

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER
In the Court of Common Pleas for the First Circuit

Walter H. Sanders, Jr., Special Referee

Case No. 2019-000598

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SEP 12 2019

SC Court of Appeals

Marjorie Faye Rickenbaker and Steve L. Rickenbaker Respondents,

v.

Schumacher Homes of South Carolina, Inc. Appellant

RECORD ON APPEAL

Barnwell Whaley Patterson & Helms, LLC

M. Dawes Cooke, Jr.
K. Michael Barfield
Anna L. Strandberg
P.O. Drawer H
Charleston, SC 29402
(843) 577-7700

**Peters, Murdaugh, Parker,
Eltzroth & Detrick, PA.**

John E. Parker
William F. Barnes, III
P.O. Box 457
Hampton, SC 29924
(803) 943-2111

Attorneys for Appellant

Attorneys for Respondents

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF DORCHESTER)	CIVIL ACTION NO.: 2018-CP-18-01194
)	
MARJORIE FAYE RICKENBAKER)	
AND STEVE L. RICKENBAKER,)	
Plaintiffs,)	
)	
v.)	ENTRY AND ORDER OF DEFAULT
)	
SCHUMACHER HOMES OF SOUTH)	
CAROLINA, INC.,)	
Defendant.)	

This matter comes before the Court on the Plaintiff's motion, pursuant to Rule 55(c), SCRCPP for an Entry and Order of Default against the Defendant, Schumacher Homes of South Carolina, Inc.

The Amended Summons and Complaint were filed in this action on July 3, 2018. It appears from the Affidavit of Service, filed on August 7, 2018, in the Dorchester County Court of Common Pleas, that the Defendant, Schumacher Homes of South Carolina, Inc., was served via Lisa Cullen, Registered Agent with CT Corporation System. Service of the Amended Summons and Complaint was accepted by Ms. Cullen at 2 Office Park Court, Suite 103, Columbia, SC 29223 on July 12, 2018. (Exh. A). The affidavit of William F. Barnes, III, counsel for the Plaintiff, indicates that more than thirty (30) days elapsed since July 12, 2018, excluding the day of such service and that no Answer, Demurrer, or Notice of Appearance was served upon him by or on behalf of the Defendant, Schumacher Homes of South Carolina, Inc., within the time required by the South Carolina Rules of Civil Procedure Compliance. Additionally, no Answer, Demurrer, or Notice of Appearance was filed in the Dorchester County Court of Common Pleas by or on behalf of the Defendant, Schumacher Homes of South Carolina, Inc., within the time required by the South Carolina Rules of Civil Procedure.

Rule 12(a) mandates that "[a] defendant shall service his answer within 35 days after the service of the complaint upon him" Rule 12(a), SCRCPP. Using the time computation rules set forth in Rule 6(e), his answer was due on or before August 15, 2018. In this case, Defendant, Schumacher Homes of

South Carolina, Inc., is in default as its' Answer was not filed within thirty-days as required by Rule 12(a), SCRPC.

Based on the above, the Court finds that the Defendant, Schumacher Homes of South Carolina, Inc., was properly served with the Amended Summons and Complaint in accordance with Rule 4, SCRPC, on July 12, 2018. The Defendant failed to properly answer or otherwise appear in this action as required by the South Carolina Rules of Civil Procedure, and is therefore in default pursuant to Rule 55, SCRPC.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant, Schumacher Homes of South Carolina, Inc., is in default in this matter pursuant to Rule 55, SCRPC and the allegations of the Complaint are deemed admitted.

IT IS SO ORDERED.

Maite Murphy
Chief Administrative Judge
First Judicial Circuit

October _____, 2018
St. George, South Carolina



Dorchester Common Pleas

Case Caption: Marjorie Faye Rickenbaker , plaintiff, et al VS Schumacher Homes
Of South Carolina, Inc. , defendant, et al
Case Number: 2018CP1801194
Type: Order/Entry of Default

So Ordered

s/ Maite Murphy 2166

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF DORCHESTER)	CIVIL ACTION NO.: 2018-CP-18-01194
)	
MARJORIE FAYE RICKENBAKER)	
AND STEVE L. RICKENBAKER,)	
Plaintiffs,)	
)	
v.)	ORDER OF REFERENCE TO
)	SPECIAL REFEREE
)	
SCHUMACHER HOMES OF SOUTH)	
CAROLINA, INC.,)	
Defendant.)	

THIS MATTER IS BEFORE THE COURT on motion of the Plaintiffs, Marjorie Faye Rickenbaker and Steve L. Rickenbaker, for a Reference to a Special Referee pursuant to Rule 53, SCRPC. This motion is based on the Entry of Default against the Defendant, Schumacher Homes of South Carolina, Inc., that is contemporaneously entered by the Court.

IT IS FURTHER ORDERED that this matter is referred to Walter H. Sanders, Jr, Esquire, pursuant to Rule 53, SCRPC, for all purposes including but not limited to taking testimony and determining the amount of damages on all causes of action contained in Plaintiff's Complaint against the Defendant, Schumacher Homes of South Carolina, Inc. Pursuant to Rule 53(c), the special referee shall have and exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter for the claims. Any appeal from any order or judgment issued by the special referee shall be to the South Carolina Supreme Court or South Carolina Court of Appeals as provided by the South Carolina Appellate Court Rules. Rule 53(e), SCRPC.

IT IS SO ORDERED.

Maite Murphy
Chief Administrative Judge
First Judicial Circuit

October ____, 2018
Hampton, South Carolina

*Order of Reference to
Special Referee
Page 2*

I SO CONSENT:

/s/Walter H. Sanders, Jr.
Walter H. Sanders, Jr., Esquire
Post Office Box 840
Fairfax, SC 29827-0840
Phone: (803) 632-3347

The e-filer hereby certifies that she has obtained the required consent from Counsel of Record to e-file this document.

