

1 A Oh, well, he was the person that was pushing the  
2 sales and he was the architect on-site so to  
3 speak. And architectural review committee was  
4 essentially him, at least according to him. He  
5 was drawing the plats and getting, in theory, the  
6 sewage situation, you know.

7 Q Why do you say "in theory"?

8 A Well, because he didn't do it.

9 Q Okay.

10 A It was a mess.

11 Q How was it a mess?

12 A Well, my lot perked. And so, we bought it. Of  
13 course, we made sure it perked before we bought  
14 it. But I'm an attorney so didn't even think  
15 about that. That's just what you do. The people  
16 on the other side of me, on the next block up,  
17 they purchased but they didn't -- they didn't  
18 perk. One day I came in and there was a sewer  
19 line stretching from their land into mine.  
20 Because mine perked, theirs didn't. I had some  
21 words with Danny about that.

22 Q Did he ask your permission to use your land to do  
23 that?

24 A He never said anything to me. I just walked out  
25 one day and saw some dug up dirt going across my

1 Q Okay.

2

3 MR. FERRARA: Your Honor, respectfully, I  
4 would have a relevance objection.

5 MR. JACKSON: Be glad to address that, Your  
6 Honor. We have an unfair trade practices cause of  
7 action. And the potential for that repetition and  
8 actual reputation to an actual resident or formal  
9 owner of Eagle Harbor certainly competent to  
10 testify about similar activities.

11 MR. FERRARA: Respectfully, Your Honor, the  
12 witness has been allowed to testify. And his  
13 testimony is that he did not enter into a contract  
14 with Danny or Eagle Harbor and that he didn't have  
15 a contract.

16 MR. JACKSON: He also testified that Danny  
17 was the central guy doing the marketing, drawing  
18 all the plans, and the architectural committee.  
19 And he also testified that he had a direct  
20 contract with Mr. Gilbert.

21 THE COURT: I'll allow it.

22 MR. FERRARA: Thank you, Your Honor.

23

24 BY MR. JACKSON (Continuing):

25 Q So did he ever produce plans as you requested?

1 Q Okay.

2 A Eventually -- my daughter died within days of all  
3 this happening. And my wife and I were very  
4 upset. Not at Danny but the cause of the death.

5 And I just didn't want to mess with it anymore. I  
6 mean, honestly, that was just one more trouble in  
7 a really troubled time. I took \$2500 and called  
8 it quits.

9 Q Okay.

10 A And we went back to the drawing board so to speak  
11 with the land. But he never produced anything  
12 that we wanted or even close to it.

13 Q Okay. Now, you mentioned before that he  
14 trespassed on your property and put a sewer line.  
15 Was there any other time that he came and used  
16 your property?

17 A Well, it was pretty constant. We -- originally,  
18 the land went back and backed up to -- well, the  
19 land backed up to near the area where the boys  
20 home was supposed to be built. And there was a  
21 little trail through there. And we were not on  
22 real good terms. And one day I came out and  
23 checked it. It was obvious somebody had been  
24 using it as a four-wheeler course. Didn't like  
25 it. Got upset about it. So I put -- I put up a

1 we bought the lot, there were no covenants or  
2 restrictions on it.

3 Q And that was in '03 you said?

4 A March of '03.

5 Q Okay.

6 A After we bought the lot, Mr. Gilbert filed  
7 covenants and restrictions. Of course, he never  
8 owned the land to file it. His Eagle Harbor Inc.,  
9 Eagle Harbor, none of those people are in the  
10 chain of title.

11 Q Okay.

12 A So when he came forward with all these issues that  
13 were being discussed about -- I don't remember all  
14 of them. One of them was lighting, streetlights.  
15 And everybody had to put their own streetlight up.  
16 Little small ones, not the great big ones. And  
17 other issues that had to do with the type of  
18 architecture that was supposed to be there, what  
19 you could do and couldn't do. Of course, it was  
20 all nonsense because, at least for phase two,  
21 because Danny didn't have any right to put any  
22 restrictions on the -- it came down to a pretty  
23 big fur ball before it got finished. There were a  
24 lot of tempers. Nobody said or did anything out  
25 of line, but, I mean, there was a lot of anger

1 riding lessons with the Girl Scouts. She was  
2 gonna volunteer her time for doing that. Supposed  
3 to be a barn. These are all amenities that went  
4 with the Eagle Harbor subdivision. And nothing  
5 was being accomplished until -- in fact, we got to  
6 the point where we didn't want to give him any  
7 more money. We went up to him one Saturday. We  
8 sat down, calculated the cost of putting the  
9 correct kind of fencing in for the horses. You  
10 know, you tear them all up if you put barbwire up.  
11 You got to put better quality fencing than that.  
12 I don't remember exactly what the total bill was.  
13 We were on the computer with the fencing company,  
14 and we worked up the order. It was well over  
15 10,000, and it may have been closer to \$15,000, in  
16 fencing material that we were going to donate. So  
17 we got ready to give the money. We were actually  
18 going to do a transaction I think over the -- I  
19 don't know. That might not be right. But anyway,  
20 we were going to cut a check to the fencing  
21 company for the delivery of the fencing materials.  
22 We were going to donate the fencing for the -- at  
23 least the horse fencing. Now, there's some  
24 ornamental fencing that was gonna go up, and we  
25 weren't paying for that, but horse fencing. And

1

2

MR. JACKSON: That's all the questions I

3

have. Answer any questions that Mr. Ferrara may

4

have.

5

THE COURT: Mr. Ferrara?

6

MR. FERRARA: May it please the Court, Your

7

Honor?

8

- - - - -

9

CROSS-EXAMINATION

10

BY MR. FERRARA:

11

Q Mr. Cox, my name is Paul Ferrara and I'm

12

representing Belinda Fox and Gerry Fox in this

13

lawsuit brought by Mr. and Mrs. Price. Let's be

14

clear, I know you said you purchased -- you and

15

your wife purchased property from the Winns. Do

16

you remember what lot you would have purchased or

17

what the street address would've been in general?

18

A Let's see. Let me think. I went and looked it

19

up. I've got the TMS number. Actually, I can't

20

tell you what the lot number was on the plat. And

21

that was another thing, the plats were not what

22

you would expect. They were deficient and they

23

didn't give information. And Mr. Gilbert would

24

take it on himself to change things. And after

25

you sell the land, that gets to be difficult.

1 Q -- that called out your -- do you have a copy of  
2 your recorded deed in your folder with you today?

3 A I do not.

4 Q Okay. And I'll ask you, the plat -- I'll hand you  
5 Defendant Fox's Exhibit No. 1, sir. See if that  
6 looks familiar to you.

7 A (Witness reviews document.)

8 Q It's not a full -- a full-blown, you know, a large  
9 copy, but it is a full copy of the plat.

10 A Yes, sir. I'm actually somewhat familiar with it.

11 Q Okay. And that plat was recorded when you and  
12 your wife purchased the property, correct?

13 A Let me see about the recording date on it.  
14 5/3/20- -- no, that's something different. Let's  
15 see. April 25th -- yes. Yes, this was  
16 approximately one month after we purchased our  
17 property.

18 Q That plat was recorded one month after?

19 A Yes.

20 Q Okay. So there must have been a plat prior to?

21 A Yeah. Like I said, he kept changing the lines.

22 Q Okay. Let's see. The issue that you testified  
23 about with Mr. Gilbert and the sewer line coming  
24 on your property, did you ultimately resolve that  
25 with Mr. Gilbert?

1 schmo.

2 Q Right.

3 A A plat -- the plat was given to me and we checked  
4 ahead of time to make sure that it perked. And I  
5 talked to Berkeley County about different issues.  
6 Checked the setbacks on it so I could be sure when  
7 we got ready to put a house on there I know what I  
8 was doing. No, it was not -- it was not as is.  
9 It had a clean title and it perked. And I think  
10 all the various conditions in the contract of sale  
11 were acceptable.

12 Q Okay. Thank you, sir. You testified that you and  
13 your wife purchased that lot with the intent of  
14 splitting it into smaller lots?

15 A Not exactly.

16 Q No?

17 A I was going to build a big house and have kind of  
18 a mini farm. And then I was going to maybe have a  
19 guesthouse or something off to one side for the  
20 kids to come. You know, I expected to have a lot  
21 of grandkids and whatnot. We were going to play  
22 on the farm and -- that all went away.

23 Q And I'm assuming you checked -- that was something  
24 else you checked with Berkeley County prior to  
25 closing to make sure that you could do what you

1 repeatedly selling lots, assisting Danny in  
2 selling lots, to unsuspecting buyers. As you sit  
3 here today, sir, you didn't have any interaction  
4 with my clients?

5 A I didn't have any interaction with your client.  
6 Now, I don't know if y'all picked this up, but  
7 there was a no sale order that came out from  
8 Berkeley County that Danny Gilbert and his Eagle  
9 Harbor mess could not sell any more lots. And he  
10 ignored it and kept selling lots on top of it.

11 Q Well, we're not aware of that. But my point is is  
12 that with respect to Gerry and Belinda Fox and  
13 your lot, no contact with them and there were no  
14 representations, of course, made by Gerry or  
15 Belinda to you or your wife --

16 A No.

17 Q -- about Eagle Harbor?

18 A Nothing. We may have said hello. They did not  
19 make any representations to me at all. All that  
20 went through Mr. Gilbert.

21 Q Now, you've mentioned about the covenants. And we  
22 have Exhibit No. 2, which were recorded covenants  
23 on February 3, 2003, that referenced the plat I  
24 showed you earlier. Were you -- I'll hand these  
25 to you, sir, and see if you are aware of those

1 covenants, would you --

2 A Well, let me see them.

3 Q Sure.

4 A Sir, these covenants and restrictions are  
5 unsigned. They've been recorded blank.

6 Q Right.

7 A So I have no idea what the Winns agreed to or  
8 didn't agree to. But, certainly, the covenants  
9 and restrictions are seriously deficient.

10 Q I understand, Mr. Cox, that's your opinion. But  
11 I'm saying, you know, as a layperson, but I want  
12 to be clear because you are an attorney. Did you  
13 render any type of legal opinion to the  
14 homeowner's association or concerned citizens as  
15 they're called now about the applicability of  
16 these covenants?

17 A No.

18 Q Okay. You were just making a comment about, in  
19 your opinion, these covenants didn't apply to your  
20 lot, correct?

21 A I think it's a pretty good opinion. I've been  
22 practicing 42 years.

23 Q If the covenants state that the declarant, or  
24 anyone who wants to be subject to these covenants,  
25 agrees to be party to these covenants would agree,

1 seriously did not like that man. And I wasn't  
2 going to have anything more to do with him than I  
3 had to. And I didn't intend to go around,  
4 stirring up, you know, going to the Androsics or  
5 the Evans or any of the other people that I knew  
6 and saying, "Okay, you got to know this. You  
7 know, this is bad and that's bad." I didn't do  
8 that. I mean, all I did was -- I wanted to live  
9 my life by myself. I wanted to put my farm up  
10 there or actually just a horse. We were gonna  
11 have a little stable with a horse. That's all I  
12 wanted. And the less I had to do with the rest of  
13 those people as time went on. The turmoil, you  
14 know, the whole road thing blew up. We just  
15 are -- got the point we didn't want to mess with  
16 him anymore. So the question being about how  
17 other people would've reacted to this? I didn't  
18 get involved. I mean, as an attorney, you know,  
19 you don't go around giving out advice, legal  
20 advice, and opinions to people who haven't  
21 retained you. This is a very ungood thing. So  
22 that's the answer.

23 Q Okay.

24

25 MR. FERRARA: Thank you, sir. That's all the

- 1 Q Is it 8? I'm not sure.
- 2 A Yeah. I think it was either 8 or 7.
- 3 Q Okay.
- 4 A One of those two.
- 5 Q Okay. Can you see this dotted line running across  
6 the front of that? Can you read that language  
7 right there?
- 8 A Sewer something.
- 9 Q Can you make the word easement out of that?
- 10 A I can see easement. That's on the right-hand side  
11 of Lot 8 and the left-hand side of Lot 9. I  
12 didn't own Lot 9. I may have owned lot 8. But  
13 here's a good little bit, the line that was put  
14 down came from Lot 7, and it came about a third --  
15 well, I don't know -- maybe 35 feet from the front  
16 of the road and across. It was nowhere near sewer  
17 easement that is delineated on the plat.
- 18 Q Okay. Thank you. When did you -- if you've  
19 already testified to this, I apologize. You got a  
20 date of purchase on 3/21/03. When did you sell  
21 the lot? Do you remember?
- 22 A It was two years later. I can give you the exact  
23 date. Sold it on January 3, 2005. I should  
24 remember that. That's my birthday. Well,  
25 January 3rd anyway.

1 was also because of, oh, you have to have the  
2 roads at a certain width. They have to be graded  
3 to a certain level. They have -- you have to put  
4 ROC down to a certain depth. You have to add so  
5 much asphalt to the roads. And all that was in a  
6 big blur of what can we do, how can we do it?  
7 Danny Gilbert actually contacted my wife for a  
8 hundred-thousand-dollar loan so he could put the  
9 roads in. And we turned him down.

10 MR. JACKSON: No further questions, Your  
11 Honor.

12 THE COURT: Any follow-up?

13 MR. FERRARA: Nothing, Your Honor.

14 MR. HUBBARD: Nothing.

15 THE COURT: All right. You can step down,  
16 Mr. Cox. Thank you very much.

17 MR. JACKSON: Your Honor, I would call Diane  
18 Cox to the stand.

19 THE COURT: Ms. Cox.

20

21 (Whereupon, the witness, DIANE A. COX,  
22 was duly sworn.)

23

24 THE COURT: Thank you, ma'am. You can sit  
25 down. Give your name and spell your last name for

1 A Nothing ever came. Danny constantly changed.  
2 Honestly, the reason why I left was because  
3 Mr. Gilbert, with the house, he never even sent us  
4 plans. Okay. I asked for my 5,000 back.  
5 Mr. Gilbert came to us at church one day, stepped  
6 in my face and started screaming after church was  
7 over in the lobby. He followed my husband and I  
8 out to our car screaming and yelling. This is a  
9 side of him that not a lot of people know.  
10 There's a side were he's totally dishonest. And  
11 there is this side he comes across as a nice man,  
12 but, oh, if he doesn't get his way, he is absolute  
13 hellion.

14 Then when I was by myself -- by the way, he  
15 had promised pastures, a barn, everything. I  
16 brought my three horses out. There basically was  
17 a half-acre paddock. Because of the fact you  
18 shouldn't keep horses, three horses, on that,  
19 okay, my husband and I -- I paid extra for hay,  
20 everything else. I kept the place immaculate.  
21 With Northwood Church, I had started a group  
22 called Horsing Around. All right. Horsing Around  
23 was to train volunteers to safely be able to work  
24 with the boys and the horses. This never  
25 happened. All right. Sir, he came out, he still

1           went to make the place look good. They didn't go  
2           anywhere with horses. The side of Mr. Gilbert  
3           that I know is that he is a liar. He is a thief.  
4           He is a bully. And he is a coward. To come up  
5           behind me -- my daughter hadn't even been dead for  
6           a year -- and scream and yell at me over a measly  
7           \$5,000. This is who he is. And here I sit. I  
8           never -- this is -- I'm sorry. But he did not  
9           keep his word. He did not keep -- all the plans  
10          that he showed when we sat down for Eagle Harbor,  
11          he didn't do it.

12    Q       Okay.

13    A       Okay. I'm sorry. But, I mean, this is just --  
14          sorry.

15    Q       Let me ask you. You said there was a plan to be  
16          able to train the children to safely ride horses.  
17          First of all, what's your background in horses?

18    A       My background is I have been teaching lessons  
19          since 1981. I teach dressage which is classical  
20          riding. I teach hunt seat. All right. I taught  
21          at various stables around the state. I have taken  
22          lessons from -- riders. I know what I'm doing  
23          with a barn. I know how to run a barn. I also  
24          know how to keep children safe as well as anybody  
25          working with the horses. Basically, he kind of

1 see, it was a Thursday. Amy's accident was on the  
2 31st. The Thursday before my daughter's car  
3 accident, put the two horses in there. Later, I  
4 brought my mare from Black Bottom, okay. There  
5 was nothing. There was no cover. There wasn't  
6 anything. As a matter of fact, one of the pastors  
7 from our church, Doug Cotton, and his son-in-law  
8 at that time went and cut a dead tree down because  
9 it was hanging over the horse pasture. Well,  
10 that's a safety issue. It has to deal with the  
11 fact that, you know, storm, sooner or later, if a  
12 horse is in that area, it's gonna fall on top of  
13 it. The bottom line is no stable, no pastures at  
14 that time except that dinky little pasture, okay.  
15 Nothing that he had said would had happen. I  
16 continued after my daughter's death, which was  
17 May -- she had her accident March 31, 2003. We  
18 declared her dead on April 3rd. The day that we  
19 had to meet and declare her dead, I was supposed  
20 to be at the barn out there with a man from  
21 Clemson who was gonna talk about how the pastures,  
22 how -- have the best grasses, how to have things  
23 that would be suitable that would have, you know,  
24 for the horse, to keep it healthy. Even on that  
25 day dealing with everything else to do with my

1           disconcerting to me seeing as how my daughter's  
2           accident was coming off of a road. Mr. Gilbert  
3           didn't care. Doug Cotton went and worked with him  
4           to get the road fixed.

5    Q       Okay. So you mentioned -- we know about the  
6           \$5,000. We know about him -- his inability to get  
7           the horse, the pasture, the stable, the stables.

8    A       Yes.

9    Q       Is there anything else? Is there any other  
10           specific incidents that you can remember?

11   A       No. The same with my husband. There's a specific  
12           incident, other than feeling, like, not safe  
13           around Mr. Gilbert, he put -- mowed down our trees  
14           in the back. Okay. That treeline was going to be  
15           there to kind of act as a buffer. You know, we'd  
16           look out on the woods between our property and the  
17           house and the boys home. And one day we went out,  
18           and the whole -- it's all plowed down. And I  
19           remember I cried because at that time -- well, it  
20           was really tough. Amy hadn't been gone that long  
21           and I was grieving. The bottom line was I could  
22           remember crying because he'd taken down with a  
23           bulldozer, bulldozer tracks, beautiful little  
24           dogwood tree. Everything that was back there that  
25           was growing, he just mowed it down. He didn't ask

1           whatever Danny wanted, whatever laws he wanted to  
2           break. And by the way, if somebody looks it up,  
3           there is in Berkeley County; there is the  
4           paperwork when he was ordered not to sell the land  
5           and he sold a lot.

6

7           THE COURT: Ms. Cox --

8           THE WITNESS: Sorry.

9           THE COURT: Not to interrupt you, but I've  
10          got to concern myself with --

11          THE WITNESS: I know.

12          THE COURT: -- is there any specific  
13          representations that Mr. Gilbert may have made  
14          prior to y'all purchasing the lot that you  
15          considered in going forward with the purchase?  
16          Anything specific?

17          THE WITNESS: Roads. Roads. There was  
18          supposed to be good roads. All right.

19          THE COURT: What else?

20          THE WITNESS: I think they had to go back  
21          with -- spaces for fire engine turnaround. The  
22          roads, the fact that, you know, there would be a  
23          barn, there would be stables. I believe the lake  
24          is there now and the kids can fish in it, and  
25          that's good. But all these different amenities

1 THE COURT: Okay.

2 THE WITNESS: And that was because I honestly  
3 didn't want to be around this man anymore.

4 THE COURT: All right.

5 MR. JACKSON: I don't have any further  
6 questions, Your Honor.

7 THE COURT: Any cross-examination,  
8 Mr. Ferrara?

9 MR. FERRARA: No, Your Honor.

10 MR. HUBBARD: No, sir.

11 THE COURT: Thank you, ma'am. You can step  
12 down. I appreciate it.

13 THE WITNESS: Thank you, sir.

14 MR. COX: Your Honor, may we be excused from  
15 the trial?

16 THE COURT: Any objections from excusing  
17 Mr. and Mrs. Cox?

18 MR. JACKSON: No, certainly not.

19 MR. FERRARA: No objection.

20 THE COURT: Yes, sir, you're excused with  
21 thanks to the Court.

22 MR. JACKSON: Your Honor, I have one final  
23 witness who is Mrs. Price. I'm not sure we'll be  
24 able to get -- certainly with direct and cross, we  
25 would not be able to finish today. So I'd rather

1 do have to come to a hard stop a few minutes  
2 before 5:00 because everybody else in the  
3 courthouse has to --

4 MR. JACKSON: Yes, sir.

5 THE COURT: -- has to be able to leave.

6 MR. JACKSON: Sure.

7 THE COURT: So I'd ask you try and time it  
8 out. And we can go straight for about an hour and  
9 then reach a breaking point, please.

10 MR. JACKSON: Yes, sir.

11 THE COURT: Mrs. Price. Were you sworn  
12 before?

13 THE WITNESS: Yes, sir.

14 THE COURT: You're still under oath, okay.

15 THE WITNESS: Yes, sir.

16 THE COURT: Thank you, ma'am.

17 - - - - -

18 DIRECT EXAMINATION

19 BY MR. JACKSON:

20 Q Mrs. Price, I'll skip the usual background. We've  
21 already established a lot of that. But if you  
22 could tell me a little bit about your educational  
23 background.

24 A I have a master's degree.

25 Q Okay. What do you have a master's degree in?

1 ran into the Cottons. They had their house for  
2 sale. And I couldn't tell you for sure where that  
3 was. I guess it was Hanahan because that's what  
4 he remembered. But it was the daughter that had  
5 talked about Eagle Harbor. And it was a new  
6 development and they were familiar with the boys  
7 home scenario that was going on out there and a  
8 nonprofit, and, you know, big support kind of  
9 thing. It was kind of enticing. I mean, we had  
10 never run into anything like that. And it sounded  
11 like it might be something we might really want to  
12 be involved with.

13 Q Okay.

14 A So she sent us to Eagle Harbor.

15 Q And when you say "sent us to Eagle Harbor," where  
16 did you go?

17 A We went out to the development, to Eagle Harbor,  
18 in Gilbert's trailer that he had set up there for  
19 Heritage Classic Homes.

20 Q Okay. And what did you discuss?

21 A Well, what lots do you have for sale.

22 Q Okay.

23 A And he was very eager. He, in fact, took us to  
24 Lot 20. I don't even think we really looked at  
25 much else because he seemed to be pretty focused

1 A Well, he actually told us that the lot perked.  
2 And, of course, that was a word that wasn't  
3 familiar to me or my husband. And I quickly said,  
4 well, you know, what do you mean? He said, oh,  
5 you can put a septic system on it. And I said,  
6 why would we think you couldn't? I mean, you  
7 know, that was my response to that because it was  
8 such a large lot. So it sort of, like, dropped at  
9 that point, but it was sort of like a shock.

10 Q Let me ask you this: What condition was the lot  
11 at that time? Was it -- was it bare? Was it  
12 wooded? What was the state of the lot when you  
13 were looking at it?

14 A Well, it was rough. It was rough. It was dry.  
15 We walked around. There was quite a few -- you  
16 know, there was a lot of brush. So it was a  
17 little bit difficult to walk around. But, I mean,  
18 it looked good. It looked like it was gonna need  
19 some work leveling. And that didn't -- that  
20 didn't sound like a lot of fun or didn't appear to  
21 be a whole lot of fun. But at the same time, we  
22 expected something like that if we were gonna get  
23 acreage.

24 Q Okay. Let me ask you about Plaintiffs' Exhibit  
25 No. 2 that's been offered. And what do you recall

1 had already mentioned like the subdividing. We  
2 made sure that was gonna be in there because he  
3 had said that. And he said there were CCRs in  
4 place, the columns for the gates were up. It was  
5 gonna be gated. The roads would all be nice,  
6 private. The amenities, there would be many  
7 amenities for this boys home. And all the people  
8 living around would be able to use those.

9 Q Okay.

10 A And he, you know, he spit out some things. And he  
11 did show us the master plan. Now, we might have  
12 seen that on the first trip. But I think he kind  
13 of showed that to us again. We didn't see any  
14 other plat. We saw the master plan. He didn't  
15 offer any of the plats to us, and he didn't  
16 suggest that there was anything else that we  
17 needed to look at besides that master plan.

18 But we did notice, of course, when we saw  
19 this that Belinda Fox's name was on it. He had  
20 never said anything about somebody else. We  
21 assumed he had owned -- he owned the property.  
22 That he owned all the property, that he was a  
23 developer and he was the builder; not necessarily  
24 exclusive builder, but it was his plan to build  
25 and sell. Didn't seem like an unusual thing

1 A Well, I mean Mr. Gilbert was a very enticing kind  
2 of guy, and he was very convincing that he was our  
3 man to build our house. He could do it all. And  
4 we believed it.

5 Q Okay.

6 A We believed the building. We believed the  
7 developing. We believed the whole nine yards.  
8 And the whole idea with this nonprofit and these  
9 boys homes was, wow, what a story. So we didn't  
10 -- I mean, we made, you know, some questions.  
11 Obviously, he didn't have this contract with these  
12 attachments. When we started doing this and  
13 working this up, we put in the attachments. We  
14 said we need these attached, you know. These  
15 places in here, we have to have drawings that back  
16 up what you're telling us, you know. We have to  
17 have this cost estimate. He offered the porch  
18 estimate. He already had that.

19 Q Okay.

20 A We attached that because we were going to have a  
21 big porch. It was going to be three levels.  
22 Pretty much of a wraparound porch. We asked for  
23 the draw schedule, and he had it. He had it from  
24 National City Mortgage. And we put that in  
25 because we needed to know, you know, how that

1 what's been marked as Plaintiffs' Exhibit No. 11.

2 It appears another e-mail from you to a Patty  
3 Zerbst. Can you tell me about the context of that  
4 e-mail?

5 A Well, she was the lender or the closer, I guess,  
6 for this particular loan that we were trying or  
7 had gotten. And so, we went back to her and kind  
8 of asked her some questions about what we thought.  
9 I understand this, I understand that. So we were  
10 kind of getting clarification. And this was kind  
11 of what our plan based on what Gilbert was telling  
12 us that he was needing a draw, he was needing a  
13 draw. But we weren't getting information.

14 Q That was my question is why did this become  
15 important?

16 A Why did going to her become important?

17 Q Yeah. Why were you concerned about getting  
18 details about the drawing scenario?

19 A Because were already now -- this is 13 January.  
20 That last e-mail was the end of December. We're  
21 now two weeks later. And Ron's saying, telling  
22 me, because I'm not really so much there as he is.  
23 I'm kind of back in Ohio.

24 Q Okay.

25 A But things weren't happening and yet he was

1 the marked stamp.

2 MR. JACKSON: Your Honor, I think I had them  
3 over here.

4 THE COURT: I'm not sure these -- this stack  
5 you have is marked. So when you're talking about  
6 them, I want you to identify what they are.

7 MR. JACKSON: Yeah., Yeah, we have -- and I'm  
8 trying to say I just had it, the marked stack.

9 THE COURT: Trying to keep tract.

10

11 (Brief pause.)

12

13 BY MR. JACKSON (Continuing):

14 Q Okay. Let me show you what's been marked as  
15 Plaintiffs' Exhibit No. 12 and ask can you  
16 identify it? Do you recognize that letter?

17 A I do.

18 Q What was the purpose of that letter?

19 A Well, we had just found out that he didn't have a  
20 septic permit.

21 Q Okay.

22 A And we had been -- apparently, the last couple of  
23 days before this, we had been talking to him and  
24 we met with him.

25 Q Okay.

1 receipts and invoices. And some of this was  
2 outrageous. And then we found out he didn't have  
3 a septic permit. He never would produce a septic  
4 permit.

5 Q Okay. Was that a condition of his draw?

6 A Yes. Absolutely.

7 Q Pursuant to his contract, was he required to get  
8 all permits?

9 A Absolutely.

10 Q Okay. Let me show you what has been marked as  
11 Plaintiffs' Exhibit No. 13 and ask if you can  
12 identify it? First of all, what's the date of  
13 that document?

14 A 22 January, same day. I had gotten this from the  
15 permitting -- permitting department. Bonnie  
16 Watson had given me this.

17 Q Okay.

18 A And I actually attached that to this letter and  
19 took it, hand-delivered it, to Mr. Gilbert.

20 Q And what does that letter say? The January  
21 22nd --

22 A Well, it doesn't have the attachments with it.  
23 But there was a whole stack of attachments that  
24 were all about the building permit that Danny had  
25 gotten erroneously. Because the application that

1 he received it by certified mail as well.

2 Q Okay.

3 A And I think he got a copy from Ms. Watson, county  
4 permitting, too.

5 Q Okay. Let me show you the next document,  
6 Plaintiffs' Exhibit No. 14 and ask if you can  
7 recognize it?

8 A Yes. This is my -- this is the same day. I got  
9 the septic permit applied for.

10 Q Why did you apply for the septic tank permit?

11 A Because it hadn't been done yet.

12 Q Okay.

13 A And as far as we were concerned, we were way  
14 behind schedule, and this needed to be done.

15 Q Okay.

16 A And we didn't know why it wasn't done. I mean,  
17 there wasn't, you know -- there was not any  
18 justification for that. In fact, it was the  
19 neighbor, a neighbor that was building out there,  
20 that told us he would call DHEC and find out if we  
21 had a septic permit because he knew how to do  
22 that. We didn't even know how to do that. So he  
23 called them, and they said, "Oh, no. They don't  
24 have a septic permit."

25

1 A Yes. Because in January, we were saying that  
2 there was no way that we were going to be able to  
3 get through this construction done in time for  
4 this construction loan.

5 Q First of all, who is that letter from?

6 A Well, it's actually from the loan officer,  
7 National City Mortgage.

8 Q Did you make an inquiry to them about your  
9 interest rate?

10 A Yes. Yes.

11 Q Why did you do that?

12 A Because we were saying we were not going to be  
13 able to get this construction done. I mean, it  
14 was unrealistic to believe after all this time  
15 that we could actually meet this target date.

16 Q What was the target date in there?

17 A They had given us until 24 May. Even though the  
18 contract was set up to be completed by 1 February,  
19 they still set up the construction loan for a  
20 six-month period of time. So I went to them and  
21 she gave me this letter as here's how this is  
22 gonna be handled.

23 Q And what happened --

24

25 THE COURT: Hang on a second. I don't think

1 from Mr. Gilbert?

2 A Well, we handed it to him. Yes, we did. Because,  
3 you know, just a few days later, we met with him.

4 Q Okay. What happened at that meeting?

5 A He just said he was done. He hadn't done  
6 anything. He wasn't justifying anything. He  
7 wasn't explaining anything. He sort of threatened  
8 to lien the property. And he basically said I  
9 quit.

10 Q Okay. Let me show you the next document. And  
11 this is a letter dated January 30, 2004, and it's  
12 Plaintiffs' Exhibit No. 16, and ask if you  
13 recognize it?

