Buyer's Transaction Costs exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all Seller's Transaction Costs.

6. FINANCING: Buyer's obligation under this Contract is () is not () contingent on Buyer obtaining financing. Buyer and Seller acknowledge that all financing contingencies herein automatically expire five (5) Business Days prior to the closing date set forth in Paragraph 7 and this Contract will become non-contingent on financing unless otherwise agreed to in writing. If Buyer subsequently fails to close because of the inability to obtain financing, the Buyer will be in default of this Contract and earnest money will be released to Seller. See Paragraph 4(D).

A. FINANCING TYPE: Financing type will be Conventional (X), FHA (), VA (), Seller (). Cash (no financing required) (). Other ().

Buyer or Buyer's Agent will immediately notify Seller or Seller's Agent if Buyer changes financing type. If the change in financing type modifies the terms of this Contract, then Seller will have the option of agreeing with the change or voiding this Contract. If Seller elects to void the Contract, earnest money will be released to the Buyer. See Paragraph 4(D).

Note: If Buyer utilizes FHA or VA financing, an FHA/VA Addendum signed by Buyer and Seller must accompany this Contract. Utilizing FHA or VA financing will require Seller to pay for certain loan-related closing costs termed "non-allowable costs". VA financing will additionally require Seller to pay for the cost of conducting the VA required termite (CL-100) inspection.

B. APPLICATION FOR FINANCING: IF Lender financing is being used, Buyer will have five (5) Business Days from the date of Contract acceptance to apply for financing from Lender of their choice. Application will include advancement of any funds required by Lender and providing Lender's identity to Seller or Seller's Brokers. Buyer will also furnish Lender all documentation required for the processing of this loan in a diligent and timely manner.

1. Should Buyer fail to apply for the loan within five (5) Business Days, Buyer will be in default of this Contract and Seller will have the option of voiding this Contract with earnest money being released to Seller. Should the loan be denied while subject to a financing contingency, Contract will be voided and earnest money will be released to Buyer. See Paragraph 4(D).

2. If loan is rejected by initial lender or subsequent lenders, Buyer or Buyer's Agent must give written notice of each occurrence to the Seller or Seller's Agent immediately, and Seller will then have the option of continuing with or voiding the Contract. If Seller elects to void the Contract, the earnest money will be released to Buyer, provided it is not within (5) business days prior to closing. See Paragraph 4(D).

3. If Buyer elects to make any material change to their financial condition after Contract acceptance that negatively affects their ability to close the transaction, Buyer will be in default and earnest money will be released to Seller. See Paragraph 4(D).

4. Buyer gives permission to Lender to disclose any allowable pertinent information concerning Buyer's loan to any attorney representing Buyer or Seller and to the Buyer's and Seller's Brokers.

BUYER

Initials

Date

SELLER

Initials

Date

C. SELLER FINANCING. If Seller financing is included in the financing of this Property, Buyer's and Seller's Brokers make no representations as to the creditworthiness of Buyer and suggest that Seller determine whether Buyer's credit is satisfactory. The terms of Seller financing should be noted in Paragraph 18 of this Contract or in a separate Addendum to this Contract.

D. CASH TRANSACTION. In a cash transaction, Buyer agrees to provide Seller or Seller's Broker, within five (5) Business Days of acceptance of this Contract, written verification of availability of funds from the source(s) of those funds. If Buyer fails to comply with the above requirement, then Seller will have the option of voiding this Contract and earnest money will be released to Seller. See Paragraph 4(D).

E. APPRAISAL CONTINGENCY. This Contract is (✓) is not () contingent on lot or parcel with building and improvements thereon, if any, appraising according to Lender's appraisal, or other appraisal as agreed by Buyer and Seller for non-Lender financed transactions, for the selling price or more. If contingent, and lot or parcel with building and improvements thereon appraises for less than the selling price, the Buyer will have one business day after notification of the results of the appraisal to proceed with the consummation of this sale without regard to the appraised value or attempt to renegotiate this Contract. If after the one business day period, the Parties are unable to reach agreement on a renegotiated Contract then either party can terminate this Contract by providing written notification to the other. Upon termination, earnest money will be released to Buyer. See Paragraph 4 (D).

F. SELLER'S MORTGAGE PAYOFF. Seller gives permission to Closing Attorney to obtain Seller's mortgage payoff information. SELLER (/)

7. CONVEYANCE DATE OF CLOSING/POSSESSION: Conveyance will be made subject to all easements and covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a general warranty deed, if applicable, free of encumbrances, except as herein stated. The deed will be prepared in the name(s) of Raymond J. Malick or as otherwise stipulated by Buyer, and delivered to stipulated place of closing. The deed will be held in trust by the Closing Attorney until sales proceeds have been disbursed to Seller, at which time the Closing Attorney shall be authorized to record the deed. This transaction will be closed on or before March 28 2014, unless extended pursuant to Paragraph 7(B) or by mutual agreement.

A. BUYER (/) 3/5/14 SELLER (/) 3/8/14 Seller will be obligated to vacate and give possession of the Property (free of debris and in a clean condition) to Buyer: at closing (X), 24 hours after closing (), 48 hours after closing (), or in accordance with attached agreement ().

B. If Buyer has provided written loan commitment without additional conditions, or in a cash transaction Buyer has met the terms and conditions of Paragraph 6(D), but has not closed within the stipulated time limit of this Contract, both Parties agree to extend this Contract for a period not to exceed five (5) Business Days from the original closing date.

8. RIGHT OF BUYER TO INSPECT/RE-INSPECT PROPERTY: Buyer or Inspectors selected by Buyer at Buyer's expense will have the right to enter Property to inspect, examine and test the Property. For the purposes of this Contract, the term "Inspector" is defined as a person or company, licensed or certified where required by law, with specific, professional expertise or knowledge in property inspections, or in an item, building product or condition contained therein for which the Inspector is inspecting, examining or testing. Seller will make the Property available for all inspections and will have all utilities operational for the inspections, any re-inspections, appraisals and final walk through. Seller agrees to allow Buyer or Inspectors selected by Buyer, the right to re-inspect the Property at Buyer's expense to determine if agreed upon repairs and/or replacements have been made. Buyer will also be allowed to perform a walk-through prior to closing to confirm that the Property has been maintained in compliance with Paragraph 11, if applicable, and that any personal Property to be transferred or conveyed is on the premises. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages arising out of, or related to, the exercise of these rights and will repair any damages resulting from same.

BUYER (/) 3/5/14 SELLER (/) 3/8/14
Initials Date Initials Date

9. PROPERTY SOLD SUBJECT TO DUE DILIGENCE PERIOD:

(If Property being sold "As-Is" proceed to Paragraph 10 PROPERTY SOLD "AS-IS")

A. DUE DILIGENCE PERIOD INSPECTIONS: Buyer will have a ten (10) Business Day Due Diligence Period beginning at time of final Contract acceptance, as defined in Paragraph 29(B), to conduct, at Buyer's sole expense, whatever non-destructive inspections, examinations and testing of the Property that Buyer deems appropriate and necessary. This will include, but is not limited to, conducting a risk assessment test for lead-based paint and lead-based paint hazards, testing for environmental hazards, inspecting the heating and air (HVAC) system and inspecting for active infestations of and/or damage from termites, other wood destroying organisms, fungi and for any drainage problems (CL-100 inspection). If Buyer utilizes VA financing, Seller will be required to pay for the cost of conducting the VA-required termite (CL-100) inspection. Any re-inspections that may be required will also be at Buyer's expense. If this Contract is contingent on the sale and closing of Buyer's Property (See Paragraph 16A) then the Due Diligence Period will begin on the date Seller or Seller's Broker receives written notification that this contingency is removed.

B. DUE DILIGENCE PERIOD EXTENSION: Notwithstanding other provisions to the contrary, in the event an inspector, in a written report provided to Seller or Seller's Broker prior to the expiration of the Due Diligence Period, recommends any additional study, inspection or evaluation of any product, item or condition in the Property, or the results of any tests conducted cannot be completed or produced prior to the expiration of the Due Diligence Period, then the Due Diligence Period may be extended by mutual agreement of Buyer and Seller through a written Addendum to this Contract. If Buyer and Seller cannot agree on an extension to the Due Diligence Period, then Buyer may proceed under the terms of Paragraph 9(C) based on available inspection reports or void this Contract and earnest money will be released to Buyer. See Paragraph 4(D).

C. INSPECTION OPTIONS: Buyer will have the following options during the Due Diligence Period:

1. Buyer can accept Property as inspected.

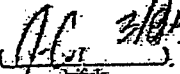
2. If Buyer, in his sole discretion, determines the result of any inspection, examination or test conducted to be unsatisfactory, Buyer may terminate this Contract by providing entire copies of all inspection reports and written notice of termination to Seller or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed upon extension to this period and the earnest money will be released to Buyer. See Paragraph 4(D). If Buyer fails to give such notice prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligations to make any repairs or replacements to the Property and Buyer being obligated to proceed with the transaction in accordance with the terms of this Contract.

3. If Buyer requests Seller make repairs and/or replacements to the Property, Buyer must submit complete copies of any inspection reports and an Inspection Repair Addendum, signed by the Buyer, identifying specific defects Buyer wants corrected, to Seller or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed extension to this period. If Buyer fails to submit complete copies of these reports and the Addendum to Seller or Seller's Broker prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligation to make any repairs or replacements to the Property, and Buyer will be obligated to proceed with the transaction in accordance with the terms of this Contract. If reports and Addendum are submitted within the Due Diligence Period and any extension, Buyer and Seller will then have five (5) Business Days from expiration of Due Diligence Period to negotiate the defects to be corrected by Seller, at Seller's expense, and sign the Addendum. If Buyer and Seller have not reached agreement on the Addendum by the end of this negotiation period:

a. Buyer and Seller may mutually agree to extend the negotiating period through written Addendum to this Contract, or;

b. Buyer will have one business day after the end of the negotiation period, or any extension to the period, to accept Property "As-Is" in current state with no repairs or replacements made by Seller by providing written notice to Seller or Seller's Broker, or;

c. If the negotiating period is not extended and Buyer does not accept Property "As-Is" within the time frame prescribed in the above Paragraph, then either party can terminate this Contract by providing written notice of termination to the other and earnest money will be released to Buyer. See Paragraph 4(D). Seller's failure to respond to the Inspection Repair Addendum within the five (5) Business Day period will be deemed to be a refusal to do repairs/replacements.

BUYER  3/5/14 SELLER  3/10/14
Initials Date Initials Date

D. FHA/VA APPRAISAL INSPECTIONS: If Buyer uses FHA or VA financing, the Property may be inspected by an Appraiser appointed by Lender. This inspection is not subject to time limitations or other requirements of the Due Diligence Period outlined above. If Appraiser identifies repairs to be made as a condition of loan approval and Seller elects not to make them, Buyer will have the option of paying for and completing the repairs prior to closing or voiding this Contract, with earnest money being released to Buyer. See Paragraph 4(D).

10. PROPERTY SOLD "AS-IS": (If Selected Terms of Paragraph 9 do not apply) (Select, initial and date only one of the options below)

A. BUYER () SELLER ()

PROPERTY SOLD "AS-IS" WITH DUE DILIGENCE PERIOD

All Parties agree that Property is being sold "As-Is" with all defects including, but not limited to, lead-based paint, lead-based paint hazards, environmental hazards, active infestations of and/or damage from termites, other wood destroying organisms or fungi and for any drainage problems (CL-100). Buyer will have a ten (10) Business Day Due Diligence Period as stipulated in Paragraph 9(A) to have Property inspected, examined and tested to determine its condition. Seller will have no obligation to make any repairs or replacements to the Property identified as a result of inspections. Buyer may proceed under the terms of this Contract or void this Contract by providing written notice to Seller or Seller's Broker, prior to the expiration of the Due Diligence Period, with the earnest money released to Buyer. See Paragraph 4(D). Failure to provide notice of voiding this Contract prior to the expiration of the Due Diligence Period will be deemed Buyer's acceptance of the Property in "As-Is" condition with no Seller repairs or replacements.

OR

B. BUYER () SELLER ()

PROPERTY SOLD "AS-IS" - NO DUE DILIGENCE PERIOD

All Parties agree that Property is being sold "As-Is". Seller will make no repairs or replacements, and Buyer elects not to have a Due Diligence Period. Buyer retains the right to inspect, examine and test the Property but waives both the right to request repairs or replacements and the right to void this Contract based on inspection results.

11. CONDITION OF PROPERTY: Except for property being sold "As-Is" per terms of Paragraph 10, after any inspections by Buyer and after repairs or replacements, if any, made as a result of any such inspections, Seller agrees to maintain the Property (including but not limited to, lawn, shrubbery, grounds and fixtures, equipment and systems that convey with the Property) and all improvements thereon in similar condition until the day of closing or the day possession is given, whichever occurs first. Seller warrants that to the best of his knowledge, information, and belief there are no conditions in the Property which would adversely affect the value when conditions are hidden by furniture, fixtures or window treatments currently in place in the Property.

12. PROPERTY CONDITION DISCLOSURE STATEMENT: (Select, initial and date only one of the options below)

A. BUYER () SELLER () Buyer and Seller agree that a Residential Property Condition Disclosure Statement, as required by S.C. Code, as amended, Section 27-50-10, et. seq., has been provided to Buyer by Seller prior to the final acceptance of this Contract. If Seller discovers, after his delivery of the Disclosure Statement to Buyer, any material inaccuracy in the Disclosure Statement or the Disclosure Statement is rendered inaccurate, misleading, incomplete or false in a material way by the occurrence of some event or circumstance, Seller will promptly make reasonable repairs needed to eliminate the deficiency and repair the damage caused by the occurrence or correct the inaccuracy by delivering a corrected disclosure statement to Buyer before closing. Buyer understands and agrees that Seller's Property Condition Disclosure Statement is not intended to replace inspections of the Property.

OR

B. BUYER () SELLER () Buyer and Seller agree that Seller will not complete nor provide a Residential Property Condition Disclosure Statement in accordance with S.C. Code, as amended, Section 27-50-30, Paragraphs (1-13).

BUYER () 3/5/14 SELLER () 3/5/14
Initials Date Initials Date

13. LEAD-BASED PAINT: Buyer is advised that if this Property was built prior to 1978, it may contain lead-based paint and that a "Disclosure of Information and Acknowledgement Lead-Based and/or Lead-Based Paint Hazards" form is hereby made an Addendum to this Contract and will be signed by both Buyer and Seller and their Agents.

14. HOME WARRANTY COVERAGE: Buyer and Seller agree that a home warranty providing at least twelve (12) months of coverage for the Buyer will ☒ will not ☐ be provided at closing. If applicable, the warranty premium will be paid by Buyer ☐ Seller ☒ in the amount of \$ 530.00 provided by American Home Shield (home warranty company) and written by the Buyer's Agent ☐ Seller's Agent ☒. If the price of the warranty exceeds the dollar amount entered in this paragraph, Buyer shall be responsible for the difference at closing.

15. PROPERTY DOCUMENTATION: (Initial and date after reviewing information in Paragraphs 15 A-D)

BUYER [Signature] 3/5/14 SELLER [Signature] 3/5/14 Buyer's and Seller's Brokers strongly recommend Buyer review existing Property documentation to include the most current plat, Covenants and Restrictions, and Seller's Property Condition Disclosure Statement before entering into this Contract. The Buyer's and Seller's Brokers also recommend that prior to closing on this Contract, Buyer have a survey of the subject Property made to verify land size/boundary dimensions, measure existing structures to verify square footage, have an examination as to the title to the Property, obtain owner's title insurance and the Buyer obtain appropriate hazard, flood, earthquake and wind/hail damage insurance coverage effective at the time of closing.

A. Seller represents that the Property is:

Connected to - public/community sewer system ☒ septic tank ☐.

Connected to - public/community water system ☒ well system ☐ Other _____

B. Seller represents that to the best of Seller's knowledge, the Property is ☐ is not ☒ partly or entirely located within a designated Special Flood Hazard Area (flood zone). If Seller's response indicates that it is in a flood zone, Buyer understands that it may be necessary to purchase flood insurance in order to obtain a loan. If Seller's response indicates that the Property is not in a flood zone and, subsequent to Contract acceptance, it is determined that permanent improvements to the Property are within a flood zone causing Lender to require Buyer to purchase flood insurance as a condition of loan approval, then Buyer can terminate this Contract. Buyer will have three (3) Business Days after receipt of Notice from Lender to provide written Notice to Seller of the decision to terminate. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D). Buyer's failure to provide written Notice to Seller within the three (3) Business Day period will be deemed Buyer's agreement to purchase flood insurance to close the transaction.

C. Seller represents that the Property is ☐ is not ☐ subject to a special assessment of any governing body, including, but not limited to, a homeowner's association/region or otherwise. The special assessment fee is \$ _____

D. Seller represents that the Property is ☐ is not ☐ subject to a mandatory association fee (i.e., homeowner's association/region or otherwise). If the Property is subject to a mandatory association fee, the fee is \$ 75.00 per _____ and is payable to [Signature] 3/5/14 \$55.00

16. ADDITIONAL CONTINGENCIES: (Initial and date either Paragraph A or B if applicable and Paragraph C if other contingencies apply)

A. SALE AND CLOSING CONTINGENCY

BUYER [Signature] 3/5/14 SELLER [Signature] 3/5/14 This Contract is contingent on the sale and closing of the Buyer's Property not later than the closing date agreed to in Paragraph 7 of this Contract. Property is located at the following address: _____

Buyer's failure to disclose the existence of this contingency will constitute a default of this Contract and earnest money will be released to Seller. See Paragraph 4(D).

BUYER [Signature] 3/5/14 SELLER [Signature] 3/5/14

1. Buyer represents that the Buyer's Property identified in Paragraph 16(A) above is () is not () currently listed with a real estate company.

2. As long as this contingency remains in effect, Seller may continue to market Seller's Property and can accept a subsequent offer to purchase under the following terms:

a. Any subsequent offer that does not contain a sale and closing contingency may be accepted as a Primary Contract, with this contingent Contract becoming a Back-up Contract upon agreement of Buyer and Seller. If agreement cannot be reached, this contingent Contract will become null and void with earnest money released to Buyer. See Paragraph 4(D).

b. Any subsequent offer that does contain a sale and closing contingency may only be accepted as a Back-Up Contract.

3. If Buyer does not remove this contingency by the closing date in Paragraph 7, this Contract will become null and void unless both Parties agree to extend the closing date. If Contract is voided, earnest money will be released to Buyer. See Paragraph 4(D).

4. Once Buyer accepts a Contract of Sale on their Property with all contingencies removed or waived (other than financing), with any Due Diligence Period and/or repair negotiations completed, and with a closing occurring prior to the date and time scheduled for this closing, Buyer will provide written notice of this acceptance to Seller. This Contract will then become contingent on completion of the closing of the sale of Buyer's Property. See Paragraph 16(B) below.

B. CLOSING CONTINGENCY

BUYER () SELLER () This Contract is contingent on completion of the closing of the sale of Buyer's Property. The Contract the Buyer has accepted on his Property must have all contingencies other than financing, removed or waived with any due diligence period and/or repair negotiations completed, on or before _____ Property is located at _____

1. Buyer to provide documentation of sale of Buyer's Property upon request.

2. Seller may continue to market Seller's Property for sale; however, any offer received will be negotiated as a Back-up Contract.

C. OTHER CONTINGENCIES

BUYER () SELLER () This Contract is contingent on:

17. **FIXTURES AND PERSONAL PROPERTY:** This sale includes all fixtures, equipment and improvements of any kind which now exist and are attached to or planted on the premises such as, but not limited to: shrubbery, trees, fences, shutters, blinds, lamp posts, mail boxes, storage sheds, lawn irrigation system and all related equipment, pool and spa equipment, window and door screens, storm windows and doors, garage door openers and remotes, satellite dishes, Seller-owned security systems, smoke detectors, gas logs, central vacuum system, landscape lighting, curtains/drapery rods, ceiling fans and remotes, attached mirrors, light bulbs, switch plates, heating and air system registers and built-ins, such as equipment, appliances, cabinets, furniture and shelves, unless otherwise agreed herein. Items of personal property other than those above may be sold separately by Bill of Sale.

BUYER () 3/5/14 SELLER () 3/9/14
Initials Date Initials Date

18. OTHER TERMS: If conflicting with pre-printed portions of this Contract, the following terms will control:

All Appliances Remain

19. ADJUSTMENTS: Real estate taxes, homeowner association/condo fees, and rents when applicable, will be adjusted as of the date of closing. Tax prorrations pursuant to this Contract are to be based on the tax information available and deemed reliable by the Closing Attorney on the date of closing and to be prorated on that basis. Buyer will be responsible for applying for any applicable tax exemptions. Buyer is also responsible for any tax increases due to change in ownership. Unless otherwise agreed, Seller will pay all regular and special homeowner's association assessments and all governmental assessments levied prior to closing and Buyer will pay for those assessments levied after closing.

20. FIRE OR CASUALTY: In case the Property herein is damaged wholly or partially by fire or other casualty prior to delivery of deed, Buyer will have the right for ten (10) Business Days after notice of such damage to terminate this Contract. Upon such termination, earnest money will be released to Buyer and neither party will have any further rights hereunder. See Paragraph 4(D). If Buyer elects not to terminate this Contract or fails to provide timely Notice of Termination, the Parties will proceed according to its terms.

21. DEFAULT: If Buyer or Seller fails to perform any of the terms of this Contract, the other may elect to seek any remedy provided by law including, but not limited to, attorney fees and actual costs incurred or terminate this Contract with written notice. Actual costs incurred will include all costs and expenses incurred or obligated for by Buyer, Seller or Brokers in an effort to consummate this sale. Such costs will include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, attorney's fees and real estate brokerage fee for this sale. If Contract is terminated, both Parties will execute a written release of the other from this Contract and both will hold Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or a court of competent jurisdiction dictates legal disposition. If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs.

22. MEDIATION: Any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided in relation to this Contract, shall be submitted to mediation in accordance with the rules and procedures of the dispute resolution system of the National Association of Realtors. Disputes will include representations made by Buyer, Seller or any real estate Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the Property to which this Contract pertains, including, without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreements signed by the Parties pursuant to the mediation conference will be binding. S.C. Code, Ann. Section 15-48-10 et seq. shall not apply to this Contract.

BUYER [Signature] 3/5/14 SELLER [Signature] 3/5/14
Initials Date Initials Date

23. **ENTIRE BINDING CONTRACT:** The Parties agree that this written Contract expresses the entire agreement between the Parties, that there is no other agreement, oral or otherwise, modifying the terms hereunder and that this Contract will be binding on both Parties, their principals, heirs, personal representatives, successors and assigns as state law permits.

24. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of S.C. Code, Section 12-8-580 (as amended) regarding tax withholding requirements of Sellers who are not residents of South Carolina as defined in said statute.

25. **EXPIRATION OF OFFER:** This offer from Buyer will be withdrawn at 6 o'clock P.M. (Eastern Time) on MARCH 4, 2014 unless accepted or countered by Seller in written form prior to such time.

26. **TIME IS OF THE ESSENCE:** Time is of the essence with respect to all provisions of this Contract that stipulate a specific period of time for performance. Failure of Buyer or Seller to complete any provision of this Contract within the stipulated period of time for completion of the provision will constitute, where applicable, a default of this Contract.

27. **NOTICE AND DELIVERY:** Notice means a unilateral communication, including offers, counteroffers and associated Addenda from one Party to this Contract to the other. Notice to a Broker or affiliated Agent representing a Party to this Contract will be deemed to be Notice to that Party. All Notices required under this Contract will be in writing and will be effective as of Delivery. Delivery methods may include hand-carried, sent by professional courier service, by United States mail, or by facsimile (fax) or e-mail transmission. A faxed or e-mailed signature of a Party to this Contract will constitute an original signature binding upon that Party. The Parties agree that Delivery will be deemed to have occurred either on the day and at the time Notice is delivered by hand, by a professional courier service, or by United States mail (return receipt requested) or on the day and at the time Notice is sent by facsimile or e-mail transmission provided written confirmation of receipt is received by deliverer. No Party to this Contract will refuse Delivery in order to delay or extend any deadline established in the Contract.

28. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after closing, it will survive the closing and remain binding upon and for the Parties hereto until fully observed, kept or performed.

29. **DEFINITIONS:**

A. A single Business Day is defined as a twenty-four (24) hour period beginning at 8AM of any week-day (Monday through Friday). A Business Day may not begin or end on a Saturday, Sunday or Federal legal holiday. For the purposes of this Contract, the first Business Day will begin at 8AM of the Business Day following final Contract acceptance. All deadlines/timelines set forth in the Contract will begin at 8AM of the first Business Day following the date of final Contract acceptance unless otherwise agreed to by Buyer and Seller.

B. Successful negotiation of this offer will have been completed when one of the Party's to the negotiation places the final, required signatures and/or initials on this offer. Contract acceptance will occur at the date and time when this Party subsequently delivers a copy of this executed document to the other Party. The Party receiving the executed document will be responsible for filling in the final Contract acceptance date and time on the last page of this Contract. If a Party is unrepresented, they will assume responsibility for filling in the required information.

C. In this Contract, closing is defined as the date and time that the Closing Attorney disburses funds.

D. The term Broker is also deemed to include affiliated Agent(s) of the Buyer's and Seller's Brokers.

30. **HUD-1 SETTLEMENT STATEMENT RELEASE:** Seller and Buyer authorize the Closing Attorney to furnish to Buyer's and Seller's Brokers copies of the HUD-1 Settlement Statement for the transaction.

31. **MEGAN'S LAW:** Buyer and Seller agree that the Buyer's and Seller's Brokers and all affiliated Agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry and that no course of action may be brought against the Buyer's and Seller's Agents and all affiliated Agents for failure to obtain or disclose such information. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information which may be obtained from appropriate law enforcement officials.

BUYER [Signature] 3/5/14 SELLER [Signature] 3/5/14
Initials Date Initials Date

32. NON-RELIANCE CLAUSE: Both Buyer and Seller execute this Contract freely and voluntarily without reliance upon any statements, representations, promises or agreements by the Buyer's and Seller's Brokers except as set forth in this Contract. Buyer and Seller acknowledge that the Buyer's and Seller's Brokers are being retained solely as Real Estate Agents and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, mold or air quality expert, home inspector or other professional service provider. Buyer and Seller are legally competent to enter into this Contract and to fully accept responsibility for it. This is a legally binding Contract. Buyer and Seller should seek legal advice prior to entering into this Contract if, after having read it, its contents and provisions are not understood. Both Buyer and Seller acknowledge receipt of a copy of this Contract and acknowledge receiving, reading and understanding South Carolina Real Estate Commission's Agency Disclosure Brochure.

33. DISCLAIMER: Buyer and Seller acknowledge that Buyer's and Seller's Brokers give no warranty of any kind, expressed or implied, as to: (1) physical condition of the Property or as to condition of or existence of improvements, services or systems including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems or its structure; (2) condition of the Property, any matters which would be reflected by a current survey of the Property or the accuracy of the square footage heated or unheated; (3) title to the Property including the existence or absence of easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like; (4) fitness for a particular purpose of the Property or improvements; (5) Property being purchased being in compliance with necessary zoning ordinances and restrictions; (6) projected income, value, or other possible benefits to Buyer.

X [Signature] (L.S.) Reynold J. Molajko 3/5/14
Buyer's Signature Buyer's Printed or Typed Name Date

[Signature] (L.S.) _____
Buyer's Signature Buyer's Printed or Typed Name Date

[Signature] (L.S.) Todd P. Corley 3/8/14
Seller's Signature Seller's Printed or Typed Name Date

[Signature] (L.S.) _____
Seller's Signature Seller's Printed or Typed Name Date

Janet Lopez, NextGen Real Estate 803-513-3444
Buyer's Agent/Company acknowledges Buyer is a Client () Customer () Agent's Telephone Number

Janet Lopez, NextGen Real Estate 803-513-3444
Seller's Agent/Company acknowledges Seller is a Client () Customer () Agent's Telephone Number

This section is not to be completed until the conditions of paragraph 29B are fulfilled.

CONTRACT ACCEPTED BY BOTH PARTIES AT 6:38 O'CLOCK PM (ET) ON 3/8/14 DATE

ACCEPTANCE ENTERED BY [Signature] (AGENT)

NOTE: Once the above Contract acceptance date and time are filled in a copy of this Contract should be promptly forwarded to the other Party.

Copyright © 2011 by the Central Carolina REALTORS® Association. This is a Standard Form of the Central Carolina REALTORS® Association. 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. This form may not be edited, revised or changed without the prior written consent of the Central Carolina Realtors Association and changes must be both bolded and italicized.

RAYMOND J MALEJKO
CRISTINE MALEJKO
PH: 732-814-0154
225 BONNIE MEW CT
LEXINGTON, SC 29072

284

67-560532

2/8/14

PAY

to the order of Next Gen Real Estate

\$ 500.00

Five Hundred

Dollars



BRANCH BANKING AND TRUST COMPANY
A BANK OF AMERICA COMPANY

For Deposit \$ For 141 Fox Crossing Rd

182004E0815E225000707021503



REPAIR REQUEST PROPOSAL

In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering improvements and the ☐ real property, ☐ business, ☐ premises — commonly known as:

Lot _____ Block _____ Section _____ Subdivision Fox Crossing

Address 141 Fox Crossing Road

Tax Map # 005636-01-01 City West Columbia Zip 29170

County of Lexington State of South Carolina.

The undersigned Parties hereby agree as follows:

1. REQUESTED REPAIRS: Buyer/Tenant hereby requests Seller/Landlord to complete the following repairs to the Property (please see attached sheet if checked) ☒:

Buyer and Seller have agreed that Seller is to address and remedy all items from the Home Inspection Report performed by Housemasters (1-16-14) except the brick lintel over H/H/O which will NOT be addressed. Seller to have all repairs completed by Friday, March 21, 2014. Buyer plans to have home inspector to reinspect repairs made as early as March 24, 2014.

2. AGREEMENT: At such time as Buyer/Tenant and Seller/Landlord agree which of the repairs set forth in paragraph 1 above will be completed, Seller/Landlord shall complete the agreed upon repairs (the "Repairs") at Seller's expense and in a good and workmanlike manner. Repairs shall be requested and completed prior to closing providing reasonable time for inspection and remediation if repairs are not completed in a good and workmanlike manner.

3. NOTIFICATION AND VERIFICATION: Seller/Landlord shall notify Buyer/Tenant upon completion of the Repairs prior to closing and provide time for inspection and if necessary, remediation. Buyer/Tenant shall have the right to inspect to verify that the Repairs were completed in a good and workmanlike manner. Inspection shall be at the expense of the Buyers/Tenants.

Buyer/Tenant [Signature]

Seller/Landlord [Signature]

HAVE READ THIS PAGE

Form 528 PAGE 1 OF 2

4. ADDITIONAL INSPECTIONS AND REPAIRS: Buyer/Tenant shall have the right to inspect the property until closing for a final walk-through inspection, structural inspection, wood inspection, environmental inspection, structure inspection, HVAC inspection, electrical system inspection, plumbing system inspection, and equipment inspection or any inspection called for by initial inspections. Seller/Landlord at their expense shall maintain appropriate utility connections (electricity, gas, water, etc.) to allow such inspections until closing. Any additional repairs that Buyer/Tenant may request and the Seller may agree to complete as a result of such additional inspections will be added and become part of this Agreement. Inspections shall be at the expense of the Buyer/Tenant.

5. RELEASE OF INSPECTION REPORTS: Buyer/Tenant agrees to release any inspection reports to Seller/Landlord upon request.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER/TENANT: [Signature]

Date: 3/8/14

Time: 6:02 PM

WITNESS: [Signature]

Date: _____

Time: _____

BUYER/TENANT: _____

Date: _____

Time: _____

WITNESS: _____

Date: _____

Time: _____

SELLER/LANDLORD: [Signature]

Date: 3/8/14

Time: 6:28 PM

WITNESS: [Signature]

Date: _____

Time: _____

SELLER/LANDLORD: _____

Date: _____

Time: _____

WITNESS: _____

Date: _____

Time: _____

The foregoing 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. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS.

© 2007 South Carolina Association of REALTORS. 0407
Form 625 PAGE 2 OF 2



ADDENDUM TO PURCHASE AGREEMENT

This ADDENDUM, which is attached to and made a part of a Contract of Purchase dated 3/5/14 between the following:

SELLER Todd Carley

BUYER Raymond J. Malejko

PROPERTY ADDRESS: 141 Fox Crossing Road, West Columbia
SC 29170

As property taxes are pro-rated at closing based
on current 6% rate. Seller agrees not to pursue
a tax credit when 2014 tax bill is out to
be reimbursed for being overcharged tax proration
at closing of 141 Fox Crossing Road, West Columbia
SC 29170

Any credit the Buyers receive as credit
for the portion of seller pro-rated taxes, it
is given in whole to Buyers at closing
with no future refund to Seller regarding the
2014 taxes

WITNESS the following duly authorized signatures:

Todd Carley
Seller

3/8/14
Date

[Signature]
Purchaser

3/8/14
Date

Seller

Date

Purchaser

Date

State of South Carolina)
)
County of Richland)

Raymond J. Malejko and)
Cristine Malejko,)
individually and on behalf)
of their minor child,)
Stephanie Malejko,)

Plaintiffs,)

v.)

Todd Corley, Janet Loper,)
NextGen Real Estate, LLC,)
Thomas Humphries, Dr.)
Roofs, Inc., Ray Mooneyham,)
Mooneyham Solar & Electric,)
Professional Home)
Inspections, Inc., Corley)
Enterprises, Inc. of South)
Carolina, and DBR)
Franchising, LLC,)

Defendants.)

2015-CP-40-00480

Deposition

of

Todd Corley

Date: November 22, 2016

Time: 10:07 a.m.

Location: Montgomery Willard, LLC, 1002 Calhoun Street,
Columbia, South Carolina

Reported by
Kathleen R. Tackett, CVR-M



1 Loper in this matter. I just want to get a few
2 things clarified and -- and -- and ask a few
3 things. With the -- with the roofer, Thomas
4 Humphries, it's my understanding that you contacted
5 him; is that correct?

6 A Yeah.

7 Q In other words, Janet Loper didn't say, "Here.
8 Call this -- this number" or "Call Thomas Humphries
9 Roofing"?

10 A They didn't. I hired --

11 Q Okay.

12 A -- the roofer.

13 Q The first contract that was entered into with the
14 Malejkos, the original contract that -- that's been
15 misplaced or that no -- no party can find, do you
16 -- I -- I know you -- it's been a while and you
17 couldn't recall some of the specifics, but let me
18 ask if this is -- can refresh your memory.

19 It's my understanding that the buyers wanted
20 to drop the home price even more after the
21 inspection and you indicated, as the owner, that
22 you could make the repairs and still command the
23 same or higher price. Does that sound -- does
24 that sound --

25 A Yeah.

1 to get collateral for a loan that you made?

2 A Yes.

3 Q But you were basically an investor, right --

4 A Right.

5 Q -- for this? You've never lived in that home
6 before?

7 A Never.

8 Q You never knew -- you had no knowledge of any
9 issues with the home; is that correct?

10 A None.

11 Q All right. So under "Property Disclosure," where
12 it says "Required" there's checked "No," and
13 "Exempt from property disclosure" is checked "Yes";
14 is that correct? Do you see where I'm referring
15 to?

16 MR. BULLARD: (To the deponent) You're almost
17 there.

18 A Yes. Yeah. I see it.

19 Q All right. And those -- those were because you
20 were basically an investor. You had never lived
21 there and you had no knowledge of the -- of the
22 property, so, therefore, you're exempt from the
23 residential property disclosure?

24 A Yes.

25 Q And do you recall that being discussed with you by

State of South Carolina)

County of Richland)

Raymond J. Malejko and)

Cristine Malejko,)

individually and on behalf)

of their minor child,)

Stephanie Malejko,)

Plaintiffs,)

v.)

Todd Corley, Janet Loper,)

NextGen Real Estate, LLC,)

Thomas Humphries, Dr.)

Roofs, Inc., Ray Mooneyham,)

Mooneyham Solar & Electric,)

Professional Home)

Inspections, Inc., Corley)

Enterprises, Inc. of South)

Carolina, and DBR)

Franchising, LLC,)

Defendants.)

2015-CP-40-00480

Deposition

of

Janet Loper

Date: December 7, 2016

Time: 10:19 a.m.

Location: Richardson Plowden & Robinson, PA, 1900

Barnwell Street, Columbia, South Carolina

Reported by
Kathleen R. Tackett, CVR-M



1 have every document. If it's not even my listing,
2 I print every document, property disclosure, so I
3 can quickly share it with a buyer as we go to every
4 house. Most agents probably don't do that, but I
5 want to know all the details that the report is
6 showing. So, if I'm even showing my own listing, I
7 have everything ready to talk about the property,
8 to market it and everything that I do know and
9 disclose everything at that time, whether it's my
10 listing or I printed off every document off of
11 a house that I'm going to go be showing.

12 Q I understand your usual practice. I'm just
13 interested in what you told Mr. Malejko. Did you
14 tell him that Mr. Corley was exempt from filling
15 out a property disclosure?

16 A I would've told him what Paragraph 12 says in this
17 contract.

18 Q Okay. And it says, "Buyer and seller agree that
19 seller will not complete nor provide a residential
20 property disclosure statement in accordance with
21 South Carolina Code Section 27-50-30." So that's
22 what you would've said to him?

23 A I would've said that and explained why.

24 Q And what would you've said to him, explaining --
25 your explanation?

- 1 A Just like I said a while ago, if you have a bank,
2 you inherited a house, you're an investor, you've
3 never lived there, there are different things and
4 reasons why they can be exempt from it.
- 5 Q Okay.
- 6 A Now, if I have an investor that went in and did
7 work, they have knowledge about things, you know,
8 just different situations. But, as far as when
9 Todd took this house in and he owned it for three
10 years, he knew nothing about the house. It just
11 sat. Never rented it to gain any knowledge.
- 12 Q So you told Mr. Malejko that he was exempt under
13 the statute as you --
- 14 A I would tell him --
- 15 Q -- were just explaining?
- 16 A -- there was no property disclosure on this
17 property, from the current owner that has it,
18 because they don't have any knowledge about the
19 property.
- 20 Q Okay. What -- if you know, there seem to be some
21 initials up at the top, 12A, and then there are
22 initials at 12B. Can you --
- 23 A Uh-huh.
- 24 Q -- explain what happened here?
- 25 A He just initialed the wrong spot when we were

1 house went under contract in January, and then it
2 comes back on the market in February. When it goes
3 to a pending state, agents won't even show it, so
4 it kind of just sits in the computer.

5 So it stayed occupied for, really, all of
6 January with that first original contract. Then,
7 when it got back onto the market, for the month of
8 February, that's when you'll probably see that we
9 had some -- some action that started. Right there,
10 let's see. February the 2nd, February the 3rd --
11 3rd, March 1st, 2nd, yeah.

12 Q Did -- did you arrange for Clark's to do the
13 termite inspection?

14 A I made the call because that's who they wanted to
15 use.

16 Q Who? The Malejkos?

17 A Uh-huh.

18 Q Yeah. Did you -- did you suggest any names to
19 them, or did they just tell you "We want Clark's"?

20 A I always tell buyers "You -- if you know of someone
21 or your family knows of someone, you can go based
22 on those recommendations, or someone you've used
23 that you're comfortable with. We can make
24 recommendations of several different companies in
25 town." So, with that, I always let them pick and

1 choose.

2 They chose to go with the Clark's, so I made
3 the call to Clark's to schedule it with my schedule
4 and the Malejkos' schedule so we could all be there
5 when that was taking place. And I usually try to
6 line all the inspections up on the same day as the
7 home inspection.

8 Q All right. Did -- did you give the Malejkos names
9 of Clark -- or did they tell you "We want to use
10 Clark's," or did they pick from some names you'd
11 given them?

12 A They asked me for some names of suggestions.

13 Q Uh-huh.

14 A As well as, you know, seeking their family, as
15 well, because the family's always lived here longer
16 than they have.

17 Q Do you remember who you suggested besides Clark's?

18 A It could've been anybody. It could've been Sandy
19 Run; it could've been Terminix.

20 Q Okay.

21 A Yeah.

22 Q But you're not -- you don't recall, necessarily?

23 A No. I mean, we just have to give people couple
24 options and let them decide.

25 Q In your interrogatory responses, you had indicated

1 that in transactions you were involved in?

2 A On the buyer's side when buyers would choose --
3 when they'd have choices of heating and air
4 companies --

5 Q Uh-huh.

6 A -- their preferences and so-forth, and if they
7 chose him, he got the call.

8 Q Okay. How often would they choose him? Again,
9 when you're involved -- with the homeowner.

10 A Yeah, yeah. It might be once every month and a
11 half/two months, something like that.

12 Q So was he someone that you would recommend to them
13 to perform HVAC inspections?

14 A He was one of the ones, yes.

15 Q Well, who were the others that you would recommend?

16 A Kramer, Air Flow, you name it. I mean, we give
17 people a list of different options --

18 Q Oh, yeah.

19 A -- of who they want to use.

20 Q When a -- when a --

21 A A lot of times they have their own.

22 Q When a buyer asks you for a recommendation, how
23 many people do you -- usually give them to choose
24 from?

25 A We like to give them at least three, because we

1 like for them to actually think about who they'd
2 like to use, and a lot of times, they've already
3 have experience in their current home who they may
4 use.

5 Q Did -- did you -- was Mr. Mooneyham one of the
6 people that you recommended for the Malejkos on
7 this --

8 A Yes.

9 Q -- or was he brought in by someone else?

10 A Yes.

11 Q Okay. Do you remember who else you recommended?

12 A At the time? I probably couldn't tell you,
13 because --

14 Q Okay.

15 A -- this has been two years ago --

16 Q Well, that's fine if you don't know.

17 A -- where we just go through and, like I said,
18 there's -- it's like a handful. We don't try to
19 play favorites.

20 Q How long have you been recommending Mr. Mooneyham
21 to people who ask you to -- for a recommendation?

22 A Since 2007 or 2008. It's one of the two, because
23 that's how I was introduced to him back then.

24 Q All right. I was going to ask you, how did -- how
25 did you start recommending him? How did that come

Prepared for Exclusive Use by:

RAYMOND MALEJKO

Address of Inspected Property:

141 FOX CROSSING RD.
W. COLUMBIA S.C.

Inspection Date:

1/16/2014



Inspector and Company:

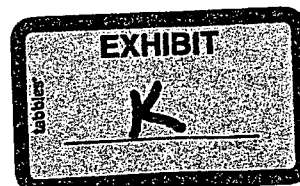
Joe F. Boyle

Professional Home Inspections, Inc. dba HouseMaster

531 D-2 Oxford St.

Sumter, S.C.

29150



INSPECTION INFORMATION

CLIENT:

RAYMOND MALEJKO

PROPERTY ADDRESS:

141 FOX CROSSING RD.
W. COLUMBIA, S.C.

INSPECTION DATE/TIME:

1/16/2014 - 09:00 AM

INSPECTOR:

Joe F. Boyle

INSPECTION COMPANY:

Professional Home Inspections, Inc. dba HouseMaster
531 D-2 Oxford St.
Sumter, S.C.
29150

INSPECTION DETAILS

AGE OF HOME:

25+- YEARS

DESCRIPTION:

Single Family

TYPE OF INSPECTION:

Standard Home Inspection

STATUS OF HOME:

Vacant

WEATHER:

Clear

PEOPLE PRESENT:

Buyer and Buyer's agent

TEMPERATURE:

45f

ANCILLARY SERVICES:

None

INTRODUCTION

The purpose of this report is to render the inspector's professional opinion of the condition of the inspected elements of the referenced property (dwelling or house) on the date of inspection. Such opinions are rendered based on the findings of a standard limited time/scope home inspection performed according to the Terms and Conditions of the Inspection Order Agreement and in a manner consistent with applicable home inspection industry standards. The inspection was limited to the specified, readily visible and accessible installed major structural, mechanical and electrical elements (systems and components) of the house. The inspection does not represent a technically exhaustive evaluation and does not include any engineering, geological, design, environmental, biological, health-related or code compliance evaluations of the house or property. Furthermore, no representations are made with respect to any concealed, latent or future conditions.

The GENERAL INSPECTION LIMITATIONS on the following page provides information regarding home inspections, including various limitations and exclusions, as well as some specific information related to this property. The information contained in this report was prepared exclusively for the named Clients and is not transferable without the expressed consent of the Company. The report, including all Addenda, should be reviewed in its entirety.

REPORT TERMINOLOGY

The following terminology may be used to report conditions observed during the inspection. Additional terms may also be used in the report.

SATISFACTORY - Element was functional at the time of inspection. Element was in working or operating order and its condition was at least sufficient for its minimum required function, although routine maintenance may be needed.

FAIR - Element was functional at time of inspection but has a probability of requiring repair, replacement or other remedial work at any time due to its age, condition, lack of maintenance or other factors. Have element regularly evaluated and anticipate the need to take action.

POOR - Element requires immediate repair, replacement, or other remedial work, or requires evaluation and/or servicing by a qualified specialist.

NOT APPLICABLE - All or individual listed elements were not present, were not observed, were outside the scope of the inspection, and/or were not inspected due to other factors, stated or otherwise.

NOT INSPECTED (NOT RATED) - Element was disconnected or de-energized, was not readily visible or accessible, presented unusual or unsafe conditions for inspection, was outside scope of the inspection, and/or was not inspected due to other factors, stated or otherwise. **Independent inspection(s) may be required to evaluate element conditions.** If any condition limited accessibility or otherwise impeded completion of aspects of the inspection, including those listed under LIMITATIONS, it is recommended that limiting factors be removed or eliminated and that an inspection of these elements be arranged and completed prior to closing.

IMPORTANT NOTE: All repair needs or recommendations for further evaluation should be addressed prior to closing. It is the client's responsibility to perform a final inspection to determine the conditions of the dwelling and property at the time of closing. If any decision about the property or its purchase would be affected by any condition or the cost of any required or discretionary remedial work, further evaluation and/or contractor cost quotes should be obtained prior to making any such decisions.

NATURE OF THE FRANCHISE RELATIONSHIP

The Inspection Company ("Company") providing this inspection report is a franchisee of DBR Franchising, LLC ("Franchisor"). As a franchisee, the Company is an independently owned and operated business that has a license to use the HouseMaster names, marks,

and certain methods. In retaining the Company to perform inspection services, the Client acknowledges that Franchisor does not control the Company's day-to-day activities, is not involved in performing inspections or other services provided by the Company, and is in no way responsible for the Company's actions. Questions on any issues or concerns should be directed to the listed Company.

GENERAL INSPECTION LIMITATIONS

CONSTRUCTION REGULATIONS - Building codes and construction standards vary regionally. A standard home inspection does not include evaluation of a property for compliance with building or health codes, zoning regulations or other local codes or ordinances. No assessments are made regarding acceptability or approval of any element or component by any agency, or compliance with any specific code or standard. Codes are revised on a periodic basis; consequently, existing structures generally do not meet current code standards, nor is such compliance usually required. Any questions regarding code compliance should be addressed to the appropriate local officials.

HOME MAINTENANCE - All homes require regular and preventive maintenance to maximize the economic life spans of elements and to minimize unanticipated repair or replacement needs. Annual maintenance costs may run 1 to 3% (or more) of the sales price of a house depending on age, design, and/or the degree of prior maintenance. Every homeowner should develop a preventive maintenance program and budget for normal maintenance and unexpected repair expenses. Remedial work should be performed by a specialist in the appropriate field following local requirements and best practices.