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Dorchester Common Pleas

Case Caption: Marjorie Faye Rickenbaker , plaintiff, et al VS Schumacher Homes
Of South Carolina, Inc. , defendant, et al
Case Number: 2018CP1801194
Type: Order/Referred to Master or Special Referee

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2018-10-23 15:27:12 page 3 of 3

MARJORIE FAYE RICKENBAKER AND STEVE L. RICKENBAKER
PLAINTIFF(S)

SCHUMACHER HOMES OF SOUTH CAROLINA, INC.
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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


ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Marjorie Faye Rickenbaker and Steve L. Rickenbaker	Schumacher Homes of South Carolina, Inc.	\$71,249.99
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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


Walter H. Sanders, Jr.
Special Referee

3003
Judge Code

3-6-2019
Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
MARJORIE FAYE RICKENBAKER)
AND STEVE L RICKENBAKER,)
Plaintiffs,)
)
v.)
)
SCHUMACHER HOMES OF SOUTH)
CAROLINA INC.,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-18-01194

JUDGMENT

This matter came before me for hearing on November 14, 2018 pursuant to the October 9, 2018 Entry and Order of Default and October 23, 2018 Order of Reference to a Special Referee. At the hearing, the Plaintiffs, Marjorie Faye Rickenbaker and Steve L. Rickenbaker, appeared with their counsel, John E. Parker and William F. Barnes, III. The Defendant, Schumacher Homes of South Carolina, Inc., was represented by K. Michael Barfield at the hearing. The hearing began shortly after 11:00 a.m. at the office of Walter H. Sanders, Jr. in Fairfax, SC. Having heard the testimony and reviewed the pleadings in this matter, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. That on or about August 6, 2013, Plaintiffs Faye and Steve Rickenbaker entered into a Purchase Agreement/Construction Agreement with Schumacher Homes of South Carolina, Inc. In accordance with the agreement Plaintiffs paid the Defendant the purchase price.
2. That Schumacher Homes contracted to construct the residence and improvements subject to generally accepted residential building practices for the Plaintiffs at the property located at 328 Gelzer Lane, Summerville, SC 29483.
3. That Defendant breached the Purchase/Construction agreement by failing to provide a habitable premises upon the completion of the construction of the Plaintiffs' home.
4. The home became uninhabitable in November of 2017 because it was replete with mold

#1
[Handwritten signature]

and required extensive mold treatment and repairs in order to be habitable.

5. The Plaintiffs, as a result of the Defendant's breach of the contract, have incurred loss because of the diminishment in the value of the house, repairs, and loss of use of the home.

6. The Defendant breached the implied warranty of habitation which accompanies the sale of a new home.

7. As a result of the breach of the implied warranty the Plaintiffs have suffered damages for the diminution in the value of the home, repairs, and loss of use of the house. (Ex. 1 – Amd. Compl., filed July 3, 2018).¹

8. The Rickenbakers filed their Amended Summons and Complaint in the Dorchester County Court of Common Pleas on July 3, 2018. (Ex. 1 – Amd. Compl., filed July 3, 2018).

9. Lisa Cullen, Registered Agent with CT Corporation System, accepted service of the Amended Summons and Complaint on behalf of Schumacher Homes of South Carolina, Inc., on July 12, 2018. (Ex. 2 – Acceptance of Service filed August 9, 2018).

10. Pursuant to Judge Murphy's Entry of Order and Default, Schumacher Homes of South Carolina, Inc. was properly served on July 12, 2018, in accordance with Rule 4, SCRCPP. (Ex. 3 – Entry of Def. filed October 9, 2018). More than thirty (30) days elapsed from service and Schumacher Homes of South Carolina, Inc., was found to be in default pursuant to Rule 55, SCRCPP. (Ex. 3 – Entry of Def. filed October 9, 2018).

11. At the hearing, the Rickenbakers testified that they suffered damages for the diminution in value of the home, loss of use of the home, and cost of repairs. The total amount of damages suffered by the Rickenbakers was \$71,249.99. (Ex. 4 – Damages, Faye and Steve Rickenbaker).

¹ Exhibits 1-3 are previous filings with the Dorchester County Clerk of Court. Exhibits 4 is submitted as a record of the case.

MR

CONCLUSIONS OF LAW

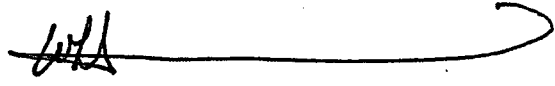
12. Defendant Schumacher Homes of South Carolina, Inc., received proper notice of the November 14, 2018 hearing in accordance with Rule 55, SCRPC and was represented by counsel at the hearing.

13. Defendant Schumacher Homes of South Carolina, Inc., is deemed to have admitted the allegations in the Complaint by its default. *Roche v. Young Bros.*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998) ("It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability.")

14. Based on the evidence and testimony presented at the hearing, the Court finds that the Rickenbakers are entitled to actual damages for recovery of incurred repair costs and loss of use of their home.

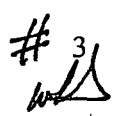
THEREFORE, I hereby order that Plaintiff is entitled to Judgment against Defendant Schumacher Homes of South Carolina, Inc., in the amount of \$71,249.99.

IT IS SO ORDERED.



Walter H. Sanders, Jr., Esquire
Special Referee

March 6, 2019
Fairfax, South Carolina

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DAMAGES
Faye and Steve Rickenbaker

HVAC Repair	\$3,500.00
Moisture Barrier Replaced	\$9,400.00
Flooring Replaced (Estimated)	\$22,000.00
Furniture Cleaning	\$1,000.00
Wiping/Cleaning House	\$1,500.00
Clean/Repair Drains	\$2,200.00
Washer/Dryer	\$1,000.00
Furniture Replacement (Sofa, Recliner, Mattress Set)	\$5,000.00
C&C Myers Inspection	\$259.99
Car Clean	\$250.00
Rent (1 Year, 2 Months)	\$14,000.00
Clean/Repair Sub-floor & Joist	\$10,000.00
Alpine Air Inspection	\$140.00
Move Items	\$1,000.00
TOTAL	\$71,249.99

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
MARJORIE FAYE RICKENBAKER,)
STEVE L. RICKENBAKER,)
)
Plaintiffs,)
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v.)
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SCHUMACHER HOMES OF SOUTH)
CAROLINA, INC.,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-18-01194

AMENDED SUMMONS
(Jury Trial Demanded)

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at Peters, Murdaugh, Parker, Eltzroth & Detrick, PA, 101 Mulberry Street East, P.O. Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: /s/ John E. Parker
John E. Parker
William F. Barnes, III
101 Mulberry Street East
Post Office Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Fax: (803) 914-2014
Email: jparker@pmped.com
Email: wbarnes@pmped.com

ATTORNEYS FOR PLAINTIFF

July 3, 2018
Hampton, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
MARJORIE FAYE RICKENBAKER,)
STEVE L RICKENBAKER,)
Plaintiffs,)
)
v.)
)
SCHUMACHER HOMES OF SOUTH)
CAROLINA INC.,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-18-01194

AMENDED COMPLAINT
(Jury Trial Demanded)

The Plaintiff alleges:

For a First Cause of Action:

1. That Plaintiffs Marjorie Faye Rickenbaker, and Steve L. Rickenbaker, are citizens and residents of the County of Dorchester, State of South Carolina.
2. The Defendant, Schumacher Homes of South Carolina Inc., is an Ohio corporation authorized to do business in the State of South Carolina.
3. Venue of the case is proper in Dorchester County, South Carolina pursuant to S.C. Code Ann. §15-7-30 as it is the county where the most substantial part of the act or omission giving rise to the cause of action occurred.
4. Defendant is a home builder who designs model home options for prospective clients to purchase and subsequently builds the homes.
5. That on or about August 6, 2013, Plaintiffs Faye and Steve Rickenbaker entered into a Purchase Agreement/Construction Agreement with Schumacher Homes of South Carolina, Inc. In accordance with the agreement Plaintiffs paid the Defendant the purchase price.
6. That Schumacher Homes contracted to construct the residence and improvements subject to generally accepted residential building practices for the Plaintiffs at the property located at 328 Gelzer Lane, Summerville, SC 29483.