14 A Yes. This is the letter that came next to Danny.

15 Q And what is that letter?

16 A This is the contract termination in accordance  
17 with the contract of September 13th. The SF  
18 agreement that we had from the general conditions  
19 document contained within that contract.

20 Q Okay. And what was your basis or cause for  
21 termination?

22 A He wasn't doing any work. He had quit. There  
23 were violations. The notice saying, hey, these  
24 are problems. This has got to be fixed. He just  
25 kind of ignored it. I think he thought he was

1 A It never should have been issued. We talked to  
2 him about the builder's risk. We asked him to  
3 take down the power pole that he had put up. We  
4 just kind of asked him to cooperate. You know,  
5 that we needed to get on with getting our house  
6 built. We also had gone to the president of the  
7 homeowner's association thinking there was one.  
8 And there was a lady that was running that. And  
9 we had gone to her with the letter and kind of  
10 informed her of what was happening.

11 Q Why did you inform her?

12 A Because we thought she should know.

13 Q Okay.

14 A We thought that he should know too that we had  
15 gone to the homeowner's association.

16 Q Okay. Now, let me show you the next letter, and  
17 it's a letter dated February 19, 2004. It's  
18 Plaintiffs' Exhibit No. 18. And ask if you can  
19 recognize that?

20 A Yes. And this is Mr. Gilbert sending us a letter.

21 Q Okay. Why did he send you a letter?

22 A Well, like I said here, the homeowner's  
23 association, I actually wrote them a letter.

24 Q Okay.

25 A Well, she, the president, Ms. Evans, took it to

1           lien. Ask do you recall this document?

2    A       Yes. This is his filing a lien on us. This is  
3           dated the 20th of February which was right after  
4           this letter.

5    Q       Okay. And to your knowledge, was that ever served  
6           on you? A statement of accounting ever served on  
7           you?

8    A       I don't think we got it by service. I think we  
9           got it somehow. I'm not sure exactly at what  
10          point. I believe it was through the attorney that  
11          he hired that sent this to us.

12   Q       Okay. Before that was filed, do you recall ever  
13          being served with a notice of lien and statement  
14          of accounting?

15   A       No. No. He had threatened. You know, he had  
16          threatened that he was gonna lien our property.  
17          But as far as actually being served or being  
18          noticed, I don't recall that happening.

19   Q       Okay. So what did you do about it? The lien.

20   A       Well, we had to get a bond. We had to bond him  
21          off.

22   Q       How much was the lien for?

23   A       He actually wrote on here \$23,700.

24   Q       Okay.

25   A       Now, it's not itemized. It's just a total number.

1 fact, at the time that we, you know, kind of  
2 entered into the contract, he offered up this  
3 storage. So sometime after we did the contract,  
4 not exactly sure when, my husband had brought  
5 these items because we didn't have them in our  
6 household goods, which was being handled through  
7 that government contracting civil service. So he  
8 was holding our property hostage. He wasn't  
9 letting us get to it. He wasn't letting us get it  
10 out. And I had gone down -- I had done homework.  
11 I went to small claims court and said how do you  
12 do this stuff? So we found out we had to do this  
13 right to cure letter.

14 Q Okay.

15 A And give him ten days to give us back our stuff.  
16 And if he didn't do that in ten days then we would  
17 have a position to file a small claim against him.

18 Q Well, let me ask you this: Did you just ask for  
19 your stuff back?

20 A Several times.

21 Q And what was his response?

22 A We couldn't get in. He never could be there to  
23 let us get our stuff. Let's see, I have to read  
24 this a little bit and see. "We've been requesting  
25 that you give us access for six weeks. This is

1 Q Okay.

2 A It is now allowing -- or is now approving the  
3 easement for the remote drain field for sites --  
4 in the Lots 1, 2, 19, and 20.

5 Q Okay. Now, did you have a problem before then  
6 about getting -- I think you said you applied for  
7 a permit. Is that right?

8 A Right. But soon after we applied, they revoked it  
9 because this encroachment permit was not obtained  
10 by the seller, by the developer, by anybody in  
11 advance. So without that encroachment permit to  
12 get to our drain field, they couldn't give us a  
13 septic permit.

14 Q Why did they need an encroachment permit?

15 A Because it runs through -- the drain field is  
16 actually on the other side of a state road on  
17 another piece of property.

18 Q Okay.

19

20 MR. JACKSON: Your Honor, Court's indulgence  
21 while I wrestle some of this paperwork. I think  
22 there is an exhibit that I don't see that I  
23 thought was in here. (Brief pause.)

24 Let me mark these. I don't see why --

25 COURT REPORTER: I don't even know where we

1 identification.)

2

3 A Chronologically out of order.

4 Q Yeah, a little bit. Just one, one set. So where  
5 is that letter -- first publish the date and what  
6 is it about?

7 A It's February 26th of '04.

8 Q Okay.

9 A And it's from DHEC. It's a local.

10 Q And who is it addressed to?

11 A It's addressed to me.

12 Q Okay. And what is it about?

13 A Well, it's telling me that the Eagle Harbor  
14 subdivision has yet to obtain written permission  
15 from SCDOT allowing four separate borings under  
16 Leisure Drive for four separate lots in  
17 subdivision in which Lot 20 is one. Per your  
18 recent discussions, I regret to inform you that  
19 our agency has no choice but to temporarily revoke  
20 your septic tank permit for Lot 20.

21 Q Okay. Now, that was 47, right? Exhibit 47?

22 A Thirty. Thirty-nine.

23 Q Thirty-nine. That's right. I'm sorry. Okay.

24 And let me show what has been marked as

25 Plaintiffs' Exhibit No. 40. And have you seen a

1 SCDHEC standards for any type of approvable sewage  
2 treatment and disposal systems.

3 Q Okay. And on the second page, what does it inform  
4 Mr. Gilbert?

5 A It says final approval of the plat by Berkeley  
6 County Planning Commission does not constitute  
7 final approval under DHEC regulation. No lot  
8 shall be sold in any subdivision where on-site  
9 systems are proposed as the method of sewage  
10 treatment and disposal unless the owner or agent  
11 has received a written approval from the  
12 Department.

13 Q Okay. Now, that also references, I guess, the  
14 same thing that you were notified that your septic  
15 tank permit was revoked?

16 A Right.

17 Q Okay. And then I guess you have the other exhibit  
18 that shows when it finally got approval to get a  
19 septic tank. And when was that again?

20 A May. The middle of May.

21 Q Okay. So how did the delay in getting a septic  
22 tank affect you?

23 A Well, I mean, we couldn't get construction going.  
24 We were just sitting and waiting while this was  
25 being resolved. So we had to pay all these extra

1 A Well, I was taking the receipts, credit cards,  
2 checks, bank statements, information that we had  
3 obtained to kind of say, okay, this cost this on  
4 this day and sort of keeping a running -- it  
5 wasn't exactly chronologically in order because I  
6 was stacking this stuff up somewhere until I  
7 started doing a spreadsheet.

8 Q Okay. Let me show you -- and I guess we can mark  
9 it if y'all want to. I don't really care. Is  
10 this a copy of the source documents where you got  
11 some of that -- the data that you put on that  
12 summary spreadsheet?

13 A It is.

14 Q And what's in this volume?

15 A Copies of checks, canceled checks, credit card  
16 receipts. In some cases there's a credit card  
17 statement with an invoice. So it's the work, the  
18 interest that we paid, the lodging that we paid,  
19 the storage that we paid. It's all pretty much in  
20 that. Now, I wouldn't say it's all there, but I'd  
21 say most of it's there.

22 Q Okay.

23 A There's stuff that was lost. I mean, I,  
24 you know . . .

25 Q Okay. All right. But you would -- for example,

1 A Well, I guess if you -- I mean, there's a couple  
2 of different ways of looking at it. First of all,  
3 we shouldn't have got the -- the lot shouldn't  
4 have been sold to us on the day it was. It  
5 shouldn't have been -- we shouldn't have closed on  
6 it because it wasn't eligible to be sold. And  
7 then you go to January, there's a stop work letter  
8 that you could use. Then you could go to the  
9 contract, the SF agreement, and look at the date  
10 of substantial completion. And you've got kind of  
11 all these different dates that you could say,  
12 well, this was wrong, that shouldn't have  
13 happened, this, you know -- so what date do you  
14 actually pick? My husband and I seem to think  
15 that the best day is 22 January when the County  
16 said you can't work. I mean, you can't build.

17 Q Okay.

18 A And that's the same day that we had to apply for a  
19 septic permit.

20 Q Okay.

21 A So that was the date that we came up with as a  
22 fair date. But some people would say, well, it  
23 should've been from the time of substantial  
24 completion. Well, that's reasonable too.

25 Q Okay. So from January 22, 2004, when were you

1 Q Okay.

2 A And we wouldn't have to spend the time waiting to  
3 get that torn down or get that -- you know, if he  
4 could really repair it. I mean, we were not  
5 really sure. I mean, the PE's report said this  
6 and this and this and this. And oh, by the way, I  
7 don't know about this and I don't know about that.  
8 But that could be a problem. Like the mesh, he  
9 didn't know. He couldn't tell. And so here we  
10 are gonna take the chance of going in and  
11 repairing and spending almost \$20,000 to repair it  
12 when it may not be sound enough to even repair.

13 Q Okay.

14 A So we just moved over, left it there, and started  
15 over again.

16 Q Okay. So that didn't cause you any delay further  
17 beyond that once you were able to start somewhere  
18 else?

19 A Right.

20 Q Okay. Now, let's look at your spreadsheet. How  
21 did you show what was rent, what was interest, and  
22 what was storage? How did you designate that on  
23 your spreadsheet, Exhibit No. 24?

24 A Well, the first part of it, of course, is just  
25 basically a running tally of everything.

1 use it, it had been weathering.

2 Q Okay.

3 A So we had to -- so we considered all those things  
4 damages.

5 Q Okay. And how did you code those on your  
6 spreadsheet?

7 A They're green.

8 Q Okay.

9 A And that's really the only two areas that I broke  
10 out.

11 Q Okay. So you lump the delay damages and the legal  
12 stuff together?

13 A Right. To me -- to us, those are all costs way  
14 above and beyond what we should've ever had to  
15 endure.

16 Q Let me see that. Now did you, on this last page,  
17 did you break out the legal from the delay on that  
18 page?

19 A No. No. The delay and other I have a column I  
20 called Delay and Other.

21 Q Okay. And what's the total of that?

22 A 58,949.

23 Q Okay.

24 A Now, there might be a plus or minus in there, you  
25 know, based on the dates of something. But

1 A Well, he wanted more money for his work. That was  
2 one thing. And then, you know, he gave us a cost  
3 estimate. It's attached to that contract. So he  
4 came up with this is how much he thought it was  
5 gonna take.

6 Q The Seibel's contract?

7 A And that wasn't -- well, no, Mr. Kahler's. And  
8 that wasn't really going to be everything because,  
9 you know, the chances were we were still -- he was  
10 telling us this still isn't gonna cover all these  
11 other little things.

12 Q Okay. Now, did you total up the amount under that  
13 contract? In other words, how is that coded on  
14 your spreadsheet?

15 A Okay. So what I did here, I didn't break out all  
16 the construction costs because it was pretty  
17 lengthy. So what I did was I broke out the delay,  
18 other cost. I broke out our cost, what we  
19 accepted. And then I broke out the -- well, wait  
20 a minute. Let me look at this. Okay. And then I  
21 put in the stipulated sum.

22 Q Okay.

23 A And took it from the total and came up with a  
24 construction amount which is right here.

25 Q Okay.

1 one.

2 MR. FERRARA: Twenty-six and 27.

3 MR. JACKSON: Twenty-six and 27?

4 MR. FERRARA: Yeah.

5 MR. JACKSON: Okay.

6

7 Q Let me show you what has been marked as  
8 Plaintiffs' Exhibit No. 25 and ask can you  
9 identify it?

10 A Yes. This is the request that we made for the  
11 wetlands determination.

12 Q And why did you make a request for wetlands  
13 determination?

14 A Because somehow or another -- and I think it was  
15 this neighbor that said --

16

17 MR. HUBBARD: Object to what the neighbor is  
18 going to say.

19

20 A -- wetlands study. Okay.

21

22 THE COURT: I'll allow it.

23

24 A It was somebody else that gave us the idea to do  
25 this.

1 that was sent to them. And it's a public -- I  
2 mean, it's a public agency and a public record.

3 THE COURT: I'm having trouble finding those  
4 letters. Is that the November 7?

5 MR. JACKSON: Yes, sir. These two letters  
6 right here.

7 THE COURT: What's the purpose for these to  
8 be offered?

9 MR. JACKSON: I'm offering these for results  
10 of their request for delineation of two acres of  
11 wetlands determination. It's addressed to them as  
12 a result of their request. And again, I would  
13 contend that it was a public document from a  
14 public agency in the performance of a public duty.

15 THE COURT: We're gonna -- I'm gonna take  
16 this as a time for an appropriate break. I'll  
17 take a look at these --

18 MR. JACKSON: Okay.

19 THE COURT: -- and make a ruling on that when  
20 we come back tomorrow, okay.

21 MR. JACKSON: One matter of housekeeping, I  
22 think. There was an exhibit -- I think my  
23 appraiser expert ran off with the exhibit that he  
24 had in his hand. And so, we have multiple copies  
25 of the identical thing that he was testifying to.

1 THE COURT: All right. Anything else,  
2 gentlemen, that we need to touch on before we --

3 MR. FERRARA: Yes, Your Honor. Just a matter  
4 of housekeeping. With the Court's permission, I  
5 was going to pass up a copy of that motion to  
6 dismiss memorandum.

7 THE COURT: I had forgotten about that.

8 MR. JACKSON: That's fine.

9 THE COURT: Hand me that. I'll take a look  
10 at those as well.

11 MR. FERRARA: May I approach, Your Honor?

12 THE COURT: Yes, please.

13 MR. FERRARA: Thank you.

14 THE COURT: Anything else for today,  
15 gentlemen?

16 MR. JACKSON: I don't think so, Your Honor.

17 THE COURT: All right. We're gonna lock the  
18 courtroom up. So he's gonna lock the courtroom so  
19 if y'all want to leave some, all, or part of what  
20 you've got, it's certainly safe to do that. Okay.

21 - - - - -

22 (The proceedings adjourned for the  
23 evening at 4:47 p.m. and resumed on  
24 Friday, May 4, 2018, at 9:05 a.m.)

25 - - - - -

1           Your Honor, the admissibility of Plaintiffs'  
2           Exhibit No. 26 and Exhibit No. 27 is clearly  
3           hearsay because there is no one here testifying  
4           from the Department of the Army. I've got -- I  
5           believe that Mr. and Mrs. Price can testify about,  
6           you know, what they understand, you know, pursuant  
7           to letters they've received. However, the  
8           admissibility of these documents to prove the  
9           matters asserted therein is clearly hearsay. And  
10          803(8) in public records and reports discusses  
11          duties and it talks about police officers.  
12          That's --

13           MR. JACKSON: I'm sorry. Go ahead. Please  
14          finish.

15           MR. FERRARA: It talks about matters  
16          excluding -- it says however in criminal cases  
17          observed by police officers and law enforcement,  
18          the notes and opinion are not admissible.  
19          Accident reports, we have a statute on that that  
20          Your Honor is looking up. And it's still hearsay.  
21          The public records doctrine, Your Honor,  
22          respectfully would be, for example, Defendants'  
23          Exhibit No. 1 and Exhibit No. 2. Those are  
24          official recorded documents that the RMC office or  
25          Register of Deeds office for Berkeley County, they

1 agency, which obviously the Army Corps of  
2 Engineers is, or subparagraph B, matters observed  
3 pursuant to a duty imposed by law as to which  
4 matters there was a duty to report. And then it  
5 goes to the exclusive for criminal cases. My  
6 client submitted an identified delineation for  
7 wetlands request to a public agency. Under the  
8 code of regulations, they delineate the wetlands  
9 and send it back to here. I don't see any clear  
10 example of a public record or report.

11 THE COURT: In that part of the rule, doesn't  
12 it exclude opinions, judgments, and conclusions?

13 MR. JACKSON: Yeah. But that is for police  
14 officers and other law enforcement personnel.  
15 Then it says provided the investigative notes of  
16 those. So if it's a criminal case, they don't  
17 want the officers saying, well, I think this  
18 was -- you know, in my opinion, this was a drug  
19 dealer or something like that. For a public --

20 THE COURT: It's that -- I don't have the --

21 MR. JACKSON: Is says -- well, here's how it  
22 reads directly on the thing, Your Honor. It says,  
23 it gives A and B, which I just said. Then it says  
24 "provided however" in italics. It goes,  
25 "Excluding, however, in criminal cases, matters

1           they observe.

2           THE COURT: That's where I think I'm  
3           different with you as to where -- once it contains  
4           the opinions, judgments, and conclusions. I read  
5           that sentence to mean that in addition to the  
6           exclusion regarding the police officers, any of  
7           those public records that include something such  
8           as opinions, judgments --

9           MR. JACKSON: Well, this is not really a  
10          judgment or a conclusion. It's just a delineation  
11          that they actually walked the property and drew on  
12          a map where the wetlands are affected. And the  
13          actual letter, too --

14          THE COURT: Isn't that a judgment or a  
15          conclusion as to whether it exists or doesn't  
16          exist as wetlands?

17          MR. JACKSON: Perhaps. But, you know, at  
18          that would -- at a lot of the public reports are  
19          going to have some kind of statement or conclusion  
20          or fact or something in those. But again, I think  
21          the reason why we have confidence in them is  
22          because they're public agencies. They're, you  
23          know, authorized under the code to give reports.  
24          And so, therefore, it's not a reason to have bias  
25          or something like that creep into those.

1 THE WITNESS: Yes, sir.

2 THE COURT: Thank you, ma'am. Yes, sir?

3

4 BY MR. JACKSON (Continuing):

5 Q Let me show you what's been marked as Plaintiffs'  
6 Exhibit No. 28. It's in evidence. Ask can you  
7 identify that?

8 A This would be the second recording of CCRs that  
9 EHI did.

10 Q Okay. With regard to that, what was the date of  
11 that recording?

12 A October 25, 2004.

13 Q Okay. Is that before or after you bought your  
14 property?

15 A After.

16 Q Okay. And who is the declarant listed on that?

17 A It's Eagle Harbor, Incorporated.

18 Q Okay. And publish for the Court the first whereas  
19 clause in that document as to ownership.

20 A "Whereas declarant is the owner of certain real  
21 property located in Berkeley County, South  
22 Carolina, and more particularly described in  
23 Exhibit A."

24 Q Okay. And we'll get to Exhibit A in a minute.  
25 But who is the declarant listed on the page 6?

1 THE COURT: I believe you provided me copies,  
2 and it's under . . .

3 MR. JACKSON: That's all right, Your Honor.  
4 I don't believe I have another copy. But I will  
5 be glad to -- there's only a few points I want to  
6 make and then I'll move on to the next exhibit.

7

8 BY MR. JACKSON (Continuing):

9 Q Would you read the description, the legal  
10 description, it says in Exhibit A?

11 A "All those pieces, parcels, and lots of land shown  
12 on a plat entitled on Final Plat of Eagle Harbor,  
13 Phase 2, St. James, Goose Creek Parish, said plat  
14 dated July 25, 2002, prepared by Stantec  
15 Consulting Services, recorded on September 26,  
16 2002, as document number 21023 in Plat Cabinet at  
17 page 281A in the Office of the Register of Deeds  
18 for Berkeley County and relates to TMS numbers  
19 194-00-02, 031, and 194-00-0 --

20 Q You don't have to read the rest. What -- so what  
21 phases does that specifically mention as it  
22 applying to?

23 A Phase two. It goes on to address phase three and  
24 also phase one.

25 Q Okay. Now, and it refers to a plat. Let me show

1 A They did not.

2 Q Okay. Now, did you ever make a request of an  
3 agency to determine if your property could  
4 actually be subdivided?

5 A Yes.

6 Q Show you what has been marked as 31. First --  
7 yeah, it looks like -- I'm sorry. It's 30 on this  
8 list.

9  
10 MR. JACKSON: Your Honor, this is a May 17,  
11 2000, letter, Plaintiffs' Exhibit No. 30.

12 Q And ask do you recognize that letter?

13 A Yes. This is a letter we received from DHEC,  
14 Columbia.

15 Q Okay. And publish that letter, please.

16 A Read the whole thing?

17 Q Well, just the high points.

18 A Okay. We had sent them a letter.

19 Q Okay.

20 A Requesting information on subdividing our  
21 property. We actually asked them to reevaluate it  
22 because the local DHEC had told us you can't  
23 subdivide it.

24 Q Okay.

25 A The only way you're gonna be able, possibly, is go

1 Exhibit No. 24, Your Honor. And I'm going to  
2 introduce Plaintiffs' Exhibit No. 23.

3 Twenty-three is the long one like this, and 24 is  
4 the more -- the wider version that --

5 Q First, let me show you Plaintiffs' Exhibit No. 23  
6 and represent that's a recapitulation of the same  
7 thing on your spreadsheet, Exhibit No. 24. And I  
8 believe you mentioned yesterday about the total of  
9 construction.

10 A Correct.

11 Q And you labeled that as contractor. That's how --  
12 on your spreadsheet, Exhibit No. 24?

13 A We did.

14 Q Okay. And I think in the blue there's a summary  
15 for all the costs for the contractor?

16 A It appears that way, yeah.

17 Q Okay. Could you publish what the total of all  
18 that was?

19 A For the contract?

20 Q Yes.

21 A Okay. Are you talking about -- you're not talking  
22 about the sum difference?

23 Q No. I'm talking about the total for the  
24 contractor.

25 A Okay. It's 283,011.83.

1 A Because of the result of the construction taking  
2 so long and the interest rate increasing with  
3 National City Mortgage, we would have to refinance  
4 to get a better rate.

5 Q Okay. So let me clarify that. On your original  
6 closing, did you have a permanent loan in place?

7 A We had a loan to set in place at the end of the  
8 construction.

9 Q Okay. And so you refinanced after that because of  
10 the interest rate problem?

11 A We did.

12 Q Okay. And if it had closed on time, would you had  
13 to have refinance?

14 A If we found better financing, we might have  
15 pursued that. But we definitely had to do it  
16 based on the rate change.

17 Q Okay. And you also included legal costs, and  
18 you're asking for the Court to award you legal  
19 costs under some of your causes of action?

20 A Yes.

21 Q Okay. So let's clarify one more time. What  
22 categories are your delay damages? What are the  
23 main categories for your delay damages?

24 A It would be rent, it would be storage, and it  
25 would be interest.

1 relevant part of 14.2. 14.2.4 I think.

2

3 THE COURT: Which exhibit are you looking at?

4 MR. JACKSON: This is -- I think it's 3 -- 4.

5 No, I'm sorry. It's 5, Plaintiffs' Exhibit No. 6.

6 It's the general terms and conditions of the

7 contract, and it's, I think, 14.2.4 . . .

8

9 Q Really all of 14.2 addresses that issue. Can you  
10 just publish that section of 14.2.4?

11 A 14.1.3?

12 Q 4.

13 A 4. Oh, I see. "If the unpaid balance of the  
14 contract sum exceeds the cost of finishing the  
15 work including compensation for the architect  
16 services and expenses made necessary, thereby such  
17 excess will be paid to the contractor. If such  
18 cost exceed the unpaid balance, the contractor  
19 shall pay the difference to the owner."

20 Q Okay. And that's what you're asking the Court to  
21 award you for damages for breach of contract for  
22 the difference?

23 A Correct.

24 Q Okay.

25

1 A Completely?

2 Q Yes?

3 A Are you saying everything on this document is the  
4 only thing applicable?

5 Q No. I'm asking you when you and your husband  
6 purchased Lot 20, the only contract that applies  
7 that you're aware of to Lot 20 is this document in  
8 your left hand? This two-page document.

9 A This would be the written contract.

10 Q Right. Well, let's go through that. I asked your  
11 husband these questions yesterday, and I'll ask  
12 you because I haven't had a chance to ask you yet.  
13 But, ma'am, if you look at --

14 A I have a question. I have a copy of this myself  
15 that I brought.

16

17 THE COURT: Ma'am, you don't get to ask  
18 questions. Okay. All right. Mr. Ferrara.

19 MR. FERRARA: Thank you, Your Honor.

20

21 Q Ma'am, if you can look at paragraph 8A.

22 A 8A.

23

24 MR. FERRARA: And, Your Honor, respectfully,  
25 Mrs. Price is looking at some notes that she has

1 regulations.

2 Q Can you show --

3 A That's what "as is" means.

4 Q Really?

5 A On this contract, that's what it means.

6 Q Where does it say it on that contract?

7 A It doesn't have to say all that. That's what it  
8 is.

9 Q Where did you learn that information?

10 A When land is subject to subdivision development  
11 regulation, which is not just local, it's also  
12 state. It's also federal. Those laws apply. So  
13 as is does not mean that that does not apply. It  
14 does apply. And that is exactly how we read that.

15 Q I understand. So you read the words "as is" in  
16 quotes in paragraph 8A to mean as is subject to  
17 other the things that are not written in this  
18 document?

19 A No. Right up at the very top it talks about the  
20 subdivision.

21 Q Sure.

22 A The TMS... Which I did a little homework on this  
23 last night.

24 Q Right.

25 A This TMS information is incorrect.

1 things apply. And in fact, in this whole thing  
2 there are numerous errors. Because, for example,  
3 it says contingent upon drain field site soil  
4 test. And those were already done and not  
5 disclosed.

6 Q Ma'am?

7 A Which is required by law.

8 Q Ma'am, if you could just please answer the  
9 questions I'm going to ask you.

10 A Okay.

11 Q Exhibit No. 23, page 2 -- I'll hand it to you --  
12 you have a line item charge of damages that you  
13 just testified about with your attorney of  
14 \$1572.90 for legal. Is that correct?

15 A I do. I remember writing that it.

16 Q Okay. And that was for Westlaw research that you  
17 did in April of 2007 to December of 2008, correct?

18 A Yes, it was.

19 Q Okay. So --

20 A I had the subscription for that period of time.  
21 It could have been longer.

22 Q Did you have any other lawsuits besides this  
23 lawsuit and the Investors Title lawsuit that you  
24 were doing legal research on during that time?

25 A I don't think so. Maybe.

1 A Okay.

2 Q At the time that you and your husband entered into  
3 a contract, which was September 13, 2003, you  
4 testified you understood it to be as is in  
5 paragraph 8A. Ma'am, did you also understand that  
6 paragraph 8C says that you would receive a copy of  
7 the covenants and restrictions from your closing  
8 attorney at closing?

9 A It says that we would've done that. It would've  
10 happened.

11 Q Right. Well, let's look at it. Who -- are you --  
12 you and your husband supposed to get copies of the  
13 covenants and restrictions from?

14 A The seller.

15 Q Okay. Again, I'd like you to read paragraph 8C  
16 out loud if you don't mind.

17 A It says we're supposed to get them there from the  
18 closing attorney. But actually, you're supposed  
19 to get them from the seller. That's --

20 Q Is that something else you learned on Westlaw?

21 A No. It's sort of a mistake. I guess I should --  
22 should have said from the seller.

23 Q You and your husband don't want this -- this  
24 contract was a big mistake. You don't want the  
25 judge to consider this contract. Is that your

1 execution of this document, buyer will be  
2 consulting an attorney as well as Jeff Spell  
3 concerning that "correctness and duplication of  
4 items listed above"?

5 A It does say that.

6 Q You bargained for that language in this contract,  
7 correct?

8 A I put that language in there to have the option to  
9 contact Mr. Spell or any attorney. I did not put  
10 that in there as an absolute that I would be doing  
11 that. It was simply to let Mr. Gilbert, let  
12 Mrs. Fox know that we may be contacting an  
13 attorney.

14 Q And did you contact an attorney other than Jeff  
15 Spell?

16 A We did not.

17 Q Because you and your husband decided that you  
18 didn't want to pay an attorney to review this  
19 contract?

20 A No.

21 Q Why didn't you?

22 A We decided there was no reason to. We did not see  
23 anything going on at this point in time.

24 Q Well, let's go back here because your eye is so  
25 critical. You made a determination when

1 THE COURT: Mrs. Price. Mrs.. Price, the  
2 court reporter is trying to take everything down.  
3 So if y'all talk over each other it's real hard  
4 for her.

5 THE WITNESS: I'm sorry.

6 THE COURT: So let him finish and then you  
7 speak and then he'll let you finish. Okay?

8 THE WITNESS: Okay. Okay. I'm sorry.

9 THE COURT: Thank you, ma'am.

10

11 Q You and your husband chose not to contact Jeff  
12 Spell prior to closing. Is that correct?

13 A Well, we didn't follow up on it. I did call him a  
14 couple of times. And I'm not even sure if it was  
15 before the closing or after.

16 Q Right. Then after Mr. Spell did not call you  
17 back, you and your husband made a conscious  
18 decision not to consult another attorney as he  
19 referenced in the bottom of page 2?

20 A We did not because we did not feel there was any  
21 reason, that nobody gave us any big indication  
22 there was a problem.

23 Q You and your husband --

24 A We were very trusting people.

25 Q Right. And you and your husband rolled the dice

1 A Would you --

2 Q Are you familiar with caveat emptor, buyer beware?

3 A No, I'm not.

4 Q Okay. Well, you and your husband are from Ohio?  
5 Or lived in Ohio at the time of contract?

6 A I was still in Ohio, yes.

7 Q You were in Ohio?

8 A Yeah, we were there.

9 Q And neither one of you had purchased property in  
10 South Carolina before, correct?

11 A We had not.

12 Q Okay. Don't you think that it would have been  
13 prudent for you or your husband to consult with a  
14 South Carolina attorney to make sure the contract  
15 was fully correct, not duplicative, and these  
16 other items that you're suing about, okay, like  
17 the covenants and subdivision plat, that those  
18 things would be in order prior to closing on Lot  
19 20?

20 A No. We really didn't because as you read this,  
21 all of those things are obligations of the seller,  
22 and they are obligations by subdivision  
23 development law. So it wasn't a risk on our part.  
24 It was a risk on the seller's part.

25 Q You don't have an attorney or someone else to come

1 It should've been done before this agreement to  
2 buy and sell was ever presented to us. So, yes,  
3 you're right.

4 Q No. I mean, you and your husband should've done  
5 that?

6 A There are numerous things in here -- I'm sorry.

7

8 THE COURT: Let her answer the question.

9

10 Q Sorry. Go ahead. I'm sorry, ma'am. Go ahead.

11 A There are numerous things in here which the seller  
12 is responsible for. And at minimal, disclosure of  
13 the information they had access to and knew of at  
14 that time whether it was Mr. Gilbert or Mrs. Cox.  
15 I mean Fox. Either one. They had  
16 responsibilities to disclose to us anything that  
17 is relevant in this contract.

18 Q Right. Paragraph 10, ma'am. Does it not say that  
19 it is your responsibility to do the inspection,  
20 environmental concerns including hazardous waste,  
21 wetland study, and radon gas in paragraph 10?