ENVIRONMENTAL AND MOLD ISSUES (AND EXCLUSIONS) - The potential health effects from exposure to many elements found in building materials or in the air, soil, water in and/or around any house are varied. A home inspection does not include the detection, identification or analysis of any such element or related concerns such as, but not limited to, mold, allergens, radon, formaldehyde, asbestos, lead, electromagnetic fields, carbon monoxide, insecticides, refrigerants, and fuel oils. Furthermore, no evaluations are performed to determine the effectiveness of any system designed to prevent or remove any elements (e.g., water filters or radon mitigation). An environmental health specialist should be contacted for evaluation of any potential health or environmental concerns. Review additional information on MOLD/MICROBIAL ELEMENTS below.

AESTHETIC CONSIDERATIONS - A standard building inspection does not include a determination of all potential concerns or conditions that may be present or occur in the future including aesthetic/cosmetic considerations or issues (appearances, surface flaws, finishes, furnishings, odors, etc.).

DESIGN AND ADEQUACY ISSUES - A standard home inspection does not include any element design or adequacy evaluations including seismic or high-wind concerns, soil bearing, energy efficiencies, or energy conservation measures. It also does not address in any way the function or suitability of floor plans or other design features. Furthermore, no determinations are made regarding product defects notices, safety recalls, or other similar manufacturer or public/private agency warnings related to any material or element that may be present in any house or on any property.

AGE ESTIMATIONS AND DESIGN LIFE RANGES - Any age estimations represent the inspector's opinion as to the approximate age of components. Estimations may be based on numerous factors including, but not limited to, appearance and owner comment. Design life ranges represent the typical economic service life for elements of similar design, quality and type, as measured from the time of original construction or installation. Design life ranges do not take into consideration abnormal, unknown, or discretionary factors, and are not a prediction of future service life. Stated age or design life ranges are given in "years," unless otherwise noted, and are provided for general guidance purposes only. Obtain independent verification if knowledge of the specific age or future life of any element is desired or required.

ELEMENT DESCRIPTIONS - Any descriptions or representations of element material, type, design, size, dimensions, etc., are based primarily on visual observation of inspected or representative components. Owner comment, element labeling, listing data, and rudimentary measurements may also be considered in an effort to describe an element. However, there is no guarantee of the accuracy of any material or product descriptions listed in this report; other or additional materials may be present. Independent evaluations and/or testing should be arranged if verification of any element's makeup, design, or dimension is needed. Any questions arising from the use of any particular terminology or nomenclature in this report should be addressed prior to closing.

REMEDIAL WORK - Quotes should be obtained prior to closing from qualified (knowledgeable and licensed as required) specialists/contractors to determine actual repair/replacement costs for any element or condition requiring attention. Any cost estimates provided with a home inspection, whether oral or written, only represent an approximation of possible costs. Cost estimates do not reflect all possible remedial needs or costs for the property; latent concerns or consequential damage may exist. If the need for remedial work develops or is uncovered after the inspection, prior to performing any repairs contact the Inspection Company to arrange a re-inspection to assess conditions. Aside from basic maintenance suitable for the average homeowner, all repairs or other remedial work should be performed by a specialist in the appropriate field following local requirements and best practices.

SELLER DISCLOSURE - This report is not a substitute for Seller Disclosure. A Property History Questionnaire form may be provided with this report to help obtain background information on the property in the event a full Seller Disclosure form is not available. The buyer should review this form and/or the Seller Disclosure with the owner prior to closing for clarification or resolution of any questionable items. A final buyer inspection of the house (prior to or at the time of closing) is also recommended.

WOOD-DESTROYING INSECTS/ORGANISMS - In areas subject to wood-destroying insect activity, it is advisable to obtain a current wood-destroying insect and organism report on the property from a qualified specialist, whether or not it is required by a lender. A standard home inspection does not include evaluation of the nature or status of any insect infestation, treatment, or hidden damage, nor does it cover issues related to other house pests or nuisances or subsequent damage.

ELEMENTS NOT INSPECTED - Any element or component not evaluated as part of this inspection should be inspected prior to closing. Whether make arrangements with the appropriate tradesman or contact the Inspection Company to arrange an inspection when all elements are ready for inspection.

HOUSE ORIENTATION - Location descriptions/references are provided for general guidance only and represent orientations based on view facing the front of the house from the outside. Any references using compass bearings are only approximations. If there are any questions, obtain clarification prior to closing.

NDOMINIUMS - The inspection of condominium/cooperative do not include exteriors/ typical common elements, unless otherwise noted. Contact the association/management for information on common element conditions, deeds, and maintenance responsibilities.

MOLD AND MICROBIAL ELEMENTS / EXCLUSIONS

The purpose and scope of a standard home inspection **does not include** the detection, identification or assessment of fungi and other biological contaminants, such as molds, mildew, wood-destroying fungi (decay), bacteria, viruses, pollens, animal dander, pet or vermin excretions, dust mites and other insects. These elements contain/carry microbial particles that can be allergenic, infectious or toxic to humans, especially individuals with asthma and other respiratory conditions or sensitivity to chemical or biological contaminants. Wood-destroying fungi, some molds, and other contaminants can also cause property damage. One particular biological contamination concern is mold. Molds are present everywhere. Any type of water leakage, moisture condition or moisture-related damage that exists over a period of time can lead to the growth of potentially harmful mold(s). The longer the condition(s) exists, the greater the probability of mold growth. There are many different types of molds; most molds do not create a health hazard, but others are toxic.

Indoor mold represents the greatest concern as it can affect air quality and the health of individuals exposed to it. Mold can be found in almost all homes. Factors such as the type of construction materials and methods, occupant lifestyles, and the amount of attention given to house maintenance also contribute to the potential for molds. Indoor mold contamination begins when spores produced by mold spread by air movement or other means to an area conducive to mold growth. Mold spores can be found in the air, carpeting, insulation, walls and ceilings of all buildings. But mold spores only develop into an active mold growth when exposed to moisture. The sources of moisture in a house are numerous and include water leakage or seepage from plumbing fixtures, appliances, roof openings, construction defects (e.g., EIFS wall coverings or missing flashing) and natural catastrophes like floods or hurricanes. Excessive humidity or condensation caused by faulty fuel-burning equipment, improper venting systems, and/or inadequate ventilation provisions are other sources of indoor moisture. By controlling leakage, humidity and indoor air quality, the potential for mold contamination can be reduced. To prevent the spread of mold, immediate remediation of any water leakage or moisture problems is critical. For information on mold testing or assessments, contact a qualified mold specialist.

Neither the evaluation of the presence or potential for mold growth, nor the identification of specific molds and their effects, fall within the scope of a standard home inspection. Accordingly, the Inspection Company assumes no responsibility or liability related to the discovery or presence of any molds, their removal, or the consequences whether property or health-related.

ADDITIONAL COMMENTS

ROOFING

The inspection of roofs and rooftop elements is limited to readily visible and accessible elements as listed herein; elements and areas concealed from view for any reason cannot be inspected. This inspection does not include chimney flues and flue liners, or ancillary components or systems such as lightning protection, antennas, solar panels, low-voltage lighting, and other similar elements, unless specifically stated. Element descriptions are provided for general information purposes only; the verification of roofing materials, roof age, and/or compliance with manufacturer installation requirements is not within the scope of a standard home inspection. Issues related to roof or roofing conditions may also be covered under other headings in this report, including the ATTIC section.

DESCRIPTION:

Moderate Slope

MATERIAL:

Shingle
ARCHITECTURAL

ESTIMATED AGE:

3 +/- YEARS

DESIGN LIFE:

20 to 25 years

LOCATION:

Whole House

INSPECTION METHOD:

From Ground

SKYLIGHT(S):

One

CHIMNEY/VENT:

Metal Flue Pipe
w/Enclosure

S F P N A NI

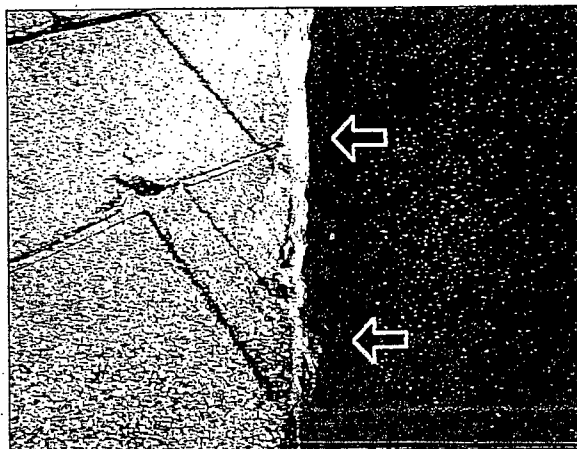
					1.0 ROOFING
					THE ROOFING IS FAIR DUE TO A ACTIVE LEAK NOTED OVER THE FRONT LEFT BEDROOM AND PRIOR LEAKAGE NOTED OVER THE BACK RIGHT CORNER OF THE GARAGE AND OVER THE KITCHEN. ALSO, CAULKING WAS NOTED IN ALL OF THE VALLEYS. CAULKING IS NORMALLY A QUICK FIX MATERIAL AND COULD FAIL WITH TIME. RECOMMEND HAVING THE ROOFING CHECKED BY A LICENSED ROOFING CONTRACTOR.
					1.1 CHIMNEYS / VENTS
					1.2 EXPOSED FLASHING
					1.3 SKYLIGHT(S)
					1.4 VENTILATION COVERS
					1.5 PLUMBING STACKS
					1.6 RAIN GUTTERS / EAVETROUGHES
					1.7 DOWNSPOUTS / ROOF DRAINS
					1.8 FASCIA / SOFFITS

S F P N A NI S= Satisfactory, F= Fair, P= Poor/Defective, NA= Not Applicable, NI= Not Inspected

Review REPORT TERMINOLOGY on Introduction Page. Consult with your Inspector for clarification on ratings or findings if there are any questions.



1.0 ROOFING Item 1(Picture)



1.0 ROOFING Item 2(Picture)

NOTE: All roofs have a finite life and will require replacement at some point. In the interim, the seals at all roof penetrations and flashings, and the watertightness of rooftop elements, should be checked periodically and repaired or maintained as required. Any roof defects can result in leakage, and subsequent damage. Conditions such as hail damage, manufacturing defects, or the lack of roof underlayment or proper nailing methods are readily detectable during a home inspection, but may result in latent concerns. Gutters (eavetroughs) and downspouts (leaders) will require regular cleaning and maintenance. All chimneys and vents should be checked periodically. In general, fascia and soffit areas are not readily accessible for

inspection; these components are prone to decay, insect, and pest damage, particularly if roof or gutter leakage and/or defects exist. If any roof deficiencies are reported, a qualified roofer or the appropriate specialist should be contacted to determine what remedial action is required. If the roof inspection was restricted or limited due to roof height, weather conditions, and/or other limitations, arrangements should be made to have it inspected by a qualified roofer, particularly if the roofing is older or its age is unknown.

EXTERIOR ELEMENTS

Inspection of exterior elements is limited to readily visible and accessible outer surfaces of the house envelope and appurtenances as listed herein; elements concealed from view by any means cannot be inspected. Like roofs, these elements are subject to the effects of both long-term wear and sudden damage due to ever-changing weather conditions. Descriptions are based on predominant/representative elements and are provided for general informational purposes only; specific materials and/or make-up are not verified. Neither the efficiency nor integrity of insulated window units is determined in a standard home inspection. Furthermore, the presence and condition of accessories such as storms, screens, shutters, locks and other attachments or decorative items are not included, unless specifically noted. Additional information on exterior elements, particularly windows/doors and the foundation may be provided under other headings in this report, including the INTERIOR and FOUNDATION/SUBSTRUCTURE sections.

SIDING:

Brick/Veneer

SIDING #2:

Hardboard/Fiberboard

PORCH/DECK:

Masonry/Concrete

Covered

Porch

PORCH/DECK #2:

Wood Frame

Deck

PORCH/DECK #3:

Wood Frame

Covered

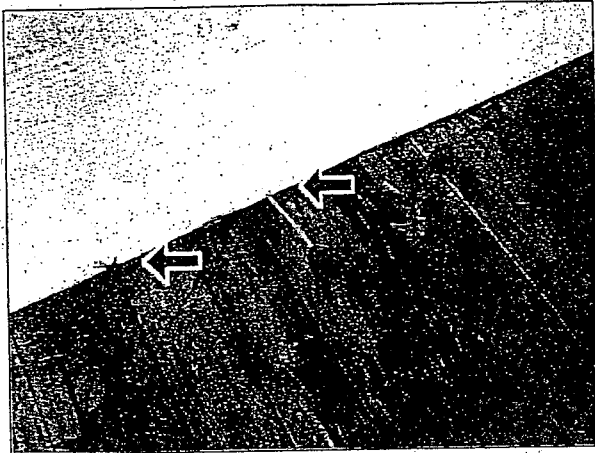
Porch

S F P N A N I

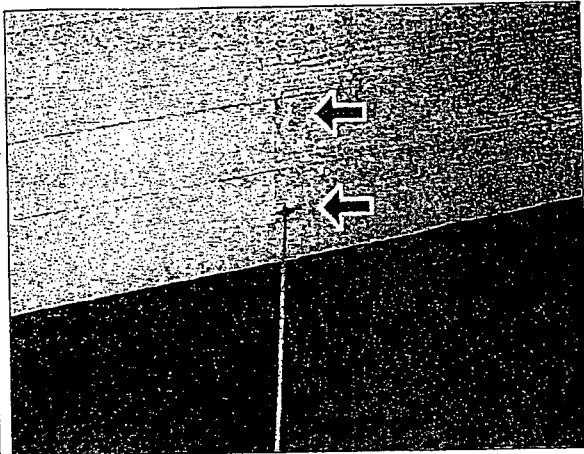
●					2.0 SIDING
●					2.1 SIDING #2 DECAY NOTED TO THE SIDING ON THE BACK OF THE HOUSE ON EACH SIDE OF THE DECK. RECOMMEND HAVING THE SIDING CHECKED AND REPAIRED.
●					2.2 WINDOWS DECAY NOTED TO THE MASTER BATH PICTURE WINDOW. RECOMMEND HAVING CHECKED AND REPAIRED.
●					2.3 ENTRY DOORS GAP NOTED UNDER THE DINETTE EXTERIOR DOOR TO THE PORCH. RECOMMEND HAVING REPAIRED. CARPENTER BEE HOLES NOTED IN THE BACK DEN EXTERIOR DOOR. RECOMMEND HAVING REPAIRED.
●					2.4 STAIRS / STOOPS
●					2.5 PORCH(ES) / DECK(S)
●					2.6 PORCH(ES) / DECK(S) #2
●					2.7 PORCH(ES) / DECK(S) #3
●					2.8 RAILINGS
●					2.9 FOUNDATION SURFACE
●	●				2.10 ELECTRIC / GFCI THE FRONT YARD LAMP POST AND BACK PORCH LIGHT / FAN KIT DID NOT COME ON. (BULBS?) HAVE CHECKED. ALL OF THE EXTERIOR OUTLETS ARE NOT ON A GFCI. THE EXTERIOR OUTLET ON THE MASTER BEDROOM EXTERIOR WALL IS VERY LOOSE AT THE WALL. RECOMMEND HAVING REPAIRED.

S F P N A N I S= Satisfactory, F= Fair, P= Poor/Defective, NA= Not Applicable, NI= Not Inspected

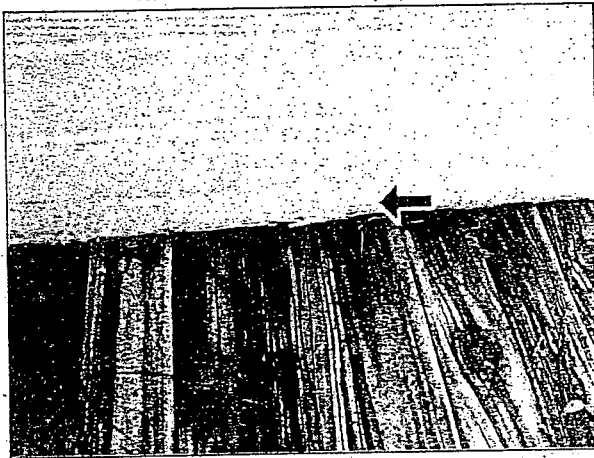
Review REPORT TERMINOLOGY on Introduction Page. Consult with your Inspector for clarification on ratings or findings if there are any questions.



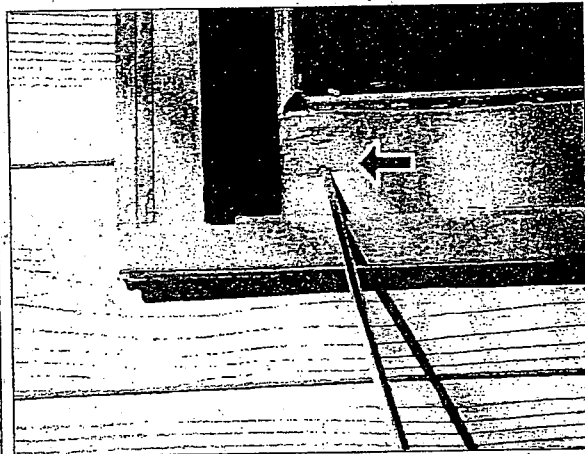
2.1 SIDING #2 Item 1(Picture)



2.1 SIDING #2 Item 2(Picture)



2.1 SIDING #2 Item 3(Picture)



2.2 WINDOWS Item 1(Picture)

NOTE: All surfaces of the exterior envelope of the house should be inspected at least semi-annually, and maintained as needed. Any exterior element defect can result in leakage and/or subsequent damage. Exterior wood elements and wood composites are particularly susceptible to water-related damage, including decay, insect infestation, or mold. The use of properly treated lumber or alternative products help minimize these concerns, but will not eliminate them altogether. While some areas of decay or damage may be reported, additional areas of concern may become apparent as they occur, spread, or are discovered during repair or maintenance work. Should you wish advice on any new or uncovered area of deterioration, please contact the Inspection Company. Periodic caulking/resealing of all gaps and joints will be required. Insulated window/door units are subject to seal failure, which could ultimately affect the transparency and/or function of the window. Lead-based paints were commonly used on older homes; independent inspection is required if confirmation or a risk assessment is desired.

SITE ELEMENTS

Inspection of site elements is primarily intended to address the condition of listed, readily visible and accessible elements immediately adjacent to or surrounding the house for conditions and issues that may have an impact on the house. Elements and areas concealed from view for any reason cannot be inspected. **Neither the inspection nor report includes any geological surveys, soil compaction surveys, ground testing, or evaluation of the effects of, or potential for, earth movement such as earthquakes, landslides, or sinking, rising or shifting for any reason.** Information on local soil conditions and issues should be obtained from local officials and/or a qualified specialist prior to closing. In addition to the stated limitations on the inspection of site elements, a standard home inspection does not include evaluation of elements such as underground drainage systems, site lighting, irrigation systems, barbecues, sheds, detached structures, fencing, privacy walls, docks, seawalls, pools, spas and other recreational items. Additional information related to site element conditions may be found under other headings in this report, including the FOUNDATION/SUBSTRUCTURE and WATER PENETRATION sections.

WALKWAY:

Concrete

DRIVEWAY:

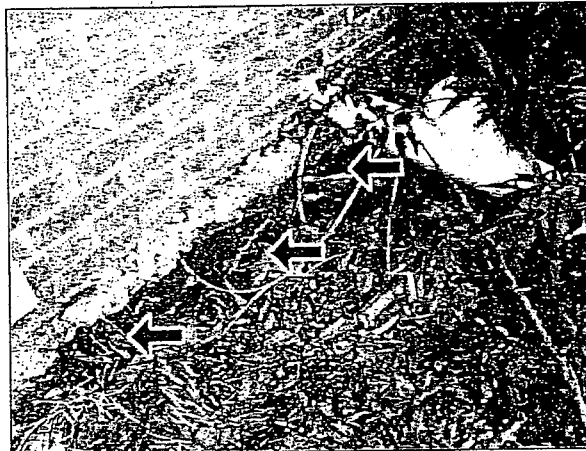
Concrete

S F P NA NI

●					3.0 WALKWAYS
●					3.1 DRIVEWAY
●					3.2 SUB-GRADE ENTRYWAY
●	●				3.3 GROUND SLOPE AT FOUNDATION LOW AREA / EXPOSED FOOTER NOTED ON THE BACK RIGHT OF THE HOUSE. RECOMMEND FILLING AND TAMPING THE LOW AREA WITH SOIL.
●					3.4 SITE GRADING

S F P NA NI S= Satisfactory, F= Fair, P= Poor/Defective, NA= Not Applicable, NI= Not Inspected

Review REPORT TERMINOLOGY on Introduction Page. Consult with your Inspector for clarification on ratings or findings if there are any questions.



3.3 GROUND SLOPE AT FOUNDATION Item
1(Picture)

NOTE: Site conditions are subject to sudden change with exposure to rain, wind, temperature changes, and other climatic factors. Roof drainage systems and site/foundation grading and drainage must be maintained to provide adequate water control. Improper/inadequate grading or drainage and other site factors can cause or contribute to foundation movement or failure, water infiltration into the house interior, and/or mold concerns. Independent evaluations by an engineer or soils specialist is required to evaluate geological or soil-related concerns. Houses built on expansive clays and uncompacted fill, on hillsides, along bodies of water, or in low-lying areas are especially prone to structural concerns. All improved surfaces such as patios, walks, and driveways must also be maintained to drain water away from the foundation. Any reported or subsequently occurring deficiencies must be investigated and corrected to prevent recurring or escalating problems. Independent evaluation of ancillary and site elements by qualified servicepersons is recommended prior to closing.

GARAGE

Inspection of the garage is limited to readily visible and accessible elements as listed herein. Elements and areas concealed from view cannot be inspected. More so than most other areas of a house, garages tend to be filled with storage and other items that restrict visibility and hide potential concerns, such as water damage or insect infestation. A standard home inspection does not include an evaluation of the adequacy of the fire separation assemblies between the house and garage, or whether such assemblies comply with any specific requirements. Inspection of garage doors with connected automatic door operator is limited to a check of operation utilizing hard-wired controls only. Additional information related to garage elements and conditions may be found under other headings in this report, including ROOFS and EXTERIOR ELEMENTS.

DESCRIPTION:

2 CAR

HOUSE/GARAGE SEPARATION:

Solid Door

GARAGE ATTIC INSPECTION METHOD:

Entered

ROOF DESCRIPTION:

Refer to ROOFING Section

INSULATION:

None

ROOF MATERIAL:

Refer to ROOFING Section

VAPOR RETARDER:

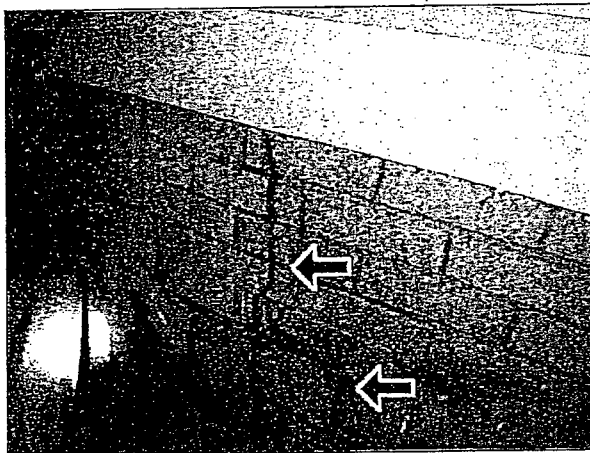
Not Found/Detected

S F P N A NI

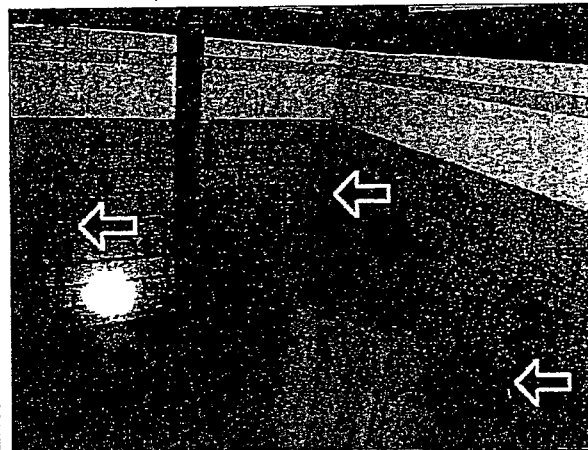
				4.0 EXPOSED FRAMING
				4.1 FLOOR SLAB
				4.2 FOUNDATION
				4.3 WALLS / CEILINGS MULTIPLE TERMITE TUNNELS NOTED ON THE GARAGE FOUNDATION WALLS. RECOMMEND HAVING THE GARAGE AND WHOLE HOUSE CHECKED BY A TERMITE CO.
				4.4 SIDING
				4.5 VEHICLE DOOR(S)
				4.6 DOOR OPERATOR(S) THE SAFETY ON THE GARAGE DOOR OPERATOR NEEDS ADJUSTING. 50 LBS. OF PRESSURE THE DOOR SHOULD STOP AND RETURN UP. RECOMMEND HAVING REPAIRED.
				4.7 ELECTRIC / GFCI NO GFCI.