7. That Defendant breached the Purchase/Construction agreement by failing to provide a habitable premises upon the completion of the construction of the Plaintiffs' home.

8. The home became uninhabitable in November of 2017 because it was replete with mold and required extensive mold treatment and repairs in order to be habitable.

For a Second Cause of Action:

9. The Plaintiffs, as a result of the Defendant's breach of the contract, have incurred loss because of the diminishment in the value of the house, repairs, and loss of use of the home.

10. The allegations of the First Cause of Action are incorporated as if repeated.

11. The Defendant breached the implied warranty of habitation which accompanies the sale of a new home.

12. As a result of the breach of the implied warranty the Plaintiffs have suffered damages for the diminution in the value of the home, repairs, and loss of use of the house.

WHEREFORE, Plaintiffs pray for judgment against the Defendant for actual damages not to exceed Seventy-Five Thousand (\$75,000.00) Dollars.

{Signature Page to Follow}

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: /s/ John E. Parker

John E. Parker
William F. Barnes III
101 Mulberry Street East
Post Office Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Fax: (803) 914-2014
Email: jparker@pmped.com
Email: wbarnes@pmped.com

ATTORNEYS FOR PLAINTIFF

July 3, 2018
Hampton, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) C/A No. 2018-CP-18-01194

Marjorie Faye Rickenbacker and Steve L. Rickenbacker,

Plaintiffs,

vs.

Schumacher Homes of South Carolina, Inc.,

Defendant.

DEFENDANT SCHUMACHER HOMES OF SOUTH AROLINA, INC.'S MOTION TO WITHDRAW REFERENCE TO SPECIAL REFEREE FOR LACK OF SUBJECT MATTER JURISDICTION AND DEMAND FOR JURY TRIAL

TO: WILLIAM F. BARNES, III AND JOHN E. PARKER, ATTORNEYS FOR PLAINTIFFS

Defendant Schumacher Homes of South Carolina, Inc., by and through its attorneys, hereby moves to withdraw the reference of this matter to the special referee for lack of subject matter jurisdiction and for a trial by jury on all issues triable herein. This demand is made pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure.

Barnwell Whaley Patterson & Helms, LLC

s/K. Michael Barfield

K. Michael Barfield

P.O. Drawer H

Charleston, SC 29402

mbarfield@barnwell-whaley.com

Attorneys for Defendant Schumacher Homes of South Carolina, Inc.

November 13, 2018
Charleston, South Carolina

objects to the default damages hearing proceeding before Mr. Sanders for the reasons set forth below.

ARGUMENT

The South Carolina Rule of Civil Procedure 53(b), which governs references to Masters and Special Referees, states that “Any party may request a jury pursuant to Rule 38 on any or all issues triable by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court.” SCRCP 53(b). Defendant has served an Answer and demand for jury trial. Plaintiffs also demanded a jury trial in their Complaint. Because not only the Defendants, but the Plaintiffs as well, have demanded a jury trial, the Special Referee is required to return the case to the Circuit Court. At this juncture, the Special Referee lacks the power, authority or subject matter jurisdiction to conduct any further proceedings or issue any further decisions in the case following the parties’ jury trial demands. Without the power, authority or subject matter jurisdiction, any decision by the Special Referee is void as a matter of law.

It is well established that a special referee is vested with no power or authority except that which is granted per the express language of the order of reference. The Order of Reference to Special Referee in this matter states the Special Referee is appointed, “pursuant to Rule 53, SCRCP, for all purposes including but not limited to taking testimony and determining the amount of damages on all causes of action contained in Plaintiff’s Complaint against the Defendant, Schumacher Homes of South Carolina, Inc. Pursuant to Rule 53(c), the special referee shall have and exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter for the claims.” See Order of Reference to Special Referee, **Exhibit A**. As a result, under Rule 53, the Special Referee was not, and is not, vested with the power, authority or jurisdiction to determine the validity of Defendant’s jury trial demand or

whether the default should be set aside. With proper notice of the Motion for Referral, Defendant, at a minimum, could have contested not only the referral itself, but also the selection of the special referee. The Supreme Court has held that “a defaulting party does not lose its right to have an impartial master or referee, and may still raise an objection to same based on such grounds.” Roche v. Young Bros., 332 S.C. 75, 86, 504 S.E.2d 311, 315 (1998).

Additionally, Dorchester County has a standing Master-in-Equity. Pursuant to S.C. Code Ann. 14-11-60, special referees are only to be appointed in instances in which the position of master is vacant. In this case, not only was a special referee appointed in contravention of this statute, but the lawyer appointed to serve as the referee is located in a different county altogether.

CONCLUSION

Defendant respectfully requests that the Order of Reference to Special Referee be voided, vacated and/or set aside; that the Special Referee be disqualified from any further handling of this case for lack of subject matter jurisdiction; and that the case be returned to the Circuit Court for further disposition including, but not limited to, the Entry and Order of Default be voided, vacated and/or set aside.

Based on the foregoing and any additional sustaining grounds offered at a hearing on this Motion, Defendants respectfully submit that they are entitled to the following remedies:

- (1) That the Order of Reference be vacated; and
- (2) That the Special Referee be recused/disqualified.

Barnwell Whaley Patterson & Helms, LLC

s/K. Michael Barfield

K. Michael Barfield

P.O. Drawer H

Charleston, SC 29402

mbarfield@barnwell-whaley.com

*Attorneys for Defendant Schumacher Homes of
South Carolina, Inc.*

November 13, 2018
Charleston, South Carolina

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STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
MARJORIE FAYE RICKENBAKER)
AND STEVE L. RICKENBAKER,)
Plaintiffs,)
)
v.)
)
SCHUMACHER HOMES OF SOUTH)
CAROLINA, INC.,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-18-01194

**ORDER OF REFERENCE TO
SPECIAL REFEREE**

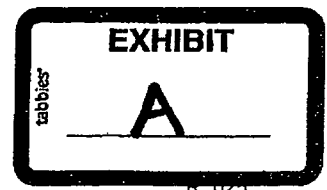
THIS MATTER IS BEFORE THE COURT on motion of the Plaintiffs, Marjorie Faye Rickenbaker and Steve L. Rickenbaker, for a Reference to a Special Referee pursuant to Rule 53, SCRPC. This motion is based on the Entry of Default against the Defendant, Schumacher Homes of South Carolina, Inc., that is contemporaneously entered by the Court.