22 A Here again, sir, it is not our responsibility  
23 after the fact that the seller was already  
24 supposed to do that.

25 Q That's not my question, ma'am. Does --

1 A I am saying that those -- you were saying and I am  
2 saying the special stipulations that are in here,  
3 these are all responsibilities that the seller  
4 had. She had the responsibility to put the CCRs  
5 on the property before it was ever sold to us.

6 Q Let's go through paragraph 10, ma'am. The last  
7 sentence of paragraph 10.

8 A Paragraph 10?

9 Q Yes, ma'am. Does it not say if buyer fails to  
10 notify seller or listing agent of the results of  
11 such inspection on or before day stipulated -- and  
12 I think that means referring to the closing -- or  
13 referring to the date above -- buyer shall be  
14 deemed to have waived the privilege of any  
15 inspections?

16 A That would apply if the seller had knowledge and  
17 known of the conditions of the property and  
18 selling it to us. They did know the conditions.  
19 Those were not disclosed. That is not overwritten  
20 in this contract. The seller disclosure is  
21 required by law. So first and foremost, it's the  
22 seller's responsibility to tell you that these  
23 things have been done or what has been discovered.  
24 Correct?

25 Q You have -- are you asking?

1 Harbor, phase one, phase two and phase three.

2 Q Okay. Now, paragraph 2A of Exhibit No. 2 states  
3 that the lot that you and your husband are  
4 purchasing contains 7.861 acres on a plat entitled  
5 Eagle Harbor Track A. It has the TMS number.

6 Does it not?

7 A That does not exist. That plat does not exist.

8 Q Well, let's take a look here at Defendant Fox's  
9 Exhibit No. 1, which is the plat.

10 A Right.

11 Q Is that not a plat showing --

12 A It is a plat.

13 Q That's a recorded plat, correct?

14 A It is.

15 Q Okay. And you might've heard, and I asked your  
16 husband, but this plat was recorded what date,  
17 ma'am, if you could look? It's tiny print. I  
18 apologize.

19 A It does show September 2002.

20 Q Right. September 26, 2002?

21 A Right.

22 Q That plat is recorded in Berkeley County, and it  
23 contains Eagle Harbor, correct?

24 A It does say Eagle Harbor.

25 Q And it's your street which is Saddlehorn?

1 test being done beforehand. There's a lot of  
2 things that could've been marked out.

3 Q Right. Well, back to Mr. Spell, when Mr. Spell  
4 performed the closing or his associate at the  
5 office -- your husband testified he didn't see  
6 Mr. Spell at the closing. He appeared on your  
7 behalf. Your husband appeared on your behalf with  
8 power of attorney. My question is that when  
9 Mr. Spell did the title search, he or his  
10 abstractor would've seen that recorded plat that's  
11 in your hand. Do you agree?

12 A Possibly. I would think at this point in time  
13 Mr. Spell did not do a title abstract.

14 Q You think he just rolled the dice?

15 A I think Mr. Spell just didn't do it or he did not  
16 disclose the reality of what he found. One or the  
17 other.

18 Q You think Mr. Spell bears some responsibility for  
19 this contract that you and your husband are suing  
20 upon?

21 A Not at this time, I do not.

22 Q Do you think he ever did at any time?

23 A Possibly. I can't say for sure.

24 Q Okay. Now, let's go back to the soil test you  
25 mentioned, paragraph 21, ma'am, page 2 of the

1 Q Doesn't it make sense --

2 A Should've been --

3 Q Sorry.

4 A Nonapplicable. It should've been nonapplicable on  
5 this contract.

6 Q Right. So if the soil test has already been done  
7 and you and your husband actually heard those  
8 statements and relied upon that, wouldn't you and  
9 your husband, considering your sophistication,  
10 have lined through paragraph 21 and said this  
11 doesn't apply because, Mr. Gilbert, you already  
12 told me the soil test has been done?

13 A No. Because there are several things over here  
14 that could've been lined through.

15 Q Sure.

16 A And they weren't.

17 Q Okay.

18 A They weren't by us and they weren't by him and  
19 they weren't by Mrs. Fox before the closing took  
20 place.

21 Q So Mrs. Price, importantly, I understand you and  
22 your husband claimed that you relied upon  
23 Mr. Gilbert in the soil test representations. But  
24 the contract still would allow you and your  
25 husband to demand Mr. Gilbert prior to closing to

1 permit be presented. He did not present it.

2 Q That's after this transaction. So my question --

3 A That's true.

4 Q -- then to you is this: If you and your husband  
5 carefully looked at paragraph 21 and held Danny  
6 and/or Belinda's feet to the fire and say, "Danny,  
7 you told me there was a septic approval or a soil  
8 test permit -- a septic permit or a soil test  
9 done, and we need that. Give us a copy of it or  
10 we're not going to close." If that happened and  
11 Danny did not produce it to you, you and your  
12 husband would not have closed on this lot,  
13 correct?

14 A This is all very hypothetical.

15 Q I'm asking you.

16 A It didn't happen. We had no reason to believe  
17 that Mr. Gilbert was not telling us the truth.

18 Q It didn't happen because you and your husband  
19 didn't perform any studies or research as the  
20 contract required?

21 A It did not require that above what the seller was  
22 required to tell us that already happened. And  
23 that's a big factor here. I don't know why you  
24 want to avoid that. We had no more responsibility  
25 with the soil testing than the seller and/or

1 Q Okay. I just wanted to make sure that I  
2 understood that you and your husband understood  
3 how important that paragraph 11 is. Now,  
4 additionally, ma'am, only a subsequent written  
5 instrument signed by both parties can change it.  
6 That is stated in paragraph 11 as well, correct?

7 A I see that in there.

8 Q And this last sentence, "Buyer and seller  
9 acknowledge that they have not received or relied  
10 upon any statements which are not expressly  
11 stipulated herein." You agree that paragraph 11  
12 says that?

13 A I agree that is says that.

14 Q And you agree --

15 A But I keep going back to the same thing. The are  
16 words in this contract that shouldn't even be here  
17 because of what the seller and Mr. Gilbert already  
18 knew before this was even done. Certainly, we see  
19 that written in there just like we've already  
20 established the fact that several things should've  
21 been lined through, changed on the spot, but they  
22 weren't. It was realistic to even use this  
23 1 October date for inspection. It says you have  
24 to have it done by the 1st of October. That's  
25 only two weeks after we actually signed this.

1           you could've told Danny and/or Belinda, "Hey,  
2           Danny, you are in default. You have not provided  
3           us with this soil test that we relied upon. You  
4           haven't provided us with any other approvals. You  
5           haven't provided us with the covenants. And we're  
6           holding you in default," as you did in Danny's  
7           builder contract. You agree you could've done  
8           that?

9       A     We could have if we had thought that was a  
10          problem, but we didn't think it was a problem. If  
11          you look at that, it says buyer or seller, failure  
12          to perform any covenant. Well, if you go back to  
13          item 8 under special stipulations, without a  
14          doubt, the seller was required to have put CCRs on  
15          the property before selling it as CCR property.  
16          That's even listed twice in the special  
17          stipulations of this contract.

18       Q     Right.

19       A     And the seller did not do this. So right there  
20          there's a default of this agreement before you  
21          even get out -- out of the cage.

22       Q     But you and your husband didn't exercise the  
23          alleged right of default you just testified about.  
24          And, yet, still chose to proceed forward with  
25          closing on Lot 20, correct?

1 and your husband, then owner of Lot 20, agreed for  
2 those to apply, correct?

3 A I agree.

4 Q Okay. Now, Defendants' Exhibit No. 2 are recorded  
5 covenants that were recorded in Berkeley County,  
6 ma'am. And I'll hand those to you. And what is  
7 the date of recording on those documents?

8 A February 2003 which was before we bought the land.

9 Q Right. And as I understand your testimony is that  
10 you believe that because the covenants that are  
11 being held in your hand right now, although being  
12 recorded prior to purchasing your Lot 20, because  
13 Belinda Fox's name is not on those covenants that  
14 you don't believe they are attached to Lot 20. Is  
15 that in essence your testimony?

16 A We did not think that initially when we first got  
17 this. We did not see that nor did we understand  
18 that. Later on, that came to our attention when  
19 we had a new title abstract done after we hired an  
20 attorney. That title abstract confirmed that  
21 these CCRs are not in our chain of title  
22 because --

23 Q Do you have an attorney who is testifying in this  
24 case to that point? That those covenants do not  
25 attach and did not attach to Lot 20 at the time

1

2 Q All right, ma'am. If you could turn to 2.2 of the  
3 covenants.

4 A 2.2.

5

6 THE COURT: Which exhibit are we looking at?

7 MR. FERRARA: Exhibit No. 2, I believe, Your  
8 Honor.

9 THE COURT: Before you go forward, let me  
10 make sure I got that in front of me.

11

12 A 2.2.

13 Q Yes, ma'am.

14

15 THE COURT: Hang on a second. Let me make  
16 sure I got them.

17

18 A You want me to read that?

19 Q One second.

20

21 MR. FERRARA: Your Honor, I do have an extra  
22 copy.

23 THE COURT: If you do, let me have those so I  
24 can quit digging around for them.

25 MR. FERRARA: Your Honor, may I approach?

1           It says the association or any owner. Which the  
2           association implies it's the homeowner's  
3           association, right? I'm a member of the  
4           homeowner's association.

5    Q       No. I mean --

6    A       An owner within the association.

7    Q       Right. Any owner, any lot owner in Eagle Harbor  
8           can agree to be subject to these covenants?

9    A       Oh, yeah. At a later -- yeah, sure they can.

10   Q       Sure. Sure.

11   A       They can sign on and accept them. I agree with  
12           that.

13   Q       Right. And so did you or -- did you or any of  
14           your attorneys ever ask Belinda Fox if she agreed  
15           to have her lots subject to these covenants that  
16           were recorded at the time you sold -- you  
17           purchased your property?

18   A       We never saw any document like that.

19   Q       Right. Right. And if you look at page 51 of the  
20           exhibit, it specifies the lots subject to the  
21           architectural review and the covenants. And Lot  
22           20 is on there, is it not?

23   A       Yeah. Lot 20 is listed here.

24   Q       Sure.

25   A       So is lot 21, which is a drain field.

1 Q So --

2 A Eagle Harbor, Incorporated, is a boys home. It's  
3 a nonprofit, correct?

4 Q You've asserted in this lawsuit, ma'am, that Eagle  
5 Harbor was the developer of this neighborhood. Am  
6 I missing something?

7 A We have found out that Eagle Harbor, Incorporated,  
8 although he suggested he was the developer, he was  
9 not actually the owner of the property, which he  
10 made known to the County after several of these  
11 properties were already sold.

12 Q Ma'am, you're assuming that Eagle Harbor is not  
13 the developer despite recorded documents and  
14 admitted documents in this case that established  
15 that Danny Gilbert and Eagle Harbor were the  
16 developer?

17 A He did apply as the developer, yes. We found that  
18 out through the Freedom of Information request.

19 Q Sure.

20 A But he also told the County later that he wasn't  
21 the developer, that he didn't own the property.

22 Q Okay.

23 A It was sort of like he misled the County right  
24 from the beginning.

25

1 MR. FERRARA: Thank you, Your Honor. May it  
2 please the Court?

3

4 BY MR. FERRARA (Continuing):

5 Q Mrs. Price, I wanted to turn to your claim for  
6 damages now which is exhibit -- Plaintiffs'  
7 Exhibit No. 23. And I'll hand that to you, ma'am,  
8 for reference. You agree that the total legal  
9 expense that you and your husband are claiming  
10 against all defendants' legal expenses,  
11 \$31,524.52?

12 A I don't see that total on here. That sounds like  
13 a fairly close number, but I don't see that number  
14 on here.

15 Q Oh, I apologize. I must have -- Plaintiffs'  
16 Exhibit No. 24. I'll hand that to you.

17 A I don't see that number on here either. We have  
18 delay and other all in one so the legal is  
19 included in that.

20 Q Okay. Well, the last page, ma'am, of 24.

21 A Right.

22 Q You've got \$31,524.52 of legal.

23 A Okay. I didn't put that number in there.

24 Q Who did?

25 A I'm not sure. That's probably the calculation

1 A We were not pro se in '11. But we did pay for  
2 copying expenses in relationship to this case.

3 Q Okay. You submitted this document to substantiate  
4 all of your claims. And I'm just asking you, are  
5 you claiming this \$111.15 legal copying costs?

6 A Yes.

7 Q Okay. That's a large amount of copies. Is that  
8 whenever you copy all of the documents in the  
9 Investors Title case and sent that in?

10 A No. This was not Investors Title.

11 Q Okay. So none of these legal expenses are  
12 Investors Title legal expenses?

13 A Well, this subscription as you brought up earlier,  
14 there are some time frame of that of which we were  
15 in that suit.

16 Q And you think that my client should have to  
17 reimburse you and your husband for that legal  
18 expense for the Investors Title, for Westlaw?

19 A We didn't have that exclusively for Investors  
20 Title. That became and was part but certainly not  
21 exclusive.

22 Q So you don't know how much of the 1572.90 was for  
23 Investors and how much was for this action?

24 A No. I can't really say.

25 Q Okay.

1 hire Chellis and Frampton's office to represent  
2 you in this case? This 2004 case that we're here  
3 on today.

4 A Yes.

5 Q Okay. And do you recall -- you got a legal  
6 expense here for Chellis and Frampton which is on  
7 line 153.

8 A 153.

9 Q Yeah.

10 A Yes. That was the rate -- that was the retainer.

11 Q And what was the date of that?

12 A June 2005.

13 Q 2005. Okay. And you recall filing in this case  
14 an amended complaint whereby you've brought in  
15 Belinda Fox, the Winns, Mr. Gilbert, and Investors  
16 Title?

17 A I remember an amended complaint. Is this by  
18 Mr. Moore?

19 Q Yes.

20 A I can't tell you exactly all the particulars about  
21 that. But I do remember he did file one that he  
22 did not serve.

23 Q Okay. And then there was -- but the attorney's  
24 fee for Mr. Moore, for the Investors Title claim,  
25 that's included in your legal expenses --

1 a complaint but did not serve it, I believe?

2 A Well, he didn't serve it. I'm not sure about the  
3 filing of it.

4 Q Okay. Well, it's hard to see on the copy, but  
5 this amended complaint from 2000 is in this case  
6 that you're suing on now, correct?  
7 2004-CP-08-1855.

8 A It would be in the history.

9 Q Okay. And you're sure that the legal expenses  
10 that you have on exhibit -- Plaintiffs' Exhibit  
11 No. 23, or Exhibit No. 24 rather, for legal to  
12 Chellis and Frampton are not for this complaint --

13 A They are not.

14 Q -- that was with Investors Title?

15 A They are not.

16 Q How do you know?

17 A Well, right after he filed that, Mr. Moore left  
18 the firm, and Mr. Parker withdrew it.

19 Q Okay. Mr. Parker withdrew?

20 A The attorney, Mr. Parker.

21 Q Okay. So the \$8,000 attorney's fee, what did that  
22 go for that you're claiming on line 153?

23 A This case, 1855. And at that time, 1150, which is  
24 the construction case, was a separate case. So  
25 that was for both of those.

1           were doing back then. But he gave us a piece of  
2           paper and we signed it.

3    Q       And so, just to be clear, Defendant Fox's Exhibit  
4           No. 3, this amended complaint, you and your  
5           husband met with your counsel and agreed to the  
6           filing of this second amended complaint in this  
7           case, correct?

8    A       Well, I guess we met with him. But that was  
9           Mr. Moore that came up with that.

10   Q       Okay.

11

12                   MR. JACKSON: Your Honor, just for  
13           clarification, and I guess it's kind of a strange  
14           objection. I'm not sure that that was ever filed.  
15           I think it was a motion to amend and I think we  
16           withdrew -- and I know he withdrew it. I don't  
17           know whether it was actually filed or not. He  
18           filed a motion to amend a second amended  
19           complaint. Later, like two weeks later, he  
20           withdrew it. I don't know if he actually filed it  
21           or not. That's the only point of clarification I  
22           wanted to make. And if it's filed -- that's fine.  
23           I'm just not sure.

24                   MR. FERRARA: But this was filed and then  
25           there's a stipulation.

1

2 BY MR. FERRARA (Continuing):

3 Q Ma'am, just to be clear, I've handed you Defendant  
4 Fox's Exhibit No. 4, I believe. And that's a  
5 consent order that your attorney agreed to  
6 withdraw the second amended complaint that we were  
7 just talking about. Do you recall?

8 A Yes, I recall. Yes, it says without prejudice.

9 Q Sure. Now, are any of the fees that you're  
10 claiming in Plaintiffs' Exhibit No. 24 for legal  
11 connected with the second amended complaint or the  
12 withdrawal of that claim?

13 A Not to my knowledge. Because this happened well  
14 after we retained them for the cases that were  
15 already pending.

16 Q Do you know in the Investors Title claim how much  
17 money you and your husband paid for attorney's  
18 fees for that action?

19 A No, I don't. We did. We had a lot of cost  
20 involved with that action.

21 Q Right.

22 A But we -- but, no. I don't have that spread out.  
23 My intention was not to put any of that in here.

24 Q Okay. And so the -- but it was Chellis and  
25 Frampton that assisted you initially with that

- 1 part of it pro se?
- 2 A We did.
- 3 Q Okay.
- 4 A Until we found representation.
- 5 Q When he quit, did you and your husband get any of
- 6 this \$5,000 retainer --
- 7 A We did not.
- 8 Q Do you know why?
- 9 A He refused to give it to us. In the contract, it
- 10 said no refund.
- 11 Q So it was a flat fee?
- 12 A (Nonverbal response.)
- 13 Q Okay. Moving on, O'Neil and Phepps, \$500, line
- 14 386. What was that for?
- 15 A That's when we were pro se. I don't recall.
- 16 Q Okay.
- 17 A There might be something written on the check.
- 18 Q Okay. The next line below, there's another filing
- 19 fee for Peterson and Scott, \$150 in '04. Is that
- 20 a duplicate of --
- 21 A Could be. Could be --
- 22 Q -- 226 up above? Because they both say 226?
- 23 A Okay. Are we looking in the green, just solid
- 24 green?
- 25 Q Yes, ma'am.

1 case.

2 Q Oh, that's just the costs?

3 A That's just the costs, not the retainer.

4 Q Not the attorney's fee?

5 A No.

6 Q Okay. But you don't know what the specifics are  
7 for the costs?

8 A We don't have the final because we paid some  
9 things through them and then we paid some things  
10 separately. But really what we're looking for is  
11 the chronological entire from start to finish with  
12 this case.

13 Q On the Investors --

14 A That's an estimated amount.

15 Q Okay. In the Investors Title case, the 2007-case,  
16 you and your husband filed an appeal and won the  
17 appeal and were granted 2500 and some-odd dollars  
18 of cost of reimbursement. Do you recall that?

19 A Yeah. I remember that, but we didn't get it.

20 Q You didn't get those costs?

21 A We did not.

22 Q Are some of those costs that you were claiming,  
23 the \$2500 of in the Investors Title, on this  
24 sheet?

25 A No, they're not.

1 A They were all training books. I don't know what  
2 you would mean by legal books. I was taking  
3 classes that were related to paralegal  
4 certification.

5 Q Okay. And you're claiming that the classes costs  
6 need to be reimbursed by my clients in this case?

7 A Of those books?

8 Q I think your testimony was that it was books and  
9 classes. Yes, ma'am?

10 A Well, it's just the books. The classes are not on  
11 there at all.

12 Q You're gonna pay for classes out of your pocket?

13 A I already did.

14 Q But you want my clients to pay for the books?

15 A Well, it's all related to this case that whole  
16 thing happened. I only started the training  
17 because of this case.

18 Q Okay. Why not include the classes in this  
19 spreadsheet?

20 A Because the VA paid for them.

21 Q Oh, okay. So if somebody else pays the amount  
22 then you're not seeking reimbursement of it?

23 A Why would I seek reimbursement? I didn't pay for  
24 it.

25 Q Okay.

1 Q In 2007 you have a line item for Simmons and  
2 Keaveny for legal, line 380.

3 A I'm sorry?

4 Q Yes, ma'am. I'm sorry. Line 380 in 2007, do you  
5 see that?

6 A Right.

7 Q What was that for?

8 A He was reviewing the cases to decide whether or  
9 not he wanted to take them.

10 Q Which cases?

11 A 1150 and 1855.

12 Q And in 2007, at the time, you hadn't filed the  
13 Investors Titles claim, correct?

14 A We had not.

15 Q Okay. Was that part of his review as well?

16 A It was not.

17 Q Was not. Okay. We talked about the Chellis and  
18 Frampton, 8,000. Did you get any refunds from any  
19 of these attorneys off of these amounts?

20 A No.

21 Q No. Okay. All these mechanics lien charges and  
22 certified mail, you're not claiming that Belinda  
23 Fox is responsible to you and your husband for  
24 those, are you?

25 A This is a group -- the way this is done is group,

1 A Okay.

2 Q \$4,753.59 for a refinance with USAA?

3 A Right. That's what it costs us for closing and  
4 the interest, the extra interest, to get the  
5 refinance.

6 Q That's your total refinance closing costs?

7 A Yes. I'm pretty sure.

8 Q Do you have the settlement statement from that?

9 A I do.

10 Q Okay. And you contend and your husband contends  
11 my client is responsible for this full amount of  
12 money?

13 A Well, here again, I'm not exactly sure how to  
14 divvy these things up because it's all related to  
15 each other.

16 Q If you get the money you'll be happy, but you  
17 don't really care who pays it?

18 A Yeah, pretty much. I mean . . .

19 Q Okay. But I just want to be clear because my  
20 clients contend that they're not responsible for  
21 that amount of money and I'm asking you. Are you  
22 claiming this 4,753 to be a charge that Belinda  
23 Fox and Gerry Fox need to pay you and your  
24 husband?

25 A Not necessarily just them. I mean, like you said,

1           \$59,000 of delay damages against my client and  
2           Mr. Gilbert. And then another \$98,000 of contract  
3           damages for the house, delay of the house.

4       A     In round numbers, yeah, that's pretty close. Now,  
5           obviously, that \$150 that we just got through  
6           pointing out is a duplication, that would come  
7           out. I mean, if there really is this issue of  
8           commingling between like the Westlaw subscription,  
9           I mean, certainly we can take something out there.

10       Q     Sure.

11       A     I mean, those are not -- this is just the best I  
12           can come up with for -- and this is really not all  
13           of it. You must believe that there's things not  
14           even addressed here. So this is not really, in  
15           the big picture of life over 15 years, a true and  
16           accurate running tally of all these costs.

17       Q     These damages that you're presenting in  
18           Plaintiffs' Exhibit No. 24, then you testified  
19           yesterday this was a ballpark. Is that correct?

20       A     That is the best way I can describe it because it  
21           does not include everything that was involved. We  
22           just have what we have, the best that we kept up  
23           with, and we could explain. There are receipts  
24           that we couldn't find, the receipt to match an  
25           invoice. Those things had to be deleted. I mean,

1           everybody is driving in and out of there. That's  
2           the entrance in and out of Eagle Harbor. But  
3           because it hasn't been permitted by law, that's  
4           where the legal access comes into play. If there  
5           was an accident that occurred at that  
6           intersection, there would be a problem.

7    Q       Okay. In this case the judge started at the  
8           beginning of yesterday, we bifurcated -- and I  
9           asked your husband this and I'm going to ask you  
10          just to be clear. The damages that you testified  
11          about, the damages that are on Plaintiffs' Exhibit  
12          No. 24, these are the total damages that you and  
13          your husband are seeking in this action, correct?

14   A       Yes. In this action, yes.

15   Q       Now, let's go to the appraiser. The \$82,530, your  
16          attorneys at Chellis and Frampton hired  
17          Mr. Carter, correct?

18   A       He did.

19   Q       Okay. The sum of his expense included in this,  
20          these damages? Mr. Carter's expense.

21   A       Yes. It came out of that retainer that we gave  
22          Chellis and Frampton.

23   Q       Okay. And do you know how much Mr. Carter  
24          charged?

25   A       I cannot say for sure because it was paid for with

1           Because the appraiser, Mr. Carter, had that  
2           considered in this hypothetical.

3   Q       Sure. But what I'm saying is in the 2007 case you  
4           used the covenants and the timing of the recording  
5           of the covenants and being attached to your  
6           property as part of your damage in that case as  
7           well, correct?

8   A       It's right here in the 82,000. What Mr. Carter  
9           came up with if CCRs are not in place, if this is  
10          not the way this is, if it -- so it's incorporated  
11          here.

12   Q       Now --

13   A       It's just simply -- it was just simply a copy --

14

15                 MR. JACKSON: Your Honor, I'm sorry. I  
16                 didn't mean to interrupt. I was just wanting to  
17                 point out to the Court it is 11 o'clock. You said  
18                 you had to do -- and I hear some rumblings back at  
19                 the door. I didn't know --

20                 THE COURT: -- is there anybody out there for  
21                 the sale?

22                 BAILIFF: Yes.

23                 THE COURT: There is? Okay. All right.

24                 Well, let's take a short recess.

25

1 Q Yes, ma'am. I apologize. You'll have to start at  
2 the front and count back.

3 A Page 7?

4 Q Yes, ma'am. If you look at line 389 which is  
5 about a little past halfway down the page. Do you  
6 see that?

7 A I see that.

8 Q You're having some concern about?

9 A That's -- I didn't enter that.

10 Q You didn't enter that? Who did?

11 A (Nonverbal response.)

12 Q I thought you testified earlier that you prepared  
13 this.

14 A Well, there's been some modification to it.

15 Q Who modified it?

16 A That I didn't -- I assume it was Derrick's.

17 Q Okay. And that's fine. But let's look at line  
18 389. Between March of '09 and April of something  
19 after -- I guess that's April 2018. There's a  
20 charge for \$6500 of legal expense for Mr. Ward.

21 A I have to suggest that that is duplicated or the  
22 number that they came up with as opposed to my  
23 estimated 7,000.

24 Q Right.

25 A So is the estimated 7,000 still in there?

- 1 Q So is it 6500 or 7,000?
- 2 A Well, I would have to say it's 6500.
- 3 Q Okay.
- 4 A Because mine was an estimated number.
- 5 Q Well, the 6500 is also estimated too, correct?
- 6 A Well, I would have to say no at this point in
- 7 time.
- 8 Q You have a statement that breaks out the \$6500?
- 9 A I haven't physically got the statement. But it
- 10 must exist because it took place of the estimated
- 11 7,000.
- 12 Q Okay. So now we -- so we should take \$7,000 off
- 13 the legal expense number we started out with of
- 14 the 31,524 then?
- 15 A Yeah. Both are included in that 31,000.. Yes,
- 16 you're right.
- 17 Q So now you're claiming 35,524 minus 7,000 for
- 18 legal?
- 19 A I'm suggesting to you that, yes, if we have any
- 20 duplicates, the duplicate needs to come out.
- 21 Q But you don't know for sure?
- 22 A Well, the total number if it's -- it looks to me
- 23 like it does have both of them in the total
- 24 because it does go to over 31. Right?
- 25 Q Right.

1 A Well, it's a little confusing. Because the total  
2 in the green here is 54, the total in the green  
3 here is 58.

4 Q Exactly. You don't know which one it is, do you?

5 A I would have to go with the 54 as being --

6 Q Okay. So now we're --

7 A Because there's been some adjustment, but exactly  
8 where that is is not clear exactly.

9 Q So now we're going to take the \$54,000 on Exhibit  
10 No. 23 as your total. And then we're going to  
11 take out of that number -- that's the total  
12 number. And out of that number, we'll take 7,000  
13 off for the duplicate legal and the 150 off for  
14 the duplicate legal?

15 A The 54,000 does not include the 6500. It does  
16 include the 7,000.

17 Q You testified, ma'am, moving on, that there was  
18 \$20,000 of expense associated with National City  
19 and refinanced. Did I write that down wrong?

20 A 20,000?

21 Q Uh-huh. I had down yesterday that you testified  
22 that there was about \$20,000 of --

23 A Oh, we had to add in 18,000 to the second contract  
24 and the building.

25 Q The 18,000 that you just testified about, is that

1 A Right. Right.

2 Q Okay. Now, don't you agree that you and your  
3 husband would've had some interest expense even  
4 if --

5 A Certainly. Yes, we would have. Had everything  
6 gone as it should've gone, certainly. There  
7 would've been some. But it would've been  
8 substantially less.

9 Q Do you know what the difference is in between what  
10 the interest would've been if everything would've  
11 went smoothly according to your plan as opposed to  
12 how it actually occurred?

13 A I have -- no. I don't know.

14 Q You don't know. Okay. You testified, ma'am,  
15 earlier today about \$3,000 for demolition --  
16 demoing a foundation.

17 A Right.

18 Q Is that a damage you're claiming against  
19 Mr. Gilbert and Heritage Classic Homes?

20 A Yes.

21 Q Okay. And isn't it true, though, that you and  
22 your husband actually didn't demo the entire  
23 foundation?

24 A We demoed everything except the footings  
25 underground.

1 MR. HUBBARD: Thank you, Judge.

2 - - - - -

3 CROSS-EXAMINATION

4 BY MR. HUBBARD:

5 Q I'm just gonna pick up with these footers. So the  
6 footers for that original thing are still there?

7 A They're in the ground.

8 Q Okay.

9 A We did not pull those out because we -- by the  
10 PE's report and by Mr. Kahler, what he thought and  
11 what we found when we pulled out the concrete,  
12 there was no vapor barrier. There was no wire  
13 mesh. All that had to be destroyed, but the  
14 footings were still there. We left them there for  
15 a while.

16 Q And then what happened to them?

17 A And then we built on them.

18 Q Oh, so you're using those footings?

19 A Yeah. They're --

20 Q So you got --

21 A -- underneath the building that we have.

22 Q -- the benefit of those footings that were put in?

23 A Yes, we do.

24 Q Okay. All right. Thank you.

25 A Because it would have cost us more to dig them up

1 Q Did you meet with him before that?

2 A Sure.

3 Q Can you tell us when you met with him?

4 A Exactly when he showed up?

5 Q Yeah. Sure.

6 A Had to be somewhere between June 30 -- I mean  
7 January 30 and 9th of February. He was working  
8 with somebody else I think in Heritage Classic --  
9 I mean, there in Eagle Harbor.

10 Q So you never met with him before you terminated  
11 Heritage Classic Homes?

12 A I don't ever remember ever meeting him, no.

13 Q Was it Mike Cable (ph) who perhaps introduced  
14 y'all? Is that a name you recall?

15 A Right. I think he might have been working for  
16 Mike Cable.

17 Q But it's your testimony here today that you two  
18 never met with Mr. Kahler before you terminated --

19 A No. I can't tell you that. I might have met him.  
20 I mean, we were all meeting each other on occasion  
21 out there in the -- because they were building  
22 their house. We were building our house.