S F P N A NI S= Satisfactory, F= Fair, P= Poor/Defective, NA= Not Applicable, NI= Not Inspected

Review REPORT TERMINOLOGY on Introduction Page. Consult with your Inspector for clarification on ratings or findings if there are any questions.



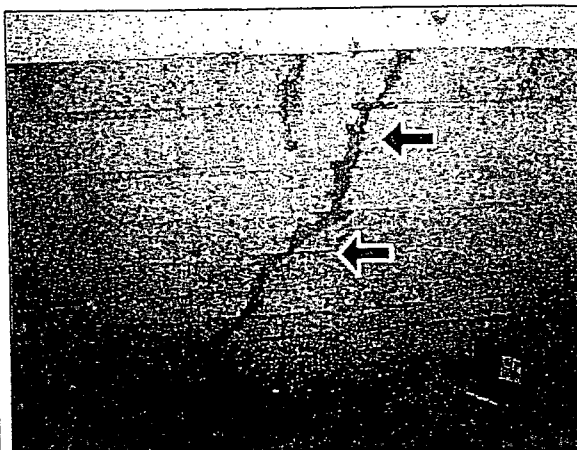
4.3 WALLS / CEILINGS Item 1(Picture)



4.3 WALLS / CEILINGS Item 2(Picture)



4.3 WALLS / CEILINGS Item 3(Picture)



4.3 WALLS / CEILINGS Item 4(Picture)

NOTE: Any areas obstructed at the time of inspection should be cleared and checked prior to closing. The integrity of the fire-separation wall/ceiling assemblies generally required between the house and garage, including any house-to-garage doors and attic hatches, must be maintained for proper protection. Review manufacturer use and safety instructions for garage doors and automatic door operators. All doors and door operators should be tested and serviced on a regular basis to prevent personal injury or equipment damage. Any malfunctioning doors or door operators should be repaired prior to using. Any door operators without auto-reverse capabilities should be repaired or upgraded for safety. The storage of combustibles in a garage creates a potential hazard, including the possible ignition of vapors, and should be restricted.

ATTIC

The inspection of attic areas and the roof structure is limited to readily visible and accessible elements as listed herein. Due to typical design and accessibility constraints such as insulation, storage, finished attic surfaces, roofing products, etc., many elements and areas, including major structural components, are often at least partially concealed from view and cannot be inspected. A standard home inspection does not include an evaluation of the adequacy of the roof structure to support any loads, the thermal value or energy efficiency of any insulation, the integrity of vapor retarders, or the operation of thermostatically controlled fans. Older homes generally do not meet insulation levels and energy conservation standards required for new homes. Additional information related to attic elements and conditions may be found under other headings in this report, including ROOFS and INTERIOR ELEMENTS.

DESCRIPTION:

Pull-Down Stairs

INSPECTION METHOD:

Entered

FRAMING:

Wood Frame
Rafters

SHEATHING:

Wood/Wood Composite

INSULATION:

Loose Fill
R-30+

VAPOR RETARDER:

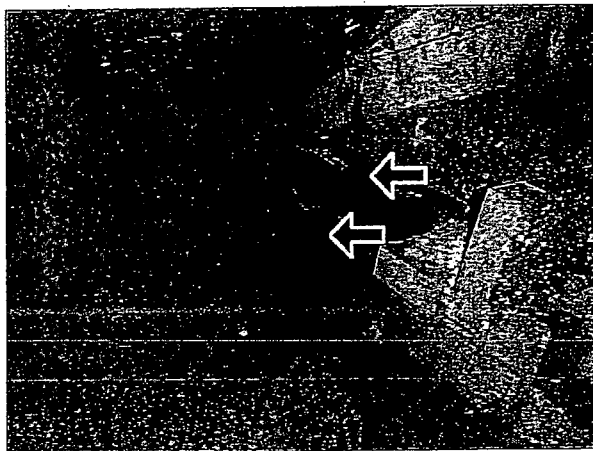
Not Found/Detected

S F P N A NI

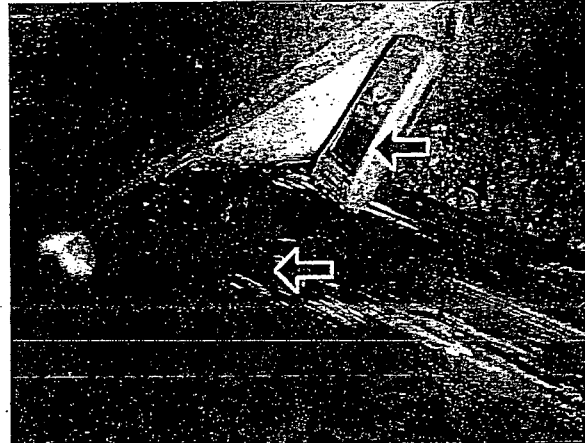
•					5.0 ROOF FRAMING HEAVY WATER STAIN NOTED ON THE WALL TOP PLATE AND BEAM BELOW THE ACTIVE WATER STAIN IN THE FRONT LEFT BEDROOM. RECOMMEND HAVING CHECKED BY A LICENSED CONTRACTOR.
•					5.1 ROOF DECK / SHEATHING
	•				5.2 VENTILATION PROVISIONS THERE ARE ONLY THREE SMALL ROOF VENTS NOTED FOR HOT AIR ESCAPE IN THE ATTIC. THE VENTS DID NOT APPEAR SUFFICIENT FOR PROPER AIR FLOW. RECOMMEND HAVING CHECKED AND REPAIRED BY A LICENSED CONTRACTOR.
		•			5.3 ATTIC VENTILATOR(S)
	•				5.4 INSULATION INSULATION HAS FALLEN OFF OF THE SKYLIGHT CHASE. RECOMMEND HAVING REPLACED. Item 1(Picture) THE INSULATION OVER THE KITCHEN HAS BEEN DISTURBED AND IS LOW IN THE AREA. RECOMMEND REDISTRIBUTING THE EXCESS INSULATION OVER THE DINETTE TO THE AREA. Item 2(Picture) INSULATION MISSING ON THE HIGH INTERIOR WALLS OF THE DEN AND FOYER EXPOSED IN THE ATTIC. RECOMMEND INSTALLING INSULATION ON THE EXPOSED WALLS. Item 3(Picture) Item 4(Picture)

S F P N A NI S= Satisfactory, F= Fair, P= Poor/Defective, NA= Not Applicable, NI= Not Inspected

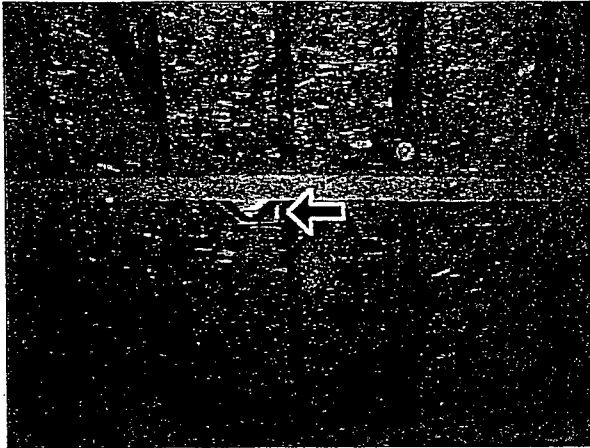
Review REPORT TERMINOLOGY on Introduction Page. Consult with your Inspector for clarification on ratings or findings if there are any questions.



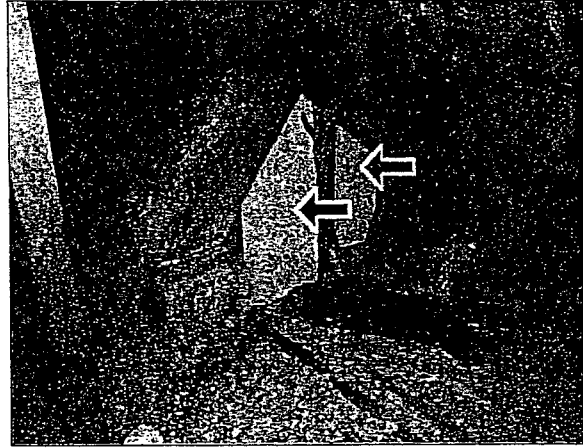
5.0 ROOF FRAMING Item 1(Picture)



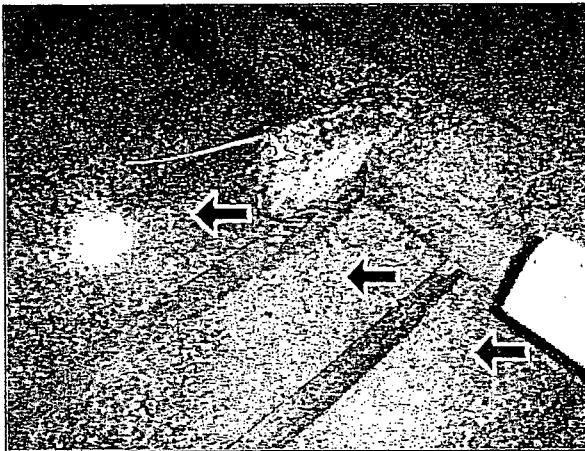
5.0 ROOF FRAMING Item 2(Picture)



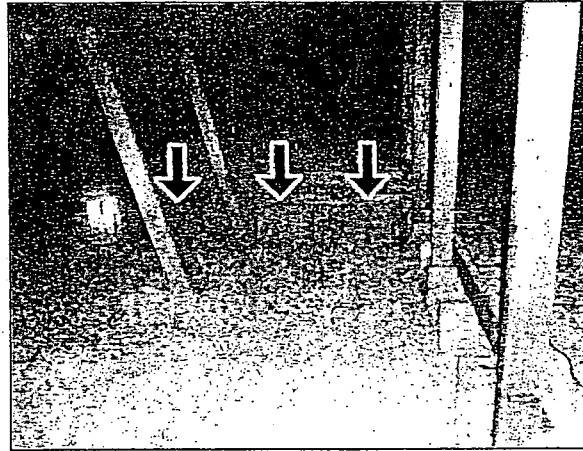
5.2 VENTILATION PROVISIONS Item 1(Picture)



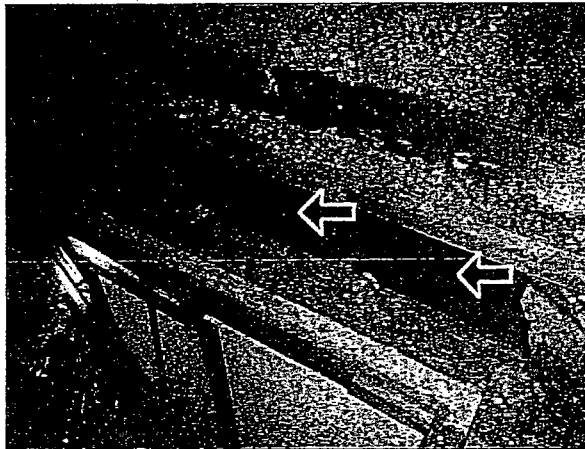
5.4 INSULATION Item 1(Picture)



5.4 INSULATION Item 2(Picture)



5.4 INSULATION Item 3(Picture)



5.4 INSULATION Item 4(Picture)

NOTE: Attic heat, moisture levels, and ventilation conditions are subject to change. All attics should be monitored for any leakage, moisture buildup or other concerns. Detrimental conditions should be corrected and ventilation provisions should be improved where needed. Any comments on insulation levels and/or materials are for general informational purposes only and were not verified. Some insulation products may contain or release potentially hazardous or irritating materials—avoid disturbing. A complete check of the attic should be made prior to closing after non-permanent limitations/obstructions are removed. Any stains/leaks may be due to numerous factors; verification of the cause or status of all condition is not possible. If concerns exist, recommend evaluation by a qualified roofer or the appropriate specialist. Leakage can lead to mold concerns and structural damage.

A). HALL BATH

The inspection of bathrooms is limited to readily accessible and visible elements as listed herein. Bathrooms are high-use areas containing many elements subject to ongoing wear and periodic malfunction, particularly fixtures and other elements associated with the plumbing system. Normal usage cannot be simulated during a standard home inspection. **Water flow and drainage evaluations are limited to a visual assessment of functional flow.** The function and watertightness of fixture overflows or other internal fixture components generally cannot be inspected. A standard home inspection does not include evaluation of ancillary items such as saunas or steam baths. Additional issues related to bathroom components can be found under other headings, including the PLUMBING SYSTEM.

LOCATION:
Hallway

DESCRIPTION:
Full Bath

VENTILATOR(S):
Exhaust Fan

S F P N A N I

●				6.0.A SINK(S)
●				6.1.A TOILET
●				6.2.A BATHTUB
●				6.3.A SURROUNDS / ENCLOSURES
●				6.4.A FLOOR(ING)
●				6.5.A WALLS / CEILING
●				6.6.A VENTILATION
●				6.7.A ELECTRIC / GFCI NO GFCI

S F P N A N I S= Satisfactory, F= Fair, P= Poor/Defective, NA= Not Applicable, NI= Not Inspected

Review REPORT TERMINOLOGY on Introduction Page. Consult with your Inspector for clarification on ratings or findings if there are any questions.

NOTE: Anticipate the possibility of leakage or other concerns developing with normal usage/aging or as concealed conditions are discovered with maintenance work or upon removal of carpeting, tile, shower enclosures, etc. The watertightness of all surfaces exposed to water must be maintained on regular basis by caulking, grouting, or other means. Hot water represents a potential scalding hazard; hot water supply temperatures should be maintained at a suitable level. The water temperature at fixtures, especially for showerings or bathing, generally will require additional tempering for personal comfort and safety. Due to the potential hazards associated with electric components located in bathroom areas, any identified concern should be addressed immediately. Ground-fault Circuit-interrupters (GFCIs) are recommended for all bathroom receptacle outlets.

B). MASTER BATH

The inspection of bathrooms is limited to readily accessible and visible elements as listed herein. Bathrooms are high-use areas containing many elements subject to ongoing wear and periodic malfunction, particularly fixtures and other elements associated with the plumbing system. Normal usage cannot be simulated during a standard home inspection. **Water flow and drainage evaluations are limited to a visual assessment of functional flow.** The function and watertightness of fixture overflows or other internal fixture components generally cannot be inspected. A standard home inspection does not include evaluation of ancillary items such as saunas or steam baths. Additional issues related to bathroom components can be found under other headings, including the PLUMBING SYSTEM.

LOCATION:

Master Bedroom

DESCRIPTION:

Full Bath

VENTILATOR(S):

Exhaust Fan

S F P N A NI

●				6.0.B SINK(S)
●				6.1.B TOILET
●				6.2.B BATHTUB
●				6.3.B STALL SHOWER
●				6.4.B SURROUNDS / ENCLOSURES
●				6.5.B FLOOR(ING)
●				6.6.B WALLS / CEILING
●				6.7.B VENTILATION
●				6.8.B ELECTRIC / GFCI NO GFCI

S F P N A NI S= Satisfactory; F= Fair; P= Poor/Defective; NA= Not Applicable; NI= Not Inspected

Review REPORT TERMINOLOGY on Introduction Page. Consult with your Inspector for clarification on ratings or findings if there are any questions.

NOTE: Anticipate the possibility of leakage or other concerns developing with normal usage/aging or as concealed conditions are discovered with maintenance work or upon removal of carpeting, tile, shower enclosures, etc. The watertightness of all surfaces exposed to water must be maintained on regular basis by caulking, grouting, or other means. Hot water represents a potential scalding hazard; hot water supply temperatures should be maintained at a suitable level. The water temperature at fixtures, especially for showerings or bathing, generally will require additional tempering for personal comfort and safety. Due to the potential hazards associated with electric components located in bathroom areas, any identified concern should be addressed immediately. Ground-fault Circuit-interrupters (GFCIs) are recommended for all bathroom receptacle outlets.

KITCHEN

Inspection of the kitchen is limited to visible and readily accessible elements as listed herein. Elements concealed from view or not functional at the time of inspection cannot be inspected. The inspection of cabinetry is limited to functional unit conditions based on a representative sampling; finishes and hardware issues are not included. **The inspection of appliances, if performed, is limited to a check of the operation of a basic representative cycle or mode** and excludes evaluation of thermostatic controls, timing devices, energy efficiency considerations, cooking or cleaning adequacies, self-cleaning functions, the adequacy of any utility connections, compliance with manufacturer installation instructions, appliance accessories, and full appliance features (i.e., all cycles, modes, and controls). Portable appliances or accessories such as washer, dryers, refrigerators, microwaves, and ice makers are generally excluded. Additional information related to kitchen elements and appliances may be found under other headings in this report.

VENTILATOR:
NONE

COUNTERTOP RANGE:
Electric

WALL OVEN:
Electric

DISHWASHER:
NEW

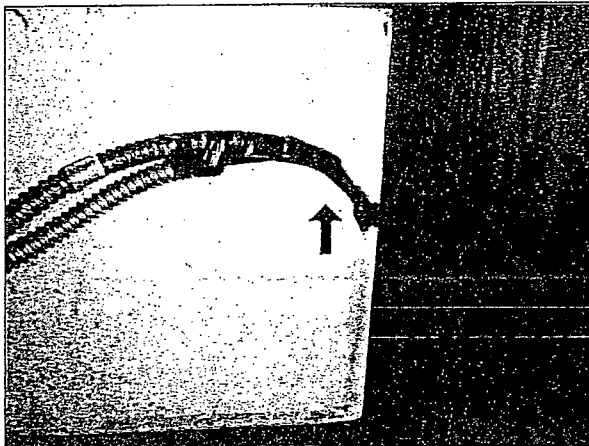
DISPOSAL:
NONE

S F P NA NI

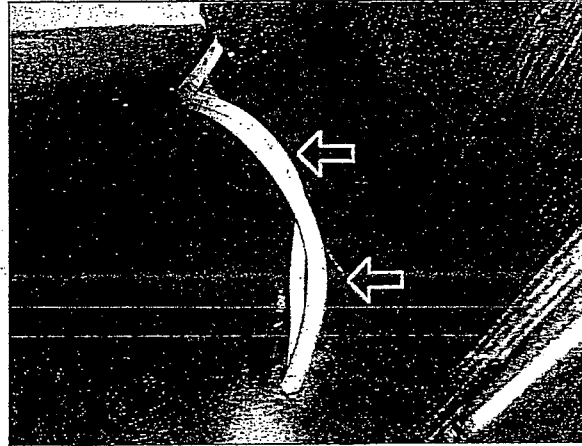
●				7.0 PLUMBING / SINK
●				7.1 FLOOR(ING)
●				7.2 WALLS / CEILING
	●			7.3 ELECTRIC / GFCI NO GFCI. THE OVERHEAD LIGHT OVER THE SINK DID NOT COME ON. (BULB MISSING) HAVE CHECKED OPEN SPLICED WIRE NOTED UNDER THE KITCHEN STOVE. RECOMMEND HAVING THE SPLICED WIRE INSTALLED IN A JUNCTION BOX. Item 1(Picture) EXPOSED WIRES NOTED UNDER THE OVEN. RECOMMEND INSTALLING THE EXPOSED WIRES IN CONDUIT.
				7.4 COOKING UNIT
				7.5 DISHWASHER
		●		7.6 DISPOSAL
		●		7.7 VENTILATOR
●				7.8 CABINetry
●				7.9 COUNTERTOP
	●			7.10 COMMENTS: OPEN END DOWN FLOW EXHAUST VENT LINE NOTED UNDER THE STOVE. THE EXHAUST VENT MOTOR HAS BEEN REMOVED. RECOMMEND REMOVING THE VENT LINE AND SEALING THE HOLE IN THE SUB FLOOR AND CABINET TO PREVENT BUG OR ANIMAL INTRUSION.

S F P NA NI S= Satisfactory, F= Fair, P= Poor/Defective, NA= Not Applicable, NI= Not Inspected

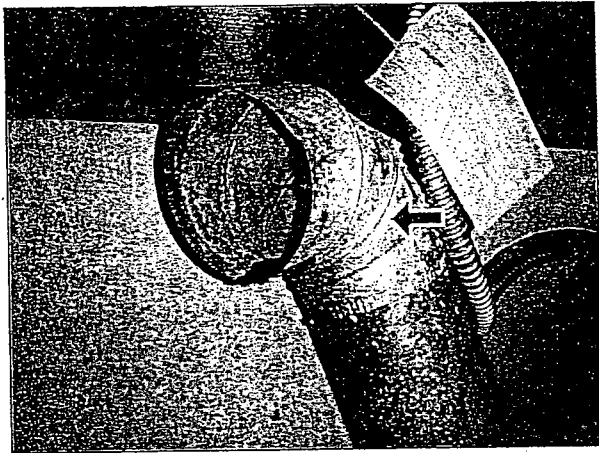
Review REPORT TERMINOLOGY on Introduction Page. Consult with your Inspector for clarification on ratings or findings if there are any questions.



7.3 ELECTRIC / GFCI Item 1(Picture)



7.3 ELECTRIC / GFCI Item 2(Picture)



7.10 COMMENTS: Item 1(Picture)

NOTE: Appliances typically have a high maintenance requirement and limited service life (5-10 years). Operation of all appliances should be confirmed during a pre-closing inspection. Obtain all operating instructions from the owner or manufacturer; have the homeowner demonstrate operation, if possible. Follow manufacturers' use and maintenance guidelines; periodically check all units for leakage or other malfunctions. All cabinetry/countertops should also be checked prior to closing when clear of obstructions. Utility provisions and connections, including water, waste, gas, and/or electric may require upgrading with new appliances, especially when a larger or upper-end appliance is installed. Ground-fault Circuit-interrupters (GFCIs) are recommended safety devices for all homes. Any water leakage or operational defects should be addressed promptly; water leakage can lead to mold and hidden/structural damage.

INTERIOR ELEMENTS

Inspection of the house interior is limited to readily accessible and visible elements as listed herein. Elements and areas that are inaccessible or concealed from view by any means cannot be inspected. Aesthetic and cosmetic factors (e.g., paint and wallpaper) and the condition of finish materials and coverings are not addressed. Window and door evaluations are based on a random sampling of representative units. It is not possible to confirm safety glazing or the efficiency and integrity of insulated window/door units. Auxiliary items such as security/safety systems (or the need for same), home entertainment or communication systems, structured wiring systems, doorbells, telephone lines, central vacuums, and similar components are not included in a standard home inspection. Due to typical design restrictions, inspection of any fireplace, stove, or insert is limited to external conditions. Furthermore, such inspection addresses physical condition only; no code/fire safety compliance assessment or operational check of vent conditions is performed. Additional information on interior elements may be provided under other headings in this report, including the FOUNDATION/SUBSTRUCTURE section and the major house systems.