IT IS FURTHER ORDERED that this matter is referred to Walter H. Sanders, Jr, Esquire, pursuant to Rule 53, SCRPC, for all purposes including but not limited to taking testimony and determining the amount of damages on all causes of action contained in Plaintiff's Complaint against the Defendant, Schumacher Homes of South Carolina, Inc. Pursuant to Rule 53(c), the special referee shall have and exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter for the claims. Any appeal from any order or judgment issued by the special referee shall be to the South Carolina Supreme Court or South Carolina Court of Appeals as provided by the South Carolina Appellate Court Rules. Rule 53(e), SCRPC.

IT IS SO ORDERED.

Maite Murphy
Chief Administrative Judge
First Judicial Circuit

October _____, 2018
Hampton, South Carolina



*Order of Reference to
Special Referee
Page 2*

I SO CONSENT:

/s/Walter H. Sanders, Jr.
Walter H. Sanders, Jr., Esquire
Post Office Box 840
Fairfax, SC 29827-0840
Phone: (803) 632-3347

*The e-filer hereby certifies that she has obtained the required consent from Counsel of Record
to e-file this document.*



Dorchester Common Pleas

Case Caption: Marjorie Faye Rickenbaker , plaintiff, et al VS Schumacher Homes
Of South Carolina, Inc. , defendant, et al
Case Number: 2018CP1801194
Type: Order/Referred to Master or Special Referee

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2018-10-23 15:27:12 page 3 of 3

ELECTRONICALLY FILED - 2018 Oct 23 3:41 PM - DORCHESTER - COMMON PLEAS - CASE#2018CP1801194
ELECTRONICALLY FILED - 2018 Nov 13 4:51 PM - DORCHESTER - COMMON PLEAS - CASE#2018CP1801194

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)	
)	CASE NO. 2018-CP-18-01194
)	
MARJORIE FAYE RICKENBAKER)	HEARING PROCEEDINGS
AND STEVE L. RICKENBAKER,)	
)	
PLAINTIFFS,)	
)	
VS.)	
)	
SCHUMACHER HOMES OF SC, INC.,)	
)	
DEFENDANT.)	

THE WITHIN HEARING WAS TAKEN BEFORE SUESAN L. RICHARDSON, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 11:43 A.M., NOVEMBER 14, 2018 AT THE LAW OFFICE OF WALTER H. SANDERS, JR., 167 ALLENDALE FAIRFAX HIGHWAY, FAIRFAX, SOUTH CAROLINA.

REPORTED BY
SUESAN L. RICHARDSON

APPEARANCES

PRESIDING THE COURT:

Special Referee,
Walter H. Sanders, Jr., Esquire

FOR THE PLAINTIFFS:

John E. Parker, Esquire
William F. Barnes, III, Esquire
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924

FOR THE DEFENDANT:

K. Michael Barfield, II, Esquire
Barnwell, Whaley, Patterson & Helms, L.L.C.
288 Meeting Street, Suite 200
Charleston, South Carolina 29401

ALSO PRESENT:

Mr. Steve L. Rickenbaker
Mrs. Marjorie Faye Rickenbaker
Mr. Keith Fluharty
Schumacher Homes of SC, Inc.

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*DIGITALLY RECORDED AUDIO RETAINED FOR TWELVE (12) MONTHS
FROM DATE OF CERTIFICATION.

1 [Whereupon, Plaintiffs' Exhibit No. 1.0 through
2 1.9, 2 and 3 are pre-marked for identification.]

3 OPENING STATEMENT BY THE COURT

4 THE COURT: Okay, this is an order of reference in
5 regards to a -- the case of Dorchester County case of
6 Marjorie Faye Rickenbaker and Steve L. Rickenbaker as
7 Plaintiff versus Schumacher Homes of South Carolina,
8 Inc.. This matter was referred to me by the Honorable
9 McMurphy, Chief Administrative Judge for the First
10 Judicial Circuit. Is the Plaintiff ready to proceed?

11 MR. MURDAUGH: We're ready to proceed.

12 MR. BARFIELD: Judge, I filed some motions
13 yesterday --

14 THE COURT: Right, I understand, we'll get to
15 that, but let's get on the record --

16 MR. BARFIELD: Okay.

17 THE COURT: -- y'all first. And then, is the
18 Defense ready?

19 MR. BARFIELD: Yes, sir.

20 THE COURT: Okay. If the parties will identify
21 themselves for the court reporter.

22 MR. PARKER: I'm John Parker, and along with
23 William Barnes we represent the Rickenbakers, Steve and
24 Faye Rickenbaker are here.

25 THE COURT: Okay.

1 MR. BARFIELD: I'm Michael Barfield. I represent
2 Schumacher Homes of South Carolina, Incorporated. And
3 with me from Schumacher is Keith. And how do you
4 pronounce your last name?

5 MR. FLUHARTY: Fluharty.

6 MR. BARFIELD: Fluharty.

7 THE COURT: Okay. All right. And, there was a
8 motion filed yesterday. We all received the motion?

9 MR. PARKER: We did.

10 THE COURT: Okay. You want me to hear the motion?

11 MR. BARFIELD: Yes, sir --

12 THE COURT: Okay.

13 OPENING STATEMENT BY MR. BARFIELD

14 MR. BARFIELD: -- I'd like to -- a motion to hear
15 it. Your Honor, I'd -- I filed a motion for -- to
16 strike the order of reference or have the matter
17 referred back to the Circuit Court on two separate
18 grounds. The first being Constitutional ground that
19 the Plaintiffs made a jury trial demand in their
20 initial summons and complaint and in their amended
21 summons and complaint. They have not formally
22 withdrawn that jury demand. We made an appearance
23 yesterday and made our own jury demand, and my
24 memorandum argues that there's some case law to support
25 that the jury trial right is sacrosanct and the rule of

1 civil procedure governing default judgments underscores
2 that by saying that in a damages hearing posture, if a
3 jury trial's been demanded then the defendant or
4 whoever, whichever party desires a jury trial is
5 entitled to a jury trial on the damages hearing.