23 Q I'm asking about specifically about Mr. Kahler.  
24 Did you have any conversations with Mr. Kahler?

25 A I personally do not recall a conversation with

1 Homes, before you filed suit, an opportunity to  
2 come in and cure those defects?

3 A We didn't -- we didn't have those defects at the  
4 time that he was terminated. What happened was on  
5 the 22nd of January, we gave him a negligence  
6 letter that came primarily because of the  
7 permitting from Bonnie Watson, her letter and all  
8 those attachments. He didn't get a septic. His  
9 building permit was invalidated. And at that time  
10 is when we gave him a negligent -- we did not know  
11 about the defects in the construction at that  
12 point. We only knew about his extensive increases  
13 in rates for charging items in the construction.  
14 He was coming up more and more with cost. He  
15 didn't get the septic permit and he deceived us  
16 about that. But we gave him the opportunity  
17 because we thought we were gonna get one. We  
18 thought we were gonna have a septic permit within  
19 a few days.

20 We gave him the opportunity in that letter to  
21 get things right so we could get on track. We  
22 didn't know ahead any defects in the construction  
23 at that point. We only knew that he wasn't being  
24 honest with us about the septic permit, and he  
25 wasn't doing the things required to get a draw.

1 answer that?

2 Q Actually it does not. But I'm going to ask the  
3 question again. Prior to filing your lawsuit --

4 A In August.

5 Q -- against Heritage Classic Homes and Danny  
6 Gilbert seeking damages allegedly caused by  
7 construction defects, did you serve him with a  
8 written notice of claim that asserts the  
9 construction defect, the nature of the claim, the  
10 defects, and any description of the results of the  
11 defects if known? And did you give him that  
12 letter? Did you do it, one? If you did, did you  
13 give it by personal service or did you send it by  
14 certified mail? That's just a yes or no.

15 A We didn't file a lawsuit against Heritage Classic  
16 Homes. Knight's filed a lawsuit against us. We  
17 filed a counterclaim that involved Danny and  
18 Heritage Classic in that lawsuit. He was notified  
19 of that, yes.

20 Q In August -- on August 23, 2004, you did not file  
21 a lawsuit?

22 A We filed a lawsuit on the property, not the  
23 construction.

24 Q Those claims you're saying were not included in  
25 this?

1 construction defects?

2 A They were filed in the counterclaim to Knight's.

3 Q Against Heritage?

4 A Against -- yeah. I'm sure that Knight's -- well,  
5 now, wait a minute. I'm not really sure exactly  
6 how Knight's did that. We hired an attorney to do  
7 all that. Knight's filed a complaint against  
8 Danny and/or I don't know about Heritage Classic.  
9 But we were included as defendants in that because  
10 it was on our property. It was filed against him.  
11 They had the contract with him. Was that with  
12 Heritage Classic Homes? I don't know. Their -- I  
13 think that initial paperwork showed something like  
14 Eagle Harbor, Incorporated, as opposed to Heritage  
15 Classic Homes. Heritage Classic Homes became a  
16 part, yes. It all was consolidated. So, yes.

17 Q Who was your contractor?

18 A At what time?

19 Q In the beginning, who was your contractor?

20 A Mr. Gilbert, Heritage Classic Homes.

21 Q You haven't sued Kahler who was a contractor and  
22 you haven't sued Seibel who was a contractor. So  
23 that only leaves Heritage Classic, right? As your  
24 contractor that you sued.

25 A That contract -- this is the contract that's in

1 Heritage Classic Homes?

2 A According to the contract that goes with this, we  
3 couldn't pay him anything once we terminated him.  
4 It's very specific in here. You can't give him  
5 any more money.

6 Q Okay. Any more money. How much have you given  
7 him?

8 A Prior to the terminating?

9 Q Ma'am, you just said you can't give him any more  
10 money. I'm asking you how much have you given to  
11 Heritage Classic Homes?

12 A We gave him the \$2,000 down payment.

13 Q What was that for?

14 A Well, it was written out to him. But it was --  
15 well, it was to buy the land.

16 Q Okay. We're talking about -- this about -- I'm  
17 sort of focused on the construction.

18 A Okay.

19 Q Okay. I'm asking how much did the Prices pay to  
20 Heritage Classic Homes for the work he did?

21 A We didn't pay him anything for the work that he  
22 did.

23 Q And you never paid him anything? You never paid  
24 Heritage anything, have you?

25 A Not to my knowledge, we haven't. We gave Danny

1

2

(Brief pause.)

3

4

Q Mrs. Price, I think I marked yesterday in haste when these were being tendered up. I think it's No. 5. Oh, you have it? Okay. Correct. That's No. 5. If you would, please, turn to Article 4, third page, I believe. And there's some underlying there. I'm not sure who did that. But under contract sum if you could direct your attention to 4.1. And the subparagraph there, if you could publish that for us, please?

10

11

12

13

A The subparagraph.

14

Q Begins with "an estimate sheet."

15

16

17

18

19

A Okay. It says, "An estimate sheet dated the 13 September is attached to this contract and gives a cost estimate of work to be done. The owner assumes responsibility for any costs exceeding that cost in each description."

20

Q Okay. Thank you.

21

22

A But you realize, of course, this is a stipulated sum.

23

Q Ma'am, thank you. I didn't ask that.

24

25

MR. HUBBARD: Thank you. I have no further

1 partnership? Eagle Harbor is part of a  
2 partnership with Ms. Fox, not that she's an agent  
3 of specifically Eagle Harbor, Inc.?

4 A Correct.

5 Q Okay. Now, looking at that exhibit, do you have  
6 any knowledge of any paperwork in your chain of  
7 title that where Ms. Fox agreed to adopt those  
8 covenants as binding on her property?

9 A I do not.

10 Q Okay. Now, the Exhibit No. 24, there was some  
11 questions about it, about attorney fees and costs.  
12 Now, have you received invoices from me for  
13 attorney fees and costs up to through the date of  
14 this trial?

15 A No..

16 Q Have you received an invoice from Mr. Carter or  
17 the other experts who have testified?

18 A No.

19 Q So you anticipate receiving additional legal costs  
20 and expenses?

21 A Oh, absolutely.

22 Q Okay.

23 A Yeah. Those would not even be addressed here.

24 Q Now, when you said -- you made some comments about  
25 this not being true and accurate or no way to tell

1 Q Okay. Now, Mr. Hubbard asked you did you send any  
2 kind of certified letter to Mr. Gilbert about --  
3 where is your No. 2? You have your stack of  
4 documents over there. Track those down.

5 A Here's the contract.

6 Q Nope. Nope. Looking for your negligence letter.

7 A It's not up here.

8 Q It may have been from the prior stack.

9

10 MR. JACKSON: Court's indulgence for just a  
11 minute.

12

13 Q Plaintiffs' Exhibit No. 12. At this time, did you  
14 send this to Mr. Gilbert?

15 A We did. We actually hand carried it as well.

16 Q Okay. And at that time, were you still trying to  
17 work with him to move forward on your construction  
18 project?

19 A Certainly. Certainly. We still thought we could  
20 get him to get going. Yeah.

21 Q And what was his response to that?

22 A Well, he really didn't say a whole lot. We were  
23 in there. We handed it to him. He didn't say too  
24 much at the time. But within the next two or  
25 three days, we talked a couple of times before we

1 Q I'm sorry. I'm sorry. Did you pay Heritage  
2 Classic. Correct. Did you pay any subcontractors  
3 on the job?

4 A After we fired him?

5 Q At any time did you pay any subcontractors that  
6 were Mr. Gilbert's responsibility or Mr. Heritage  
7 Classic's --

8 A Yes, we did pay.

9 Q Who did you pay?

10 A We paid B&B dirt guys. Some people that had done  
11 some obvious work on the land.

12 Q Okay.

13 A And he was trying to get payment from us for that.  
14 But the guy came and talked to us, and we gave him  
15 some money for doing that work even though Gilbert  
16 had hired him.

17 Q Okay. How much did you pay him? Do you remember?

18 A Well, the invoice is in there and the check. I  
19 think around \$3500, maybe.

20 Q Okay. Now, what is your understanding of the draw  
21 requirements for the first draw for Mr. Gilbert to  
22 receive payment? Looking at a contract document?

23 A I'm looking at the draw requirements.

24 Q All right. Please tell the Court what exhibit  
25 number you're looking at.

1

2 Q As part of your Knight's Redi-Mix lawsuit, did you  
3 notify Heritage Classic Homes and Mr. Gilbert of a  
4 right to inspect the concrete piers and stuff  
5 before demolition?

6 A Yes, sir.

7 Q Okay.

8

9 MR. JACKSON: I believe that's all I have on  
10 redirect, Your Honor.

11 THE COURT: Anything further, gentlemen?

12 MR. FERRARA: Very briefly, Your Honor.

13

14

15

16

17

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21

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25

- 1 Q Right.
- 2 A Right.
- 3 Q Did you pay more than \$150 to Mr. Scott for legal  
4 fees?
- 5 A He gave us back our retainer. So it's not on  
6 here.
- 7 Q The \$150, though, is.
- 8 A He did not give us back that money.
- 9 Q Okay. So if we look at Plaintiffs' Exhibit No. 23  
10 and the green section -- I'll hand that to you --  
11 on the second page, \$927.04 to \$150 legal,  
12 Peterson and Scott. Is that the 150 you were  
13 talking about?
- 14 A It must be. Is it \$150? I'm not seeing that.
- 15 Q I'm sorry.
- 16 A This one?
- 17 Q Yes, ma'am.
- 18 A Right. That's the \$150 that we paid him for  
19 filing. I guess, a filing fee.
- 20 Q Now, that fee, though, that was for the mechanics  
21 lien, correct?
- 22 A Yeah. He became our representative then. But he  
23 also told us we needed to file against Belinda  
24 Fox.
- 25 Q Right. But he wasn't -- that \$150 was for the

1 dollars off of --

2 A No. Because he charged us for that. He didn't  
3 pay us back the 150.

4 Q I know. But that was the mechanics lien portion  
5 of the case.

6 A No. I can't say that for sure because of the  
7 date. It might have been the filing fee of the  
8 actual complaint against Belinda Fox.

9 Q But it might have also been the mechanics lien  
10 legal defense which started all of this, correct?

11 A Well, I can't say for sure right now.

12 Q Right. And your attorney represented at the  
13 beginning of court when we were starting this  
14 process that you -- hold on -- that you and your  
15 husband have settled the case, the mechanics lien  
16 portion of this case with Knight's Redi-Mix. Did  
17 you hear your counsel state that at the beginning  
18 of this section?

19 A Yes. We have settled with them on that --

20 Q And that --

21 A Not the mechanics lien that Danny had filed,  
22 though.

23 Q Right. I understand.

24 A There's still that.

25 Q And, ma'am, would you agree that that mechanics

1 Q You're pretty sharp.

2 A -- filed against you. So that would be -- that  
3 would be the one against Belinda Fox.

4 Q But you do have the receipt in your folder --

5 A I have the invoice in there.

6 Q -- answer the question. Would you mind? I'll  
7 just give you the folder and you can take a look  
8 and see to answer the question.

9 A Sure. Sure. Absolutely. Let's see. Do you have  
10 the number? The item number. 226, right?

11 Q (No response.)

12 A Oh, it doesn't look like I have the invoice. I  
13 just have the check, the canceled check. And he  
14 didn't -- he wrote this number on there. He wrote  
15 that. We didn't write that. I guess the invoice  
16 is missing.

17 Q So as we're sitting here today, you can't say for  
18 sure that that \$150 was not for the mechanics  
19 lien?

20 A The court record will tell -- will tell us that,  
21 though.

22 Q Sure.

23 A Because they keep an accounting of that. So that  
24 would verify that.

25 Q Okay. All right. Thank you. How many attorneys

1 tab 389 for legal estimated costs when we were  
2 trying to decide if the costs were 6500 or 7,000.  
3 So if we --

4 A See that one is not -- that one is not in there  
5 because it was estimated. I didn't have that. So  
6 you won't find that in there.

7 Q So I've opened up your book here in item number  
8 377.

9 A Right.

10 Q It says 5,000 for legal.

11 A Right.

12 Q Mr. Ginn.

13 A Okay. All right.

14

15 MR. FERRARA: Mark this for identification.

16 (Brief pause.) Any objection to this?

17 MR. JACKSON: I don't think so. I don't  
18 think it has any privileged matters.

19 MR. FERRARA: Okay. Sure.

20 Your Honor, this is a three-page document,  
21 Defendant Fox's Exhibit No. 5.

22 Q I'll hand that to you, ma'am, which  
23 cross-references to your compilation 377 of \$5,000  
24 for legal attorney's fee. On your Plaintiffs'  
25 Exhibit No. 24 you say contract-CT REC. Do you

1 consolidated.

2 Q Which you and your husband agreed at the opening  
3 of court today to voluntarily dismiss that action  
4 against Knight's Redi-Mix according to your  
5 counsel's representation, correct?

6

7 MR. JACKSON: Object to -- the question is  
8 misleading. We agreed that the mechanics lien  
9 portion of that case. There's various crossclaims  
10 and counterclaims relating to breach of the  
11 construction contract and everything else. It's  
12 still viable. And on that, just the mechanics  
13 lien portion.

14

15 A Just the mechanics lien portion.

16 Q And I'll repeat it. I'm sorry. You and your  
17 husband agreed that the mechanics lien portion,  
18 meaning the part of the case Mr. Ginn was  
19 representing you on involving Knight's Redi-Mix  
20 was to be dismissed, correct? Or am I incorrect?

21 A Well, what I gathered was it was strictly the  
22 mechanics lien's cost that we were dismissing.

23 Q And then also your attorney's fees that you paid  
24 to Mr. Ginn --

25 A No.

1 it quickly. Now, with respect to -- well, with  
2 respect to that \$5,000, you can't tell the Court  
3 how much of that about \$5,000 fee that you paid  
4 Mr. Ginn went towards the Knight's Redi-Mix  
5 portion of the case and how much of the 5000 went  
6 to the Fox portion of the case, correct?

7 A Well, there's an appearance form just like that in  
8 the 1855 case file from Mr. Ginn. We primarily  
9 were hiring him for 1855. But he's the one that  
10 actually got the two cases consolidated so they  
11 became one. To us, that fee, that retainer,  
12 belongs to that consolidation not so much to this  
13 one and this much to another.

14 Q Now, if we look at line item 380 on Exhibit 24  
15 it's a -- I believe it's a thousand-dollar  
16 retainer. You testified earlier to Simmons and  
17 Keaveny?

18 A Right.

19 Q Okay. Looking at 380 in the book, you didn't have  
20 a copy of the fee agreement. But do you recall  
21 hiring Simmons and Keaveny for this case and other  
22 matters other than this case?

23 A We hired him to -- he wanted a thousand dollars to  
24 review. The canceled check is there and then  
25 there's another letter. He wanted another

1 A Correct. No, we did not.

2 Q You didn't provide them with a retainer?

3 A No. We just simply paid him a fee to -- and I  
4 think there's a check there, a canceled check. He  
5 wanted that much money to review it before he  
6 would accept it. He wouldn't charge us a retainer  
7 until he actually accepted representation, right?

8 Q Well, you paid an attorney for the Fox case in  
9 other related matters. That's my question. Is  
10 that a fair statement?

11 A Well, that's what that says, yes.

12 Q Well, we want the truth. Is that what you did --  
13 you and your husband did? You paid Mr. Simmons --  
14 Simmons and Keaveny for the Fox case and other  
15 related matters?

16 A We paid him to review both cases.

17 Q Okay.

18

19 MR. FERRARA: Your Honor, at this time I  
20 would move Defendant Fox's Exhibit No. 6, an  
21 August 20, 2007, letter from Simmons and Keaveny,  
22 into evidence.

23 MR. JACKSON: No objection.

24 THE COURT: Any objection?

25 MR. JACKSON: No objection, Your Honor.

1 Q Yeah.

2 A I mean, yes. We couldn't keep paying him just to  
3 review.

4 Q Right. Ma'am, on Exhibit No. 24, line item 385.

5 A That was a retainer that we gave to Mr. Ward for  
6 these two cases.

7 Q Okay. And so when we go to your book for item 285  
8 we should see an invoice for legal expenses of  
9 \$5,000?

10 A Well, I don't have an invoice. What I have is  
11 those two statements that were generated. And so  
12 those are what's in there.

13 Q But those two statements don't total \$5,000 or  
14 anywhere close, do they?

15 A Those statements come from the 2500 for each case.

16 Q Okay.

17 A Yeah. Each one is covered there.

18 Q So out of the \$5,000 that we're talking that  
19 you're claiming in this case, you admit the \$2500  
20 of that \$5,000 was for the Knight's Redi-Mix case?

21 A The retainer was 2500 for both. One case was 2500  
22 the other was 2500. They were consolidated just  
23 about -- right about the same time that either  
24 just before Mr. Ward took over or just after he  
25 took over as representing us. So the two became

1           you anticipate having to go through on this  
2           portion of the recross?

3           MR. FERRARA: Respectfully, Your Honor, it  
4           might just be a few. It might just be two or  
5           three. I just haven't gone through the book  
6           carefully to match it up. But now, I'm  
7           understanding that there's some damages that have  
8           been claimed that are for both cases. And it's  
9           broken out in line item in the book. So I would  
10          only be bringing up those points. So it may just  
11          be one or two more documents, or it may be -- Your  
12          Honor, respectfully, it can't -- it would never be  
13          any more than just the legal section of paragraph  
14          24, which I think, Your Honor, is only  
15          approximately 15 or so line items. That would be  
16          the maximum that it would be. I'm not saying that  
17          it would be.

18          MR. JACKSON: Your Honor, my -- as I recall  
19          on my redirect, I just had her confirm that the  
20          items in there were true and authentic copies of  
21          what she had in there. Not any argument about  
22          splitting these out one way or the other in  
23          reference to the source material. But, I mean,  
24          whatever the Court wants to do in that regard.

25          THE COURT: As far as the initial list that's

1           wants to take a break that I just be given the  
2           opportunity at the lunch break -- I'll just look  
3           and then confirm that there's nothing else to  
4           question Mrs. Price about. Just specifically only  
5           limited, Your Honor, to the exhibits in the book  
6           and related to the legal line items. I don't  
7           anticipate having any.

8           THE COURT: You can certainly take a look at  
9           it during the break. All right. Is there  
10          anything else for this witness other than what may  
11          be --

12          MR. JACKSON: Other than whatever limited  
13          redirect. And I just have a few items to offer  
14          into evidence that are not witness related, that  
15          are just exhibits. I think our case will be done.

16          THE COURT: Why don't we do that. Why don't  
17          we let you step down. You're subject to being  
18          called back up. And tell me what you have as far  
19          as -- you can step down -- what you have that's  
20          non-witness.

21          MR. JACKSON: Yeah, I just have three items,  
22          Your Honor. Item one was an e-email in the  
23          designations of her testimony. I just offer that  
24          as an exhibit and as part of my case in chief. We  
25          can just label it and identify it.

1 Belinda Fox. The deposition of Mrs. Fox is very  
2 small. I planned on calling her as a witness  
3 anyhow, Your Honor. So I would say that that --

4 THE COURT: I'm not sure I'm following. We  
5 got the designations here. Are you saying she  
6 wants to make designations in response?

7 MR. JACKSON: I think what he's saying in  
8 lieu of them saying I want this in, I want this  
9 in, I want this in, we'll just offer the  
10 depositions themselves. Is that what you're  
11 saying?

12 MR. FERRARA: Yes. I mean --

13 MR. JACKSON: I don't have an objection to  
14 that with it becoming part of the record. Either  
15 way. Because I just want to be able to argue from  
16 this testimony. That's all.

17 THE COURT: So would that resolve -- the  
18 depositions would be in their entirety? Is that  
19 what we're saying?

20 MR. JACKSON: I have no objection to doing  
21 that.

22 MR. FERRARA: Yes, Your Honor.

23 THE COURT: They'll come in ricketed by this  
24 which is essentially your --

25 MR. JACKSON: It's the portion I designated

1 a separate exhibit with all of them designated.

2 And the final thing, Your Honor --

3 THE COURT: As to the DHEC letters, any  
4 objections?

5 MR. FERRARA: No, Your Honor.

6 THE COURT: Admitted without objection then.

7 MR. JACKSON: And I can discuss this in more  
8 detail with counsel in the break. Your Honor, in  
9 a lot of your rulings on those two letters, I've  
10 been in contact with the Army Corps of Engineers  
11 and James Chowick (ph) their attorney about, A, if  
12 they could get a witness here to testify about  
13 those letters. But he says they don't let their  
14 federal people testify. But he did provide me  
15 with a certification for those records from a  
16 custodian that prepared in ordinary business. And  
17 it's a digital copy which I can go and get a copy  
18 made for those two records.

19 THE COURT: All right. Any objection to the  
20 presentation of the digital?

21 MR. JACKSON: I'll show it to you.

22 MR. FERRARA: No, Your Honor. I can -- as  
23 long as I'm able to ask Mr. and Mrs. Price in our  
24 case about those letters. I'll address our  
25 concerns, I guess, on examination.

1 THE COURT: We'll break for an hour. Be back  
2 here in an hour. And then we'll proceed at that  
3 point with whatever follow-up on the recross as  
4 may be necessary, okay.

5 MR. FERRARA: Thank you, Your Honor.

6 THE COURT: Thank you.

7 MR. JACKSON: Thank you, Your Honor.

8

9 (Whereupon, Plaintiffs' Exhibit No. 41,  
10 Deposition Designations, was received  
11 into evidence.)

12

13 (Whereupon, Plaintiffs' Exhibit No. 42,  
14 Affidavit, was received into evidence.)

15

16 (Whereupon, Plaintiffs' Exhibit No. 43,  
17 Certification, was received into  
18 evidence.)

19

20 (Lunch recess was taken from 12:31 p.m.  
21 until 1:33 p.m.)

22 THE COURT: Y'all are set to go?

23 MR. JACKSON: Yes, Your Honor.

24 MR. FERRARA: Yes, Your Honor.

25 THE COURT: Okay. All right. Mr. Ferrara,

1 Just go ahead and ask her for identification for  
2 right now.

3 MR. FERRARA: Your Honor, may I approach the  
4 witness?

5 THE COURT: Yes.

6 - - - - -

7 RE-CROSS-EXAMINATION

8 BY MR. FERRARA (Continuing):

9 Q Ma'am, before we took a break we were talking  
10 about Plaintiffs' Exhibit No. 23, and I'm handing  
11 you a document that has been marked for  
12 identification as Defendant Fox's Exhibit No. 8.

13 A Okay. This is the Chellis and Frampton?

14 Q Yes, ma'am.

15 A Okay.

16 Q And during the break I looked through your  
17 notebook of receipts. And I'll ask you the  
18 document that you have that's in your hand right  
19 now, Defendants' Exhibit No. 8, is that a copy of  
20 a check and legal services agreement you had with  
21 Chellis and Frampton?

22 A It is, yes.

23 Q And it's signed by you as well on the last page?

24 A Yes.

25

1                   9, Bank Statement, was received into  
2                   evidence.)

3  
4                   (Whereupon, Defendant Fox's Exhibit No.  
5                   10, Settlement Statement, was received  
6                   into evidence.)

7  
8    Q    Ma'am, if you recall earlier when we looked at  
9           Plaintiffs' Exhibit No. 24, I believe it's page 7,  
10          it was the legal expense we talked about earlier  
11          today, the \$8,000 that's on line 153.

12   A    Right.

13   Q    And your prior testimony was that you believed  
14          that full \$8,000 fee to be for this case involving  
15          the Foxes only, correct?

16   A    Only?

17   Q    Yes, ma'am.

18   A    No.

19   Q    You did not? Okay. I misunderstood you.

20   A    No.

21   Q    So what is your testimony now as you understand  
22          about the \$8,000 reimbursement that you're seeking  
23          from the Foxes?

24   A    It's not any different than it was earlier. We  
25          hired them for both of these cases because we were

1 Q Well, you're claiming -- you're just claiming the  
2 \$8,000 in total for legal expense that you paid  
3 Chellis and --

4 A For retaining them to do this two cases.

5 Q Okay. All right. Moving on. Let's look at line  
6 item 396 on that same page on Exhibit No. 23.

7 A Twenty-three.

8 Q Twenty-four. I'm sorry. I'm sorry. Plaintiffs'  
9 Exhibit No. 24.

10 A On the same page. What number?

11 Q Yes, ma'am. 396.

12 A 396. It's kind of hard to find. Okay. This is  
13 the subscription, Westlaw.

14 Q Yes.

15 A Okay.

16 Q You testified earlier to your attorney that you  
17 had receipts totaling \$1572.90 and the book,  
18 correct?

19 A We have -- well, I can't tell you there's  
20 100 percent of the receipt there because it was a  
21 subscription that once started it went monthly  
22 until the end of December. I'm not sure I had an  
23 actual statement document for each month.

24 Q And so in truth the --

25 A But most of the months are there, I mean.

1 was modified from 5.25 percent, your old loan that  
2 you had with National City. And then after you  
3 refinanced it, it turned out to be 5.375?

4 A No. This transaction here, this history here, is  
5 during the construction loan. We did assume their  
6 permanent loan. I mean, that's why we refinanced  
7 because we were given calculations that the  
8 payment -- in fact, we made one payment that's in  
9 the book -- was over \$2,000. And the initial loan  
10 paperwork that we had from them, the payment was  
11 going to be like 1500. And then it went up, it  
12 went even higher than that. So that's the reason  
13 why we went to USAA who gave us a monthly payment  
14 of 1500.

15 Q Right. Which was that 5.375 on your new permanent  
16 loan?

17 A Okay. The interest rate, right.

18 Q Well, yesterday, do you --

19 A Some how -- well, I can't say that I particularly  
20 noticed the interest rate. But what we were  
21 paying attention to was the monthly rate the they  
22 were going to charge us as opposed to what USAA  
23 was gonna charge us.

24 Q Sure. Yesterday your testimony --

25 A That's what this calculation is all about.

1 A No, no, no.

2 Q -- incur these closing costs?

3 A No, no, no. The construction loan interest is  
4 what Ms. Zerbst was talking about. Your  
5 construction loan is going to double. Your  
6 construction loan, that means if it's not done by  
7 May whatever date, we're going to start charging  
8 you 11-point something during the construction.  
9 Now, once we got to the end of the construction,  
10 we still found that the interest rate that they  
11 were going to charge for the permanent loan was  
12 still higher. And I actually have a document that  
13 -- I think it was 7 percent is what she told me  
14 and the loan paperwork. And so we did get this  
15 lower interest rate. We were never getting an  
16 interest rate of 5.25.

17 Q Even though the document says the interest is  
18 5.25?

19 A It says right here the date of payment,  
20 November 1, 2004. But the actual payment we made  
21 in December was 21 -- over \$2100. Now, this  
22 particular -- if I had anything to hide, I  
23 wouldn't be giving you this. But this particular  
24 rate did not compute to me with \$2100 for a  
25 payment. So there was a significant difference in

1 not -- we were not given any document about that.  
2 We found that when it came time to finish and we  
3 were going to be looking at the permanent loan,  
4 they told us how much that permanent loan payment  
5 was going to be. And that's when we went to  
6 refinance with USAA.

7 Q Thank you, ma'am.

8  
9 MR. FERRARA: Your Honor, as a housekeeping  
10 matter, before the lunch break there is a  
11 documented that I identified, questioned the  
12 witness about, and I failed to move it into  
13 evidence. Your Honor, Defendant Fox's Exhibit  
14 No. 7, disbursement statement. And at this time,  
15 I don't believe there was an objection, but at  
16 this I would --

17 MR. JACKSON: I need to see it again.

18 MR. FERRARA: Sure. Here it is. Here it is.

19 MR. JACKSON: Yeah. I remember that. That's  
20 fine.

21 THE COURT: With no objection, seven.

22  
23 (Whereupon, Defendant Fox's Exhibit No.  
24 7, Disbursement Statement, was received  
25 into evidence.)

1 case.

2 THE COURT: You can step down, Mrs. Price.

3 THE WITNESS: Can I take this?

4 MR. JACKSON: Sure. I guess --

5 THE WITNESS: There's something missing here.

6 THE COURT: And what number will this  
7 certification be?

8 COURT REPORTER: It's 43, Plaintiffs' Exhibit  
9 No. 43.

10 THE COURT: Plaintiff's 43?

11 COURT REPORTER: Yes, sir.

12 THE COURT: Thank you. So are we ready to  
13 proceed with the defendant's case?

14 MR. FERRARA: We are, Your Honor. Very  
15 briefly, just for the record, Your Honor, I had a  
16 few motions.

17 THE COURT: All right. What are those?

18 MR. FERRARA: Your Honor, respectfully,  
19 defendant's Belinda Fox and Gerry Fox and  
20 additional, Your Honor, to the extent that that  
21 the Foxes activities would be, I guess, as agents  
22 on behalf of Eagle Harbor Phase 2 Development  
23 Partnership, I respectfully request Your Honor to  
24 grant a directed verdict on first and foremost,  
25 Your Honor, Unfair Trade Practices Act. I don't

1 relating to the Partnership. And so I'm not  
2 basing the motion -- I'm not asking the Court to  
3 grant a motion for directed verdict on the  
4 Partnership allegations at this time because I  
5 think there's a question -- a fact for Your Honor  
6 to rule upon with that.

7 Likewise, Your Honor, for Gerry and Belinda  
8 Fox only, the breach of fiduciary duty cause of  
9 action, we respectfully request you to dismiss  
10 Belinda and Gerry Fox in their own individual  
11 capacity. There's been absolutely no testimony  
12 that Belinda or Gerry Fox owed a duty to the  
13 Prices considering their testimony. Defendants'  
14 Exhibit No. 2, Your Honor, respectfully does --  
15 and it's in evidence. It's A contract from  
16 Belinda Fox, which I understand the Prices to take  
17 as the basis of the duty for the negligent -- or  
18 for the breach of fiduciary duty. But  
19 respectfully, Your Honor, when we consider the  
20 statute of frauds that this sale of Lot 20 is a  
21 real estate transaction that the statute of frauds  
22 and the fact that it's a contract between the  
23 parties and requires a writing makes it impossible  
24 for the Prices to maintain a breach of fiduciary  
25 duty based upon any relationship between the

1 MR. HUBBARD: Okay. Your Honor, I would also  
2 join Mr. Ferrara in his motion for the unfair and  
3 deceptive trade practices against my clients,  
4 Heritage Classic Homes, Inc., Danny Gilbert, the  
5 Partnership as it's alleged, and Eagle Harbor,  
6 Inc. As the testimony showed, these were folks  
7 that originally got together to build a boys home.  
8 And there been no evidence that any other  
9 development properties that have gone forward with  
10 these entities. It's a one time offering. And so  
11 I would ask that that claim would be dismissed.

12 In addition, I move that all construction  
13 claims be dismissed against Danny Gilbert in his  
14 individual capacity. While Danny Gilbert is with  
15 Heritage Classic Homes, there's been no offer of  
16 evidence or testimony that it wasn't anything  
17 other than Heritage Classic Homes that the Foxes  
18 entered into -- sorry -- that the Prices entered  
19 into a contract with for the construction of the  
20 home. And therefore, I'd ask that he'd be  
21 dismissed individually from that.