PREDOMINANT CEILINGS:

Wood Frame

PREDOMINANT WINDOWS:

Double Hung
w/Double Glazing

PREDOMINANT WALLS:

Wood Frame

FIREPLACE(S):

Type: Fireplace
Material: Metal
vented
DEN

PREDOMINANT FLOORS:

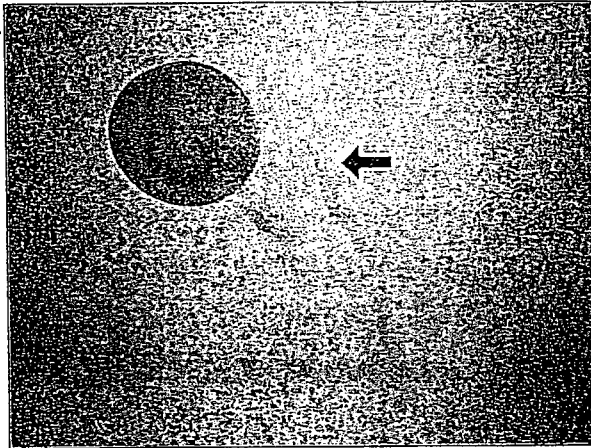
Wood Frame

S F P N A NI

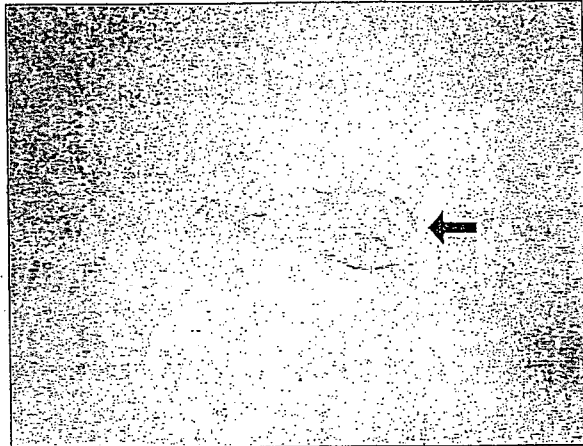
●					8.0 CEILINGS WATER STAIN NOTED ON THE CEILING IN THE FRONT LEFT BEDROOM AND CLOSET OF THE FRONT RIGHT BEDROOM. THE WATER STAIN APPEAR TO BE DUE TO THE ACTIVE LEAK NOTED IN THE ROOFING SECTION. RECOMMEND HAVING CHECKED AND REPAIRED.
●					8.1 WALLS
●					8.2 FRAMED FLOORS HUMP IN THE FLOOR NOTED IN THE FRONT LEFT BEDROOM. THE HUMP APPEARED TO BE RAISED PIECE OF UNDERLAYMENT. RECOMMEND HAVING CHECKED BY A LICENSED CONTRACTOR
●					8.3 WINDOWS CRACKED WINDOW PANE NOTED IN THE DEN. RECOMMEND HAVING REPLACED. Item 1(Picture) DEFECTIVE SEAL NOTED TO THE DOUBLE PANE GLASS WINDOWS IN THE FRONT RIGHT BEDROOM AND MASTER BEDROOM. RECOMMEND HAVING ALL WINDOWS CHECKED AND SEE SUPPLEMENTAL INFORMATION. THE COUNTER BALANCE IS BROKEN OR DISCONNECTED TO THE WINDOWS IN THE DINING ROOM, FRONT RIGHT BEDROOM, FRONT LEFT BEDROOM AND MASTER BEDROOM. RECOMMEND HAVING ALL WINDOWS CHECKED. Item 2(Picture)
●					8.4 ROOM DOORS
●	●		●		8.5 FIREPLACE THE GAS LOGS IN THE FIREPLACE WERE NOT CHECKED. ALSO, I WAS NOT ABLE TO DETERMINE IF THE GAS LOGS WERE A VENTED OR VENTLESS TYPE OF GAS LOGS. RECOMMEND HAVING CHECKED. THE FIREPLACE FAN WAS NOT WORKING AT THE TIME OF INSPECTION. RECOMMEND HAVING CHECKED AND REPAIRED OR REPLACED.

S F P N A NI S= Satisfactory, F= Fair, P= Poor/Defective, NA= Not Applicable, NI= Not Inspected

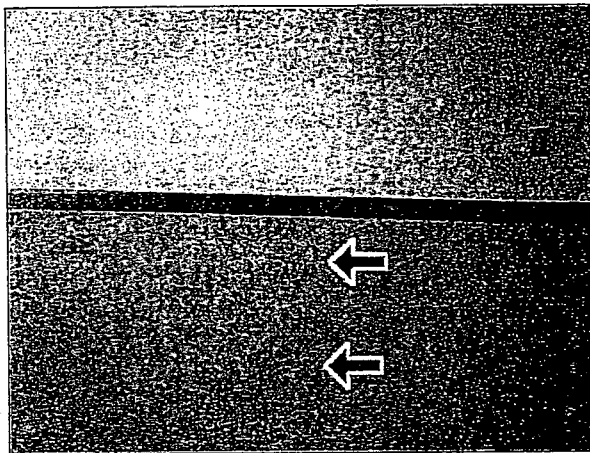
Review REPORT TERMINOLOGY on Introduction Page. Consult with your Inspector for clarification on ratings or findings if there are any questions.



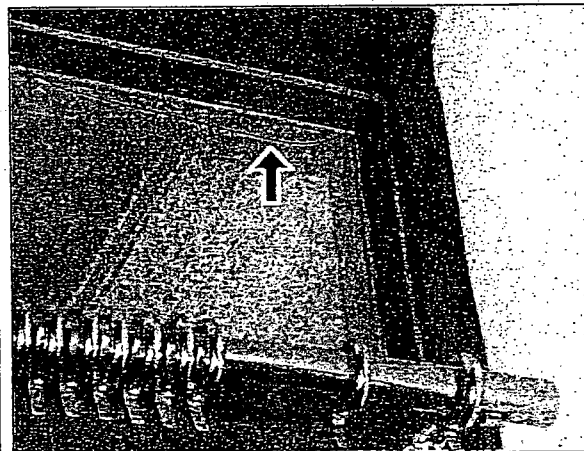
8.0 CEILINGS Item 1(Picture)



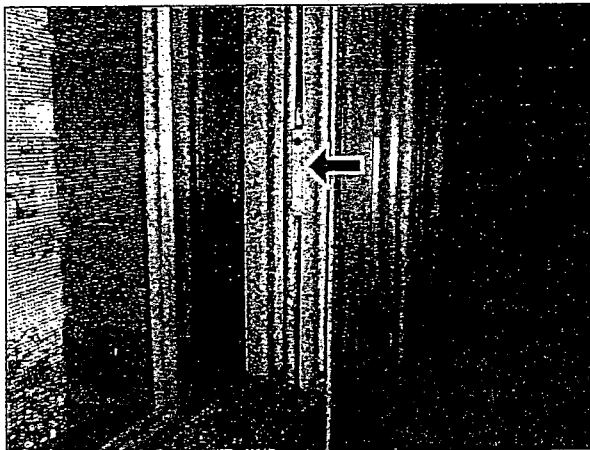
8.0 CEILINGS Item 2(Picture)



8.2 FRAMED FLOORS Item 1(Picture)



8.3 WINDOWS Item 1(Picture)



8.3 WINDOWS Item 2(Picture)

NOTE: All homes are subject to indoor air quality concerns due to factors such as venting system defects, outgassing from construction materials, smoking, and the use of house and personal care products. Air quality can also be adversely affected by the growth of molds, fungi and other micro-organisms as a result of leakage or high humidity conditions. If water leakage or moisture-related problems exist, potentially harmful contaminants may be present. A home inspection does not include assessment of potential health or environmental contaminants or allergens. For air quality evaluations, a qualified testing firm should be contacted. All homes experience some form of settlement due to construction practices, materials used, and other factors. A pre-closing check of all windows, doors, and rooms when house is clear of furnishings, drapes, etc. is recommended. If the type of flooring or other finish materials that may be covered by finished surfaces or other items is a concern, conditions should be confirmed before closing. Lead-based paint may have been used in the painting of older homes. Chimney and fireplace flue inspections should be performed by a qualified specialist. Regular painting is recommended. An assessment should be made of the need for and placement of detectors. All smoke and carbon monoxide detectors should be tested on a regular basis.

SUPPLEMENTAL INFORMATION - Review the additional details below.

Insulated Glass - Insulated (double or triple glaze) windows and doors are subject to hard-to-detect failure of the airtight seal between panes. This failure result in moisture and/or staining of the unit that can vary seasonally and increase with time. While actual/suspect seal failure may be noted, it is not in the scope of a standard inspection to assess the seal integrity of these type units. A pre-closing check of all units when house is clear of drapes, window coverings, etc. and the view of the windows is unobstructed is advised.

Window/Door Seals - Replacement of insulated glass windows or doors is usually required to correct failed or defective vacuum seals. Fortunately, the insulation value is usually not significantly reduced. Replacement time frame may be discretionary; however, conditions will gradually worsen with time.

FOUNDATION / SUBSTRUCTURE

The inspection of the substructure and foundation is limited to readily visible and access elements as listed herein. Elements or areas concealed from view for any reason cannot be inspected. In most homes, only a representative portion of the structure can be inspected. Any element descriptions provided are for general informational purposes only; the specific material type and/or make-up cannot be verified. **Neither the inspection nor report includes geological surveys, soil compaction studies, ground testing, or evaluation of the effects of or potential for earth movement such as earthquakes, landslides, or sinking, rising or shifting for any reason. Furthermore, a standard home inspection is not a wood-destroying insect inspection, an engineering evaluation, a design analysis, or a structural adequacy study, including that related to high-wind or seismic restraint requirements.** Additional information related to the house structure may be found under many other headings in this report.

BASEMENT:

None Observed

FOUNDATION WALLS/PIERS:

*Block
Pier*

VAPOR RETARDER:

Observed; Extent Indeterminate

CRAWLSPACE:

Full House

HOUSE FLOOR STRUCTURE:

*Wood Frame
Joist*

CRAWLSPACE INSPECTION METHOD:

Entered

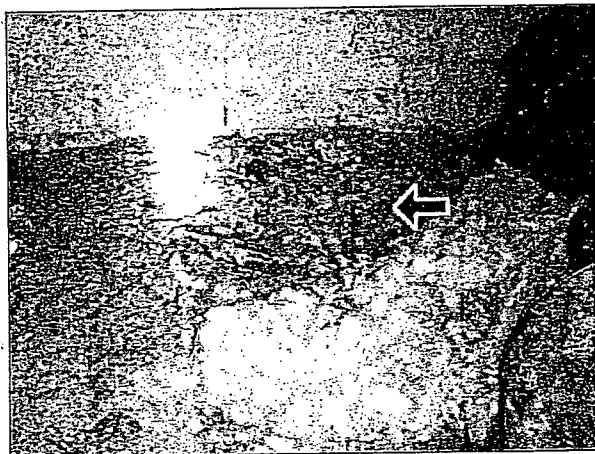
INSULATION:

*Blankett/Batt
R-19*

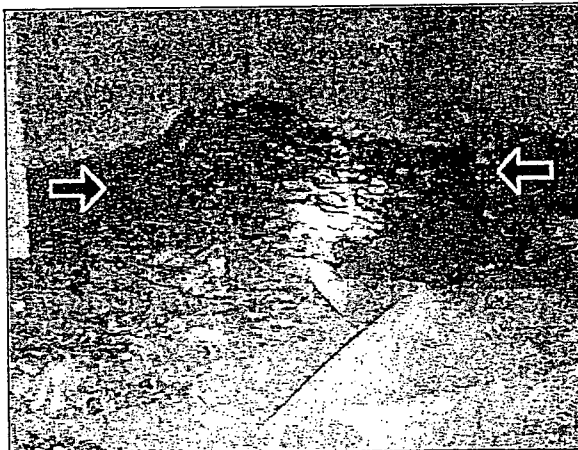
S F P N A N I

●				9.0 FOUNDATION WALLS
●				9.1 PIERS / COLUMNS
●				9.2 FLOOR FRAMING
●				9.3 MAIN BEAM(S)
●				9.4 CRAWLSPACE VENTILATION
●				9.5 COMMENTS
				THERE IS A LARGE AMOUNT OF ANIMAL FECES NOTED UNDER THE LAUNDRY ROOM AND DINETTE AREA. RECOMMEND HAVING THE FECES REMOVED.
				WOOD TO SOIL CONTACT NOTED UNDER THE HOUSE RIGHT OF THE FRONT PORCH AND IN THE FRONT RIGHT INSIDE CORNER. RECOMMEND HAVING BOTH REMOVED.

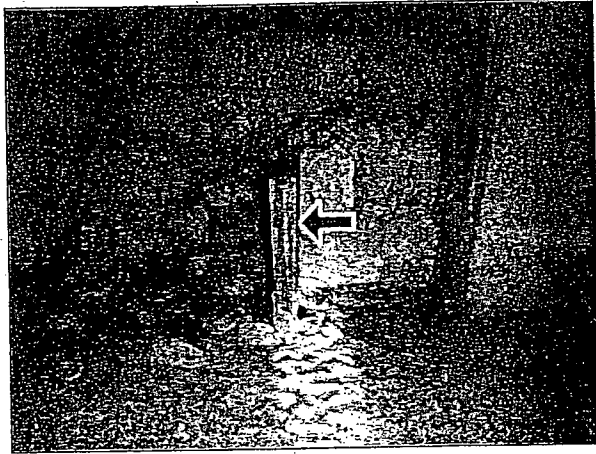
S F P N A N I S= Satisfactory, F= Fair, P= Poor/Defective, NA= Not Applicable, NI= Not Inspected
Review REPORT TERMINOLOGY on Introduction Page. Consult with your Inspector for clarification on ratings or findings if there are any questions.



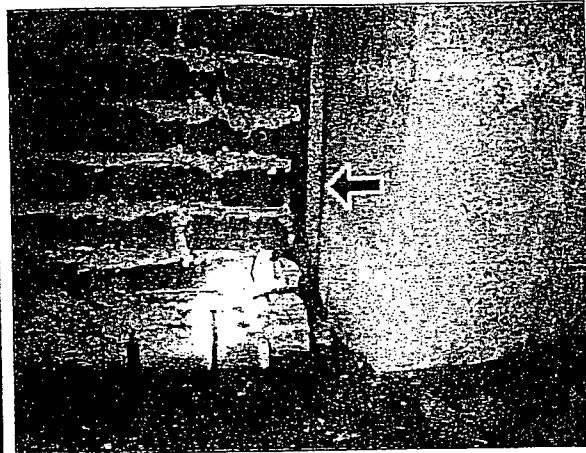
9.5 COMMENTS Item 1(Picture)



9.5 COMMENTS Item 2(Picture)



9.5 COMMENTS Item 3(Picture)



9.5 COMMENTS Item 4(Picture)

NOTE: All foundations are subject to settlement and movement. Improper/inadequate grading or drainage can cause or contribute to foundation damage and/or failure. Deficiencies must be corrected and proper grading/drainage conditions must be maintained to minimize foundation and water penetration concerns. If significant foundation movement or cracking is indicated, evaluation by an engineer or qualified foundation specialist is recommended. All wood components are subject to decay and insect damage. A wood-destroying insect inspection is recommended. Should decay and/or insect infestation or damage be reported, a full inspection should be made by a qualified specialist to determine the extent and remedial measures required. Insulation and other materials obstructing structural components are not normally moved or disturbed during a home inspection. Obstructed elements or inaccessible areas should be inspected when limiting conditions are removed. In high-wind or high-risk seismic areas, it would be advisable to arrange for an inspection of the house by a qualified specialist to determine whether applicable construction requirements are met or damage exists. Should you seek advice or wish to arrange a new inspection for elements not visible during the inspection, please contact the Inspection Company.

FOUNDATION AREA WATER PENETRATION

The inspection for water penetration issues as addressed in this section of the report is generally limited to readily visible and accessible at-grade/subgrade areas of the house as listed herein. Elements and areas that are inaccessible or concealed from view for any reason cannot be inspected. Reported findings are based on conditions observable at the time of inspection; **it is not possible to accurately determine the extent of any past conditions or to predict future conditions or concerns.** This inspection is neither a flood hazard assessment nor an in-depth evaluation of water penetration conditions. Most homes have the potential for surface or subsurface water penetration. It is recommended that the homeowner be contacted for details about the nature of past and present water penetration and moisture-related conditions. The homeowner and local authorities should also be questioned on the nature of any local flooding or water run-off conditions. Additional information related to water penetrations issues and concerns may be found under other headings in this report, including the SITE ELEMENTS and FOUNDATION/SUBSTRUCTURE sections.

DESCRIPTION:

Crawl Space Area(s)

SUMP PUMP(S):

Not Applicable

INDICATIONS OF PRIOR REMEDIAL WORK:

NONE

S F P N A NI

●					10.0 EXTERIOR FEATURES
●					10.1 INTERIOR CONDITIONS
		●			10.2 SUMP PUMP(S)

S F P N A NI S= Satisfactory, F= Fair, P= Poor/Defective, NA= Not Applicable, NI= Not Inspected

Review REPORT TERMINOLOGY on Introduction Page. Consult with your Inspector for clarification on ratings or findings if there are any questions.

NOTE: Many at-grade and subgrade water penetration concerns are related to exterior and site conditions including inadequate or malfunctioning roof drainage provisions, improper foundation or site grading, and blocked drain lines. These and other deficiencies can also cause or contribute to foundation movement or failure, deterioration of wood framing and other house components, and/or conditions conducive wood destroying insects and mold. In many situations, relatively straightforward remedial measures such as extending or diverting downspouts, regrading along the foundation, cleaning drains, or adding a sump pump will help reduce or minimize water penetration concerns. In other cases, the remedy may be much more complex. Any specific recommendations in the report should be promptly addressed; however, be aware that such measures may not represent a complete solution to conditions. Obtain additional recommendations on correcting water penetration concerns from a qualified specialist. If there are indications of prior remedial work, documentation should be obtained from the owner and contractor on the reasons for the work and related issues.

ELECTRIC SYSTEM

The inspection of the electric systems is limited to readily visible and access elements as listed herein. Wiring and other components concealed from view for any reason cannot be inspected. The identification of inherent material defects or latent conditions is not possible. The description of wiring and other components and the operational testing of electric devices and fixtures are based on a limited/random check of representative components. Accordingly, it is not possible to identify every possible wiring material/type or all conditions and concerns that may be present. Inspection of Ground-fault Circuit-interrupters (GFCIs) is limited to the built-in test functions. No assessment can be made of electric loads, system requirements or adequacy, circuit distribution, or accuracy of circuit labeling. Auxiliary items and electric elements (or the need for same) such as surge protectors, lighting protection systems, generators, security/safety systems, home entertainment and communication systems, structured wiring systems, low-voltage wiring, and site lighting are not included in a standard home inspection. Additional information related to electric elements may be found under other many other headings in this report.

SERVICE LINE:

Underground

SERVICE DISCONNECT(S):

Single Main

Location: In Distribution Panel

Estimated Amps; 200

ENTRANCE LINE:

Aluminum

MAJOR APPLIANCE (240 VOLT) CIRCUIT(S):

Copper

DISTRIBUTION PANEL:

Circuit Breaker

LOCATION: MASTER BEDROOM CLOSET

Estimated Amps; 200

HOUSEHOLD (120 VOLT) CIRCUITS:

Copper

GFCI:

In Panel

S F P NA NI

●				11.0 SERVICE / ENTRANCE LINE
●				11.1 SERVICE GROUNDING PROVISIONS
●				11.2 MAIN DISCONNECT(S)
●	●			11.3 DISTRIBUTION PANEL THE WIRE LOCK IS MISSING AROUND THE ELECTRICAL SUPPLY WIRE ENTERING THE PANEL BOX. RECOMMEND HAVING REPAIRED BY A LICENSED ELECTRICIAN.
			●	11.4 SUBPANEL(S)
●				11.5 DEVICES THERE ARE SWITCHES THAT ARE UNKNOWN WHAT THEY CONTROL. THE SWITCHES ARE MARKED WITH BLUE TAPE. RECOMMEND CONSULTING WITH THE OWNER AS TO WHAT THEY CONTROL OR HAVE CHECKED BY A LICENSED ELECTRICIAN.
●				11.6 WIRING / CONDUCTORS
	●			11.7 GFCI TEST THERE ARE TWO GFCI'S IN THE PANEL BOX THAT ARE UNKNOWN WHAT OUTLETS ARE ON THEIR CIRCUIT. THE OUTLETS IN THE BATHROOMS, KITCHEN AND EXTERIOR ARE NOT ON THEIR CIRCUITS. RECOMMEND HAVING CHECKED BY A LICENSED ELECTRICIAN.

S F P NA NI S= Satisfactory, F= Fair, P= Poor/Defective, NA= Not Applicable, NI= Not Inspected

Review REPORT TERMINOLOGY on Introduction Page. Consult with your Inspector for clarification on ratings or findings if there are any questions.



11.3 DISTRIBUTION PANEL Item 1(Picture)

NOTE: Older electric service may be minimally sufficient or inadequate for present/future needs. Service line clearance from trees and other objects must be maintained to minimize the chance of storm damage and service disruption. The identification of inherent electric panel defects or latent conditions is not possible. It is generally recommended that aluminum-wiring systems be checked by an electrician to confirm acceptability of all connections and to determine if any remedial measures are required. GFCIs are recommended for all high hazard areas (e.g., kitchens, bathrooms, garages and exteriors). AFCIs are relatively new devices now required on certain circuits in new homes. Consideration should be given to adding these devices in existing homes. The regular testing of GFCIs and AFCIs using the built-in test function is recommended. Recommend tracing and labeling of all circuits, or confirm current labeling is correct. Any electric defects or capacity or distribution concerns should be evaluated and/or corrected by a licensed electrician.

COOLING SYSTEM

The inspection of cooling systems (air conditioning and heat pumps) is limited to readily visible and accessible elements as listed herein. Elements concealed from view or not functional for any reason cannot be inspected. A standard home inspection does not include a heat gain analysis, cooling design or adequacy evaluation, energy efficiency assessment, installation compliance check, or refrigerant issues. Furthermore, portable units or add-on components such as electronic air cleaners are not inspected, unless specifically indicated. The functional check of cooling systems is limited to the operation of a basic cycle or mode and excludes the evaluation of thermostatic controls, timing devices, analysis of distribution system flow or temperatures, or operation of full system features (i.e., all cycles, modes, and controls). Air conditioning systems are not checked in cold weather. Additional information related to the cooling system may be found under other headings in this report, including the HEATING SYSTEM section.