6 Second ground is that under Rule 53, which governs
7 masters and special referees, 53-A says the term master
8 means a master and equity for the county. The term
9 special referee means a member of the South Carolina
10 Bar to whom a matter has been referred under SC Code
11 annotated 141160. If you look at 141160 it says the
12 only circumstance in which a special referee is to be
13 appointed in a civil matter is when where is no seated
14 -- no master sitting in the county in which the matter
15 is pending. This county -- this matter is pending in
16 Dorchester County. Judge Chellis is the city master in
17 Dorchester. If it was going to be referred by Judge
18 Murphy to anyone other than another circuit court judge
19 it should've been Judge Chellis. And so, I think that
20 goes to subject matter jurisdiction. I don't think
21 the, with all due respect, I don't think the matter's
22 properly before you here today, and I don't fault Judge
23 Murphy. I think that's a fairly obscure rule and --

24 THE COURT: Well, you know, Judge Murphy was the
25 Master-In-Equity prior to being Circuit Court Judge.

1 MR. BARFIELD: That's right. That's right.

2 THE COURT: So I would assume she knows the rules.

3 MR. BARFIELD: Right. Well, I think in this case
4 she -- she violated that, for lack of a better term.
5 But again, I think what should be done with this case
6 is be referred back to the Circuit Court for
7 determination of whether or not we're entitled to a
8 jury trial. And if that's determined not to be the
9 case then it should be referred to the Master or
10 otherwise served by Judge Murphy or Judge Goodstein.

11 MR. PARKER: William's going to argue this.

12 OPENING STATEMENT BY MR. BARNES

13 MR. BARNES: Thank you, Judge. I think one thing
14 Mr. Barfield may have missed, prior to the filing of
15 his motion yesterday we filed a withdrawal of a jury
16 trial demand pursuant to Rule 38D of the civil
17 procedure rules. I don't have a rule book in front of
18 me, Mr. Barfield does. Rule 38D basically talks about
19 when a party may withdraw a jury trial demand. 38D
20 explicitly provides that a party can withdraw it in a
21 case where there's a default. So we filed that jury
22 trial demand pursuant to that rule. So as to his first
23 ground about the jury trial demand and all that, we
24 believe that by the filing of our jury trial demand
25 that that issue is taking care of. Then --

1 THE COURT: And did -- but didn't you request the
2 refer? Did you request that it be referred?

3 MR. BARNES: Right, we --

4 THE COURT: So that was basically a waiver too,
5 wasn't it? You waived that demand to a jury trial?

6 MR. BARNES: Well, I think -- I think that in a
7 default case under Rule 38D the plaintiff has two
8 options.

9 THE COURT: Right.

10 MR. BARNES: They have the right to either proceed
11 with a special referee before a jury or a special
12 referee without a jury. And 38D specifically allows
13 that jury trial demand to be withdrawn. So I think we
14 complied with the rule when we filed our withdrawal of
15 a jury trial demand.

16 As to the second ground, I don't think, and I have
17 a copy of the statute here, I don't think the 141160 is
18 as narrow as Mr. Barfield makes it. And I'll read and
19 quote this. It says, "In case of a vacancy in the
20 office of Master-In-Equity or in case of a
21 disqualification or disability of the Master-In-Equity
22 from interest, or any other reason for which cause can
23 be shown the presiding Circuit Court Judge upon
24 agreement of the parties may appoint a Special Referee
25 in any case as to the case has all the powers of a

1 Master-In-Equity. The Special Referee must be
2 compensated by the parties involved in the action." I
3 can hand that up to Your Honor if you'd like. I also
4 have a copy of the case of Roach V. Young Brothers of
5 Florence, which is at 504 Southeast Second 311, which
6 is a 1998 opinion from the South Carolina Supreme Court
7 where they basically addressed this very issue. This
8 was a case that came from Florence County.
9 Procedurally there's some interesting aspects here, but
10 ultimately, the case was referred to a Special Referee
11 and they talk about reconciling 141160 and Rule 53.
12 And basically -- and I -- I'll hand this up to the
13 Court as well, but I'll read a sentence too. It --
14 basically, it addresses Mr. Barfield's argument. It
15 says, "To hold otherwise when needing that a defaulting
16 party could acquire the right to veto the Circuit
17 Court's reference authority simply by making some kind
18 of appearance in the case. This would be an
19 incongruence result." So we believe based on the plain
20 language of 141160 and the Roach case that the Circuit
21 Court had the authority pursuant to Rule 53, since this
22 case is a case involving default --

23 THE COURT: Right.

24 MR. BARNES: -- to refer the case to a Special
25 Referee.

1 THE COURT: And when the case was referred had the
2 Defense made any -- Defendants made any appearance?

3 MR. BARNES: They had not.

4 THE COURT: Okay.

5 MR. BARNES: Would you like for me to hand this
6 up, Your Honor?

7 THE COURT: Yeah.

8 MR. BARFIELD: I'd like a copy of the case too if
9 you got it.

10 Your Honor, I've not seen a jury trial waiver.
11 There's not one on the docket for this matter. I
12 checked yesterday. Nevertheless, we made an appearance
13 -- we made a jury trial demand.

14 THE COURT: Yeah, but that was after it had been
15 referred. Right? It'd been referred and you -- it was
16 already after the -- the order of default was entered?

17 MR. BARFIELD: That's right, Your Honor. But an
18 order of reference does not abrogate a party's right to
19 a jury trial. Now, a Master can --

20 THE COURT: Right.

21 MR. BARFIELD: -- potentially preside over jury
22 trials as William just said. And so, they're not
23 necessarily inconsistent with one another, but the
24 order of reference does not undercut a party's
25 Constitutional Right to a jury trial if such exists.

1 If you would give me a second to read this case?

2 [Reviews document.]

3 Well, Your Honor, this seems to just, at first
4 blush, this case seems to hinge on the portion of
5 141160 that references agreement of the parties. And I
6 would agree that if one party is in default, the Court
7 is not required to get the defaulting parts -- party's
8 agreement to refer the case.

9 THE COURT: Right.

10 MR. BARFIELD: But I would say that 141160 sets
11 forth parameters that establish the jurisdiction, the
12 subject matter jurisdiction of the Special Referee.
13 And the parameters are simply that if there's a vacancy
14 in the seat of Master, or there is good caution. In
15 this case there's nothing -- no indication of cause or
16 reason in the order of reference, there's no motion
17 filed to my knowledge referring the case outside of
18 Dorchester County. And so, there's no finding -- no
19 showing of cause and there's a perfectly good Master
20 sitting in Dorchester County that can hear this if we
21 are not entitled to a jury trial, and I would argue
22 that we are.

23 MR. BARNES: I would just say he's making a --

24 THE COURT: What about the issue about the jury
25 trial?

1 MR. BARNES: I think in that scenario if there is
2 a Constitutional right for a party to make a jury trial
3 demand they're basically getting rights that are not
4 provided for in Rule 38 that specifically allows a
5 party to withdraw a jury trial demand. I mean, I think
6 when you look at the Limehouse V. Causley case the law
7 is clear that in a default all the defaulting party,
8 the consequence they face is they can cross-examine the
9 witnesses and object to the evidence. And so we
10 believe that by them coming in after a default has
11 already been entered and requesting a jury trial demand
12 doesn't give them some right that exist.