22 I have information motion, Judge, and that is  
23 a motion to dismiss the construction claim against  
24 all of my defendants or all of my clients as it  
25 stands. And I base that on South Carolina statute

1 briefing that issue. For purposes of the motion  
2 today, I'll deny it on the basis I believe it is  
3 probably waived as a result of the time frame  
4 involved on this that there's supposed to be a  
5 motion, I believe, is contemplated to enforce  
6 that. And there was no motion. That would have  
7 been appropriate ten years ago if there was a  
8 request to do that. I'm not sure that it was  
9 properly presented. So at this point, I'm gonna  
10 say it's waived.

11 As to dismissing the construction claim as to  
12 Mr. Gilbert individually, I'll deny that as well.  
13 The contract indicates it's Mr. Gilbert and the  
14 corporation. In fact, I think that the mechanics  
15 lien that was filed by Mr. Gilbert had Mr. Gilbert  
16 doing business as the corporation. So we'll leave  
17 him in individually on that construction claim.  
18 As to the Unfair Trade Practices Act, at this  
19 point I'm going to deny that as well. But that  
20 one, I'm not sure how that's gonna hold up upon  
21 further consideration as to him. Because I  
22 believe you're right, it does seem that the bulk  
23 of unfair trade practices focus is as to the  
24 representations on behalf of the Partnership. But  
25 I'm not sure if that would continue against him

1 Q Okay. And how long have you been working for  
2 Berkeley County?

3 A Getting ready to go on two years.

4 Q Two years. Okay. My office sent a subpoena over  
5 to you and I appreciate you appearing today. This  
6 action that you're here on and we need your  
7 testimony about concerns Lot 20 which is know as,  
8 I believe it is, 1109 Saddlehorn Drive.

9 A Okay.

10 Q Did you have a chance to look at the zoning  
11 requirements as it relates to Saddlehorn Drive in  
12 Eagle Harbor?

13 A I've only seen the parcel only a couple of times.

14 Q Okay. Do you know what the zoning requirement is  
15 for that area of Berkeley County?

16 A Its that zoning Flex 1?

17 Q Yes. That's what I'm asking you.

18

19 MR. JACKSON: Your Honor, I think he needs to  
20 testify whether he knows about the zoning before  
21 Mr. Ferrara provides answers.

22 THE COURT: I agree. Ask him the question.

23 MR. FERRARA: Sure.

24 THE COURT: I wasn't sure if that was an  
25 answer or a question. So ask him again.

1 A The subject property as far zoning as concerned  
2 could be subdivided as long as they met the  
3 requirements, yes.

4 Q As they long as they met the requirements being  
5 the minimum square footage you talked about?

6 A Correct.

7 Q And then, additionally, approval from DHEC is not  
8 required if the subdivision lot is going to be in  
9 between family members, correct?

10

11 MR. JACKSON: He's leading.

12 THE COURT: Just ask the questions --

13 MR. FERRARA: Sure.

14 THE COURT: -- leading.

15 MR. FERRARA: Sure.

16

17 Q Mr. Adley, is there any other government agency  
18 involved in the determination of subdividing Lot  
19 20 other than Berkeley County?

20 A I'm not quite sure what you mean.

21 Q Sure. I'll ask you this: If the owner of Lot 20  
22 came to Berkeley County to apply for a subdivision  
23 of Lot 20.

24 A Uh-huh.

25 Q Can Lot 20 be subdivided based upon the square

1 CROSS-EXAMINATION

2 BY MR. JACKSON:

3 Q You mentioned septic tank is an additional  
4 requirement. You're not opining -- well, let me  
5 ask it -- you're not opining in any way, shape, or  
6 form that someone could build a house on each of  
7 those lots, are you?

8 A I'm not you what you're meaning.

9 Q Okay. Well, what do you mean by subdivide?  
10 Mr. Ferrara asked you about subdivide. What do  
11 you mean by that?

12 A To divide the lot into more than one lot.

13 Q So they would get a plat or survey approved by  
14 zoning?

15 A Correct.

16 Q Carving the land?

17 A Yes.

18 Q But that doesn't tell you one way or another  
19 whether they can put a house on each of those  
20 lots, does it?

21 A It doesn't tell you. But every lot has the  
22 associated and allowed uses on that property.

23 Q Right. But they would still have to go through --  
24 apply to get the proper septic tank permit if that  
25 was available?

1 property can support a septic tank or not under  
2 DHEC's regulations?

3 A That's why we request the DHEC approval letter.

4 Q So if you were wanting to get approval through  
5 subdividing to be able to build, you would have to  
6 go through DHEC to try to get a proper permit. Is  
7 that correct?

8 A Correct.

9 Q And if DHEC told you no, then you couldn't build  
10 on that lot. Isn't that correct?

11 A Correct.

12

13 MR. JACKSON: No further questions.

14 THE COURT: Mr. Hubbard, any questions?

15 MR. HUBBARD: No questions, Your Honor.

16

- - - - -

17

REDIRECT-EXAMINATION

18 BY MR. FERRARA:

19 Q Ty, I'll hand you Plaintiffs' Exhibit No. 30 and  
20 ask you on page 2, the middle paragraph, last  
21 sentence, Mr. Houston is saying that the only way  
22 he knows to subdivide the property would be to  
23 have public sewer access. You see that sentence?

24 A Yes, sir.

25 Q Okay. So the question that we're asking your help

1 Give your name, spell your last name for the court  
2 reporter.

3 THE WITNESS: Belinda Fox, F-O-X, is my last  
4 name.

5 - - - - -

6 DIRECT EXAMINATION

7 BY MR. FERRARA:

8 Q Belinda, where do you currently reside?

9 A 160 Loganberry Circle, Goose Creek.

10 Q And you've heard the testimony in this case. If  
11 you could very briefly tell the Court how you got  
12 involved with the Eagle Harbor subdivision?

13 A A neighbor invited us to their home. It was a  
14 group of adults there. And Danny and Liz Gilbert  
15 were there that night. And they had just -- I  
16 think they had just returned from the boys home  
17 where they had worked before. And they were  
18 sharing their vision for a boys home.

19 Q Danny and his wife?

20 A Danny and Liz.

21 Q Right. Right.

22 A But that night -- we didn't really know them, but  
23 they described some of the boys. And the one I  
24 remember the most was they described a boy that  
25 was locked in a cage, and he was being fed through

1 A No, I did not.

2 Q Okay. If you had no communication with them, you  
3 would not have been able to make any  
4 representations about Lot 20 or the neighborhood,  
5 correct?

6 A Correct.

7 Q Okay. And Mr. Gilbert was an agent or signed on  
8 your behalf regarding the Lot 20 contract which is  
9 Exhibit No. 2. You're familiar with that?

10 A Say that again.

11 Q Mr. Gilbert acted on your behalf when selling lot  
12 2?

13 A Yes.

14 Q Okay. And what were your instructions to  
15 Mr. Gilbert, if any, about what your understanding  
16 was about him selling Lot 20 to the Prices?

17 A Well, the property was in my name only. So I  
18 didn't really have a lot to do with that. So I'm  
19 not sure what you're asking. But my husband put  
20 the land in my name. But that didn't -- I wasn't  
21 really interacting with the process.

22 Q Right. Mr. Gilbert was on-site at Eagle Harbor in  
23 his trailer and selling --

24 A Yes.

25 Q -- the lots, correct?

1 Q Today, Belinda, is Eagle Harbor subdivision  
2 progressing along as planned?

3 A The subdivision is progressing. There has been a  
4 road issue that has been resolved.

5 Q Okay. Yeah, we weren't going to talk about that  
6 today. But with respect to -- we've heard some  
7 testimony about the amenities and fences and gates  
8 in the neighborhood. Are you aware of any  
9 problems as we sit here today with the  
10 neighborhood?

11 A No, I'm not.

12 Q Were you ever made aware of, Belinda, of any of  
13 the letters that Mr. Gilbert would've received  
14 from DHEC that are into evidence?

15 A I don't think so.

16 Q Okay. Well, ma'am, Plaintiffs' Exhibit No. 40  
17 with Mr. Gilbert that talks about the problems in  
18 2004 with Lot 20. Did you ever receive a copy of  
19 that letter from Mr. Gilbert or DHEC prior to the  
20 Prices closing?

21 A I don't think I did. I don't know why I would.

22 Q Right.

23 A So not to my knowledge.

24 Q And, Belinda, what I'm asking is that was there  
25 any type of an agreement between you and Danny to

1 A Well, we purchased that property. And, yes, we  
2 did.

3 Q Okay. With respect to the development of the  
4 neighborhood, what was your understanding with  
5 your -- what was your understanding that Danny was  
6 to do with respect to the development of the  
7 neighborhood and specifically phase two?

8 A Well, again, I was in the background. So I can't  
9 be real specific. But I do remember that we  
10 were -- there was another builder and they  
11 approached us about doing something as partners.  
12 And we were just adamant that we do not do  
13 partnerships. So, you know, that was just never  
14 an issue. And my name was on the land. And that  
15 was my participation is that it had been put in my  
16 name. As far as the other details, I was in the  
17 background on that.

18 Q Belinda, looking at Defendant Fox's Exhibit No. 1,  
19 it's signed by you -- the plat is signed by you,  
20 correct?

21 A Yes.

22 Q Okay. And this Defendants' Exhibit No. 1 is a  
23 plat of phase two, Eagle Harbor. And it was --  
24 the engineering work and the planning work was  
25 performed by Stantec?

1 think, five years because of this situation. So  
2 it was -- you know, like you said, Diana, what you  
3 know now. Well, we didn't know anything then what  
4 we were -- you know, the initial phase one was not  
5 without problems, you know. And so, yes we -- so  
6 what is your question? So that's how we -- we  
7 really got involved just thinking about the boys  
8 home. And it just wasn't a simple project.

9 Q Right. And, in fact, Mr. Gilbert advised you and  
10 your husband that he could use his builder's  
11 license and build a boys home at a discounted  
12 cost, correct?

13 A I don't know.

14 Q You don't know that. Okay.

15

16 MR. FERRARA: Okay. Thanks, Belinda. That's  
17 all the questions I have.

18 THE COURT: Cross-examination.

19 MR. JACKSON: Yes, couple of questions here.

20

- - - - -

21 CROSS-EXAMINATION

22 BY MR. JACKSON:

23 Q You mentioned there was some problems with phase  
24 one. What were some of the problems with phase  
25 one?

1 A I'm a realtor.

2 Q Okay. And how long have you been a realtor?

3 A I got my license about 13 years ago, I believe.

4 Q Okay.

5 A After this ordeal.

6 Q Okay. And you say after this ordeal, you mean way  
7 after it or like --

8 A Probably a year or two later.

9 Q Okay. Now, have you sold any lots as a broker in  
10 Eagle Harbor subdivision?

11 A What is your question as a broker?

12 Q Have you sold any lots in Eagle Harbor subdivision  
13 as a broker?

14 A Since I got my license as a realtor?

15 Q Yes, a realtor. I'm sorry.

16 A Yes, I have.

17 Q -- terms -- you have. Okay. Now, you may not  
18 know the answer to this. And if you don't, that's  
19 fine. Let me back up. You said that you weren't  
20 involved in the different things and you said you  
21 didn't know if there were any wetlands. Did you  
22 try to do any investigation to see if there was  
23 any wetlands? Do you know if there was any  
24 stormwater management plan done as part of the  
25 subdivision? Or did you rely on somebody else to

1 Q Sure. Okay. That's fine. And let me see if you  
2 recognize this letter, and if you're familiar with  
3 it, and if not, that's fine.

4 A Well, this is addressed to my husband.

5 Q Okay.

6 A So I would've -- I'm sure I would've seen it then.

7 Q Well, are you familiar with any of the contents or  
8 recall receiving it or discussing it with him?

9 A (Witness reviews document.) Yes, sir.

10 Q Okay. What, if anything, did y'all do in response  
11 to that letter?

12 A Well, my husband had a conversation with  
13 Mr. Gilbert and also asked to meet with the  
14 Prices.

15 Q Okay. What was the conversation with Mr. Gilbert  
16 about?

17 A You would have to ask my husband.

18 Q Okay. You didn't have that conversation?

19 A I did not.

20 Q Okay. All right.

21

22 MR. JACKSON: I'll go ahead and move to offer  
23 this as --

24 COURT REPORTER: Am I marking this one?

25 MR. JACKSON: Yeah, you can mark that one. I

1 MR. FERRARA: Your Honor, at this time,  
2 defendants will call Mr. Danny Gilbert to the  
3 stand. Danica purchased in.

4 THE COURT: All right. Mr. Gilbert, come on  
5 up. You previously have been sworn. You're still  
6 under oath, okay. Thank you, sir.

7 - - - - -

8 DIRECT EXAMINATION

9 BY MR. FERRARA:

10 Q Mr. Gilbert, you've been here throughout the trial  
11 and you testified a little yesterday. And without  
12 duplicating your testimony from yesterday, I'll  
13 ask you, at or prior to the closing of Lot 20 with  
14 the Prices, you were you aware of --

15

16 MR. JACKSON: Leading, Your Honor.

17 Objection, Your Honor. Leading.

18 THE COURT: No leading.

19 MR. FERRARA: Okay. All right, Your Honor.

20 Respectfully, Your Honor, we got -- we've got a

21 claim for indemnification against Mr. Gilbert.

22 And, technically, he's an adverse witness. So I

23 would request permission to lead?

24 THE COURT: Any objections?

25 MR. JACKSON: As long as he declares him a

1 Lot 20 --

2 A Never. Never.

3 Q -- in order to sell the lot?

4 A Never. We got -- we were gonna run a children's  
5 home out there. I mean --

6 Q Right.

7 A -- can't do that.

8 Q You testified about that yesterday. And I'll ask  
9 you because you were brought in as a witness for  
10 the plaintiff. Do you have any additional  
11 background information relating to this  
12 subdivision in Eagle Harbor that you think would  
13 be important for the Court?

14 A Yeah, I do. Phase one was nine lots and then  
15 count the residual property Eagle Harbor owns is a  
16 tenth lot. The subdivision regulations for a --  
17 you know, for a subdivision that's under 15 lots,  
18 way different. No paving, the storm drainage, all  
19 that not needed. You just had to have -- had to  
20 go before planning and zoning and get the plat  
21 approved and that was it. You know, didn't even  
22 have to make roads, you know, passable. But  
23 things changed when it went to phase two because  
24 it was more than 15 lots so then it had to have  
25 the stormwater, you know, the whole thing; the

1 Q Right. And I apologize. I wasn't trying to paint  
2 a picture that you were in a trailer.

3 A No. I wasn't marketing. My point is I wasn't  
4 marketing.

5 Q My question, I guess, sir, is that you were  
6 on-site handling the day-to-day development  
7 activities of phase two, correct?

8 A Yeah. It was convenient for me to do that because  
9 I was there. We were -- at the end of 2004,  
10 October is when we got our first child. Prior to  
11 that, 2003, we were building. We were building  
12 the first house. We were putting in roads for the  
13 boys home. We were putting in the lake. I mean,  
14 I was there every day.

15 Q All of the building and putting in the roads and  
16 things like that, that was done on behalf of Eagle  
17 Harbor, correct?

18 A The whole purpose out there was Eagle Harbor. It  
19 was just a vessel to use to get us to that  
20 particular point.

21 Q Mr. Gilbert, if you can look at Fox Exhibit No. 1,  
22 there's some signatures at the bottom of this  
23 plat. And there's this signature by Eagle Harbor.  
24 Is there not?

25 A Yeah.

1           that we did.

2    Q       Sure. Sure. I think you were just try to let the  
3           Prices know that before when they had you build  
4           their house, you were handling some things in the  
5           background with architectural review. But now  
6           that they have terminated their relationship with  
7           you, you were warning them that they needed to  
8           follow the covenants and restrictions?

9    A       Sure. So myself and Malcolm Brennan, who's an  
10           architect in Charleston, and we were looking for  
11           somebody that had bought a lot out there to be on  
12           the committee. So that we could -- the reason --  
13           the reason the declarant was to have oversight of  
14           what was going in the communities. Because I had  
15           vulnerable, you know, children there. And, you  
16           know, I didn't want rapists or -- you know, I just  
17           didn't want different kind of houses or things  
18           that could affect the 91 acres that we owned in  
19           the middle. So ARB was very important. And then  
20           they fought it because where she put her lot, she  
21           put her new house too far to the road. People  
22           complained about having to pay the fee. And now  
23           they've got -- they've got a mess out there. They  
24           got a mess because they fought the ARB. And, to  
25           me, it's diminished their property values because

1 we weren't doing that. She sent everything to  
2 every agency that exist for the environment. She  
3 did everything. Its cost -- we spent \$120,000  
4 three years ago for a land disturbance permit that  
5 quite frankly we would never had to pay if it  
6 wasn't for her. She's cost -- she's cost numerous  
7 kids money. Numerous kids. Program things that  
8 we could have done with the kids have been left  
9 out because of what she started.

10 Q That \$120,000 that you were talking about, that  
11 came from Eagle Harbor?

12 A It came from Eagle Harbor, absolutely.

13 Q Eagle Harbor. Okay. And you've heard what the  
14 Prices are complaining about. And I'll ask you  
15 this -- in this action, I'll ask you this: It's  
16 absolutely, positively, unequivocally true that  
17 you did not have an agreement with Belinda or  
18 Gerry to misrepresent or shade in any way any  
19 information you might have known at the time that  
20 the lot was sold?

21 A No.

22 Q Lot 20 sold to the Prices?

23 A No. Again, we have to live there. We have to be  
24 there. We have to --

25 Q Yeah. You live in that neighborhood, correct?

1 THE COURT: Okay. Limit the answer to what  
2 was prior to the closing, Mr. Gilbert.

3 THE WITNESS: Gotcha.

4

5 A Prior to her closing?

6 Q Yes.

7 A Have a conversation with who?

8 Q Did you have any discussions with Berkeley County  
9 about the ability to subdivide any lots in phase  
10 two?

11 A Sure, we did. Yeah.

12 Q And so, the Prices -- you heard their testimony --  
13 are claiming that you represented that Lot 20  
14 could be subdivided into two or three lots?

15 A Yeah.

16 Q You heard that?

17 A I did. I said that the lot could be subdivided.  
18 I didn't promise them a drain field. I never said  
19 the word perk. I was taught not to say that.  
20 There is non-buildable -- they can subdivide it  
21 the day that they bought it. Right here, lot  
22 three is a non-buildable lot. They could have  
23 made two other non-buildable lots. And what we  
24 talked about was, you know, our hopes for sewer to  
25 come out there because the children's home was

1 availability of potential public sewer in the  
2 future?

3 A I think so. I think I've had conversations with  
4 DHEC.

5 Q Okay. And that's fine.

6 A Okay.

7 Q That's all I wanted to ask you. And so, was that  
8 your plan when you look at Exhibit No. 1 for Eagle  
9 Harbor, phase two, to have public sewer?

10 A No. It wasn't my plan. It was just -- it's just  
11 a bonus to those people who bought the extra lots.  
12 You know, for Eagle Harbor to have it, you know,  
13 that's our plan in the future because we're very  
14 limited.

15 Q Okay. Danny, you never had any conversations with  
16 Belinda prior to the closing of Lot 20 about any  
17 representations you may have made to the Prices  
18 prior to their closing, did you?

19 A I don't believe so. What specific representation  
20 are you talking about?

21 Q Well, I'm just asking you that the Prices are  
22 contending that you advised them -- and you had  
23 talked about this earlier -- that you advised them  
24 that Lot 20 would not only be subdividable, but  
25 they understood that to be buildable. Did you

1           you can tell the Court?

2       A     Mr. Park -- Mr. Parker will be here. And me and  
3           him -- he's a soil consultant.

4       Q     And I don't want you to testify to what he told.

5       A     Okay. He's a soil consultant that we hired  
6           because when we applied for the subdivision  
7           permit -- you saw the letter that said we had a  
8           limited amount of lots. Very small. But the end  
9           result, you see that we have 20 lots. Well, it  
10          started out at five. And then we had to bring in  
11          Mike Parker. And me and Mike Parker walked every  
12          piece of this property doing soil borings to find  
13          suitable soil for a drain-field system. There was  
14          no perk word there. I don't even know what perk  
15          is.

16       Q     Sure.

17       A     We walked it. He taught me. He showed me the  
18          soil colors. He showed me the grays and the reds,  
19          and when to cull the water table. And he taught  
20          me like I was his son. And I take pride in that  
21          because he's a good person. We did that. We  
22          started out with five or six lots. We ended up  
23          with 20 lots. So there's was the soil done and it  
24          was done for DHEC as well because DHEC had to come  
25          out and check. When Mike Parker called him and

1 letters from DHEC advising you different lot  
2 concerns. But all of those concerns were relieved  
3 or addressed by DHEC prior to your closing of Lot  
4 20, correct?

5 A Yeah. Yes, sir.

6 Q Okay. Do you agree with the Prices' testimony  
7 that DHEC later revoked a permit that they had in  
8 hand due to the DOT encroachment permit?

9 A Yeah, I agree with that.

10 Q Okay. Was that known to you at the time that you  
11 entered into the contract on behalf of Belinda for  
12 Lot 20?

13 A No. No.

14 Q Meaning, I'm asking you.

15 A I'm like -- we hired, you know, expensive  
16 engineers. And people that submitted for permits.  
17 And it was my, you know, my belief that we needed  
18 an encroachment permit or whatever we needed that  
19 that would've been taken care of.

20 Q The encroachment permit turned out to be an  
21 ancillary matter that applied to a few lots in  
22 phase two, correct?

23 A Four lots, yes.

24 Q Four lots. The other lots that are included on  
25 the plat, which is Exhibit No. 1, have drain

1           that correct?

2    A       Yes, it seems that way.

3    Q       Prior to that, had you already received some type  
4           of approval or an agreement by DHEC that your plan  
5           for phase two was going to be accepted?

6    A       Can you say that one more time.

7    Q       Prior to receiving that letter --

8    A       Right.

9    Q       -- you must have met with DHEC and had them come  
10           out and do the samples, walk the phase two, and  
11           give you a preliminary approval?

12

13           MR. JACKSON: Can you clarify which letter.

14           I'm sorry --

15           MR. FERRARA: Sure. I'm sorry. Plaintiffs'  
16           Exhibit 40.

17           MR. JACKSON: Okay.

18

19    A       I don't know. I mean, I can't --

20    Q       Can't remember?

21    A       I can't remember.

22    Q       Okay. Well, if you can, it will help the Court --  
23           you've already testified that you did have  
24           communications with DHEC prior to the plat, which  
25           is Defendants' Exhibit No. 1, being recorded,

1           sir, on Lot 20.

2     A     Right. No, no knowledge.

3     Q     No knowledge. Okay. You heard me ask the Prices  
4           about the plat and the plat specifically  
5           references that no wetland delineation has been  
6           conducted by Stantec. Do you recall that?

7     A     Yes, I do.

8     Q     Okay. You must had a conversation with Stantec  
9           about wetlands at some point?

10    A     No, I can't say that I did. I won't say I didn't.  
11           But I just can't recall that.

12    Q     Okay. Did Eagle Harbor high Stantec to assist  
13           Eagle Harbor in developing phase two in getting  
14           all of the approvals from DHEC and Berkeley  
15           County?

16    A     Not directly. I mean, Stantec was hired by me  
17           and, you know, those who were paying the bills. I  
18           mean, you know.

19    Q     Okay. And Stantec would have told you that you  
20           needed to have a wetland study done, would you  
21           have done that?

22    A     Yeah, we would have had to do that. And then we  
23           would have put it into the price of the lots.

24    Q     Sure.

25    A     And then we would have had to the incur that cost,

1 Q Okay. Danny, why was -- and I'm putting my hand  
2 on it -- but why was the contract with the Prices,  
3 why was it an as-is contract?

4 A Well, every one was out there.

5 Q Okay.

6 A And they had the -- you know, they had the right  
7 to do their own due diligence.

8 Q Right. Did you have any conversations with the  
9 Prices about due diligence and the items --

10 A Sure. Because we agreed on the dates. I mean,  
11 these dates aren't -- they're not arbitrary. You  
12 know, you had to get your financing, proof of  
13 financing. You had to -- you know, you had so  
14 many days to do your whatever, your inspections or  
15 whatever else. These guys are on, you know, a hot  
16 path to get to getting something done real quick.  
17 It's not my fault that they didn't do the work.

18 Q Did your -- who prepared Exhibit No. 2?

19 A I'm sorry. Is this Exhibit No. 2 here?

20 Q Yes, sir. Yeah, the contract for Lot 20.

21 A This contract was given to me by an attorney and I  
22 had a blank form on my computer. So that if  
23 something like this happened, someone came in --  
24 I'm not a realtor. I was just, you know,  
25 facilitating, you know, a service for the people

1 A -- do their own little subdevelopment, I mean, we  
2 were certainly against that.

3 Q Lot 20 was 7.86 acres. If you divide that into  
4 2.86, two acres and three acres, you can have  
5 three lots, right?

6 A You could, yeah.

7 Q Mrs. Price testified, Danny, on page 2 about  
8 the -- her conversations with you, I guess,  
9 regarding hiring or having the ability to hire  
10 either Mr. Spell to review this contract or  
11 another attorney. Do you recall that?

12 A I do. I made it clear. I'm just -- can I speak?

13 Q Well, I'll ask you the quick questions. What was  
14 your conversation, if any, with Mrs. Price  
15 specifically about consulting an attorney  
16 concerning the correctness or duplication of  
17 items?

18 A That was something that she wanted in there.

19 Q Okay.

20 A I'm sorry. I thought you were talking about the  
21 closing attorney because there was some issues  
22 with the closing attorney.

23 Q Well, we can come to that. But this on page 2 the  
24 language about consulting an attorney concerning  
25 correctness and duplication. position?

1 back now.

2 Q Okay.

3 A He's been referred to multiple times. But, you  
4 know, give me kind of a heads up, hey, somebody  
5 came by, you know, told him about what's going on  
6 in Eagle Harbor. Then they came -- if I recall,  
7 they had a trailer behind their car, I think.

8 Q Sure.

9 A But and then they came back. Yeah, they came  
10 back.

11 Q And so, did you give a copy of this two-page  
12 contract to the Prices to take with them?

13 A At one point. I don't know if it was the first  
14 meeting. But, certainly, it was when they were  
15 serious about buying the property then that's when  
16 they came back with the change. And I'd given it  
17 to them as well. I told everybody out there, you  
18 know, you choose your closing attorney, but this  
19 is the one we use and he's very familiar with what  
20 we're doing out there. He's got the master plat.  
21 He's got all that stuff, so.

22 Q Sure.

23 A I didn't tell them they had to use Jeff Spell.

24 Q Sure. I understand that. You heard me ask  
25 Mrs. Price about paragraph 11 the entire

1 a drain field which is, you know, very close to  
2 what the gentleman was saying here earlier. You  
3 can subdivide, but, you know, it's gonna be  
4 non-buildable until you get your DHEC stuff  
5 squared away. And then, again, I went to the  
6 County the other day. I met with the guy and said  
7 can I subdivide this and he --

8 Q Right. And we had the gentleman -- we had the  
9 gentleman come in with Berkeley County, and he  
10 advised the Court on his opinion.

11 A Yes, sir.

12 Q Yeah. Real quick, Danny, paragraph -- hold that  
13 in your hand there -- paragraph 8C, buyer to  
14 receive copy of the covenants and restrictions  
15 from the closing attorney at closing. Plaintiffs  
16 are claiming they were not provided with that, and  
17 they understood that that was not their  
18 responsibility. Did you -- is this part of your  
19 standard contract or did you write this covenant  
20 and restriction language in --

21 A No. It was -- I don't know if it was written in  
22 there by us or it was already there. But I that's  
23 pretty typical. My wife and I just, you know, our  
24 last house that we purchased, we went to the  
25 closing and we asked the closing attorney were the

1 input into what Steve Smith was gonna change on  
2 these things, so.

3 Q And respectfully, I'm just asking you let's just  
4 go back to prior to or with Lot 20 closing.

5 A Okay.

6 Q Back in 2003.

7 A Okay.

8 Q And so, the covenants that I've handed you, was it  
9 your intent that those covenants attached to phase  
10 two at the time of recording?

11 A Yeah. Phase two and phase one.

12 Q Okay.

13 A Absolutely.

14 Q And if you look at the second to the last page, or  
15 maybe the last page, do you have all the lots  
16 listed that --

17 A Yeah, we do.

18 Q That touch and concern those covenants?

19 A Yes, sir.

20 Q At the time that you were acting on Belinda's  
21 behalf with the Prices, was it your understanding  
22 that those covenants were recorded in Berkeley  
23 County?

24 A Yes.

25 Q And that those covenants actually touched and

1 Honor.

2 THE COURT: Mr. Hubbard?

3 MR. JACKSON: I don't get the right to cross  
4 yet?

5 MR. HUBBARD: Yeah. I was gonna say is it me  
6 or him?

7 MR. JACKSON: I'll let him go --

8 THE COURT: I thought you could cross in  
9 full.

10 MR. JACKSON: That's fine. I'll be glad to  
11 do that, Your Honor.

12 - - - - -

13 CROSS-EXAMINATION

14 BY MR. HUBBARD:

15 Q Danny, did you ever -- when you met with the  
16 Prices at any time, did you ever tell them that  
17 they could put a septic tank on the lot?

18 A I don't think I said it that way, but certainly  
19 there's a septic tank on their lot right now.

20 Q All right. Did you tell them -- you mentioned  
21 earlier that you don't use the work perk. Why is  
22 that? Did you tell them the lot perked? They  
23 said --

24 A No. I never used the word perk. Because before I  
25 even knew anything about the subdivision, I hired

1 thinking.

2

3 MR. HUBBARD: Your Honor, may I approach?

4 THE COURT: As you wish.

5

6 Q I'm gonna --

7

8 MR. HUBBARD: I'm not sure what we'll call  
9 this.

10 COURT REPORTER: I don't know. I'd have to  
11 look it up. I don't know right now.

12 MR. HUBBARD: I think I had one exhibit  
13 yesterday. But I don't know if we just called it  
14 Fox or not.

15 COURT REPORTER: You just had one. So we'll  
16 mark it as two. Yeah, it's two.

17 MR. HUBBARD: So call that Heritage Exhibit  
18 No. 2?

19 COURT REPORTER: That's fine, Heritage  
20 Exhibit No. 2.

21

22 Q Danny, I'm handing up what's been marked as  
23 Heritage Exhibit No. 2. Are you familiar with  
24 that?

25 A Yes, sir.

1 Q Okay. So you mentioned earlier you had land  
2 clearing?

3 A So clearing, yeah. So we did the land clearing.  
4 Looks like to me we dug the footings. We put in  
5 the, you know, temporary power pole. Got the  
6 permits. Got all the insurances. You know, all  
7 that stuff taken care of. You know, had the  
8 footing inspected. You know, had the concrete  
9 poured.