SYSTEM TYPE:
Electric Central Air Conditioning

SYSTEM MAKE:
Goodman

SYSTEM LOCATION:
Outside

ESTIMATED AGE:
9 + YEARS

DESIGN LIFE:
10 to 15 years

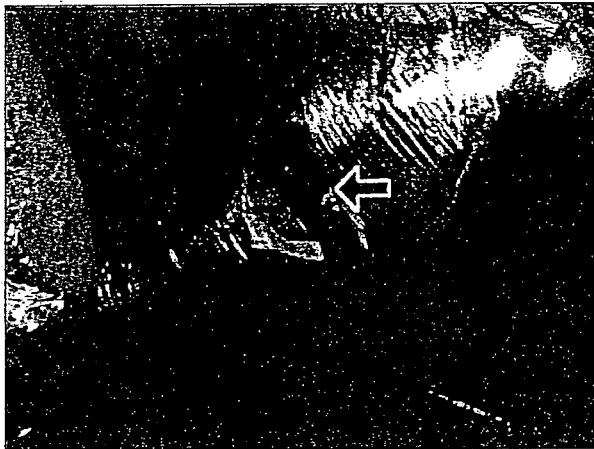
GENERAL DISTRIBUTION:
Ducted/Registers

S F P N A N I

				●	12.0 COOLING SYSTEM
●					12.1 OUTDOOR UNIT(S)
●					12.2 INDOOR BLOWER / FAN
●					12.3 CONDENSATE PROVISIONS
●					12.4 DUCTWORK HOLES IN TWO DUCT LINES NOTED UNDER THE LAUNDRY ROOM AND THE DUCT LINE TO THE KITCHEN IS DAMAGED. THERE ARE ALSO DUCT LINES THAT ARE NOT SUPPORTED AND ARE LAYING ON THE GROUND. RECOMMEND HAVING THE DUCT SYSTEM CHECKED AND REPAIRED BY A HVAC CO. THE OLD DUCT SYSTEM FOR THE HOUSE WAS NOT REMOVED WHEN THE NEW SYSTEM WAS INSTALLED.
				●	12.5 THERMOSTAT
					12.6 COMMENTS A BRICK LINTEL IS MISSING BEHIND THE HVAC GAS PACK. RECOMMEND ADDING A LINTEL TO PREVENT SETTLEMENT IN THE BRICK ABOVE THE UNIT.

S F P N A N I S= Satisfactory, F= Fair, P= Poor/Defective, NA= Not Applicable, NI= Not Inspected

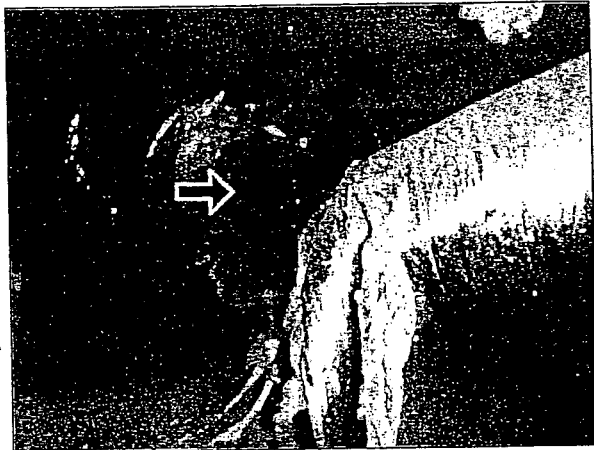
Review REPORT TERMINOLOGY on Introduction Page. Consult with your Inspector for clarification on ratings or findings if there are any questions.



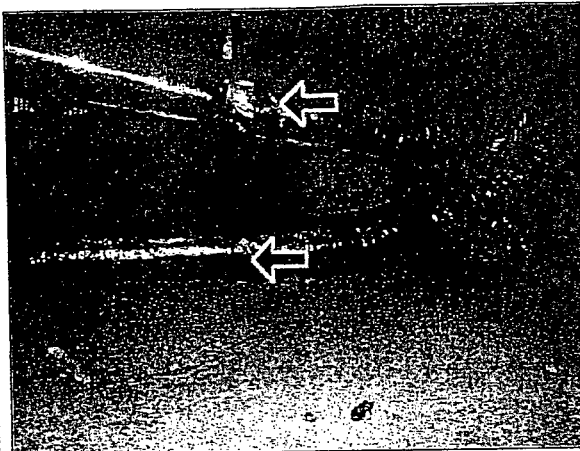
12.4 DUCTWORK Item 1(Picture)



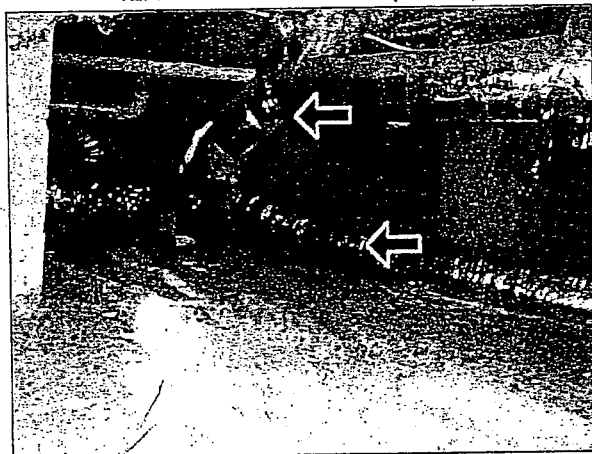
12.4 DUCTWORK Item 2(Picture)



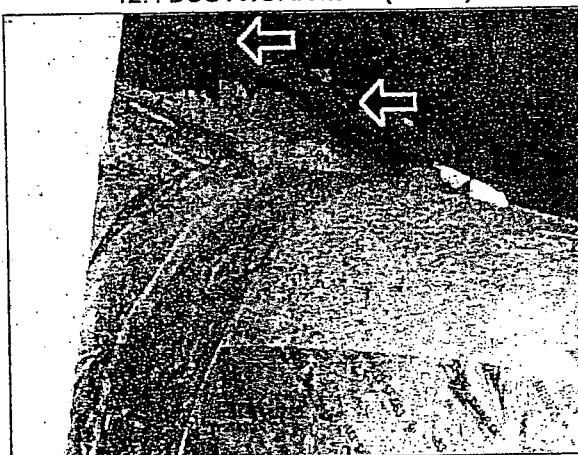
12.4 DUCTWORK Item 3(Picture)



12.4 DUCTWORK Item 4(Picture)



12.4 DUCTWORK Item 5(Picture)



12.6 COMMENTS Item 1(Picture)

NOTE: Regular cooling system maintenance is important. The older the unit the greater the probability of system deficiencies or failure. Do not assume inadequate cooling or other system problems are related to an inadequate refrigerant charge, as more significant concerns may exist. Condensate lines and pumps, if present, should be checked regularly for proper flow; backup or leakage can lead to mold growth and structural damage. All condensate drains must be properly discharged to the exterior or a suitable drain using an air gap. Cooling comfort will vary throughout most houses due to house or system design or other factors. Filters need to be replaced/cleaned on a regular basis; periodic duct cleaning may also be required. Cooling systems cannot be safely or properly evaluated at low exterior temperatures. Arrange for an inspection when temperatures are at moderate levels for several days. Servicing or repair of cooling systems should be made by a qualified specialist.

HEATING SYSTEM

The inspection of heating systems is limited to readily visible and accessible elements as listed herein. Elements concealed from view or not functional at the time of inspection for any reason cannot be inspected. A standard home inspection does not include a heat-loss analysis, heating design or adequacy evaluation, energy efficiency assessment, installation compliance check, chimney flue inspection or draft test, solar system inspection, or buried fuel tank inspection. Furthermore, portable units and system accessories or add-on components such as electronic air cleaners, humidifiers, and water treatment systems are not inspected, unless specifically indicated. The functional check of heating systems is limited to the operation of a basic cycle or mode and excludes the evaluation of thermostatic controls, timing devices, analysis of distribution system flow or temperatures, or operation of full system features (i.e., all cycles, modes, and controls). Additional information related to the heating system may be found under other headings in this report, including the COOLING SYSTEM section.

SYSTEM TYPE:

Hot Air

Fuel: Natural Gas

ESTIMATED AGE:

9 +- YEARS

SYSTEM MAKE:

Goodman

DESIGN LIFE:

10 to 15 years

SYSTEM LOCATION:

Outside

GENERAL DISTRIBUTION:

Ducted/Registers

S F P N A NI

●				13.0 HEATING UNIT
●				13.1 BURNERS
●				13.2 GAS / FUEL LINES AT UNIT
●				13.3 COMBUSTION AIR PROVISIONS
●				13.4 VENT CONNECTOR
●				13.5-BLOWER
	●			13.6 CIRCULATOR PUMP
	●			13.7 HEAT COIL
				13.8 THERMOSTAT

F P N A NI S= Satisfactory, F= Fair, P= Poor/Defective, NA= Not Applicable, NI= Not Inspected

view REPORT TERMINOLOGY on Introduction Page. Consult with your Inspector for clarification on ratings or findings if there are any questions.

NOTE: Regular heating system maintenance is important. The older the unit the greater the probability of system deficiencies or failure. Combustion air provisions, clearances to combustibles, and venting system integrity must be maintained for safe operation. Any actual or potential concerns require immediate attention, as health and safety hazards may exist, including the potential for carbon monoxide poisoning. A thorough inspection of heat exchangers by a qualified heating specialist is recommended to determine heat exchanger conditions, particularly if the unit is beyond 5+ years old or any wear is indicated. Heating comfort will vary throughout most houses due to house or system design or other factors. Filters need to be replaced/cleaned on a regular basis; periodic duct cleaning may be required. Insulation on older heating systems may contain asbestos. Independent evaluation is required to address any possible asbestos or buried fuel tank concerns. Servicing or repair of heating systems should be made by a qualified specialist.

PLUMBING SYSTEM

The inspection of the plumbing system is limited to readily visible and accessible elements as listed herein. Piping and other components concealed from view for any reason cannot be inspected. Material descriptions are based on a limited/random check of representative components. Accordingly, it is not possible to identify every piping or plumbing system material, or all conditions or concerns that may be present. A standard home inspection does not include verification of the type water supply or waste disposal, analysis of water supply quantity or quality, inspection of private onsite water supply or sewage (waster disposal) systems, assessment/analysis of lead piping/solder or lead-in-water concerns, or a pressure test of gas/fuel piping or storage systems. Furthermore, the function and effectiveness of any shut-off/control valves, water filtration or treatment equipment, irrigation/fire sprinkler systems, outdoor/underground piping, backflow preventers (anti-siphon devices), laundry standpipes, vent pipes, floor drains, fixture overflows, and similar features generally are not evaluated. Additional information related to plumbing elements may be found under other headings in this report, including BATHROOMS and KITCHEN.

WATER PIPING:

CPVC

WATER SHUT-OFF LOCATION:

At Meter

GAS SHUT-OFF LOCATION:

At Meter

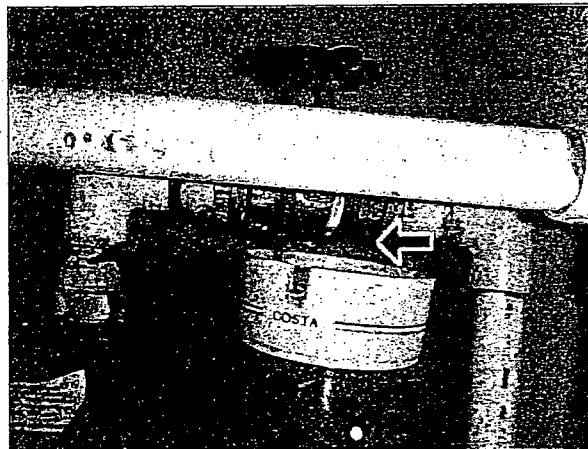
DRAIN/WASTE LINES:

Plastic

S F P N A N I

●	●	●	●	14.0 WATER PIPING
				ACTIVE LEAK NOTED TO THE WATER SHUT OFF VALVE ABOVE THE WATER HEATER. RECOMMEND HAVING REPAIRED BY A LICENSED PLUMBER.
●	●	●	●	14.1 WATER FLOW AT FIXTURES
●	●	●	●	14.2 DRAIN / WASTE PIPING
●	●	●	●	14.3 FIXTURE DRAINAGE
●	●	●	●	14.4 EXTERIOR FAUCET(S)
		●		14.5 LAUNDRY SINK
		●		14.6 GAS PIPING
✓				14.7 BAR SINK

P N A N I S= Satisfactory, F= Fair, P= Poor/Defective, NA= Not Applicable, NI= Not Inspected
Review REPORT TERMINOLOGY on Introduction Page. Consult with your Inspector for clarification on ratings or findings if there are any questions.



14.0 WATER PIPING Item 1(Picture)

NOTE: Recommend obtaining documentation/verification on the type water supply and waste disposal systems. If private onsite water and/or sewage systems are reported/determined to exist, independent evaluation (including water analyses) is recommended. Plumbing systems are subject to unpredictable change, particularly as they age (e.g., leaks may develop, water flow may drop, or drains may become blocked). Plumbing system leakage can cause or contribute to mold and/or structural concerns. Some piping may be subject to premature failure due to inherent material deficiencies or water quality problems, (e.g., older polybutylene pipe may leak at joints, copper water pipe may corrode due to acidic water, or old galvanized pipe may clog due to water mineral content). Periodic cleaning of drain lines, including underground pipes will be necessary. Periodic water analyses are recommended to determine if water filtration and treatment systems are needed. Confirm and label gas and water shut-off valve locations. A qualified plumber should perform all plumbing system repairs.

15. WATER HEATER

The inspection of hot water supply systems is limited to readily visible and accessible elements as listed herein. Elements concealed from view for any reason cannot be inspected. All standard water heaters require temperature-pressure relief valves (TPRV); these units are not operated during a standard home inspection but should be checked regularly for proper operation. **A standard home inspection does not include evaluation of the adequacy/ capacity of hot water supply systems, or inspection of saunas, steam baths, or solar systems.** An increase in the hot water supply system capacity may be needed for large jetted baths or other fixtures requiring a large volume of hot water, or when bathroom or plumbing facilities are added or upgraded. Additional information related to the hot water supply system may be found under other headings in this report, including the BATHROOMS and PLUMBING SYSTEM sections.

WATER HEATER TYPE:

Direct-heated Tank
Fuel: Natural Gas

WATER HEATER LOCATION:

Garage

ESTIMATED CAPACITY:

40 Gallons

SYSTEM MAKE:

Whirlpool

ESTIMATED AGE:

7 +/- YEARS

DESIGN LIFE:

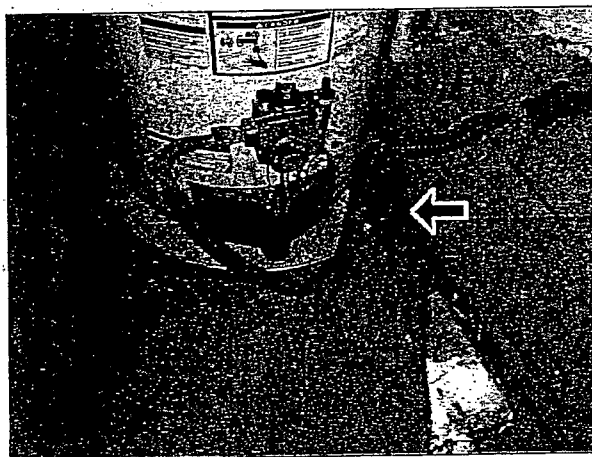
10 to 15 years

S F P N A NI

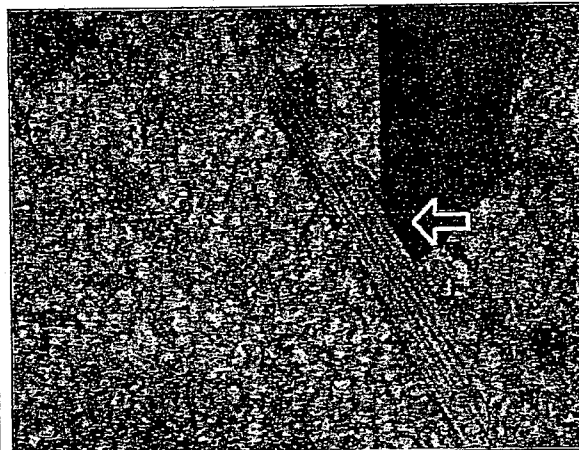
					15.0 WATER HEATER THE GAS WATER HEATER IS NOT 18" OFF OF THE GARAGE FLOOR. RECOMMEND HAVING REPAIRED.
					15.1 VENT CONNECTOR THE WATER HEATER FLUE PIPE IS TOUCHING A CEILING JOIST IN THE ATTIC. THERE SHOULD BE A MINIMUM CLEARANCE OF 1". RECOMMEND HAVING REPAIRED.
					15.2 GAS / FUEL LINES AT UNIT
					15.3 SAFETY VALVE PROVISIONS

S F P N A NI S= Satisfactory, F= Fair, P= Poor/Defective, NA= Not Applicable, NI= Not Inspected

Review REPORT TERMINOLOGY on Introduction Page. Consult with your Inspector for clarification on ratings or findings if there are any questions.



15.0 WATER HEATER Item 1(Picture)



15.1 VENT CONNECTOR Item 1(Picture)

NOTE: Maintain hot-water supply temperatures at no more that about 120 degrees F (49 degrees Celsius) for personal safety; hot water represents a potential scalding hazard. Anti-scald devices are available as an added safety measure. The combustion chamber or ignition sources of water heaters and other mechanical equipment in garage areas should be positioned/maintained at least 18 inches above the floor for safety reasons. Adequate clearance to combustibles must also be maintained around the unit and any vents. Restraining straps are generally required on heaters in active seismic zones. Safety valve (TPRV) discharge should be through a drain line to a readily visible area that can be monitored. Newer tanks should be drained periodically, but many old tanks are best left alone. Tankless or boiler coils systems have little or no storage capacity; a supplemental storage tank can often be added if needed. A qualified plumber or specialist should perform all water heating system repairs.

SUPPLEMENTAL INFORMATION - Review the additional details below.

Clearance/Elevation - The combustion chamber or ignition sources of water heaters and other mechanical equipment in garage areas generally should be positioned at least 18 inches above the floor for fire safety reasons. Adequate clearance to combustibles must also be maintained around the unit and vent.

SUMMARY OF INSPECTOR COMMENTS

This Summary of Inspector Comments is only one section of the Inspection Report and is provided for guidance purposes only. This Summary is **NOT A HOME INSPECTION REPORT** and does not include information on all conditions or concerns associated with this home or property. The Inspection Report includes more detailed information on element ratings/conditions and associated information and **must be read and considered in its entirety prior to making any conclusive purchase decisions or taking any other action.** Any questionable issues should be discussed with the Inspector and/or Inspection Company.

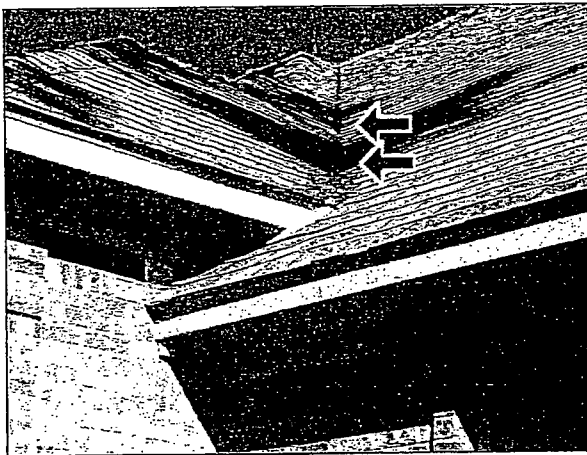
Note: While listings in this Summary of Inspector Comments may serve as a guide to help prioritize remedial needs, the final decision regarding any action to be taken must be made by the client following consultation with the appropriate specialists or contractors.

1. ROOFING

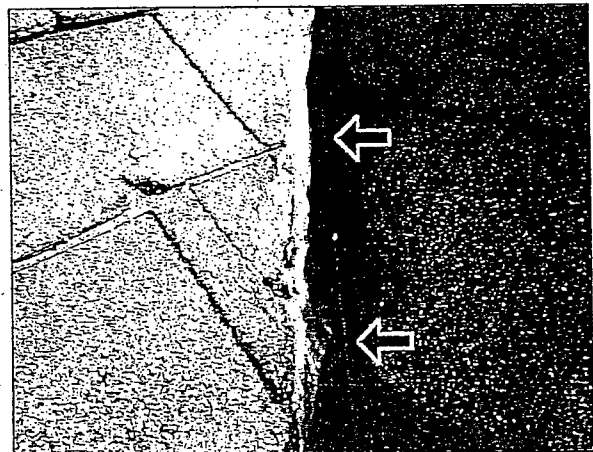
1.0 ROOFING

Fair

THE ROOFING IS FAIR DUE TO A ACTIVE LEAK NOTED OVER THE FRONT LEFT BEDROOM AND PRIOR LEAKAGE NOTED OVER THE BACK RIGHT CORNER OF THE GARAGE AND OVER THE KITCHEN. ALSO, CAULKING WAS NOTED IN ALL OF THE VALLEYS. CAULKING IS NORMALLY A QUICK FIX MATERIAL AND COULD FAIL WITH TIME. RECOMMEND HAVING THE ROOFING CHECKED BY A LICENSED ROOFING CONTRACTOR.



1.0 Item 1(Picture)



1.0 Item 2(Picture)

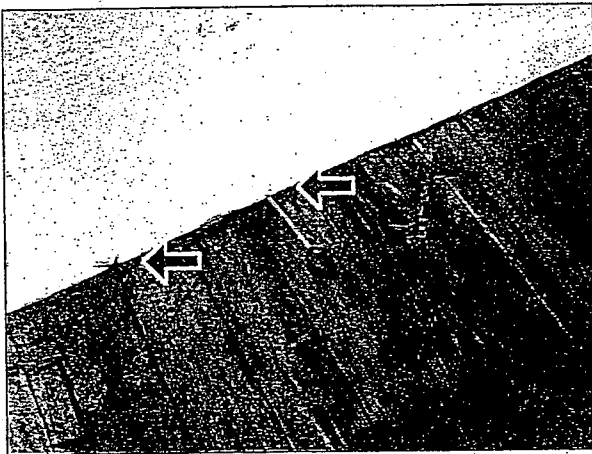
2. EXTERIOR ELEMENTS

2.1 SIDING #2

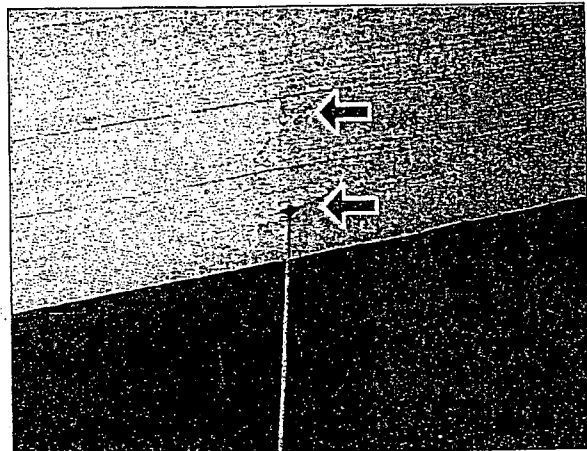
Fair

DECAY NOTED TO THE SIDING ON THE BACK OF THE HOUSE ON EACH SIDE OF THE DECK. RECOMMEND HAVING THE SIDING CHECKED AND REPAIRED.

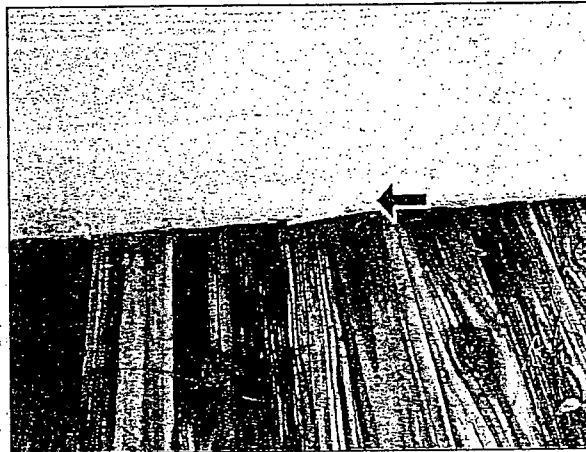
2. EXTERIOR ELEMENTS



2.1 Item 1(Picture)



2.1 Item 2(Picture)

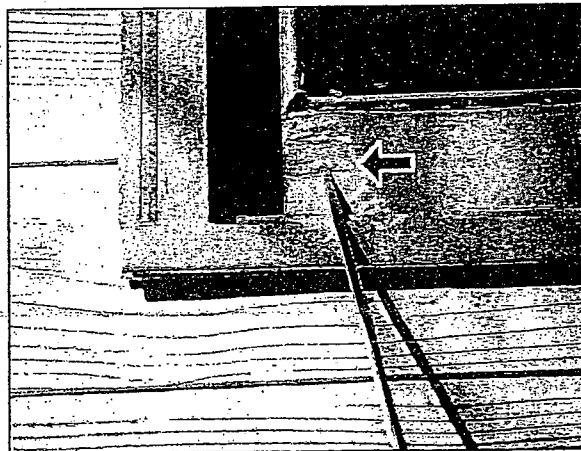


2.1 Item 3(Picture)

2.2 WINDOWS

Fair

DECAY NOTED TO THE MASTER BATH PICTURE WINDOW. RECOMMEND HAVING CHECKED AND REPAIRED.