13 MR. BARFIELD: Well, Judge, I disagree with that
14 interpretation of Rule 38. The default process is a
15 two step process. I'm not saying we're entitled to a
16 jury trial before there was an entry of default, but
17 it's clear that Rule 38 addresses the right of a jury
18 trial at the damages hearing stage and either party may
19 make the demand. So, they may well want to withdraw
20 their jury trial demand. I've made one. And, I think
21 Constitutionally we're entitled to it --

22 THE COURT: Right.

23 MR. BARFIELD: -- to that.

24 THE COURT: Okay. I'm going to deny your motion.
25 I think it's properly before me. You can go ahead and

1 proceed.

2 MR. PARKER: Thank you. If you would swear in Ms.
3 Rickenbaker?

4 (Marjorie Faye Rickenbaker, having been first duly
5 sworn, testifies as follows:)

6 DIRECT EXAMINATION OF MRS. RICKENBAKER BY MR. PARKER

7 Q All right. Will you please state your full name?

8 A It's Marjorie Faye Rickenbaker.

9 Q And your address?

10 A [Emotional.] 1705 Dawson Branch Road, Summerville,
11 South Carolina.

12 Q Do you want to take a little minute and --

13 A [No verbal response. Emotional.]

14 Q You all right?

15 A Yeah, it's just been a long year.

16 Q Tell us, we're here today about the house that --

17 A Yes, sir.

18 Q -- you and Steve -- Steve's your husband?

19 A Yes.

20 Q Y'all bought a house from Schumacher Homes of South
21 Carolina?

22 A Yes.

23 Q And, when did you buy that house?

24 A Oh, gosh, I don't remember now. We --

25 Q You don't have to give the exact date, but

1 approximately now.

2 **A I'm thinking it was in the Fall of 2014.**

3 **Q Okay. We have the contract here, but --**

4 **A Yes, sir.**

5 **Q -- that we could present, but --**

6 **A Yes, sir.**

7 **Q -- y'all -- how much did y'all pay for the house?**

8 **A After added changes and substitutions we -- I think it**
9 **came to a little over 242,000, two hundred and forty-**
10 **two thousand.**

11 **Q Two hundred and forty-two thousand?**

12 **A Yes, sir.**

13 **Q And, the purpose of buying the house was what?**

14 **A To provide a living space for our daughter, our only**
15 **child.**

16 **Q Okay. And her name is Jennifer?**

17 **A Jennifer Rickenbaker.**

18 **Q And, I'm going to hand you Exhibit 1 dash -- 1.0, and**
19 **is that --**

20 **A That's --**

21 **Q -- the house you purchased?**

22 **A Yes, sir.**

23 **Q And, after the purchase of the house Jennifer moved in?**

24 **A She moved in, I'm thinking it was the end of April**
25 **2015.**

1 Q And at -- at some point in time did it become a problem
2 with mold?

3 A 2014, I'm sorry.

4 Q Yeah. But at some point in time did it --

5 A Yes.

6 Q -- become a problem with mold?

7 A Yes.

8 Q And when was that?

9 A We determined that basically it was in the Fall of
10 2017.

11 Q Was it November of 2017?

12 A Yeah, November is when Jennifer moved back into our
13 home.

14 Q And, that was because of the mold?

15 A Yes.

16 Q And, if you would describe the mold for us.

17 A The mold was determined to be underneath the house in
18 the crawl --

19 MR. BARFIELD: I'm going to object to hearsay.

20 Q Did -- were you aware there was mold under the house?

21 A At what point?

22 Q At any point.

23 A No, not until it all manifested in November.

24 Q Right, that's what I'm saying.

25 A Yes.

1 Q After November you were aware of it?

2 A Yes, sir.

3 Q And, where else was the mold other than under the --

4 A In the attic.

5 Q And, it was in the attic, it was under --

6 A And then --

7 Q -- the house, and where --

8 A And --

9 Q -- else?

10 A -- under the house and then there was evidence of mold
11 inside the house.

12 Q And, were pictures taken of it?

13 A Yes, sir.

14 Q And I'm going to hand you a series of pictures that are
15 Exhibits 1.1 through 1.9. And if you would tell us
16 what those are.

17 A Yes, sir. These are photographs that were -- these
18 particular photographs were taken by CC Myers, who we
19 called in to help us determine what the problem was.
20 This was, I think in first part of May 2018. This is -
21 - I'm not technical so I couldn't tell you what part of
22 the air conditioning it is, but I know it was in the
23 attic showing mold, rust, fungus.

24 This is another part of it. I think that might've
25 been the back part of the vent into the hallway. I'm

1 not sure. Another -- these -- the gentleman took the
2 photos and immediately when he came down he showed them
3 to me that same -- within the hour.

4 Another part of the air conditioning up in the
5 attic.

6 Q And which photograph are you looking at now?

7 A 1.3.

8 Q Okay. And that's --

9 A Showing mold, fungus. This is, 1.4 is Jennifer's
10 mattress. It's located directly under the vents in the
11 bedroom, and the mattress has mold and fungus growing
12 on it.

13 This is, I believe this is the return that's in
14 the, I think it's in the hallway. I'm not sure exactly
15 which one it is --

16 Q And --

17 A -- but --

18 Q -- and it's Exhibit what?

19 A That's 1 -- 1.5.

20 Q And does it show the mold?

21 A It shows mold. This is another -- 1.6 is another from
22 upstairs in the attic showing rust, mold, fungus.

23 1.7 is another picture. I'm not sure of what part
24 it is, if it's the back part of the vent or what.
25 Showing, again, mold, fungus, bacteria growth.

1 This is a picture of --

2 Q What's the number on it?

3 A 1.8 is part of the air duct where the gentleman who was
4 doing the inspection said that --

5 MR. BARFIELD: I'll object to hearsay --

6 THE DEPONENT: All right. Okay.

7 MR. BARFIELD: -- to what the gentleman said.

8 A Well, I did not see it personally.

9 Q Right.

10 A But this is a picture of the air duct where it showed
11 it had already been somewhat patched. And there's
12 fungus, there's mildew, there's mold.

13 And there's in -- 1.9 is another picture of the
14 air duct still showing mold.

15 Q And as a result of the mold in November of 2017 --

16 A Yes, sir.

17 Q -- did Jennifer have to move out?

18 A She moved out. She had to come back to our house. She
19 was not able to live there.

20 Q And is the house inhabitable at this time?

21 A No. She's --

22 Q Okay.

23 A -- gone back, maybe, five times in the last year and
24 just tried to stay overnight and she could not do it.

25 Q And --

1 A She's not able to live there because of the quality.
2 She's not able -- she doesn't even take a bath anymore
3 because she's afraid of what's coming off her hair will
4 get on her skin. She hasn't taken a bath, what I call
5 a bath, since this. She'll stand in our tub only. She
6 won't do this anywhere else. She'll stand in our tub
7 only with a handheld. She does her hair first. She
8 does not plug up the drain or anything, so it can go
9 out and then she -- she does not -- she -- she does not
10 shower. I mean, she does a shower because she's afraid
11 of what's going to come off and accumulate.