10 Q Did the footing pass inspection?

11 A Absolutely.

12 Q And I think you heard Mrs. Price say it's still  
13 there today and they've actually built something  
14 on it.

15 A Yeah. That's convenient.

16 Q Do you have a value -- do you have any idea what  
17 the value for that footing would be?

18 A Well, in this, I think -- right here we're looking  
19 at -- the guy's name that did the footing was  
20 Norwood Wade. Hold on, I'll find it. Yeah.

21 Q Sort of towards the back.

22 A Sure. So the total price for the footing, the  
23 original footing, \$5341 and it looks like 24  
24 cents. So, you know, I mean, you could get -- you  
25 could break that down by linear foot and then find

1 MR. HUBBARD: Your Honor, I'd ask that this  
2 document be entered into evidence as Heritage  
3 Exhibit No. 2.

4 THE COURT: Any objection?

5 MR. JACKSON: No objection.

6 MR. FERRARA: No objection, Your Honor.

7 THE COURT: Entered without objection.

8

9 (Whereupon, Defendant Heritage's Exhibit  
10 No. 2, Transaction Document, was  
11 received into evidence.)

12

13 Q Mrs. Price testified earlier today that you sort  
14 of took them to Lot 20. Is that true? You wanted  
15 them to buy Lot 20. Did you direct them to Lot  
16 20?

17 A No. I mean, it's probably -- I assume this is  
18 probably how it went down. They came in, said,  
19 hey, we're looking for land. Okay, let me see  
20 what's been sold, what's not been sold. This is  
21 what's available. What do you want to look at?

22 Q She also said you talked about amenities. Did you  
23 offer amenities to them?

24 A I offered amenities to nobody. And I'll tell you  
25 where that comes from if I could.

1 love to share it with you to the point where if we  
2 have a swimming pool and your kid throws a chair  
3 in the pool, then we're gonna kick him out. And I  
4 told that story over and over and over to  
5 different people. I never -- if you look at the  
6 covenants that you guys figured out that I  
7 prepared when the lawyer gave them to me, there is  
8 nothing in there, nothing, about a swimming pool,  
9 about anything else. It's cut and dry. Nothing  
10 was ever promised to anybody.

11 Q Okay. Do any of the residents use any part of the  
12 boys ranch?

13 A All the time. All the time.

14 Q What sorts of things --

15 A People are riding four-wheelers there. There's  
16 people fishing in the lake all the time. There's  
17 people with the horses. We have 30 acres of  
18 fences pastures. We tried, you know, having horse  
19 boarders there. You saw the drama yesterday from  
20 one horse person. We had 18 of those people. We  
21 stopped that. And now we give our -- we have our  
22 facility that we for nothing -- because God gave  
23 it to us, we're giving it back. We gave it to  
24 Hope Acres who has horse rescue. So we have 25  
25 rescued horses out there. Except for one horse,

1 permit -- when I went to pick up the permit, that  
2 wasn't -- that wasn't --

3 Q That wasn't a request --

4 A That wasn't it. I mean, I got the building  
5 permit, I started working. You know, I talked to  
6 Berkeley County and I talked to DHEC about this  
7 stuff. You know, there's multiple developments in  
8 places that have started and done this without the  
9 proper authority, putting their stamp on it. And  
10 they continue to run and, you know, it's no  
11 problem. But we got pegged and then we got really  
12 pegged because she kept prying and prying and  
13 prying and sending letters and digging, digging,  
14 digging. And anything that was out there, you  
15 know, was gonna stop.

16 Q What did you have an intention to mislead anybody?

17 A No. No. My intention was to build them a really  
18 nice house.

19 Q Okay.

20

21 MR. HUBBARD: Just a second, please.

22 Q I guess we should talk a little bit about your  
23 relationship once you got going on this -- how did  
24 the relationship go with the Prices once you  
25 started -- once the contract was signed? How did

1 now.

2 MR. HUBBARD: Okay. Thank you, Judge.

3

4 BY MR. HUBBARD (Continuing):

5 Q Danny --

6 A It didn't start that way. It started out, you  
7 know, I'm gonna do what I can do for these folks.  
8 I was supposed to get some money at the beginning.  
9 I didn't get any money. And I kept on doing my  
10 job.

11 Q Did you do some drawings for them?

12 A Did drawings. Did preliminary drawings. Did  
13 drawings. Did modifications to drawings. Was  
14 doing drawings and changing drawings, you know, a  
15 month after the closing.

16 Q Did that have any -- did those changes reflect any  
17 sort of upcharges to the contract price?

18 A Well, I mean, they're addressed in her wanting,  
19 you know, for the extension of time having  
20 interest payments or whatever. But, you know, at  
21 the beginning --

22 Q Let me ask you this: When you had contract, they  
23 had an idea about you could build them a house for  
24 X amount of dollars, correct?

25 A Well, no. They came in my office, what can you

1 A Oh, it's in the exhibit that's attached. Anything  
2 over that amount they have to cover. So it looks  
3 like to me that, you know, I didn't want to spend  
4 any more money. She had no skin in the game. No  
5 skin in the game whatsoever. It was all me. And  
6 so I did say I'm not working anymore unless you  
7 pay me. I absolutely said that because she wasn't  
8 going to pay me. She wanted me to build the next  
9 floor system. To order that floor system was  
10 \$55,000 more. And she did -- additionally, the  
11 Prices asked me for the appliances and things that  
12 they bought. They wanted to take those out of my  
13 first draw. I didn't tell them to buy the  
14 appliances ahead of time. They wanted the  
15 elaborate driveway. They wanted me to eat that  
16 out of the first draw. I needed money to pay me  
17 back for the first draw. So, no, I didn't want to  
18 work for them anymore. It became very toxic. You  
19 know, I consulted with another contractor. And  
20 the contractor said, you know, I would --

21

22 MR. JACKSON: Objection to what another  
23 contractor said.

24 THE COURT: We'll strike that.

25 THE WITNESS: Sorry. I'm sorry.

1 A This is her handwriting on here. She marked this  
2 up.

3 Q Okay.

4 A Just saying. In estimate, she dated 13  
5 September 2003 as attached to this contact that  
6 gives a cost estimate -- estimate for the work to  
7 be done. The owner assumes responsibility for any  
8 cost exceeding that cost in each description. The  
9 only exception to be overhead job management which  
10 will not exceed the amount of 6900 and 9354  
11 respectively. So those were capped. But nothing  
12 else was capped because it was an in-house design.  
13 It was evolving, it was changing.

14 Q Okay. With regard to Eagle Harbor and Eagle  
15 Harbor boys home and the subdivision around it,  
16 have done any other subdivisions or developments  
17 or anything like that?

18 A No. No.

19 Q Have any of your other folks?

20 A No. You know, it was a group of people that said,  
21 hey, let set out to do something good. And how  
22 can we do that? And like I said yesterday, it was  
23 something that could be duplicated, you know,  
24 social entrepreneurship, and we did it. And we  
25 hired the right people. Maybe some of the people

1           yesterday that we took our money and we put it  
2           into the children's home.

3    Q       But this doesn't say half the net profit to Eagle  
4           Harbor Children's Home, does it?

5    A       No, it doesn't. It was my option, my choice to  
6           do. Just like the --

7    Q       But the answer to my question is it only says  
8           Danny and Liz Gilbert, correct?

9    A       Sure.

10   Q       Okay. Now, let's talk about these DHEC letters  
11           that Mr. Ferrara said were routine. I know I had  
12           a specific exhibit on those. Here we go. this is  
13           a collection of them. So I'm gonna ask -- this  
14           may make it more convenient. So let's start with  
15           the one in August of 2001.

16   A       Sure.

17   Q       Wouldn't it be fair to say as earlier as that time  
18           you were advised by DHEC that your proposed site  
19           for platted for the boys home, et cetera, had poor  
20           soils for phase two?

21   A       Yeah, absolutely.

22   Q       Okay. So you knew it was marginal soils?

23   A       I did.

24   Q       Okay. And also it says here in the last sentence,  
25           I visited the property -- and this would be the

1 MR. JACKSON: Your Honor, this is dated  
2 October 27, 2005. And you may not have that as  
3 part of that unless you have a copy of this entire  
4 packet. I think have an extra copy.

5 THE COURT: Yeah. Why don't you share that  
6 with me.

7 MR. JACKSON: I'll be glad to, Your Honor.  
8 Here's the same packet that he's looking at.

9 THE COURT: Is this already in?

10 MR. JACKSON: Yes. And all these other  
11 letters are in at various parts. But this is the  
12 business custodian version. And it's a letter  
13 dated October 27, 2005. I better keep it  
14 together. So let's keep this together.

15 MR. FERRARA: I apologize, Derrick. What  
16 number is that?

17 MR. JACKSON: This is the Plaintiffs' Exhibit  
18 No. 42 and the compilation business records.

19

20 Q And let's just look at this letter together.

21 A Sure.

22 Q And it's a notice of violation.

23

24 THE COURT: Which date is that?

25 MR. JACKSON: This is the last -- October 27,

1 Q Sure. Sure. Take a look.

2 A Yeah. I see this letter.

3 Q Okay. And attached to that --

4 A What's the date on that?

5 Q It's the same date. They're all dated the same  
6 date.

7 A The first one was 2001?

8 Q No. They're all dated -- oh, the first DHEC  
9 letter. Right.

10 A Sure.

11

12 MR. FERRARA: Your Honor, respectively, these  
13 documents are already in evidence. And I think  
14 that Mr. Gilbert has already testified that he's  
15 not aware of the contents of those documents. And  
16 I would think that those documents being in  
17 evidence speak for themselves.

18 THE COURT: I'll allow him to ask questions  
19 about it. It's cross-examination.

20

21 Q Okay.. And I would -- did you have a chance -- did  
22 you review those findings of fact?

23 A Yeah. I see them.

24 Q Okay. So while you were cutting these roads you  
25 were also fillig in wetlands?

1 Q Okay.

2 A I don't dispute that.

3 Q All right. I think Mr. Hubbard already asked you  
4 about getting a permit. And I think you said,  
5 well, I just went there and got one. But wasn't  
6 the permit revoked?

7 A For what?

8 Q Your building permit. I should have clarified.  
9 I'm sorry. Your building permit. The permit that  
10 you had that the Prices hire you --

11 A Yeah. We got a building permit and then it got  
12 revoked. Absolutely.

13 Q And why did it get revoked?

14 A My understanding is because it didn't have a DHEC  
15 permit.

16 Q Okay. And who -- and whose responsibility in the  
17 contract documents is it to get all required  
18 permits?

19 A For a house?

20 Q Yeah.

21 A The builder.

22 Q Okay. And you were the builder, were you not?

23 A Yeah. Absolutely.

24 Q So it was your responsibility to get the septic  
25 tank permit and the building permit, right?

- 1 is that your name?
- 2 A Danny Gilbert is my name, yeah.
- 3 Q Okay. So it doesn't say Heritage Classic Homes.
- 4 It doesn't say -- it says Danny Gilbert.
- 5 A Heritage Classic Homes had nothing to do with the
- 6 development at all.
- 7 Q Okay. All right. Now, publish for the Court
- 8 items 10 through 13 in this complaint. Now, you
- 9 had a chance to review the complaint, I assume,
- 10 and discussed with your attorney?
- 11 A No.
- 12 Q So you just told your attorney do whatever?
- 13 A No. I didn't tell my attorney just do whatever.
- 14 Q So you disagree what your attorney wrote?
- 15 A Wrote where?
- 16 Q Look at items 10 through 13 and see.
- 17 A Are you talking about this attorney or this
- 18 attorney over here?
- 19 Q I'm talking about this complaint.
- 20 A Well, you got to specify.
- 21 Q I just did.
- 22 A You want me to look at just 9 through 13?
- 23 Q Ten through 13, please.
- 24 A (Witness complies.) Okay.
- 25 Q Okay. You agree with those statements?

1 A You would have to break it down. You know --

2 Q Well, let me ask you this --

3

4 MR. FERRARA: Respectfully, Your Honor, this  
5 bit of questioning is I don't think relevant for  
6 this action. And that -- I don't believe that  
7 complaint --

8 MR. JACKSON: Your Honor, we pled a violation  
9 of breach fiduciary duty for the development of  
10 the subdivision. He was one of the developers.  
11 His name is on the complaint. This specifically  
12 shows that he had knowledge that he violated the  
13 wetlands. He didn't do a delineation, he dredged  
14 fill, and they were fined for it. I think that's  
15 relevant.

16 THE COURT: Is this a complaint regarding  
17 property that was affected or part of the  
18 development?

19 MR. JACKSON: Absolutely. This is --  
20 absolutely. That was what the other letter  
21 request for omissions involved.

22 THE WITNESS: It's after the sale.

23 THE COURT: Hang on. Hold on. I'll allow  
24 the questions.

25 MR. JACKSON: Your Honor, I'll just offer

1 coming in as the next exhibit, Your Honor?

2 THE COURT: No objection to the copy of --

3 MR. JACKSON: Complaint.

4 THE COURT: -- complaint?

5 MR. HUBBARD: Yes, Your Honor.

6 THE COURT: And how will we number that one?

7 COURT REPORTER: This will be number 45.

8

9 (Whereupon, Plaintiffs' Exhibit No. 45,  
10 Complaint, was received into evidence.)

11

12 Q So what did you do with the proceeds? Or how did  
13 you divvy up the proceeds? I noticed that the  
14 Foxes and the Winns and --

15 A No. It was put into an account at the bank under  
16 Eagle Harbor Homeowner's Association, and it was  
17 paid to a road contractor who patched the roads on  
18 phase two.

19 Q Okay. Fair enough.

20 A Hundred percent.

21 Q All right. Now, were you aware of the requirement  
22 to have a plat approved by DHEC before selling  
23 lots?

24 A Yeah, I think so. Sure.

25 Q And do you recall when you actually had that plat

1 MR. JACKSON: This is part of this packet,  
2 Your Honor, of the public business records  
3 exhibit. And this is a May 18, 2004, letter  
4 addressed to Mr. Gilbert.

5

6 Q Would this be the final date you had approval of  
7 the plans by DHEC for phase two?

8 A I'm not sure. Was this even -- lot 17.

9 Q Okay.

10 A So I'm not sure.

11 Q Okay. You're not sure? Okay. Fair enough. But  
12 it include Lot 20, doesn't it?

13 A I believe so.

14 Q Okay. Now, Lot 20 was sold before this plat was  
15 approved, was it not? Before you received this  
16 final approval?

17 A Let me see the date. I don't know when the lot  
18 was sold.

19 Q You don't know when you sold the lot to the Prices  
20 or enter into that agreement? I'll be glad to  
21 show it to you.

22 A No, you can just give me --

23 Q Okay. Sure. Sure.

24 A And I'll believe you.

25 Q Okay.

1 Q Why did you need to get an encroachment permit?

2 A There had to be -- the way I understand it is that  
3 the four lots that were pumping across the street  
4 on the other side of Leisure had to go under  
5 Leisure and had to be in a sleeve, a pipe sleeve.

6 Q Okay.

7 A And so you had put that pipe underneath the  
8 ground, underneath the road.

9 Q Okay. And whose responsibility is it to secure  
10 that type of permit?

11 A The engineer.

12 Q Okay. And so as developer, you have no  
13 responsibility to secure permits for anything in  
14 the neighborhood?

15 A Well, I would think as a developer you delegate  
16 all those things and you have people do those  
17 things. Apparently, this guy didn't do it.

18 Q Okay. And it was your job to make sure he got it  
19 done?

20 A It was my job to make sure it got done when I was  
21 aware of it, absolutely.

22 Q Okay. And you would concede that caused a delay  
23 in the Prices being able to move forward?

24 A Would I concede? Yeah. No doubt.

25 Q Okay. Now, let me ask you about the entrance to

1 Mrs. Price contacted SCDOT. And then this came up  
2 with, hey, we don't cannot have an official  
3 permit. So I filled out this encroachment permit  
4 so we could -- so we could, you know, satisfy that  
5 particular need.

6 Q Well, you keep on blaming Mrs. Price for these  
7 problems. But aren't they regulations that you  
8 have to abide by as a subdivision?

9 A I don't know if they are.

10 Q You don't know. You developed a subdivision, you  
11 don't know the regulations?

12 A Again, I just said, we delegated people to do the  
13 things that they were supposed to do. That's what  
14 we did. She delegated me to build her house. She  
15 didn't -- you know, it's the same thing.

16 Q So did you ever do the things that DOT required  
17 you to do?

18 A We brought pipe up there to install it. And then  
19 we pulled back on the installation because were  
20 having some issues with the pavement up there, and  
21 we decided to wait until we resurfaced it.

22 Q Okay. Let me show you a copy of the report. I  
23 believe if you will check, this corresponds --  
24 it's dated -- it says road number and it matches  
25 up to your permit number. Can you publish to the

1 MR. FERRARA: No objection, Your Honor.

2 THE COURT: Without objection. How are we  
3 numbering these?

4 COURT REPORTER: The application for  
5 encroachment will be 46, and the SCDOT document  
6 will be 47, Plaintiffs' 47.

7 THE COURT: Okay.

8

9 (Whereupon, Plaintiffs' Exhibit No. 46,  
10 Application for Encroachment Permit, was  
11 received into evidence.)

12

13 (Whereupon, Plaintiffs' Exhibit No. 47,  
14 Encroachment Permit Approval Form, was  
15 received into evidence.)

16

17 Q Are you familiar with the Berkeley County  
18 regulations as they relate to private streets?

19 A No. Not necessarily, no.

20 Q Okay. Who did you hire then to advise you about  
21 the private streets?

22 A About the private streets?

23 Q Right.

24 A Stantec, Cornerstone, and Davis and Floyd  
25 possibly.

1 A Sure.

2 Q And that's the requirement to have some kind of  
3 maintenance agreement for the roads.

4 A Maintenance agreement with who?

5 Q In order to do a private street, you have to have  
6 a maintenance system or agreement in place. I  
7 would represent to you in subparagraph B(3).

8 A Yeah. Something like the homeowner's association.

9 Q Yeah. That's what --

10 A Sure.

11 Q You anticipated my question. So it was your  
12 intent that the homeowner's association served as  
13 the maintenance facility for the road?

14 A Yeah. And there was also -- at the closing for  
15 each lot, there was X amount of dollars that were  
16 supposed to go towards the original maintenance  
17 escrow account.

18 Q Okay. And that was the other part I was going to  
19 ask you about. You're supposed to have a thousand  
20 dollars for each lot, right?

21 A I don't know how much it was. But I know that the  
22 attorney, the closing attorney should have taken  
23 that out.

24 Q Okay. I represent to you that's also in B(3).

25 A Oh, that's fine. I mean, I agree with you on

1 Q Okay. And I believe the declarant -- and I don't  
2 have -- I won't bother to try and track them  
3 down -- but I believe the covenants list the  
4 declarant as being Eagle Harbor, Inc.?

5 A Yes, sir.

6 Q Okay. And I believe it also refers to the  
7 declarant as owning certain real property attached  
8 in the plat. And the plat describes phase two of  
9 Eagle Harbor. Is that correct?

10 A I don't know.

11 Q Well, I'll represent to you that's what the  
12 evidence shows. And did Eagle Harbor, Inc., ever  
13 own any part of phase two land?

14 A Yes.

15 Q Okay. What part of phase two land did it own?

16 A The two pits that were across the street from --

17 Q Okay. So we have two pits that might be subject  
18 to the covenants. What about Lot 20?

19

20 MR. FERRARA: Objection, Your Honor. Move to  
21 strike that last comment. It wasn't a question.

22 THE COURT: What about 20?

23 MR. JACKSON: I'll withdraw the comment.

24

25 Q Lot 20, did Eagle Harbor, Inc., ever own Lot 20 or

1 MR. FERRARA: Object to the form of the  
2 question, Your Honor. Compound.

3

4 Q Okay. Have you ever had --

5

6 MR. JACKSON: I'm sorry. Please, Your Honor  
7 it.

8 THE COURT: Go ahead and break it down.

9 MR. JACKSON: I will break it down.

10

11 Q Have you ever had Berkeley County code enforcement  
12 cite you for a violation for not obtaining a  
13 building permit?

14 A Not that I'm aware of.

15 Q Let me show you these documents and ask if you can  
16 look at these and see if you recognize these at  
17 all.

18 A Sure. (Witness complies.) It looks like it's for  
19 the second house at the boys home.

20 Q Okay. May I have the exhibits back?

21 A Sure. Can I --

22 Q Sure. Please, take your time. Make sure you're  
23 familiar with it.

24 A Well, it says it's on hold for planning,  
25 engineering, and legal. I don't know why.

1 building.

2 Q Okay. So you weren't building the barn?

3 A No. It was JW Aluminum was building the barn.

4 Q Okay. But as a developer and having a barn built  
5 on your land, you weren't responsible for trying  
6 to ensure that it was properly done?

7 A Again, I did. I ensured it. I went to the County  
8 and said hey, I've got a volunteer group that's  
9 gonna build us a barn, what do we need to do? And  
10 you got different stories from different people.  
11 Originally, they said it's fine.

12 Q Okay. What about the second one? It says, "Terry  
13 will give Mr. Gilbert a call to pick up the plans.  
14 Permit application has been denied. Requested  
15 information has never been submitted and the  
16 application is six months old."

17 A Yeah. That was probably for electrical for --  
18 what is it for? It's for something we never did.  
19 That's why it's not turned on. I mean, you're  
20 twisting this around.

21 Q Well, doesn't it show they were requesting  
22 information that was never supplied?

23 A On a permit that was never picked up because the  
24 work was never done.

25 Q Okay. So you applied --

1 Carolina Secretary of State?

2 A Yes.

3 Q And they require you to file certain audits and  
4 reporting information?

5 A Yeah.

6 Q Okay. And that purports to be a notice of a  
7 violation from them. Do you recall receiving  
8 that?

9

10 MR. FERRARA: Your Honor, at this time I  
11 would just object to referencing this document as  
12 being properly authenticated. And I'm not sure of  
13 the relevance.

14 MR. JACKSON: Well, I just asked him does he  
15 recall the document. It's in the process of being  
16 authenticated. It's addressed, I believe, to him.

17

18 A Yeah. I mean, it looks familiar. I mean, it  
19 looks like something I could have read.

20 Q Did you file reports with the South Carolina  
21 Secretary of State?

22 A Yeah. Yeah, we do.

23 Q Okay. And what's the purpose of those reports?

24 A To make sure we're a good charity.

25 Q Okay. And make sure they have up-to-date

1 THE COURT: How is that relevant to what  
2 we're doing?

3 MR. JACKSON: Because Carl's already argued  
4 that Heritage Classic has nothing to do with this  
5 development. Yes, he's blending the two. He's  
6 using Heritage Classic Homes for the office, for  
7 the sell of Eagle Harbor stuff. He's building  
8 homes out there. And this next exhibit, Your  
9 Honor, I would proffer to the Court he has to  
10 disclose some of those relationships.

11 THE COURT: So you're saying this letter  
12 disclosing relationships which are relevant?

13 MR. JACKSON: Well, yeah. Your Honor, I'm  
14 saying that it refers -- some corrections on the  
15 document he supposed to file with the Secretary of  
16 State. And I believe this next document I have  
17 kind of shows what those are.

18 MR. FERRARA: Respectfully, Your Honor,  
19 additionally, I would just urge the Court to not  
20 allow admission of this document on the additional  
21 basis, Your Honor, of hearsay. I do think that,  
22 of course, Mr. Gilbert is free to testify about  
23 his knowledge of the letter or his knowledge of,  
24 you know, of those relationships.

25 THE COURT: I think he already testified that

1 Q And it's my understanding that that document wants  
2 you to disclose certain things about that. Is  
3 that correct?

4 A It looks like -- it looks like, you know, you got  
5 a report here that says if you're gonna use the  
6 truck or, you know, you're gonna use this vehicle,  
7 you need, you know, show that you're using it. I  
8 mean, that's what it looks like to me.

9 Q Okay.

10

11 MR. JACKSON: Here's the other document I was  
12 referring to. That's part of the tax return  
13 supplied -- Eagle Harbor. I think it's probably  
14 an attachment to this. I think that addresses the  
15 concerns that were raised.

16 THE COURT: I'm not sure I'm following the  
17 connection. I see here the only connection would  
18 be as to whether there's a mobile office that  
19 Heritage Classic Homes used --

20 MR. JACKSON: Well, Your Honor, I believe --

21 THE COURT: Is that in dispute?

22 MR. JACKSON: Well, if I may, Your Honor,  
23 approach. This is the next exhibit that I would  
24 proffer. That's the correction there.

25 MR. FERRARA: Your Honor, I understand this

1 MR. JACKSON: Thank you, Your Honor.

2

3 BY MR. JACKSON (Continuing):

4 Q So you said you were the Executive Director of  
5 Eagle Harbor?

6 A Yes, sir.

7 Q Does your wife has a role in the organization as  
8 well?

9 A She's the cofounder. She's a director.

10 Q Is she also the assistant director?

11 A Yeah. I guess that's her title. I'm not certain.

12 Q And business manager?

13 A Yeah. That's correct.

14 Q Okay. What about Angie Johnson?

15 A She's a social worker.

16 Q Doe she help you with Heritage Classic Homes as  
17 well?

18 A Angie has -- they have a seal. They can -- but,  
19 yeah, but she's helped me with some documents.

20 Absolutely, yeah. On her time, not on the  
21 company's time.

22 Q Do you know Troy Winn?

23

24 MR. HUBBARD: Can I see it?

25 MR. JACKSON: I'm sorry, Carl. I'm sorry.

1 THE WITNESS: It says that. I didn't say --

2 MR. JACKSON: Okay. Sure. Okay.

3 THE COURT: All right. So what document do  
4 you have and what are you doing with it?

5 MR. JACKSON: Okay. This is a letter from  
6 Troy Winn who was one of the partners he just  
7 testify to. It raises some concerns that he has  
8 about commingling funds being an executive  
9 director in a profit business.

10 THE COURT: Yeah. I haven't heard the  
11 authentication, I haven't heard that he understood  
12 what was where or that it was to him. Maybe  
13 mistaken, but I don't think you've was gotten  
14 there yet.

15 MR. JACKSON: No, no. I'm not going to offer  
16 it as an exhibit. I'm asking him about the facts  
17 alleged in there.

18 THE COURT: Hold on to it then.

19 MR. JACKSON: Okay.

20

21 A Well, I'm not admitting to the facts.

22 Q Well, I'm not saying -- I'm just saying . . .

23

24 MR. JACKSON: I'll skip it, Your Honor.

25

1 did you -- you said before -- I think your  
2 testimony was an agreement to -- did some attorney  
3 gave that to you? That was the agreement to buy  
4 and sell, just to save time?

5 A Yeah, I believe it was Jeff.

6 Q Okay. And who is Jeff Spell?

7 A Jeff Spell is a good friend. We had high school  
8 sweethearts together. He was from James Island.  
9 I was from Goose Creek.

10 Q Okay.

11 A Both dated girls on James Island.

12 Q All right. And was he involved in the  
13 development?

14 A To what capacity?

15 Q Well, that's what I'm asking you.

16 A Not that I understand his role.

17 Q Okay. Let me show you this letter. (Brief  
18 pause.) While he's looking that up and confirming  
19 if he has any objections to it, I noticed on  
20 agreement two it had Jeff Spells name preprinted  
21 on that contract. You know who did that?

22 A Can you show me what you're talking about?

23 Q Sure.

24 A I might have it up here already. I don't know.

25 Q It would be 2, Plaintiffs' Exhibit No. 2, I think.

1 was the designated attorney for an escrow account  
2 for South Carolina Housing Trust Fund. It was a  
3 grant.

4 Q Okay.

5 A I think that's it. I'm -- relating to it.

6 Q Okay. So he was holding some funds that you were  
7 accessing for the development and paying  
8 construction costs.

9 A Yeah. You know, I don't what -- this is probably  
10 not about the South Carolina Housing Trust Fund.  
11 Obviously, it says Jerry left some money there.  
12 And I've got to present something to somebody that  
13 that money is for the subdivision. Yeah.

14 Q Okay. So it would be reasonable to assume that he  
15 was holding money that was used in the  
16 construction of Eagle Harbor subdivision?

17 A It would be reasonable to believe that he's got  
18 some escrow money that Jerry gave them because  
19 that's what is says.

20 Q Okay. Then when you'd ask for money, you'd ask  
21 for a check from Mr. Spell?

22 A I can't recall how the disbursements were made.  
23 That was 15 years ago.

24 Q Let's look at that last -- this letter, for  
25 example.

1 THE COURT: The letters, are those in as 50?

2 MR. JACKSON: Okay.

3 THE COURT: Were they?

4 COURT REPORTER: Well, no. There was one I  
5 marked 49. And then there's a separate one you  
6 gave --

7 MR. JACKSON: Yeah. It was construction --

8 COURT REPORTER: It was 49 and 50. So I'll  
9 just do this one as 51.

10 THE COURT: Let's make sure what's coming in.

11 MR. JACKSON: Yeah, okay. Sure. This is  
12 Exhibit No. 51. And I was going to ask him some  
13 questions and get him to identify it first.

14

15 Q I think my question was did you -- did Jeff Spell  
16 ever represent you personally? You said he tried  
17 to. Do you remember that letter? Is that your  
18 signature?

19 A Yeah. It's my signature, sure. Carbon copy to  
20 Jeff Spell, Doug Cotton. Yeah.

21 Q Okay. So you remember writing that letter?

22 A I don't remember writing it, but it's obvious I  
23 wrote it.

24 Q Okay. Now, can you publish the first line.

25 A "I received your fax this morning."

1 MR. FERRARA: No objection, Your Honor.

2 MR. JACKSON: -- he signed the letter.

3 MR. HUBBARD: No objection.

4 THE COURT: In without objection.

5

6 (Whereupon, Plaintiffs' Exhibit No. 51,  
7 Letter, was received into evidence.)

8

9 Q We're about finished here. So I'll wind it up a  
10 little bit. Now, you mentioned before about those  
11 appliances. Isn't it true that the Prices bought  
12 those appliances and stored them?

13 A We have a 4,000 square-foot storage building.  
14 Yeah, and I let them store those in there.  
15 Absolutely.

16 Q Okay. But they bought it, right?

17 A Yeah, yeah. Absolutely.

18 Q Okay. Now, I'm trying to find your attorney's --  
19 defendant's exhibit that has a list of costs,  
20 20-something thousand, whatever it was.

21

22 MR. JACKSON: Carl, do you know where you  
23 left your exhibit?

24 MR. HUBBARD: I'm sorry -- I'm sorry?

25 MR. JACKSON: Trying to say where you left

1 building on top of that.

2 Q And you have a dollar figure? Do you know?

3 A Well, I think we discussed a dollar figure.

4 Q Okay.

5 A And then, that's all I know. They could've left

6 the other footings. I'm not sure.