2.2 Item 1(Picture)

2. EXTERIOR ELEMENTS

2.3 ENTRY DOORS

Satisfactory, Fair

GAP NOTED UNDER THE DINETTE EXTERIOR DOOR TO THE PORCH. RECOMMEND HAVING REPAIRED.

CARPENTER BEE HOLES NOTED IN THE BACK DEN EXTERIOR DOOR. RECOMMEND HAVING REPAIRED.

2.10 ELECTRIC / GFCI

Satisfactory, Fair

THE FRONT YARD LAMP POST AND BACK PORCH LIGHT / FAN KIT DID NOT COME ON. (BULBS?) HAVE CHECKED.
ALL OF THE EXTERIOR OUTLETS ARE NOT ON A GFCI.

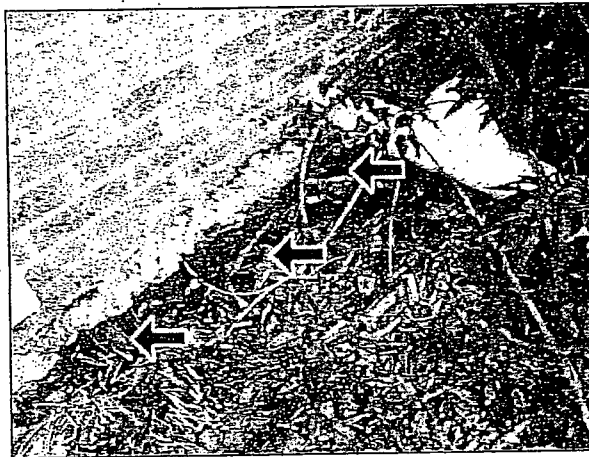
THE EXTERIOR OUTLET ON THE MASTER BEDROOM EXTERIOR WALL IS VERY LOOSE AT THE WALL. RECOMMEND HAVING REPAIRED.

3. SITE ELEMENTS

3.3 GROUND SLOPE AT FOUNDATION

Satisfactory, Fair

LOW AREA / EXPOSED FOOTER NOTED ON THE BACK RIGHT OF THE HOUSE. RECOMMEND FILLING AND TAMPING THE LOW AREA WITH SOIL.



3.3 Item 1(Picture)

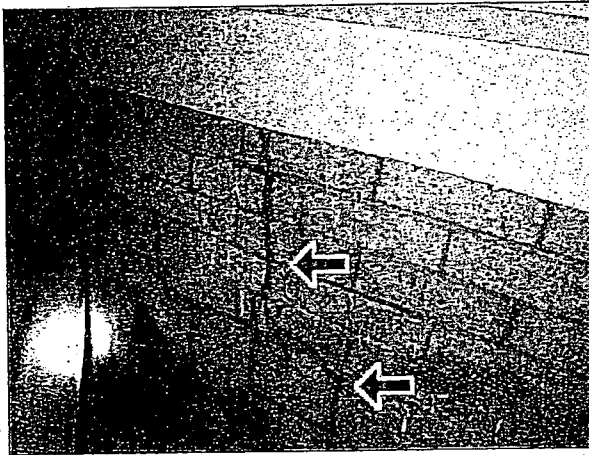
4. GARAGE

4.3 WALLS / CEILINGS

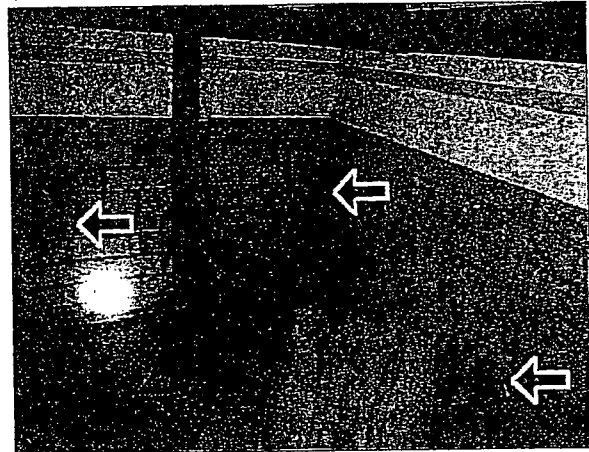
Fair

MULTIPLE TERMITE TUNNELS NOTED ON THE GARAGE FOUNDATION WALLS. RECOMMEND HAVING THE GARAGE AND WHOLE HOUSE CHECKED BY A TERMITE CO.

4. GARAGE



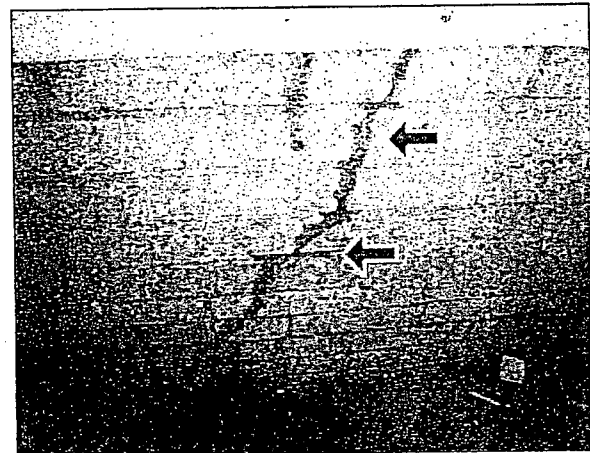
4.3 Item 1(Picture)



4.3 Item 2(Picture)



4.3 Item 3(Picture)



4.3 Item 4(Picture)

4.6 DOOR OPERATOR(S)

Fair

THE SAFETY ON THE GARAGE DOOR OPERATOR NEEDS ADJUSTING. 50 LBS. OF PRESSURE THE DOOR SHOULD STOP AND RETURN UP. RECOMMEND HAVING REPAIRED.

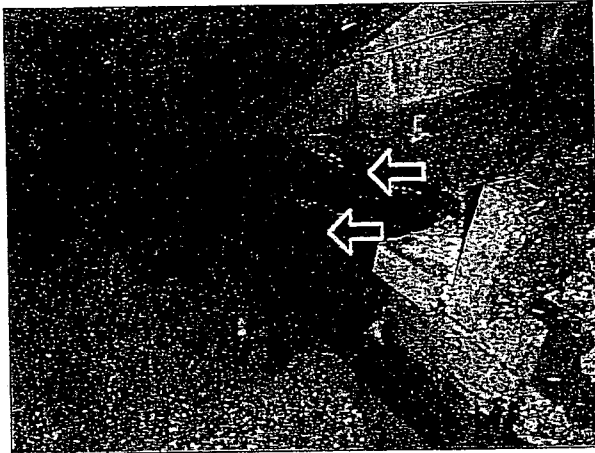
5. ATTIC

5.0 ROOF FRAMING

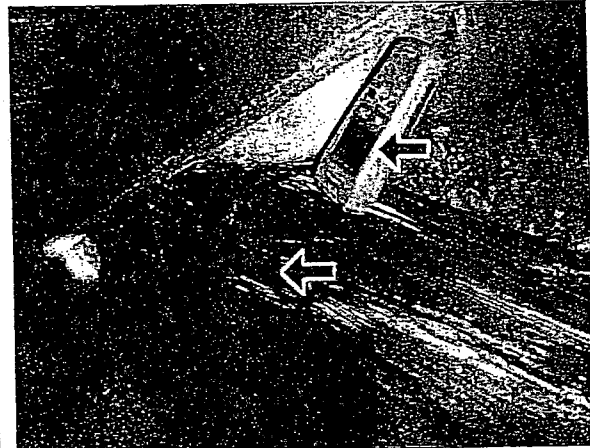
Satisfactory

HEAVY WATER STAIN NOTED ON THE WALL TOP PLATE AND BEAM BELOW THE ACTIVE WATER STAIN IN THE FRONT LEFT BEDROOM. RECOMMEND HAVING CHECKED BY A LICENSED CONTRACTOR.

5. ATTIC



5.0 Item 1(Picture)

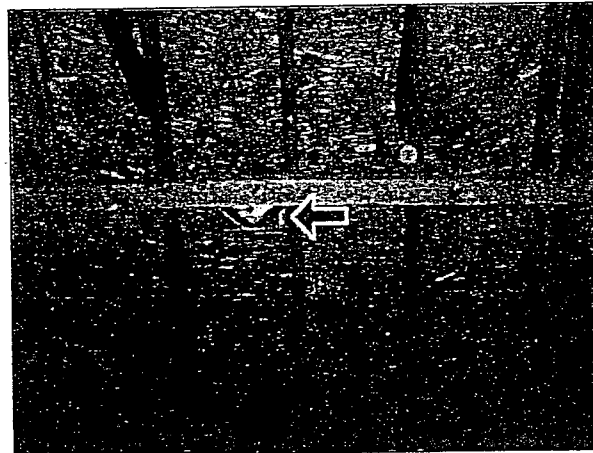


5.0 Item 2(Picture)

5.2 VENTILATION PROVISIONS

Fair

THERE ARE ONLY THREE SMALL ROOF VENTS NOTED FOR HOT AIR ESCAPE IN THE ATTIC. THE VENTS DID NOT APPEAR SUFFICIENT FOR PROPER AIR FLOW. RECOMMEND HAVING CHECKED AND REPAIRED BY A LICENSED CONTRACTOR.



5.2 Item 1(Picture)

5.4 INSULATION

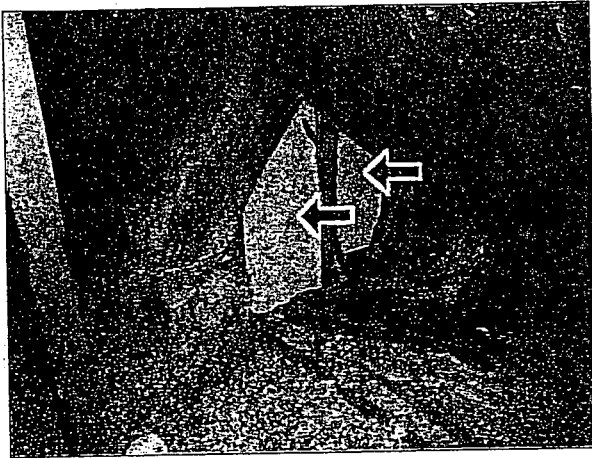
Satisfactory, Fair

INSULATION HAS FALLEN OFF OF THE SKYLIGHT CHASE. RECOMMEND HAVING REPLACED. Item 1(Picture)

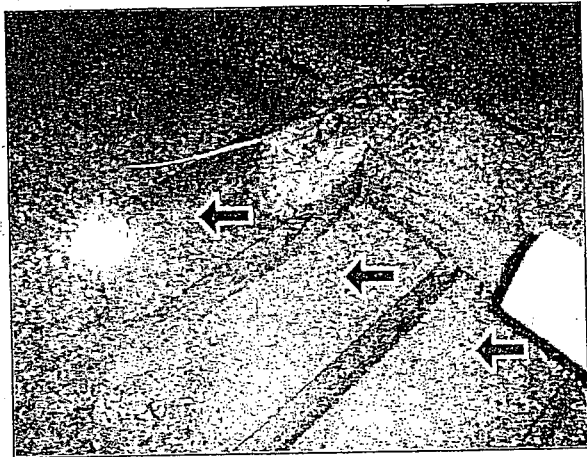
THE INSULATION OVER THE KITCHEN HAS BEEN DISTURBED AND IS LOW IN THE AREA. RECOMMEND REDISTRIBUTING THE EXCESS INSULATION OVER THE DINETTE TO THE AREA. Item 2(Picture)

INSULATION MISSING ON THE HIGH INTERIOR WALLS OF THE DEN AND FOYER EXPOSED IN THE ATTIC. RECOMMEND INSTALLING INSULATION ON THE EXPOSED WALLS. Item 3(Picture) Item 4(Picture)

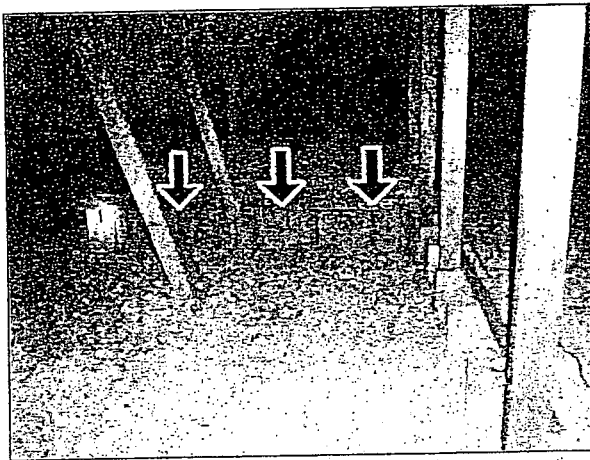
5. ATTIC



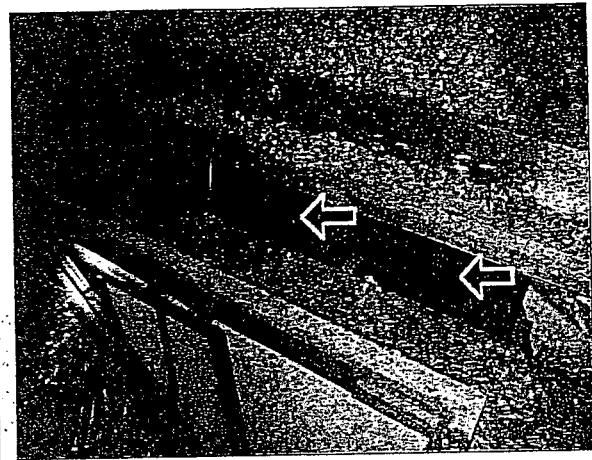
5.4 Item 1(Picture)



5.4 Item 2(Picture)



5.4 Item 3(Picture)



5.4 Item 4(Picture)

7. KITCHEN

7.3 ELECTRIC / GFCI

Fair

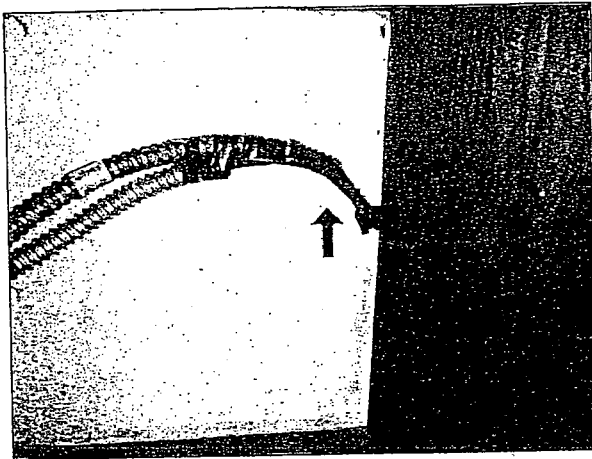
NO GFCI.

THE OVERHEAD LIGHT OVER THE SINK DID NOT COME ON. (BULB MISSING) HAVE CHECKED

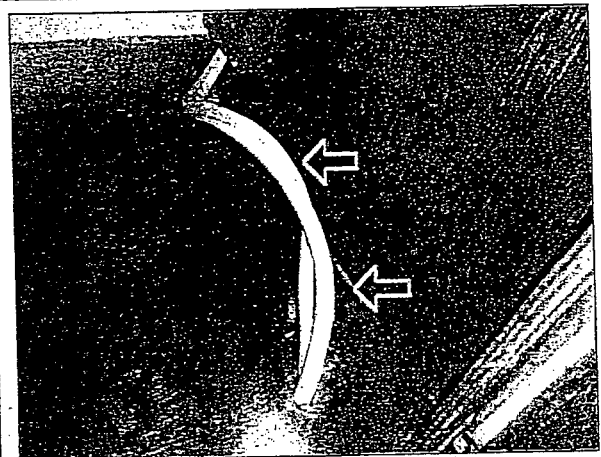
OPEN SPliced WIRE NOTED UNDER THE KITCHEN STOVE. RECOMMEND HAVING THE SPliced WIRE INSTALLED IN A JUNCTION BOX. Item 1(Picture)

EXPOSED WIRES NOTED UNDER THE OVEN. RECOMMEND INSTALLING THE EXPOSED WIRES IN CONDUIT.

7. KITCHEN



7.3 Item 1(Picture)

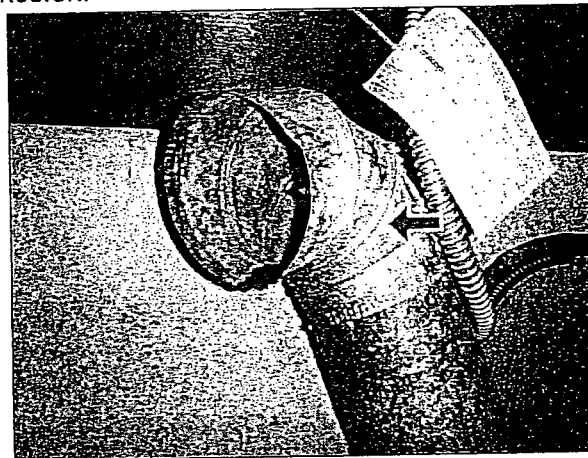


7.3 Item 2(Picture)

7.10 COMMENTS:

Fair

OPEN END DOWN FLOW EXHAUST VENT LINE NOTED UNDER THE STOVE. THE EXHAUST VENT MOTOR HAS BEEN REMOVED. RECOMMEND REMOVING THE VENT LINE AND SEALING THE HOLE IN THE SUB FLOOR AND CABINET TO PREVENT BUG OR ANIMAL INTRUSION.



7.10 Item 1(Picture)

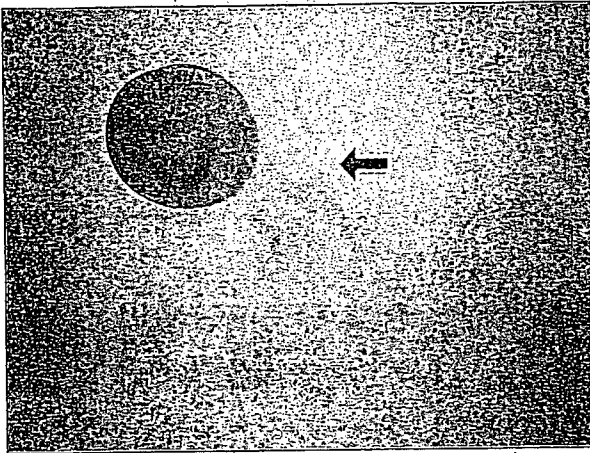
8. INTERIOR ELEMENTS

8.0 CEILINGS

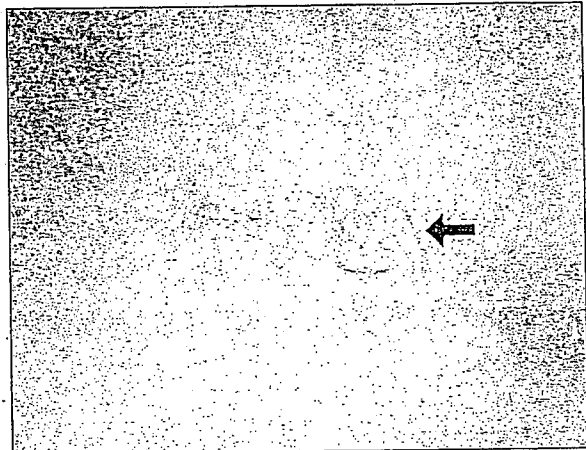
Fair

WATER STAIN NOTED ON THE CEILING IN THE FRONT LEFT BEDROOM AND CLOSET OF THE FRONT RIGHT BEDROOM. THE WATER STAIN APPEAR TO BE DUE TO THE ACTIVE LEAK NOTED IN THE ROOFING SECTION. RECOMMEND HAVING CHECKED AND REPAIRED.

INTERIOR ELEMENTS



8.0 Item 1(Picture)

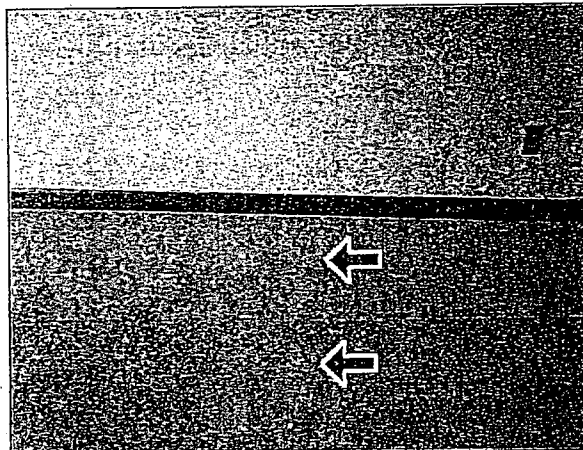


8.0 Item 2(Picture)

8.2 FRAMED FLOORS

Satisfactory

HUMP IN THE FLOOR NOTED IN THE FRONT LEFT BEDROOM. THE HUMP APPEARED TO BE RAISED PIECE OF UNDERLAYMENT. RECOMMEND HAVING CHECKED BY A LICENSED CONTRACTOR.



8.2 Item 1(Picture)

8.3 WINDOWS

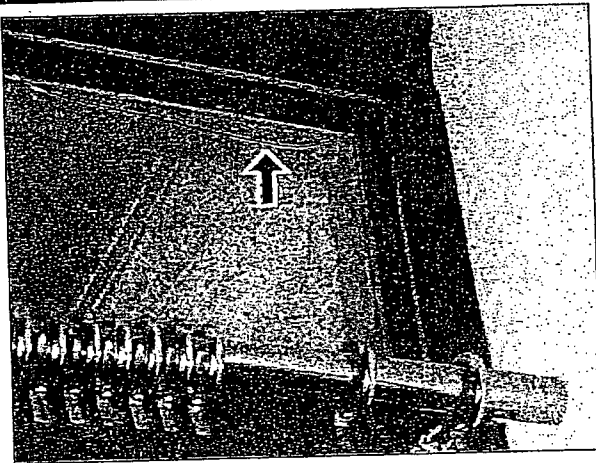
Fair

CRACKED WINDOW PANE NOTED IN THE DEN. RECOMMEND HAVING REPLACED. Item 1(Picture)

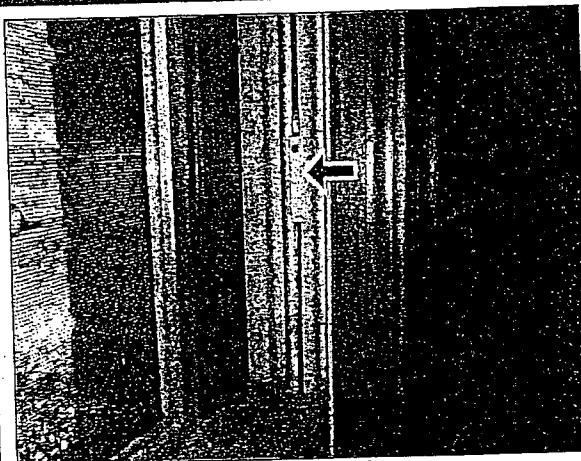
DEFECTIVE SEAL NOTED TO THE DOUBLE PANE GLASS WINDOWS IN THE FRONT RIGHT BEDROOM AND MASTER BEDROOM. RECOMMEND HAVING ALL WINDOWS CHECKED AND SEE SUPPLEMENTAL INFORMATION.