12 Q And let me next hand you Exhibit No. 2. And, is
13 Exhibit No. 2 a compilation of the damages that you and
14 Steven have experienced as a result of this?

15 A Yes, sir. And --

16 Q Well --

17 MR. BARFIELD: Your Honor, I -- I don't mind her
18 testifying from this document, but I would object to
19 its admissibility into evidence unless there are
20 documents supporting these numbers --

21 MR. PARKER: Well, we --

22 MR. BARFIELD: -- estimates, so forth.

23 MR. PARKER: We'll have the testimony to support
24 the documents so we'll --

25 THE COURT: You can testify --

1 MR. PARKER: -- go forward.

2 THE COURT: -- as to --

3 A Okay, well --

4 THE COURT: -- what's on there.

5 Q Let's talk about Exhibit No. 2. We --

6 A Yes, sir.

7 Q -- first got the heating and air repair.

8 A Yes, sir.

9 Q And tell us what that is.

10 A That was work done to clean, the conditioner and, I
11 forget, let me just look and see what else they did
12 because I don't remember right off hand. They had to
13 replace drain pans because they were already rusted.
14 They had to -- we had to -- we installed a UV light to
15 help with kill any bacteria growth.

16 Q And so this is actually --

17 A Repairing --

18 Q -- money that y'all spent --

19 A -- repairing duct work that had -- it was less than
20 four years old.

21 Q And, next item you have there, it says moisture barrier
22 replacement. Is that --

23 A Yes, sir. The -- underneath the moisture barrier had
24 to be totally removed, and replaced.

25 Q And did y'all spend \$9,400 to do --

1 A Yes, sir.

2 Q -- that?

3 A Yes, sir.

4 Q And that's been paid?

5 A Yes, sir.

6 Q Has that been paid?

7 A Yes, sir.

8 Q And for the HVAC it was \$3,500 and that --

9 A Yes, sir.

10 Q -- was paid?

11 A Yes, sir.

12 Q And the next item says flooring replaced. What is --

13 A Yeah.

14 Q -- that?

15 A That's -- the hardwood floors have spots in them where

16 there's just stuff that's coming through the hardwood

17 floors.

18 Q And by stuff, you mean mold?

19 A Mold.

20 Q Fungus?

21 A Some kind of fungus growth.

22 Q And, the next item you've got is --

23 [Cell phone rings.]

24 Q -- is furniture cleaning?

25 A Yes, sir. That's -- we had a good many antique

1 furniture that --

2 MR. BARFIELD: Aren't you supposed to take his
3 phone?

4 MR. PARKER: He should have, hey?

5 [Sotto voce discussions.]

6 A -- that -- that's the hardwood furniture that we can --
7 it's a company that can wipe down and disinfect it and
8 clean it.

9 Q All right. And it's -- the next item is wipe -- how
10 much was the furniture cleaning?

11 A A thousand.

12 Q And wiping and cleaning the house, what is that?

13 A That's wiping down all the interior surfaces and such.

14 Q And --

15 A And disinfecting.

16 Q -- and the next items is clean and repair drains, what
17 is that \$2,200?

18 A Yes, sir. There's some type of things that come up out
19 of the drains. So they have to be repaired or cleaned,
20 disinfected, something --

21 Q And --

22 A -- to take care of this property.

23 Q -- and the cost of that's 2,200?

24 A Yes, sir.

25 Q And next is washer and dryer \$1,000, what is that?

1 A Right. Right.

2 Q What is that?

3 A Well, the dryer and what comes through the lint and
4 such has -- had some mold. We've saved some of the
5 lint and things that -- and then the washer, just --
6 just the use of the water and such, it needs to be
7 replaced.

8 Q And it has mold in it, the --

9 A Yes, sir.

10 Q -- the washer does? And, the next item -- and that was
11 -- washer/dryer is \$1,000?

12 A Yes, sir.

13 Q And the furniture replacement (sofa, recliner and
14 mattress set) --

15 A Right.

16 Q -- what is that about?

17 A All of the upholstered furniture, cloth things had
18 spots of -- of fungus or mold or mildew. The mattress
19 set has to, you know, has bad spots on it. So none of
20 that was salvageable.

21 Q And is this -- was this all new --

22 A Yes, sir.

23 Q -- when -- when y'all -- your daughter Jennifer moved
24 in?

25 A Yes, sir. One sofa that I had bought, we had just

1 bought recently, and -- and that's part of it.

2 Q And did all of these items have mold and mildew --

3 A Yes, sir.

4 Q -- on --

5 A Yes, sir. We aren't able to keep any of the

6 upholstered --

7 Q And --

8 A -- fabrics.

9 Q -- the cost of the replacement's \$5,000?

10 A Yes, sir.

11 Q The next item is CC Myers Inspection 259.99, what is

12 that?

13 A That was for the initial cost for them to come out and
14 determine what needed to be done, what the problem was.

15 Q And did y'all pay that?

16 A Yes, sir.

17 Q And the next item is car cleaning.

18 A Yes, sir.

19 Q What is that?

20 A The car that Jennifer uses, it belongs to us, and it
21 developed mold. She was not able to drive it. She
22 would have a physical reaction so we had it cleaned by
23 BioSweep for that price and --

24 Q And that was 250?

25 A -- it was cleaned, yes, sir. But she's still not able

1 to drive it. She tried afterwards and she has a
2 reaction.

3 Q And the next item is rent, one year and two months, 14
4 months \$14,000. Is that because you haven't been able
5 to live in the house for 14 --

6 A Right.

7 Q -- months?

8 A Right.

9 Q And, what is the payment on the house?

10 A The mortgage payment is 1,000.

11 Q And, is --

12 A With insurance it is -- goes up to about 12 something.

13 Q But you put \$1,000 a month for 14 months for rent --

14 A Yes, sir.

15 Q -- would be how much it would cost for --

16 A I think so and some of the --

17 Q And, then you got another item here that says clean and
18 repair sub-floor and joist.

19 A Right.

20 Q What is that for?

21 A Well, I know that the initial inspection showed some
22 joist and -- and some areas of the sub-floor had some,
23 from underneath had some mold. We won't know fully
24 until we take the floors up as to what the damage might
25 be underneath, but they're probably going to have to

1 replace some joist. And -- and -- some --

2 Q And you put in an --

3 A -- sub-flooring.

4 Q -- item of \$10,000?

5 A If we can have it cleaned.

6 Q Okay.

7 A Yes, if it can be salvaged.

8 Q And the next items is Alpine Air Inspection, what is
9 that?

10 A That's another company that we just had come out to
11 give us an opinion trying to find out what the problem
12 was.