7 Q Okay. Now, did you take out from here the

8 Knight's Redi-Mix expenses?

9 A They're not in there. Why would I take them out?

10 Q I thought the copy I saw had some in there.

11 A Well, there's some concrete in there, but that's

12 for the footings. It's not for the slab.

13 Q Okay. So that's not -- so this Knight's Redi-Mix  
14 invoices is not for the stuff that was at dispute?

15 A Right.

16 Q Okay. Now, you testified earlier that the Prices  
17 didn't pay you. Now, did you recommend that they  
18 use National City Mortgage? Did you have any  
19 relationship to Patty Zerbst?

20 A Sure, I had a relationship with Patty Zerbst.

21 Q Okay. Did you suggest that they might want to use  
22 National City Mortgage?

23 A Probably did. I found them to be real easy to  
24 work with.

25 Q Okay. Let's look at that standard form contract.

1 Thank you. What time line are we looking at? How  
2 much more you got?

3 MR. FERRARA: Your Honor, we have Mr. Michael  
4 Parker whose a witness about the soil in the  
5 neighborhood. And I don't anticipate his  
6 testimony to be more than about ten minutes or 15  
7 minutes tops with direct and cross.

8 THE COURT: All right. I need to be able  
9 to -- there's folks in the courthouse here that I  
10 don't have control over. I'd be more than happy  
11 to stay if y'all were. But I don't have control  
12 over everybody else, and they deserve to be able to  
13 go home. So if you can wrap them up in ten  
14 minutes, otherwise we're gonna have to -- they'll  
15 have to figure out what to do to finish it up.  
16 Okay?

17 MR. FERRARA: Yes, sir. Yes, sir. At this  
18 time we would call Mr. Michael Parker to the  
19 stand.

20 THE COURT: And if you think you can't, then  
21 we'll sort it out. I don't want to rush you. All  
22 right.

23 MR. FERRARA: Okay.

24 THE COURT: All right. Mr. Parker.

25 THE WITNESS: Your Honor.

1 A Danny called me to come out to look at some of the  
2 lots that had been turned down by DHEC so they  
3 could get the plat approved.

4 Q And let's go back real quick. If you can quickly  
5 tell the Court, what is your current employment?

6 A I run Coastal Soil Evaluators.

7 Q And what is Coastal Soil Evaluators?

8 A It's a business to help individuals look for  
9 suitable sites on their property for septic  
10 systems.

11 Q And prior to running Coastal Soil Evaluators, did  
12 you work for South Carolina DHEC?

13 A Yes.

14 Q In Berkeley County?

15 A 1972 until I retired in 1999.

16 Q Okay. That's a long time. So that's --

17 A Twenty-eight years.

18 Q Twenty-eight years. Okay. And so, do you have  
19 firsthand knowledge of the soil conditions, sir,  
20 of the phase two of Eagle Harbor? And I'll hand  
21 you this plat to maybe assist you in making that  
22 determination.

23 A Not overall. I mean, the soils on a lot of these  
24 lots are terrible. And that's why a lot of them  
25 had to be pumped offsite. So we had to go with

1 Close to Leisure Lane if you know where that is.

2 A Yes. A lot of them in there, like I say, you  
3 know, we walked that weren't approved. And then  
4 we found some sites on some, you know, so we could  
5 get them approved. Then we got the health  
6 department to come back and reevaluate them to get  
7 approved.

8 Q Did you assist Mr. Gilbert and Eagle Harbor in  
9 that process?

10 A Yes. We found some sites for some of the houses.

11 Q Do you know if -- or can you assist the Court in  
12 opining whether a particular lot can be  
13 subdivided?

14 A An existing lot?

15 Q Yes.

16 A It depends on, again, the soil conditions and what  
17 we call the seasonal water tables. Each lot has  
18 to be so big. And if there's a big enough area  
19 where you could subdivide the lot, then you could  
20 do so. Back then, it all had to be standard  
21 systems. And if not, you know, they had to be,  
22 you know, denied. Now you can get into what we  
23 call engineered design systems which was started  
24 in 2008 where you could -- a lot that was actually  
25 denied, you could get the soil scientist and

1 approve it.

2 Q In your experience, sir, once the County approves  
3 a plat for subdivision, is the process with DHEC  
4 substantially completed with the County before a  
5 plat --

6 A Normally, because they have to have DHEC approval  
7 before they'll approve them.

8 Q Because the County, in your experience, is looking  
9 for some confirmation from DHEC that the plat --  
10 that their preliminarily approving is approved?

11 A Right.

12 Q Okay. And in your experience, did you have any  
13 familiarity with reviewing plats for subdivision?

14 A Yeah. A lot of them I do from scratch.

15 Q Okay. All right. And you assisted Mr. Gilbert  
16 and Eagle Harbor between 2000 and 2004? I  
17 apologize. It's been a long time.

18 A I don't know the dates. But yes, I did a lot -- I  
19 don't know when I started out there, but I spent  
20 many hours out there hunting and pecking on lots  
21 to find good sites.

22 Q Well, this might help. Was that before the roads  
23 were in or after?

24 A I think one of the roads was possibly in partway  
25 and in part with the other. Because I know we

1 MR. HUBBARD: No, Your Honor. We're done.

2 THE COURT: Anything in reply from the  
3 Plaintiff?

4 MR. JACKSON: No, Your Honor.

5 THE COURT: Okay. So I'll take it that we  
6 are complete for today and as to this portion of  
7 the case. Is that right?

8 MR. JACKSON: I think so.

9 THE COURT: Okay. Good job. All right. So  
10 what I'm going to do is ask y'all to double check  
11 with the court reporter to make sure that we've  
12 got all those in there properly identified and  
13 marked. I think I've got copies of everything  
14 already. If I need copies, I may have to rely on  
15 hers' as well. But I just wanted to make sure  
16 y'all get y'all's straight today before we leave.  
17 Okay.

18 MR. JACKSON: Yes, sir.

19 THE COURT: And then what I'm going to do is  
20 I'm going to review what I've got and then make  
21 sure that I've got everything as far as the  
22 records and so forth. If I need any follow up,  
23 I'll get with y'all. In all likelihood, I'll  
24 solicit a draft order from one or all or an in  
25 part depending on what I eventually conclude.

1           putting this together. There's a lot of  
2           information, a lot of documents. I appreciate  
3           y'all's cooperation in moving it forward and being  
4           such good advocates for your clients. Thank  
5           y'all.

6                     MR. JACKSON: Thank you, Judge.

7                                     - - - - -

8                                     (Whereupon, there being nothing further,  
9                                     the trial concluded on Friday, May 4,  
10                                    2018, 4:54 p.m.)

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State of South Carolina ) In the Court of Common Pleas  
County of Berkeley ) Case No: 2004-CP-08-1855,  
1150

Ronald E. Price and Diana R. )  
B. Price, )  
Plaintiff(s), )

vs. )

Belinda Fox, Danny L. Gilbert )  
and Eagle Harbor, Inc., )  
Defendant(s). )

\_\_\_\_\_  
Knight's Redi-Mix, Inc., )  
Plaintiff, )

vs. )

Heritage Classic Homes, Inc., )  
Ronald E. Price, Diana R. B. )  
Price, and Western Surety )  
Company, )  
Defendants, )

and )

Ronald E. Price, Diana R. B. )  
Price, )  
Third Party Plaintiffs, )

vs. )

Danny L. Gilbert, )  
Individually, )  
Third Party Defendant. )  
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Transcript  
of  
Proceeding

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8 APPEARANCES

9 Presiding before:  
10 The Honorable Dale Van Slambrook

11  
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Defendant Fox Exhibits (Click tab to left to view)

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- [denotes interruption/change in thought]
- ... [denotes trailing off/incomplete thought or statement]
- [sic] [denotes word/phrase that may seem strange or incorrect; written verbatim]
- (ph) [denotes phonetic spelling]
- (unintelligible) [denotes not capable of being understood]
- (indiscernible crosstalk) [denotes] multiple speakers at the same time, not capable of being understood]

1 and Diana Price, the plaintiffs.

2 MR. FERRARA: Good morning, Your Honor. Paul  
3 Ferrara. I'm representing Belinda Fox and Gerry  
4 Fox and -- individually.

5 THE COURT: Individually?

6 MR. FERRARA: Yes, sir.

7 THE COURT: All right.

8 MR. HUBBARD: Your Honor, Carl Hubbard for  
9 Heritage Classic Homes, Inc., Danny Gilbert, Eagle  
10 Harbor, Inc.

11 MR. FERRARA: Additionally, Your Honor, just  
12 for clarity to the extent the plaintiffs have  
13 claimed that Belinda and Gerry Fox were agents on  
14 behalf of Eagle Harbor Development Partnership,  
15 and I'm representing my clients to that end as  
16 well.

17 THE COURT: All right. And what  
18 limitations -- you're qualifying the  
19 representation as to Ms. Fox. What qualifications  
20 or limitations or tell me about that.

21 MR. FERRARA: Your Honor, as it's set out in  
22 this case, my clients were disputing that agency  
23 connection, and I'm not sure how the plaintiff was  
24 going to proceed. So that's why I was just  
25 mentioning that. But to the extent that that's

1 standing up. You had something --

2 MR. HUBBARD: Your Honor, the named  
3 partnership, this was just something that came  
4 about as this case progressed. This entity, which  
5 really is not a formal entity, just became named  
6 as a named defendant. But all of the people that  
7 are here allegedly are involved in that claim, I  
8 guess, by the plaintiffs. But there's a  
9 partnership, but it's not, for lack of a better  
10 term, it's not a formal partnership.

11 THE COURT: Okay. That was my understanding  
12 as well.

13 MR. HUBBARD: Okay.

14 THE COURT: Okay. All right. And the other  
15 folks that are involved in other portions of the  
16 case are not here because we are proceeding in a  
17 bifurcated fashion to address the construction  
18 litigation claims and the partnership development  
19 claims not the road issues. Is that correct?

20 MR. JACKSON: That's correct, Your Honor.  
21 There was a bifurcation for that. And largely  
22 that would involve the Concerned Citizens of Eagle  
23 Harbor, Inc., and the Winns and the Foxes. But  
24 the road -- yeah, the road claims are bifurcated.  
25 And I would also note for the Court, we did have

1 late this afternoon for the defendants to start  
2 their case. So with the Court's permission, I  
3 wanted to just release Mr. Adley back to his  
4 office. And then I'll be back in touch with him  
5 later on today and advise him to come back if  
6 that's permissible with the Court.

7 THE COURT: All right. Mr. Adley. Where's  
8 Mr. Adley? Mr. Adley, you're subpoenaed for  
9 today. I'm going to release you for now, but  
10 we'll call you when we need you. Could possibly  
11 be later today, it doesn't sound likely, but more  
12 likely tomorrow.

13 Okay. And you got contact information for  
14 him, Mr. Ferrara? Is that right?

15 MR. FERRARA: Yes, I do.

16 THE COURT: Okay. All right. Thank you,  
17 sir.

18 MR. FERRARA: Thank you.

19 THE COURT: Any other preliminary matters?

20 MR. FERRARA: Your Honor, as a preliminary  
21 matter I recently filed a motion to dismiss for  
22 res judicata and I didn't forward a copy to your  
23 office. And I'm not sure if the Court's aware of  
24 that. I didn't know if Your Honor would want to  
25 entertain that motion before we started, or if you

1 I had a concern with. And it may be resolved by  
2 the time we get to that part of the testimony.

3 THE COURT: What number is that one?

4 MR. JACKSON: I'd have to go to the marked  
5 number -- find out which one it is.

6 THE COURT: Essentially, y'all are agreeing  
7 to the admissibility --

8 MR. JACKSON: Yes, Your Honor.

9 THE COURT: -- of everything except for that  
10 one. And that one is --

11 MR. JACKSON: Yeah, to aid time.

12 THE COURT: -- not necessarily objectionable  
13 but maybe. It is that right?

14 MR. FERRARA: Correct, Your Honor.

15 THE COURT: Okay.

16 MR. JACKSON: Twenty-six and 27 are the ones  
17 that we may have an issue with, Your Honor.

18 THE COURT: And that was the total number?

19 MR. JACKSON: Twenty-six and 27 are exhibits;  
20 Plaintiffs' 26 and 27. They're letters from the  
21 Army Corps of Engineers addressed --

22 THE COURT: What's the total number of the  
23 exhibits that you've got there?

24 MR. JACKSON: Oh, in the stack I think we  
25 have, like, 31 total.

1 MR. JACKSON: Thank you, Your Honor.

2 - - - - -

3 DIRECT EXAMINATION

4 BY MR. JACKSON:

5 Q Mr. Price, where do you live?

6 A 1104 Saddlehorn Road in Summerville.

7 Q And how long have you lived at that address?

8 A Since November of '04.

9 Q Okay. And where did you live before that?

10 A I had a lot of temporary residences in that prior  
11 year to that. But an apartment complex and then  
12 some temporary lodging places.

13 Q Okay. And are you married?

14 A I am.

15 Q And who are you married to?

16 A Diana Price.

17 Q And how long have you been married to Ms. Price?

18 A Since '02.

19 Q Okay. Can you tell me about your educational  
20 background?

21 A High school graduate. Got a college degree while  
22 I was in the service.

23 Q Okay. You said the service. What military  
24 service do you have?

25 A United States Air Force, 30 years.

1 So around May '03 we started looking for a home.

2 Q Okay. Describe that process to me.

3 A We just started going around to different areas  
4 that we ran across while we were here on weekends  
5 and evenings. From Mount Pleasant to Hanahan,  
6 Moncks Corner, and eventually out to Eagle Harbor.

7 Q Okay. So what were some of the places you looked  
8 at?

9 A They were all single-family dwellings. And we  
10 were hoping to get a little acreage with them.

11 Q Okay. How did you learn about Eagle Harbor?

12 A We were in Hanahan looking around and saw a real  
13 estate sign in a yard. And people were out front  
14 mowing the grass. So we stopped and talked to  
15 them a little bit. And it turned out to be the  
16 daughter of Doug Cotton's. And Doug Cotton's  
17 daughter actually built a home in Eagle Harbor.  
18 And Doug talked to us a little bit about what was  
19 going on out here.

20 Q What did he tell you?

21 A Well, he said it was a subdivision that was going  
22 up. And part of that was in support of a boys  
23 home.

24 Q Okay. Was it called Eagle Harbor back then?

25 A Yes.

1 marked as Plaintiffs' Exhibit No. 1.

2

3 MR. JACKSON: And, Your Honor, did I give you  
4 a set of those already?

5 THE COURT: If not, I will -- if you have a  
6 set, I'll take them.

7 MR. JACKSON: Yes, sir. I do have a complete  
8 set, which I put up there to give to you. These  
9 are the ones we're talking about now in order.  
10 May I approach?

11 THE COURT: Thank you.

12 MR. JACKSON: Thank you.

13

14 Q Show you what's been marked as Plaintiffs' Exhibit  
15 No. 1 and ask can you recognize that?

16 A Yes.

17 Q Was that presented to you at one of your meetings?

18 A It was actually in Danny's office. He showed us  
19 the master plan.

20 Q And did he talk to you about that plan or anything  
21 that's gonna be going on?

22 A Oh, yeah. Just like -- you can see the lake. He  
23 discussed the homes that he anticipated going in.  
24 And then he showed the properties that were still  
25 available and not sold.

1 A Yeah. He said that means you can put a septic  
2 tank on there.

3 Q Okay. Now, did you intend to buy 7.86 acres, that  
4 large amount of acres?

5 A Actually, we were looking at something maybe a  
6 little bit smaller. And then as we discussed  
7 that, he indicated well maybe we could sell --  
8 subdivide and sell a lot to help pay for that.

9 Q Okay. And did that become part of one of the  
10 conditions you wanted to place in the contract?

11 A It did.

12 Q And what were you told and what did you put in the  
13 contract about subdivisions?

14 A It says that we could subdivide into two pieces.  
15 And with the approval of the homeowners, we could  
16 probably subdivide into a third as well.

17 Q Okay. When was that contract executed?

18 A This was executed on the 13th of September, '03.

19 Q Okay. And who was the seller?

20 A To me, Danny was the seller.

21 Q Okay.

22 A But actually at the top of the contract it says  
23 Belinda Fox.

24 Q Did you ask about who Belinda Fox was?

25 A He said that she was part of -- he was doing that

1 A I think Diana is the one that actually asked him  
2 who Jeff Spell was, and he said it was the  
3 attorney that handles the closings.

4 Q Okay. Now, did you understand that this was  
5 supposed to be a restricted, gated community?

6 A Yes. In fact, the brick structure to hold the  
7 gates were going up while we were there.

8 Q Did you understand there was supposed to be  
9 restrictive covenants?

10

11 MR. FERRARA: Objection, Your Honor. He's  
12 leading the witness.

13 THE COURT: Refrain from leading, please.

14

15 Q Were there supposed to be restrictive covenants?

16 A Yes.

17 Q Okay. Now, when did the closing take place?

18 A The closing took place the 25th of November.

19 Q Okay. Where did it take place?

20 A At Jeff Spell's office.

21 Q Did you receive any prior notice of this closing?

22 A I received notice of the closing because I went  
23 there. Did I get a piece of paper about that?

24 I'm not sure.

25 Q How much notice did you get for the closing?

1 A No, she was not.

2 Q And who signed for Belinda?

3 A They kept everything and said she would sign it  
4 later.

5 Q Okay. Was Danny Gilbert present?

6 A He was.

7 Q Okay. Now, at the time that you signed the  
8 agreement to buy and sell, did you sign any other  
9 contracts with Mr. Gilbert?

10 A Well, we signed a contract to build the house.

11 Q Okay. And how you find out that Danny was the  
12 builder?

13 A Well, when we went out to see Eagle Harbor at his  
14 office, he was kind of the umbrella. I mean, he  
15 was the guy that was developing. He was the guy  
16 that was selling. He's the guy that was building.  
17 And so it was all put together with Danny in his  
18 office.

19 Q Okay. Let me show you what's been marked as  
20 Plaintiffs' Exhibit No. 5 and ask do you recognize  
21 this document?

22 A Yes....

23 Q What is Exhibit No. 5?

24 A It's a standard form of agreement between the  
25 owner and contractor.

1 things would cost that came out to a total.

2 Q Okay. And when was construction supposed to  
3 commence?

4 A It was -- we were supposedly going to close on the  
5 30th of October. And construction would commence  
6 immediately. And the house was supposed to be  
7 done in 90 days. And . . .

8 Q Did you extend the completion date?

9 A We had to extend the completion date because we  
10 didn't close until the 25th of November. So we  
11 extended the completion date to the 25th of  
12 February to take care of that delay in the  
13 closing.

14 Q So what was your understanding as to when the  
15 house was to be complete?

16 A Twenty-fifth of February, substantially completed.

17 Q Was time of the essence for you?

18 A Well, it was for us because we -- Diana was living  
19 in Ohio at my grandmother's home. And I was  
20 living in pretty substandard housing here in  
21 temporary quarters waiting for this all to take  
22 place. And we had household goods to be delivered  
23 that had to be shipped, that had been shipped and  
24 were put into storage. So time was critical. The  
25 end of February would fit all that for us to move

1 Q Okay.

2 A And there's a draw schedule in here too for the  
3 first draw.

4 Q Okay. And it contains requirements to get the  
5 draw?

6 A It does.

7 Q Okay.

8 A Building permit, septic permit, soil treatment,  
9 request for a disbursement form, a foundation  
10 survey, inspection of property, and a title  
11 update.

12 Q Okay. Now, what other attachments are there  
13 besides the draw schedule and the cost estimate?

14 A There are drawings in here.

15 Q Where did those drawings come from?

16 A Danny had a CAD system on this computer and he  
17 drew up the drawings and then eventually converted  
18 those to blueprints.

19 Q Okay. Now, does the contract refer to other  
20 documents that make up the contract? What other  
21 documents does it reference? You can publish  
22 that.

23 A There's a -- publish which?

24 Q I was gonna say you can publish 9.1.2.

25 A Yeah. The general conditions are the general

1 immediately after we signed the contract.

2 Q Did he have a building permit at that time?

3 A I can't answer that.

4 Q Okay.

5 A I don't know.

6 Q All right. So what else did he do?

7 A Well, he just started clearing the lot, had a guy  
8 clearing the lot.

9 Q Okay. Let me show you what's been marked as  
10 Plaintiffs' Exhibit No. 8 and ask if you recognize  
11 that e-mail?

12 A I do.

13 Q What prompted that e-mail?

14 A Well, Danny was dragging his feet a little bit in  
15 the construction in getting it going. And in this  
16 letter, we're telling him, now that the closing is  
17 taking place, we're ready to construct the house  
18 and we wanted that to happen. And he wasn't  
19 building the house at that time.

20 Q Okay. Let me show you what has been marked as  
21 Plaintiffs' Exhibit No. 9. And did -- first of  
22 all, publish the date of the previous exhibit.

23 A The date of the letter was 1 December.

24 Q Okay. And now this e-mail, did Mr. Gilbert  
25 respond?

1           company. I have given many opportunities to the  
2           first company and was continually stood up.  
3           Currently, we're waiting for the design of your  
4           septic tank to be completed by DHEC.

5    Q       Okay. And what did he say about the building  
6           permit?

7    A       The building permit has been approved but not  
8           picked up yet. I will do that before I call for  
9           my first inspection.

10   Q       Okay. So up at this point, what work had been  
11           done on your home?

12   A       At this point, we just had the lot cleared.

13   Q       Okay. Let me show you another e-mail and ask that  
14           you . . .

15   A       Actually, that's -- yeah. Go ahead.

16   Q       I'll show you another e-mail and ask that you look  
17           at that. Do you recognize it and what prompted  
18           you to send that?

19   A       Well, this is about we need to know where you  
20           stand in preparation for the first draw. Is the  
21           weather changing your expectations? We're using  
22           the contract cost estimate with the attached draw  
23           procedures information you gave us from National  
24           City Mortgage and the draw schedule as basis for  
25           our expectations. We are expecting copies of the

1 Q Okay.

2 A And this is to Patty Zerbst.

3 Q And who is Patty Zerbst?

4 A She's the National City Mortgage representative.

5 Q And what's the substance of that e-mail?

6 A The first draw and plan to completion. And would  
7 you like me to publish one and two?

8 Q Sure.

9 A (As read): "We understand Danny will be ready  
10 with all applicable documents submitted to you in  
11 the first phase of construction completed by  
12 16 January. We further understand the critical  
13 aspect, information draw procedures, construction  
14 loans, the draw schedule, and contractor's rules  
15 defined in our contract with Danny. On January  
16 20th after receiving and reviewing copies of  
17 building and septic permits, termite treatments,  
18 builders' risk general liability insurance,  
19 receipts and invoices for work, and a copy of the  
20 frame-up contract, and the request for  
21 authorization from Danny, we will sign it. We  
22 understand it will not ensure all actions and  
23 documents are in order. We take the chance of  
24 failed inspection resulting in delay of  
25 disbursement."

1 pad, and the supporting concrete block structures.

2 And I went out to that property and we had a

3 little wind storm. And one of the concrete

4 columns had actually blown over.

5 Q Okay. All right. Did you subsequently terminate

6 Mr. Gilbert's --

7 A We did.

8 Q Okay. Now, did you hire another contractor to

9 finish the job?

10 A We did.

11 Q And who was that?

12 A That was Johnny Kahler.

13 Q Okay. And what happened with that contract?

14 A John started work and he was doing a good job. He

15 was arguing with me about everything. But he

16 was -- his subs were working and they were putting

17 the structure together. And he continued to argue

18 with me and wanted a special meeting with me in a

19 cul-de-sac by myself. And we had a big issue that

20 happened between him and the framer. And he told

21 the framer to stop working. And so we ended up

22 firing him, John Kahler.

23 Q Okay. Did you hire a contractor after that?

24 A We did.

25 Q Who was that?

1 Q Yeah. What's the construction price?

2 A 20950.

3 Q Why is that higher than the 185?

4 A Because some things had changed. I mean, the cost  
5 of the Boozer package was substantially different.

6 Q Okay. All right.

7 A And we continued on with the original drawings in  
8 that package that Danny had put together.

9 Q Okay. So is that contract or the scope of work  
10 any different than the Gilbert contract?

11 A The scope of work is the same.

12 Q Okay.

13

14 MR. JACKSON: That's all I have of this  
15 witness, Your Honor.

16 THE COURT: Mr. Ferrara?

17 MR. FERRARA: Thank you, Your Honor. May it  
18 please the Court?

19

- - - - -

20

CROSS-EXAMINATION

21 BY MR. FERRARA:

22 Q Mr. Price, as you know, I'm representing Mr. and  
23 Mrs. Fox in this action. And what I'd like to do  
24 is go back to your testimony earlier about your  
25 conversations with Mr. Gilbert.

1 buildable lot in a subdivision and all the laws of  
2 a subdivision would apply to that.

3 Q Sure. And we're going to get to that. But,  
4 additionally, your testimony was that Mr. Gilbert  
5 told you that the property would perk, meaning a  
6 septic system would be approved on Lot 20,  
7 correct?

8 A Yes.

9 Q Okay. Now, when we look at the contract, is it  
10 not true -- we flip to page 2, sir, under  
11 paragraph 21 -- you and your wife also have here  
12 that this contract is contingent upon drain field  
13 site (soil test)?

14 A And that's what I was looking for with Derrick's  
15 question.

16 Q Sure.

17 A And that's when I asked him what about the soil  
18 test?

19 Q Right.

20 A And he said that's been done.

21 Q Okay.

22 A It's been taken care of.

23 Q Well, if you just relied upon Mr. Gilbert's  
24 representation at the time of signing the contract  
25 with the soil test as a nonissue, why would you

1 Q I know you see it. But I'm saying if you look at  
2 the contract, you would agree with me that you and  
3 your wife, pursuant to this contract, had the  
4 responsibility to inspect and perform a wetland  
5 study on this property before you purchased it,  
6 correct?

7 A Yes.

8 Q Okay.

9 A But, may I add something to that?

10 Q Sure. Sure.

11 A It's our understanding that those things were  
12 taken care of in the subdivision.

13 Q Sure. Well, and that's my question. Is if you --

14 A I'm not -- go ahead.

15 Q If you and your wife were understanding that these  
16 things that are in the contract were already-done,  
17 why wouldn't you just line through those and say,  
18 well, that doesn't apply because we think those  
19 are already completed?

20 A I normally don't go lining through contracts to  
21 start with.

22 Q Well, let's be clear to the Court. In this  
23 particular two-page contract, you and your wife  
24 carefully reviewed every paragraph before you  
25 signed it, right?

1           you or your wife would've done or could've done,  
2           that you deem to waive those privileges of any  
3           inspections if you proceed forward to closing?

4    A       That's what it says.

5    Q       Right. And that's what you understand, correct?

6    A       I understood that we didn't really need to do  
7           that.

8    Q       Okay. And so, the exhibit, which I believe -- the  
9           settlement statement exhibit, you and your wife, I  
10          believe you testified, proceeded forward to  
11          closing despite paragraph 10. And, finally, sir,  
12          if you could turn to page 2, did you also  
13          understand that any changes to this contract must  
14          be in writing?

15   A       Does it say that?

16   Q       I believe it does. But I was also asking your  
17          understanding. You understood -- you and your  
18          wife understood when you signed this agreement  
19          that any changes to the contract would be required  
20          to be in writing. Was that your understanding?

21   A       Normally, that's what we did.

22   Q       Okay... And so, the agreement that you and your  
23          wife had with Mr. Gilbert on behalf of Belinda  
24          Fox, the complete agreement is contained in  
25          Exhibit 2, is it not?

1 subdivided lots, would be buildable?

2 A That's all we understood about lots in a  
3 subdivision is that they would be buildable lots.  
4 You wouldn't have a lot if it wasn't buildable in  
5 a subdivision.

6 Q But let's be clear with the Court, though. You  
7 and your wife understood that if the lots would be  
8 subdivided, you assumed they would be buildable  
9 lots. But when you look at the contract, it  
10 doesn't say that the additional subdivided lots  
11 would be buildable, correct?

12 A Correct. And then it does -- those words are not  
13 there, but it's implied. It's in a subdivision.  
14 It's a lot you're separating in a subdivision.

15 Q Well, and I apologize. Earlier I didn't reference  
16 you -- paragraph 11, which is right below  
17 paragraph 10, does it not say, Mr. Price, that the  
18 complete agreement is set forth in these two pages  
19 and that -- and I'm paraphrasing -- that only a  
20 subsequent written signed, you know, document by  
21 both parties could change that agreement?

22 A Yes, it says that.

23 Q And it further says that the buyer and seller,  
24 meaning you and your wife being the buyers,  
25 Mrs. Fox being the seller, acknowledge that they

1 Q Okay. You would agree that you're sophisticated  
2 and experienced in general?

3 A No.

4 Q You would not. I think you're quite articulate.  
5 Would you agree you're at least articulate?

6 A I can sometimes express myself.

7 Q Sure. Sure. I mean, when we look at exhibits  
8 that you've already introduced in this case, in  
9 this lawsuit, it's pretty clear that you and your  
10 wife understand the importance of contracts, the  
11 importance of holding Mr. Gilbert, you know, to  
12 his AIA contract that you testified. You agree to  
13 that?

14 A We learned all that. That was not the knowledge  
15 that we had when we signed this contract for sure.

16 Q Okay. Sir, Exhibit No. 2 that you have in your  
17 hand, 8D -- or 8C -- C rather says you're going --  
18 that buyer is to receive a copy of the covenants  
19 from closing attorney at closing?

20 A That did not happen.

21 Q That didn't happen because you nor your wife asked  
22 Mr. Spell to give you a copy of those documents?

23 A He wasn't there.

24 Q Okay. Will you agree that you paid -- if we look  
25 at Exhibit No. 3 -- you actually appeared on

1 A Of course that's correct. But also we were under  
2 a lot of pressure to do something to move here and  
3 to get the building going.

4 Q Sure.

5 A And this had already been delayed. We were trying  
6 to have a place to live.

7 Q Sure. I understand. Now --

8 A And -- go ahead.

9 Q Looking back at the settlement statement, sir,  
10 which I think is Exhibit No. 3, you and your wife  
11 or you paid -- you paid for title insurance on Lot  
12 20, correct?

13 A Yes.

14 Q And is it not true that you and your wife filed a  
15 title claim claiming the exact same damages that  
16 you're claiming in this suit --

17

18 MR. JACKSON: Your Honor, I object to any  
19 testimony about insurance in this matter. It's  
20 clearly independent, wholly independent, under  
21 collateral source rule. That's not relevant to  
22 this trial. What they did with their insurance  
23 company based on the premiums they paid, what they  
24 did with that is not relevant to this trial. And  
25 I would object to the introduction of any evidence

1 and I've got a copy of the case here I'll be glad  
2 to hand Your Honor -- provides that compensation  
3 received by an injured party from a source wholly  
4 independent of the wrongdoer will not reduce the  
5 amount of damage owed by that wrongdoer. That's  
6 the purpose of it. And he's trying to elicit  
7 testimony about what damages as some kind of  
8 set-off or something. It's simply not allowed  
9 because my client has paid for title insurance.  
10 They paid for an owner's policy. They paid the  
11 premiums. It's wholly independent of what Mr. Fox  
12 or Mr. Gilbert or any of these other defendants  
13 did. And so there's no relevancy to this  
14 proceeding to go into what the title insurance  
15 damages is.