THE COUNTER BALANCE IS BROKEN OR DISCONNECTED TO THE WINDOWS IN THE DINING ROOM, FRONT RIGHT BEDROOM, FRONT LEFT BEDROOM AND MASTER BEDROOM. RECOMMEND HAVING ALL WINDOWS CHECKED. Item 2(Picture)

INTERIOR ELEMENTS



8.3 Item 1(Picture)



8.3 Item 2(Picture)

8.5 FIREPLACE

Satisfactory, Fair, Not Inspected

THE GAS LOGS IN THE FIREPLACE WERE NOT CHECKED. ALSO, I WAS NOT ABLE TO DETERMINE IF THE GAS LOGS WERE A VENTED OR VENTLESS TYPE OF GAS LOGS. RECOMMEND HAVING CHECKED.

THE FIREPLACE FAN WAS NOT WORKING AT THE TIME OF INSPECTION. RECOMMEND HAVING CHECKED AND REPAIRED OR REPLACED.

FOUNDATION / SUBSTRUCTURE

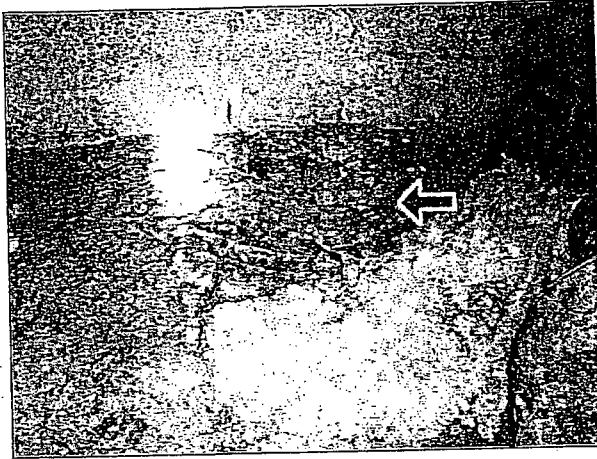
COMMENTS

Fair

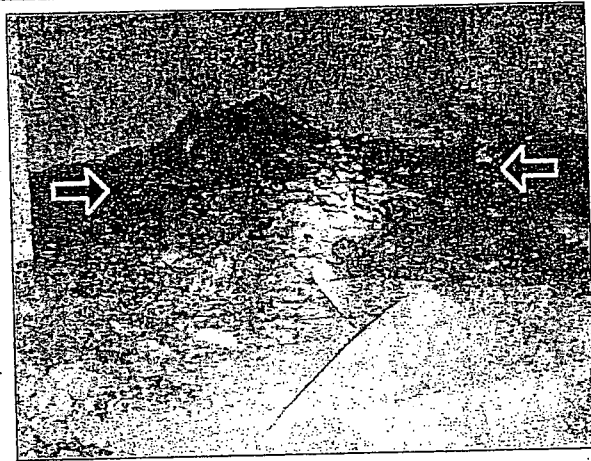
THERE IS A LARGE AMOUNT OF ANIMAL FECES NOTED UNDER THE LAUNDRY ROOM AND DINETTE AREA. RECOMMEND HAVING THE FECES REMOVED.

WOOD TO SOIL CONTACT NOTED UNDER THE HOUSE RIGHT OF THE FRONT PORCH AND IN THE FRONT RIGHT INSIDE CORNER. RECOMMEND HAVING BOTH REMOVED.

FOUNDATION / SUBSTRUCTURE



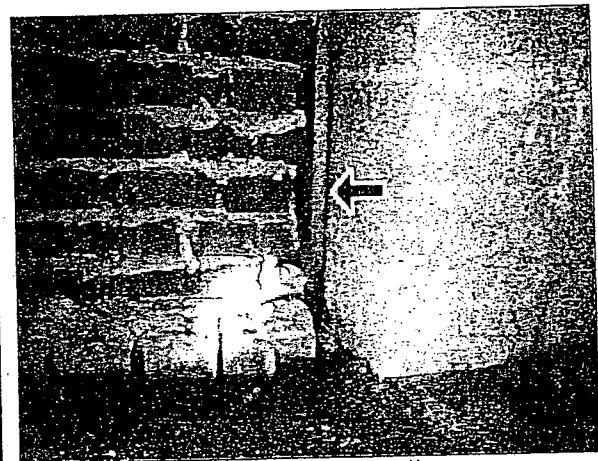
9.5 Item 1(Picture)



9.5 Item 2(Picture)



9.5 Item 3(Picture)



9.5 Item 4(Picture)

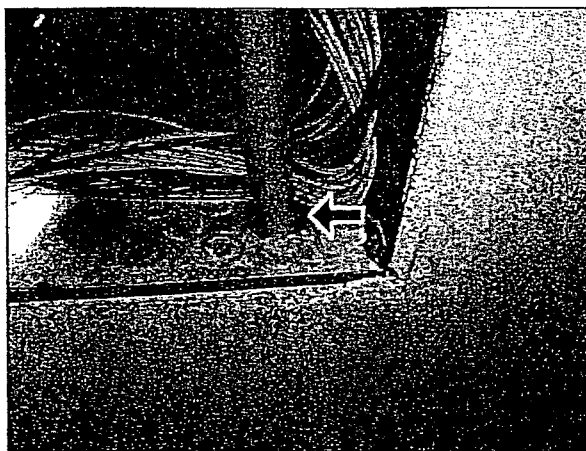
11. ELECTRIC SYSTEM

11.3 DISTRIBUTION PANEL

Satisfactory, Fair

THE WIRE LOCK IS MISSING AROUND THE ELECTRICAL SUPPLY WIRE ENTERING THE PANEL BOX. RECOMMEND HAVING REPAIRED BY A LICENSED ELECTRICIAN.

11. ELECTRIC SYSTEM



11.3 Item 1(Picture)

11.5 DEVICES

Satisfactory

THERE ARE SWITCHES THAT ARE UNKNOWN WHAT THEY CONTROL. THE SWITCHES ARE MARKED WITH BLUE TAPE. RECOMMEND CONSULTING WITH THE OWNER AS TO WHAT THEY CONTROL OR HAVE CHECKED BY A LICENSED ELECTRICIAN.

11.7 GFCI TEST

Fair

THERE ARE TWO GFCI'S IN THE PANEL BOX THAT ARE UNKNOWN WHAT OUTLETS ARE ON THEIR CIRCUIT. THE OUTLETS IN THE BATHROOMS, KITCHEN AND EXTERIOR ARE NOT ON THEIR CIRCUITS. RECOMMEND HAVING CHECKED BY A LICENSED ELECTRICIAN.

12. COOLING SYSTEM

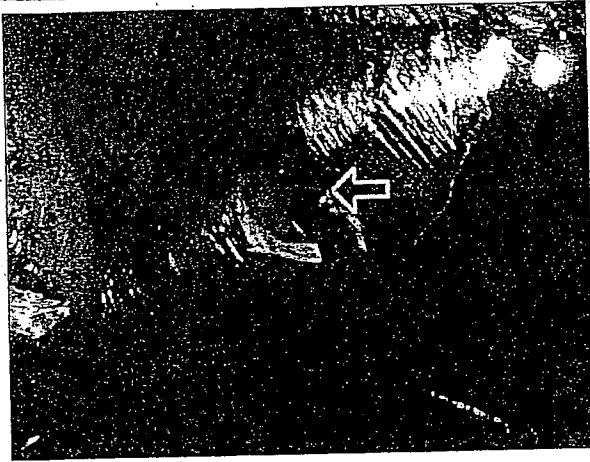
12.4 DUCTWORK

Fair

HOLES IN TWO DUCT LINES NOTED UNDER THE LAUNDRY ROOM AND THE DUCT LINE TO THE KITCHEN IS DAMAGED. THERE ARE ALSO DUCT LINES THAT ARE NOT SUPPORTED AND ARE LAYING ON THE GROUND. RECOMMEND HAVING THE DUCT SYSTEM CHECKED AND REPAIRED BY A HVAC CO.

THE OLD DUCT SYSTEM FOR THE HOUSE WAS NOT REMOVED WHEN THE NEW SYSTEM WAS INSTALLED.

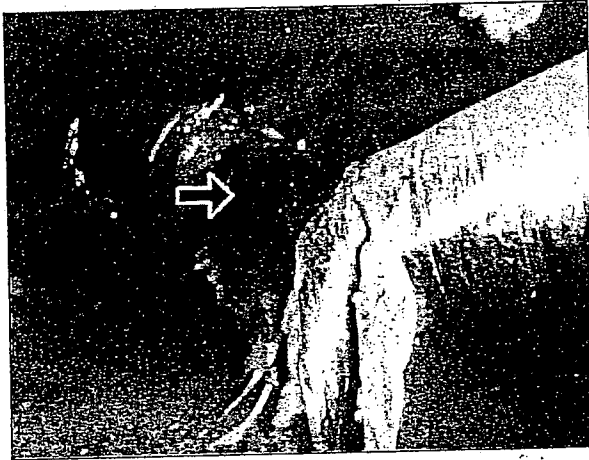
2. COOLING SYSTEM



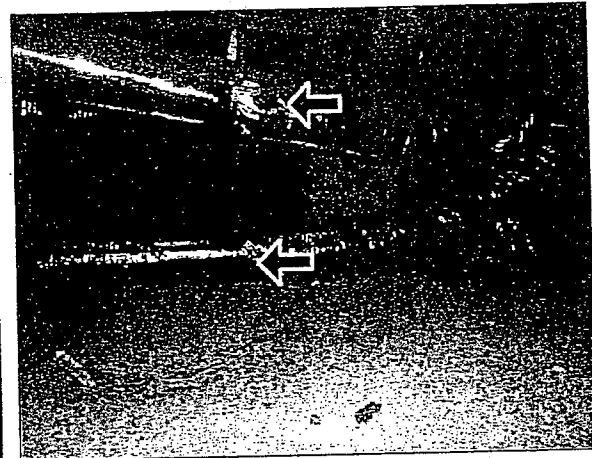
12.4 Item 1(Picture)



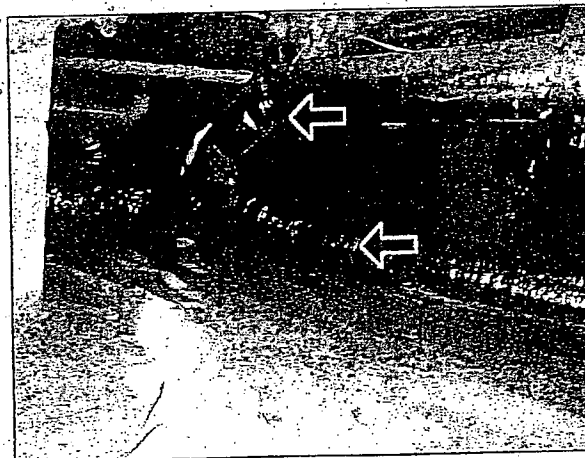
12.4 Item 2(Picture)



12.4 Item 3(Picture)



12.4 Item 4(Picture)



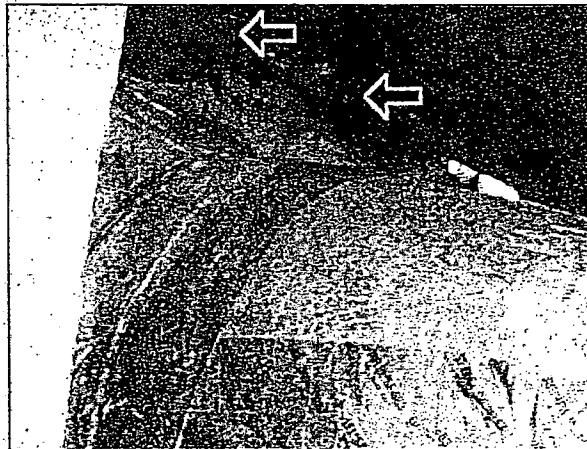
12.4 Item 5(Picture)

12.6 COMMENTS

Fair

A BRICK LINTEL IS MISSING BEHIND THE HVAC GAS PACK. RECOMMEND ADDING A LINTEL TO PREVENT SETTLEMENT IN THE BRICK ABOVE THE UNIT.

12. COOLING SYSTEM



12.6 Item 1(Picture)

14. PLUMBING SYSTEM

14.0 WATER PIPING

Satisfactory, Fair

ACTIVE LEAK NOTED TO THE WATER SHUT OFF VALVE ABOVE THE WATER HEATER. RECOMMEND HAVING REPAIRED BY A LICENSED PLUMBER.



14.0 Item 1(Picture)

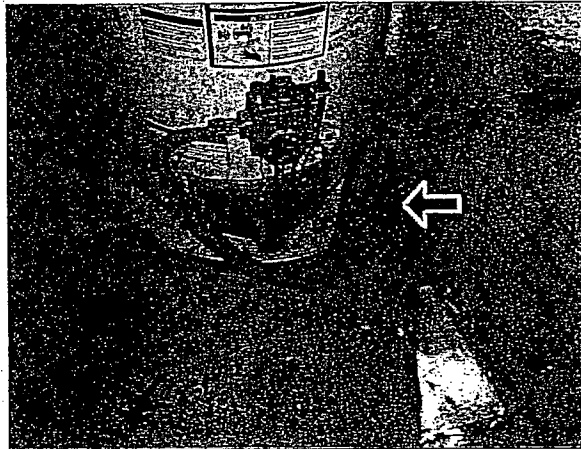
15. WATER HEATER

15.0 WATER HEATER

Poor/Defective

THE GAS WATER HEATER IS NOT 18" OFF OF THE GARAGE FLOOR. RECOMMEND HAVING REPAIRED.

15. WATER HEATER

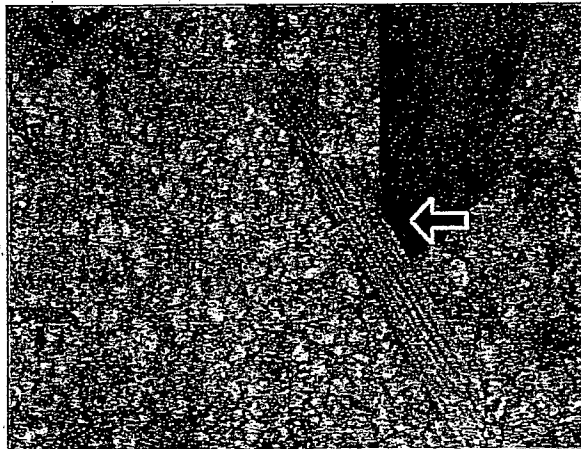


15.0 Item 1(Picture)

15.1 VENT CONNECTOR

Fair

THE WATER HEATER FLUE PIPE IS TOUCHING A CEILING JOIST IN THE ATTIC. THERE SHOULD BE A MINIMUM CLEARANCE OF 1". RECOMMEND HAVING REPAIRED.



15.1 Item 1(Picture)

Prepared Using HomeGauge <http://www.HomeGauge.com> : Licensed To Joe F. Boyle

INVOICE

Professional Home Inspections, Inc. dba HouseMaster
531 D-2 Oxford St.
Sumter, S.C.
29150

Inspection Date: 1/16/2014
Inspected By: Joe F. Boyle

Customer Info:	Inspection Property:
RAYMOND MALEJKO	141 FOX CROSSING RD. W. COLUMBIA S.C.

Service	Price	Amount	Sub-Total
STANDARD HOME INSPECTION		250.00	1 250.00
			Tax \$0.00
			Total Price \$250.00

Payment Method: Check

Payment Status: Paid At Time Of Inspection

Notes:



JANET LOPER
NEXTGEN REAL ESTATE LLC
5465 SUNSET BLVD
LEXINGTON, SC

CONTACT: 803-513-3444
OFFICE: 803-513-3444

LOPERJANET@GMAIL.COM



Email Me

HOME

MLS#: 343858



Image 1 of 15.



[Click Here for Virtual Tour.](#)

Status: Closed
Area: 2 Cayce/West Cola/Airport/S.
Congaree
Class: Residential Type: Single Family

Address: 141 FOX CROSSING ROAD
Subdivision: FOX CROSSING
City: West Columbia
Zip: 29170
County: Lexington
Parcel ID#: 005536-01-011

Heated SF (+/-10%): 1975
Bedrooms: 3
Bathrooms: 2 / 0
Garage: Garage Attached, side-entry
Spaces: 2 /

Listing Price: \$164,900
Original Price: \$168,900

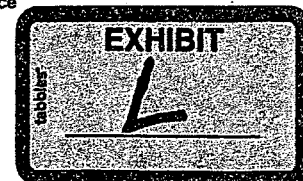
Primary:
Elemen.: White Knoll
Intermd:
Middle: White Knoll
High: White Knoll
District: Lexington One

Age (Yrs): 21 - 30
Stories: 1
Style: Traditional
Constr: Brick-All Sides (Abv Found.)
of FP: 1 / Gas Log

Directions:

20 towards Augusta. Exit 58 (augusta rd.) towards west columbia. Right on Kitt wake dr, left on fox crossing rd.

Lvl	Description	Lvl	Description
Living Room:		Master BR:	M Double Vanity, Garden Tub, Separate Baths, Shower, Sitting Room, Skylight, Tray Ceilings, Walk-in Closet
Family Rm/Den:		Bedroom 2:	M Walk-in Closet
Great Room:	M Beams, Fireplace, French Doors, Molding	Bedroom 3:	M Walk-in Closet
Dining Room:	M Tray Ceilings, Vaulted Ceilings	Bedroom 4:	
Kitchen:	M Bar, Cabinets - Wood - Natural, Counter Tops - Formica, Cabinets - Wood-Stained, Laminate Floor, Vinyl Floor	Bedroom 5:	
FROG/Other:		Total Bed:	3
Basement:	No	Wash/Dry:	M Electric, Laundry
Heating:	Gas Pac	Misc:	Cable, Cable TV Available, Warranty (Home 12-month)
Cooling:	Gas Pac	Equip:	Dishwasher, Icemaker, Refrigerator, Microwave-Built-In
Water:	Public	Range:	Built-In, Smooth Surface, Self Clean
Sewer:	Public	Floors:	Carpet, Hardwood, Vinyl
Pool:	No/	Handicap:	
Fencing:	Chain Link, Rear Only-Chain Link, Partial	Exterior:	Deck, Porch (not screened)
Interior:	Ceiling Fan, Garage Opener, Wetbar, Attic Pull-down Access	Foundation:	Crawl Space
		Underpinning:	
		Lot Location:	
		House Faces:	
		Green Constr:	
		Energy:	Thermopane
		Road Type:	Paved



Remarks: Rare Find in Lexington School District One!! Owner had custom built. All brick, side entry 2 car garage, large spacious lot with drive through gate/fully fenced back yard! Unbelievable molding detail inside you must see to appreciate, with real wood coffer beam ceiling, gorgeous stone fireplace in great room, and wrap around windows. Master bedroom features tray ceiling, walk in closet with master bath separate tub and shower. New appliances never used, new paint inside and out, new carpet, vinyl flooring, counter tops, and lighting! Move in ready. Two car garage door opener, large entertaining deck overlooking large and private back yard.

Property Disclosure: No
Exempt Prop Discl: Yes
Acres: 0.41
Lot Size: 18040
Water Front Ft:
Foreclosed:
Water Front Type:

Available Financing: Cash, Conventional
Assn/Regime Fee Per: \$55 / YR Includes:

Closed Date: 3 / 31 / 2014

Sale Price: \$160,000
352

Sell \$ Per SF: 81.01

DOM: 108

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Raymond J. Malejko and Cristine Malejko,)
individually and on behalf of their minor child,)
Stephanie Malejko,)

Plaintiffs,)

v.)

Todd Corley, Janet Loper, NextGen Real)
Estate, LLC, Thomas Humphries, Dr. Roofs,)
Inc., Ray Mooneyham, Mooneyham Solar &)
Electric, Professional Home Inspections, Inc.,)
Corley Enterprises, Inc. of South Carolina, and)
DBR Franchising, LLC,)

Defendants.)

IN THE COURT OF COMMONPLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2015-CP-40-00480

**AFFIDAVIT OF
DONALD "FRANKIE" GRIFFIN**

PERSONALLY APPEARED BEFORE ME Donald "Frankie" Griffin, who, first being duly sworn, deposes and states as follows:

1. I am over the age of eighteen (18) and have personal knowledge of, and am competent to testify to, the matters set forth herein.
2. I am a licensed real estate broker who is currently the owner and broker-in-charge of a real estate brokerage company named the Palmetto Success Team. I also own an accredited real estate school, the Real Estate School for Success, where I train real estate professionals.
3. I am qualified to testify as to the professional standards and customary practices of real estate agents and companies. My qualifications are based upon my experience as both a teacher and professional within the field of real estate. Attached to this Affidavit is a copy of my current resume [EXHIBIT A].



4. I have personally reviewed the file maintained by Defendants Loper and NextGen Real Estate, LLC as it relates to Ms. Loper's representation of Raymond Malejko and the underlying real estate transaction at issue for 141 Fox Crossing Road.

5. I have personally reviewed the Complaint filed by the Plaintiffs alleging causes of action against Defendants Loper and NextGen Real Estate, LLC.

6. Title 40, Chapter 57 of the South Carolina Code of Laws governs real estate brokers. I have examined Title 40, Chapter 57 of the South Carolina Code of Laws in relation to this case and in conjunction with the file maintained by Defendants Loper and NextGen Real Estate, LLC. Having examined the governing law and the file documentation, it appears that Defendant Loper and Defendant NextGen were in compliance with South Carolina law governing real estate brokers.

7. Title 27, Chapter 50 of the South Carolina Codes Annotated is entitled the Residential Property Condition Disclosure Act. I have reviewed this Act in relation to the case file documentation maintained by Defendants Loper and NextGen Real Estate, LLC. Having examined the Act and the file documentation, it appears that Defendant Loper and Defendant NextGen were in compliance with the Act as it relates to 141 Fox Crossing Road.

8. South Carolina Code Annotated § 27-50-80 outlines the obligation of the purchaser to inspect. In doing so, the statute notes that, "The real estate licensee, whether acting as listing agent or selling agent, has no duty to inspect the onsite or offsite conditions of the property and any improvements." The allegations in the Plaintiffs' Complaint claiming that Defendants Loper and NextGen failed to adequately oversee or review inspections made are not supported by South

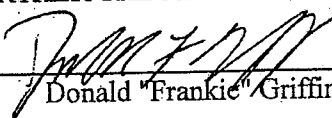
Carolina law where Defendants had no duty to inspect the property condition or improvements to the property.

9. It appears that Defendants Loper and NextGen's Dual Agency Agreement for 141 Fox Crossing Road, signed by Raymond Malejko, met governing South Carolina laws. Additionally, it appears from a review of the file maintained by Defendants Loper and NextGen that Defendants Loper and NextGen complied with the lawful terms of the Dual Agency Agreement.

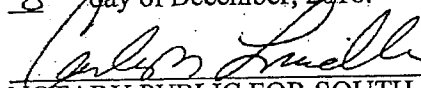
10. It appears from a review of the file maintained by Defendants Loper and NextGen, as well as the applicable South Carolina statutes, that Defendants Loper and NextGen used a reasonable degree of care, caution and diligence in representing the Plaintiffs. Additionally, it appears that Defendant Loper and NextGen's representation of the Plaintiffs met customary real estate standards regarding duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting. Moreover, it appears that Defendant Loper and NextGen's representation of the Plaintiffs complied with South Carolina law.

11. I did not detect any negligence on behalf of Defendants Loper and NextGen Real Estate, LLC, as it related to the manner in which this transaction occurred and was documented.

FURTHER THE AFFIANT SAYETH NAUGHT.


Donald "Frankie" Griffin

SWORN TO and subscribed before me this
8th day of December, 2016.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 3-18-2024