16 MR. FERRARA: If, Your Honor, I could just  
17 briefly. I have one more thing. The title policy  
18 included in the title policy and that's already  
19 admitted in the other action has the rights and  
20 the obligations of the parties, and it has that  
21 there are subrogation interests. The title  
22 insurance company pursuant to that contract stands  
23 in the shoes of the seller, which was Belinda Fox,  
24 on this Lot 20. And they have a power of  
25 subrogation that's implicit in that. To be candid

1           that information to be able to understand the  
2           argument. Because if his argument is such that  
3           it's not independent because of the subrogation  
4           rights, and your position is that it's carved out  
5           and, therefore, that doesn't apply, then I need  
6           all that information to make that.

7           MR. JACKSON: Your Honor, I can furnish you  
8           an in-camera copy of that settlement agreement so  
9           you can see that it's carved out for yourself  
10          before you take his testimony.

11          THE COURT: All right. Mr. Ferrara, your  
12          position on that?

13          MR. FERRARA: My position, Your Honor, I  
14          would request Your Honor to do what your initial  
15          ruling was, was to hear the testimony. Because my  
16          client's position is that even though the  
17          subrogation issue might've been carved out, it  
18          still does not resolve the issue about the  
19          damages. And that if the damages that the Prices  
20          are seeking in this action have already been paid  
21          in another action, then the testimony is relevant  
22          at least on that point, Your Honor. It's not --  
23          I'm not trying to get around the collateral source  
24          rule, Your Honor. But the testimony is offered  
25          for an additional purpose which is to the damages

1 MR. JACKSON: And there's also a part in the  
2 release that says it doesn't release those  
3 specific parties. If it's not on that page, I  
4 have it on another page. I have a full copy of  
5 the agreement.

6 On page 3, I would show the Court this as  
7 well. Second paragraph, Your Honor.

8  
9 (Brief pause.)

10  
11 THE COURT: All right, gentlemen. What I'm  
12 going to do is I should -- I believe they call  
13 these exhibits on there -- I think I want to go  
14 ahead and hear from Paul's testimony. You know,  
15 I'll of course hear the argument. I'm not ruling  
16 at this time as to the effect of all that. I'm  
17 going to listen to all the testimony and then I'll  
18 listen to -- after having had a chance to look at  
19 it more closely, because I wasn't aware this was  
20 coming down the road.

21 MR. JACKSON: Your Honor, because of the  
22 confidentiality provision, can we have an  
23 in-camera, just Mr. Ferrara and Mr. Hubbard, on  
24 the testimony because of the confidential  
25 provision?

1

2

THE COURT: All right. We can proceed.

3

We're proceeding in-camera regarding the issue

4

regarding the confidentiality and the testimony

5

related to that. Go ahead, Mr. Ferrara.

6

MR. FERRARA: Thank you, Your Honor. May it

7

please the Court?

8

9

BY MR. FERRARA (In-Camera):

10

Q Mr. Price, I was asking you -- we've talked about

11

it, but I'll ask you now. It's true that you and

12

your wife filed a title claim for damages that you

13

and your wife claimed that you suffered as a

14

result of the Lot 20 deficiencies, correct?

15

A Yes. There was a title insurance claim.

16

Q Okay. And --

17

18

MR. FERRARA: Your Honor, I'm permitted to be

19

able to ask him the amount?

20

THE COURT: Yes.

21

MR. FERRARA: Okay.

22

23

Q Mr. Price, how much was -- what was the amount of

24

the settlement that you and your wife had with

25

Investors Title?

1 associated with Lot 20, correct?

2 A That's what it says.

3 Q Well, now I'm asking you -- you said you couldn't  
4 remember. But I'm asking if you could tell the  
5 Court from your memory, did you and your wife  
6 receive money for damages from Lot 20  
7 deficiencies?

8 A We got a check, right. I don't know. I didn't  
9 see the check.

10 Q You don't know. Okay. Now, that \$125,000 that's  
11 referenced on page 2, you and your wife had  
12 instituted a lawsuit pro se at some point,  
13 correct? Meaning without an attorney.

14 A Against -- yes.

15 Q Okay. And as I understand in that action, you and  
16 your wife initially reached a settlement  
17 agreement. And then that settlement agreement was  
18 set aside and you went back and negotiated a new  
19 settlement agreement that resulted in this  
20 \$125,000 settlement, correct?

21 A I would assume so.

22 Q Okay. Now, the \$125,000 that Investors Title paid  
23 to you and your wife, that was for the wetland  
24 issue on the two acres of Lot 20, correct?

25 A I can't tell you that. I don't know.

1 MR. JACKSON: Ms. Price.

2 THE COURT: We're going to let you step down,  
3 Mr. Price. You're still under oath and you're  
4 still a witness. We're just going to substitute  
5 in your wife, okay.

6

7 (Mr. Ronald Price exits the witness  
8 stand at 10:46 a.m.)

9 (Whereupon, the witness, DIANA RAE  
10 PRICE, was duly sworn.)

11

12 THE COURT: Thank you, ma'am. Sit down, give  
13 your name, spell your last name for the court  
14 reporter.

15 THE WITNESS: Diana Rae Price, P-R-I-C-E.

16

- - - - -

17

DIRECT EXAMINATION

18 BY MR. FERRARA (In-Camera):

19 Q Mrs. Price, I'm just going to limit my questions  
20 at this time to the title claim. Did you handle,  
21 primarily handle, the title claim with Investors  
22 Title regarding Lot 20?

23 A I did.

24 Q Okay. And did you write a letter to Investors  
25 Title detailing the problems you and your husband

1 MR. FERRARA: May I approach the witness,  
2 Your Honor?

3 THE COURT: Yes.  
4

5 BY MR. FERRARA (Continuing):

6 Q Mrs. Price, I'm handing you this two-page document  
7 that's identified as Court's Exhibit No. 3. It's  
8 a copy of a letter -- is that a letter written by  
9 you to Investors Title?

10 A It is.

11 Q Okay. And is it not true that in 2004, March of  
12 2004, you advised Investors Title that you and  
13 your husband were defrauded -- and I'm  
14 paraphrasing -- defrauded and misinformed about  
15 the status of Lot 20, and that you believe that  
16 the covenants and the plat in this action, in that  
17 action, were not validly recorded, the title was  
18 unmarketable, that the restrictive covenants as to  
19 Eagle Harbor don't apply to your lot, and that the  
20 soil tests were not made aware to you and your  
21 husband?

22 A I don't see all that in this letter.

23 Q Okay. And I'm just referring to -- I apologize,  
24 if I could look over your shoulder. Okay. I  
25 apologize. I have the wrong letter there. The

1

2 A This page 2 is a different page 2 to a different  
3 letter.

4 Q Okay. I apologize.

5 A These are not -- these do not go together.

6 Q Let me take a look real quick.

7

8 THE COURT: Gentlemen, we got the -- we have  
9 the letter and then we'll have the complaint.  
10 That basically outlines what you contend,  
11 Mr. Ferrara, would be the claim for damages under  
12 that policy. Is that right?

13 MR. FERRARA: Additionally, Your Honor, there  
14 is a second letter, just the one page.

15 THE COURT: We got all the letters in there.  
16 And I think I understand the argument. I don't  
17 want to cut you short if you want to ask more  
18 questions. I'll certainly let you. I just want  
19 to make sure that I know where we're at and to  
20 make a suggestion that it's my understanding that  
21 that's the basis -- that will give me the  
22 information that I think I need to be able to make  
23 a determination on that. And it will allow us to  
24 basically take that portion under advisement and  
25 then proceed with the rest of the testimony as to

1 agree to this stipulation, I think I'll be done --  
2 I won't have any more questions at this time from  
3 Mrs. Price in that the -- let's see.

4 In the Court's file downstairs, Your Honor,  
5 in the other case, in the Court's file -- and has  
6 already in court documents that two letters that  
7 I -- we're seeking to advise the Court on. And --  
8 let's see here. I just want to be clear. Yeah.  
9 Your Honor, in 2007-CP-08-458 there is -- in the  
10 Court's file downstairs, there's a binder in  
11 response to summary judgment with affidavits. And  
12 it contains the two letters that I would like the  
13 Court -- draw the Court's attention to -- in order  
14 to be able to make a ruling about that specific  
15 issue in the case. And that way there won't be  
16 any question about which page, page 1 or page 2,  
17 is right. But there are two letters and I've got  
18 the dates in the Court's file downstairs if the  
19 parties would agree that we could just --

20 MR. JACKSON: If that's part of the file,  
21 sure.

22 MR. FERRARA: Yeah. If we could just have  
23 Your Honor look at that.

24 THE COURT: You're suggesting that those are  
25 clear as to which page belongs to which?

1 the Court on the collateral source rule.

2 THE COURT: Thank you.

3 MR. FERRARA: Your Honor, if I may? Very  
4 tiny redirect in that --

5 - - - - -

6 REDIRECT EXAMINATION

7 BY MR. FERRARA (In-Camera):

8 Q Mrs. Price, you and your husband also brought  
9 causes of action for negligent misrepresentation  
10 fraud in connection with Lot 20 and sought to  
11 include an unfair trade practices action in the  
12 2007 08-458 too, correct?

13 A I do not remember that.

14 Q Well --

15

16 MR. JACKSON: Can you clarify? Was that the  
17 pro se version or was that the one drafted by the  
18 lawyer?

19 MR. FERRARA: I don't want to misrepresent  
20 anything to the Court. Maybe I'll just ask this.

21

22 Q Ma'am, would you agree that whatever actions you  
23 took in the Investors Title case that are in the  
24 Court's file downstairs were taken by either you  
25 or your attorney in that action?

1 are.

2 MR. JACKSON: Yes, sir.

3

4 (Mr. Price resumes the witness stand at  
5 10:58 a.m.)

6

- - - - -

7

CROSS-EXAMINATION

8 BY MR. FERRARA (Continuing):

9 Q Mr. Price, we were talking about the closing. And  
10 I think I'd asked you that -- let's see. I asked  
11 you about the wetland study or maybe I did not.  
12 Did you or your wife have a wetland study done on  
13 Lot 20 before you purchased it?

14 A No.

15 Q Okay. And did you and your wife have any type of  
16 boring samples completed or a soils test completed  
17 before closing?

18 A No.

19 Q Did you or your wife contact a septic company or  
20 anyone to determine the location, the appropriate  
21 location, of a septic permit on Lot 20?

22 A No.

23

24 MR. FERRARA: Your Honor, I don't believe  
25 there's an objection and I would seek to move into

1 Q If you take a look at it, would that help refresh  
2 your recollection about whether you've looked at  
3 it before?

4 A I've looked at it, but I don't think we looked at  
5 it before closing.

6 Q Okay.

7 A We looked at it a lot since.

8 Q A lot since. Okay. And you agree that on the  
9 right-hand side of that plat that's recorded in  
10 Berkeley County that the engineer noted that no  
11 wetland study had been completed?

12 A No wetland delineation or environmental studies  
13 have been done.

14 Q And do you know if Mr. Spell, your attorney for  
15 closing, in connection with the title search  
16 would've reviewed that plat on your behalf?

17 A I have no idea. I never talked to Mr. Spell.

18 Q What about the attorney that you did speak with at  
19 closing, Mr. Brian Badger?

20 A He did not discuss this with me.

21 Q Okay.

22 A If he saw it. I don't know whether he did or not.

23 Q Okay. Now, when we look, sir, to the deed that's  
24 already in evidence -- which I believe is  
25 Plaintiffs' Exhibit No. 4, and I'll hand that to

1 Berkeley County of the time you and your wife  
2 closed on Lot 20 in November 2003, correct?

3 A Yes. That's what this says.

4 Q Sure. Now, we talked about the no wetland  
5 delineation done. And also, if you look  
6 carefully, sir, at the plat, it states that the  
7 roads -- that there's a private ingress/egress  
8 easement on the roads. Now, I can help you there  
9 and ask if you agree with that?

10 A Yeah. It says private 50-foot ingress/egress.

11 Q Right. And so if you look -- if you and your wife  
12 or your attorney looked at that plat, you would  
13 see that the roads in Eagle Harbor at the time of  
14 your closing were private, correct?

15 A I see that description.

16 Q Are you and your wife seeking damages against my  
17 client Belinda or Gerry Fox or Eagle Harbor  
18 Partnership for the roads in Eagle Harbor being  
19 private or are you not?

20 A In the separate road issue not . . .

21 Q Right. And I apologize. Just for clarity, I  
22 think, Your Honor, I wasn't trying to get to the  
23 general road claims. I'm talking about on this  
24 action here today, sir. It's just about Lot 20  
25 and any claims you and your wife might have. And

1 damages that are already into evidence for delay.  
2 Do you have any knowledge about your delay damages  
3 with respect to Lot 20?

4 A Yes.

5 Q Okay. And what is your knowledge?

6 A The knowledge is that it was delayed. It was  
7 supposed to have been completed the 25th of  
8 February. It was not able to be completed until  
9 the 25th or sometime in November of '04. And the  
10 reason for the delay was no septic permit caused  
11 the stop of construction.

12 Q Okay.

13 A And when the construction stopped and they had to  
14 do a -- had to get a permit for an easement to  
15 cross the road and to get the septic permit  
16 issued, all that caused us some delay. On top of  
17 the fact that when that happened, simultaneously  
18 we found out that the construction that Danny did  
19 do was unusable and we had to tear it down. That  
20 caused delay because we couldn't continue  
21 building. We had to start building over.

22 Q And just for the Court's clarifications,  
23 Mr. Hubbard -- or for your clarification, Mr.  
24 Hubbard, I'm going to let him ask you questions  
25 about you and your wife's claims against

1           they rescinded it.

2       Q     Right.  So Berkeley County or DHEC did give you  
3           and your wife a permit, but then it later got  
4           rescinded?

5       A     The next day.  Was it the next day?

6       Q     A couple of days later, right.  And so how much of  
7           it -- so when -- when, if you recall, were you and  
8           your wife able to obtain the permit from DHEC?

9       A     That was May.  Later than that, wasn't it?  When  
10          was it?

11      Q     I believe in one of these court documents here, I  
12          believe you got an approval on May 18, 2004.  Does  
13          that sound correct?

14      A     Yes.

15      Q     Okay.  So what damage are you and your wife  
16          claiming against Mrs. Fox from two -- from 1/22 of  
17          '04 to 5/18 of '04?

18      A     We would have interest on the loan that increased  
19          because of the delay in construction.  We have the  
20          delay in storage.

21      Q     Okay.

22      A     And the delay in my rent.

23      Q     Now, even though the contract, which is  
24          Plaintiffs' Exhibit No. 2 says the property was  
25          sold to you as is, and you and your wife had the

1 A Right.

2 Q Okay. And what is your understanding about the  
3 value that you and your wife are claiming about  
4 the two acres of wetlands that you later  
5 discovered?

6 A That you can't do anything with it. It's  
7 unusable.

8 Q And do you know what dollar amount you're claiming  
9 for the two acres of loss of use?

10 A Approximately \$80,000.

11 Q Okay. I think we're gonna have Mr. Carter come in  
12 and testify later today. But is that -- is your  
13 basis of the \$80,000 from Mr. Carter's appraisal?

14 A It is.

15 Q Okay. Are there any other damages that you or  
16 your wife are claiming against Belinda Fox other  
17 than what you've testified about just now?

18 A Just what's in the lawsuit.

19 Q Well, and I'm trying to be clear that other than  
20 what you've testified to on the witness stand,  
21 correct?

22 A Yes.

23 Q Okay.

24 A All of those things are in that spreadsheet that  
25 you want to talk about.

1 to prime lending that you were hoping after  
2 considering the delays at that point that you and  
3 your wife would be moved in by March 31st of 2004.  
4 Does that sound right?

5 A Yeah. That was our desire, yeah.

6 Q Okay. And so it appears that neither you nor your  
7 wife went back and amended the building contract,  
8 which is Plaintiffs' Exhibit No. 5, to change the  
9 completion date from February 25th to March 31st.  
10 Is there a reason?

11 A What is the date of the letter that you're talking  
12 about?

13 Q Plaintiffs' Exhibit No. 11 is January 13, 2004.

14 A None of these are numbered.

15 Q They've got a red stamp on them.

16 A And your question is we note that we expect to be  
17 moved in March 31st, and we did not go back and  
18 change the contract. That's what your question  
19 is?

20 Q Yes.

21 A That's true. We didn't do that.

22 Q Did you or your wife have a conversation with  
23 Danny about the March 31st deadline?

24 A I don't know whether we had a conversation with  
25 him about that or not.

1                   2, Covenants, was received into  
2                   evidence.)

3

4    Q    Mr. Price, I'm handing you Defendant Fox's Exhibit  
5           No. 2, which are recorded covenants. Prior to  
6           closing, did either you or your wife take a look  
7           at those restrictive covenants?

8    A    No. We didn't have them.

9    Q    Okay.

10   A    Danny gave me some later.

11   Q    Did Danny give you any restrictive covenants  
12           before closing?

13   A    No.

14   Q    No. Okay.

15

16           MR. FERRARA: Thank you, sir. That's all the  
17           questions I have.

18           THE COURT: Mr. Hubbard?

19           MR. HUBBARD: Thank you, Your Honor.

20

-----

21

CROSS-EXAMINATION

22   BY MR. HUBBARD:

23   Q    Mr. Price, I'm going to go back to the agreement  
24           to buy and sell. And I apologize, I don't know if  
25           that's -- that's Defendant Fox's Exhibit No. 2

1 Q But you did read the contract?

2 A We read it.

3 Q Okay. I want to get a little bit of background on  
4 your time in the service. I see -- I understand  
5 you retired as a master sergeant?

6 A Chief master sergeant.

7 Q Okay. I'm sorry. Chief master sergeant. And how  
8 long were you in the service?

9 A Thirty years.

10 Q And what was one of your last jobs with the Air  
11 Force?

12 A One of my last jobs?

13 Q Yes, sir.

14 A Preparing a wing initial communications package  
15 for deployment overseas.

16 Q Was that Cannon Air Force Base?

17 A It was.

18 Q New Mexico?

19 A It was.

20 Q Okay. And what was your responsibilities with  
21 that job?

22 A My responsibilities include the maintenance of all  
23 the radios, nav sites, radar, communications on  
24 the base.

25 Q Did it involve reading contracts at all?

1 contract together and said we're gonna build you a  
2 house over here on this lot and you're gonna pay  
3 this amount of money for it. Yeah, go do that.  
4 I'm not a lawyer. And I normally don't contact  
5 lawyers in the purchase of something, anything.  
6 Buying a car is pretty expensive today. You don't  
7 contact a lawyer about that. But it's -- Danny  
8 presented himself -- he's a very personable guy.  
9 He's a smart guy. And when we talked to Danny and  
10 he has faith involved in this business, that was  
11 good for us. That's what we thought. And he  
12 presented himself as the guy for Eagle Harbor: the  
13 developer, the builder, the designer. And he was  
14 putting this together for us and we trusted him.

15 Q Okay.

16 A I trusted him that he was on our side to get this  
17 done.

18 Q All right. When did you lose that trust?

19 A I lost that trust when he started pushing for that  
20 first draw and poured the concrete and things  
21 started falling apart. That's when I lost trust  
22 with him.

23 Q And when was that? Do you recall?

24 A That was in -- we had so many things and I'm  
25 getting old here.

- 1 November 28th of '03?
- 2 A Twenty-fifth.
- 3 Q Twenty-fifth. Okay. And on January 30th, I
- 4 believe, you terminated --
- 5 A Yes.
- 6 Q -- Heritage Classic Homes, correct?
- 7 A Yes.
- 8 Q Okay. And then you hired John Kahler.
- 9 A That's correct.
- 10 Q Okay. And that was February 9th of '04?
- 11 A That's probably about right.
- 12 Q So nine days later, you had a new contractor on
- 13 the site and up and moved. When did you first
- 14 contact Mr. Kahler?
- 15 A After Danny was terminated.
- 16 Q So you had no contact, didn't know who he was?
- 17 A I knew about him because he was building Mike
- 18 Cable's (ph) house.
- 19 Q And where is that?
- 20 A That's in the phase one subdivision.
- 21 Q Okay. So there are other builders in Eagle
- 22 Harbor. Danny Gilbert or Heritage Classic Homes
- 23 does not have an exclusive to build in that
- 24 subdivision?
- 25 A He does not.

1 that part of your --

2 THE WITNESS: It's part of his --

3 MR. JACKSON: No. We don't have that  
4 contract into evidence. It's the same price as in  
5 the -- contract which is in evidence.

6

7 Q Two hundred and --

8 A 209.

9 Q Fifty?

10 A Yeah.

11

12 MR. HUBBARD: May I approach, Your Honor?

13 THE COURT: Yes.

14

15 Q This is just for purposes of identification,  
16 Mr. Price. If you would take a look at that and  
17 see if you're familiar with that contract?

18 A Okay.

19 Q And you can go to the next to the last page. It's  
20 dated February 9, 2004?

21 A Okay.

22 Q Was that your signature on there?

23 A It is.

24 Q Okay.

25 A Well, actually, that's my wife's signature for me,

- 1 A Yes, that happened.
- 2 Q Okay. What were the reasons for the revisions?
- 3 A He wanted the revisions.
- 4 Q Okay. And then on July 15th, I believe, is it  
5 true that you terminated his employment with you?
- 6 A That's correct.
- 7 Q Okay. And how did you do that?
- 8 A How did I do that?
- 9 Q Sure. Sent him a letter? I mean, you sent -- you  
10 sent Mr. Gilbert for Heritage Classic Homes --
- 11 A Yeah. There was a letter that went to John Kahler  
12 telling him he wasn't -- but I told him  
13 face-to-face wasn't -- he was fired.
- 14 Q Okay. And then August 6th you hired Mr. Siegel?
- 15 A We found Mr. Seibel, yeah.
- 16 Q Seibel. Sorry. I apologize. All right. I think  
17 your initial lawsuit to get this whole thing  
18 started was filed in August, August 23rd of 2004.  
19 Does that sound about right to you?
- 20 A Could be. Yeah.
- 21 Q Okay. Do you recall ever sending to Heritage  
22 Classic Homes --
- 23 A Actually -- let me stop.
- 24 Q Sure.
- 25 A I think -- we were sued first. And then we

1 A Yes.

2 Q Okay.

3

4 MR. HUBBARD: I don't have any further  
5 questions for you.

6 THE COURT: Any follow-up?

7 MR. JACKSON: Briefly, on redirect, Your  
8 Honor.

9

- - - - -

10 REDIRECT EXAMINATION

11 BY MR. JACKSON:

12 Q Now, I believe Mr. Ferrara asked you about, you  
13 know, you're not claiming delay due to weather.  
14 What was the time frame in which you -- well, let  
15 me back up. Is it your understanding that to get  
16 a building permit you have to have a septic tank  
17 permit?

18 A It is now, yes.

19 Q Okay. And when did you first get your septic tank  
20 permit?

21 A The first one was when Diana filed for it.

22 Q The one that was not invalidated or rescinded or  
23 all that?

24 A That one was invalidated. When did we get the  
25 real one? I don't know the date. We have it here

1 THE COURT: Mr. Ferrara?

2 MR. FERRARA: Very briefly, Your Honor.

3 - - - - -

4 RE-CROSS-EXAMINATION

5 BY MR. FERRARA:

6 Q Mr. Price, just to be clear -- we're throwing a  
7 lot of dates around. To be clear to the Court,  
8 you and your wife were under the impression and  
9 actually had received communication from  
10 Mr. Gilbert that he did have an approval from DHEC  
11 initially, correct?

12 A He said he did.

13 Q And, in fact, to be clear with the Court, he did,  
14 correct? He did initially and then they later  
15 revoked it?

16 A No. I don't know that.

17 Q Okay. Well, I understood your testimony earlier  
18 that the permit that you and your wife --

19 A That's what his letter said to us that he had the  
20 building permit. And he was waiting on DHEC to  
21 design the septic. That's what he said.

22 Q Right.

23 A He didn't have the permit, though. He didn't have  
24 the building permit in his hand either. I  
25 testified to that as well --

1 Q And he had a DHEC permit as well that was later  
2 rescinded. Did he not?

3 A I did not see the DHEC permit.

4 Q Well, let's just be clear with the Court. You  
5 didn't see it, but you testified earlier that  
6 DHEC, and I think Mr. Bozardt, wrote you and your  
7 wife a letter that said the septic permit or  
8 approval was rescinded. Did I misunderstand your  
9 testimony earlier?

10 A What you misunderstood was I don't know that he  
11 ever had a septic permit. He said he had talked  
12 to them in his letter to us, and he said he had a  
13 building permit and had the number. I actually  
14 saw the building permit later when it was posted  
15 on the property.

16 Right here it is, Plaintiffs' Exhibit No. 9.

17

18 MR. FERRARA: Your Honor, may I approach the  
19 witness?

20 THE COURT: If you wish.

21

22 A There's the building permit.

23 Q Oh, yes, sir. Yes, sir.

24 A On here, he says he's talked to them. He does not  
25 have a septic permit number.

1 Q You don't know that? Okay. That's what I was  
2 trying to find out if you did. So you don't know?

3 A I don't know what he talked to DHEC about.

4 Q Okay. But you do know that DHEC did issue a  
5 permit to you and your wife on January 22, 2004,  
6 for the septic?

7 A They did and revoked it immediately.

8 Q Okay.

9

10 MR. FERRARA: Thank you, sir.

11 THE COURT: Mr. Hubbard?

12 MR. HUBBARD: Just one housekeeping, Your  
13 Honor. I move the John Kahler contract be  
14 admitted into evidence.

15 THE COURT: Any objection?

16 MR. JACKSON: No objection, Your Honor.

17 MR. FERRARA: No objection, Your Honor.

18 COURT REPORTER: Will you show me which one  
19 that is so I can mark it? I don't see it.

20 MR. HUBBARD: Sure.

21 COURT REPORTER: Is that the correct one?

22 MR. HUBBARD: That's it.

23 COURT REPORTER: Thank you.

24

25 (Whereupon, Defendant Heritage's Exhibit

1 MR. HUBBARD: I would prefer that, Judge.

2 THE COURT: Okay. All right. Let's do that.

3 It's a quarter to twelve now. We'll resume at  
4 one o'clock with the rest of the plaintiffs' case.

5 MR. JACKSON: Okay.

6 THE COURT: Okay.

7

8 (Lunch recess was taken from 11:44 a.m.  
9 to 1:02 p.m.)

10

- - - - -

11 THE COURT: Is everyone ready to proceed?

12 MR. JACKSON: I'm ready to proceed, Your  
13 Honor.

14 THE COURT: Okay. All right. Mr. Jackson?

15 MR. JACKSON: I would call Hank Jackson to  
16 the stand.

17 THE COURT: Mr. Jackson, come on up.

18

19 (Whereupon, the witness, HANK JACKSON,  
20 was duly sworn.)

21

22 THE COURT: Thank you, sir. Go ahead and  
23 have a seat. Give your name, spell your last name  
24 for the court reporter, please.

25 THE WITNESS: My name is Hank Jackson,

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1 had failed due to vapor barrier not being in  
2 place.

3 Q Okay. Did you find anything else?

4 A I think that was pretty much it.

5 Q Okay.

6 A It's been quite a while.

7 Q Okay. And did you -- and so, it did not pass  
8 inspection?

9 A It did not.

10 MR. JACKSON: Okay. That's all the questions  
11 I have of this witness.

12 THE COURT: Mr. Ferrara?

13 MR. FERRARA: Your Honor, at this time, I  
14 don't have any questions.

15 THE COURT: Yes, sir. Mr. Hubbard?

16 MR. HUBBARD: Thank you, Judge.

17 - - - - -

18 CROSS-EXAMINATION

19 BY MR. HUBBARD:

20 Q Mr. Jackson, Carl Hubbard. When you went out to  
21 the Lot 20, what did you see actually? Your  
22 affidavit that you gave indicated that the land  
23 had not -- or the earth had not been compacted.  
24 How did you make that determination?

25 A Usually, during that type of inspection, we would

1 your subpoena. Thank you, sir.

2 THE WITNESS: Thank you.

3 THE COURT: So we do not -- you don't have  
4 your next person ready to go?

5 MR. JACKSON: I could call -- the person I  
6 would call would be -- I know what I could do,  
7 Your Honor. I would call Danny Gilbert to the  
8 stand.

9 THE COURT: All right. Mr. Gilbert.

10

11 (Whereupon, the witness, DANNY GILBERT,  
12 was duly sworn.)

13

14 THE COURT: Thank you, sir. Have a seat.  
15 State your name and spell your last name for the  
16 court reporter, please.

17 THE WITNESS: Danny Gilbert, G-I-L-B-E-R-T.

18

19

DIRECT EXAMINATION

20 BY MR. JACKSON:

21 Q All right. Mr. Gilbert, I'm going to show you a  
22 couple of documents here that were produced to me  
23 by document production.

24 MR. JACKSON: Carl, I'll show these to you.  
25 I got copies from you. I'll give those to you.

1 Exhibit No. 32 into evidence.

2 THE COURT: Any objection?

3 MR. FERRARA: Your Honor, just for  
4 clarification, is that -- Derrick, is that  
5 everything that you've handed me?

6 MR. JACKSON: No. I've to -- well, let me  
7 show you how I separated them.

8

9 (Brief pause.)

10

11 MR. FERRARA: No objection, Your Honor, to  
12 Exhibit No. 32.

13

14 (Whereupon, Plaintiffs' Exhibit No. 32,  
15 Cost and Expenses Document, was received  
16 into evidence.)

17

18 Q Can you explain to me why these calculations and  
19 what they mean?

20 A Yeah. These are exclusive costs for Gerry Fox.  
21 This is what Gerry paid for their part of phase  
22 two, I guess, up to this point.

23 Q Okay.

24 A So exclusive was costs just for Gerry where there  
25 was also costs for Troy, but those are the costs.

1 expenses?

2 A No.

3 Q So what was your part of the deal?

4 A To organize and facilitate things, you know,  
5 things happening and the development getting done.

6 Q Okay. All right. Let me show you this summary  
7 here. Are you familiar with that? That's part  
8 of . . . .

9 A Looks like lots listed, original owner, who they  
10 were sold to, and the purchase price.

11 Q Would it be fair to say that most of the lots had  
12 been sold in phase two by the time the Prices  
13 bought their lot?

14 A Yeah. I would say so. I think so, yeah.

15 Q Okay. Let me ask you about this. Projection of  
16 net income?

17 A Okay.

18 Q Did you prepare that?

19 A I did.

20 Q And how much net profit did you project there to  
21 be?

22 A Well, on this it's projected at 324,153.

23 Q Okay. And who was the -- divide part of that  
24 property with?

25 A The Foxes and myself.