13 Q And you paid them \$140?

14 A Yes, sir.

15 Q The next items is move items. And what is that about?

16 A When we had the flooring and -- and that work done all
17 the items would have to be moved out of the house. And
18 we're not physically able to do it so we'd have to hire
19 some people to -- to do that.

20 Q And I know your husband is 72, but I'm not going to ask
21 you your age, but --

22 A I'm 69.

23 Q Yeah, I wasn't going to get to that. We all thought
24 you were younger, so...

25 A Oh, yeah. [Laughs.] I appreciate that fib. Yes.

1 Q But the total of that is \$71,249.

2 A Yes, sir.

3 Q Now, I'm going to hand you Exhibit 3, and if you will
4 tell us the difference between Exhibits 2 and Exhibit
5 3.

6 A Yes, sir. The difference would be the -- in cleaning
7 and repairing the sub-floor and the joist. That would
8 be if there has to be replacement of materials.

9 Q If it has to --

10 A Labor and --

11 Q -- be replaced --

12 A Right.

13 Q -- then --

14 A We'd have to replace --

15 Q -- the cost would be \$30,000 --

16 A Yes, sir.

17 Q -- rather than the 10 in the other --

18 A Right.

19 Q -- estimate?

20 A Right.

21 Q It -- can -- is the house habitable as it is?

22 A No, sir.

23 Q And y'all paid \$242,000 for it?

24 A Yes, sir.

25 Q And, as it is what's it worth like it is in the

1 condition it's in?

2 A I don't know that we would even get an offer for it. I
3 don't know.

4 Q It's not --

5 A It's not something that I would've ever thought to ever
6 have done because it's built on family properties, so
7 it's not...

8 Q It -- would it be sellable in the condition it's in?

9 A I --

10 MR. BARFIELD: Objection. That's calls for --

11 Q You --

12 MR. BARFIELD: -- speculation.

13 Q -- you can go ahead and answer.

14 A I'd -- I don't know. I mean, someone might say yeah,
15 I'll give you \$500 for it. So I mean, if you consider
16 that sellable, then yes.

17 MR. PARKER: I think that's all we have. Please
18 answer any questions that Mr. Barfield may have. But
19 excuse me, just a moment.

20 Q What is the address of the home?

21 A It's 328 Gelzer Lane, Summerville, South Carolina.

22 Q And the contractor of the home was Schumacher?

23 A Yes, sir.

24 Q And they the ones -- did y'all try to get them to
25 repair it and come to --

1 A We had -- we -- we got them to come out in December.
2 All of this kind of manifested itself around the
3 holidays, but we did get them to come, I think it was
4 middle part of December. And they said they couldn't
5 find any problems.

6 Q Answer any questions Mr. Barfield may have for you.

7 THE COURT: Okay.

8 MR. BARFIELD: Ma'am, do you need a break or drink
9 of water --

10 THE WITNESS: No, I'm fine.

11 MR. BARFIELD: -- before we begin?

12 THE WITNESS: I'm fine.

13 MR. BARFIELD: All right. I won't be too long.

14 CROSS-EXAMINATION OF MRS. RICKENBAKER BY MR. BARFIELD

15 Q I notice you don't -- well, let me ask you a little bit
16 about your background because I'm new --

17 A Okay.

18 Q -- to the case. I don't know anything about you --

19 A Yes, sir.

20 Q -- guys. Where are y'all originally from?

21 A Right here, Summerville, South Carolina.

22 Q All right. Very good. And --

23 A I was born and raised on the property where this house
24 is built.

25 Q All right. And explain to me, how old is your daughter

1 again?

2 **A Jennifer now is 38.**

3 Q Okay. And does she have --

4 **A She's not married.**

5 Q -- does she have any respiratory problems that make her
6 susceptible to --

7 **A No. Not to my knowledge. She does now.**

8 Q Okay. And, has she --

9 **A Prior --**

10 Q What's that?

11 **A Prior to that, no.**

12 Q Okay. What -- who lived in the home when it was
13 completed?

14 **A Jennifer moved into it.**

15 Q Okay. Just her?

16 **A Yes.**

17 Q Okay. Have you ever lived in the home?

18 **A I've spent nights over there.**

19 Q Okay. But you've never, other than the occasional
20 night spent in the home, you never lived there?

21 **A No, sir.**

22 Q All right. Why is Jennifer not here today to address
23 these claims?

24 **A We were told she did not need to be here.**

25 Q Okay.

1 MR. RICKENBAKER: She's sick too.

2 A And plus she's sick.

3 Q Okay. Well, so am I.

4 A Well, so am I. In fact, he's been in the hospital five
5 months, so we're all sick.

6 Q We're all here making each other sick.

7 A Yes, sir, you got that right.

8 Q Thus is the nature of the law. How long did she live
9 in the home before she started noticing issues?

10 A I -- in retrospect I noticed issues with her health the
11 year of 2017 and a little bit before that. She would
12 always have a runny nose, sniffing, congestion. She'd
13 had lot of UTIs and some female issues and other health
14 issues, yes.

15 Q Okay. But you're not a physician, are you?

16 A No, sir.

17 Q All right.

18 A I'm just a mother.

19 Q I understand. But from a medical standpoint you're not
20 -- you would agree with me you're not qualified to
21 diagnose the reason she was having those problems?

22 A No, sir, but you asked me what -- you asked me if there
23 were any issues that --

24 Q I did.

25 A -- appeared and --

1 Q I did.

2 A -- that was my answer.

3 Q Fair enough. Are you a air quality expert?

4 A I can smell things.

5 Q Do you have any formal training in air quality or mold
6 remediation?

7 A No, I don't.

8 Q Okay. Do you have an expert with you today to connect
9 the damages that you are complaining of to the
10 construction of your home?

11 A Only in the paperwork that I have presented.

12 Q Okay. But -- so that's a no, you don't have an expert
13 with you today?

14 A I don't, but I'm not the attorney.

15 Q Okay.

16 A It wasn't up to me to get -- bring my witnesses in. I
17 didn't know I was going to have to need -- need all my
18 witnesses and such.

19 Q Okay. Very good. You mentioned that Schumacher had
20 somebody come out in December of last year.

21 A Yes, sir.

22 Q Did -- were you there when that gentleman came?

23 A Yes, I was.

24 Q Okay. Did you meet with him?

25 A I don't remember his name.

1 Q Okay. If I told you that his name was -- where is it?
2 [Reviews notes.] Where is the signature page on this
3 thing?

4 A I don't know.

5 Q Oh, here we go.

6 A If you told me, I don't know.

7 Q Terrance Tully, Terry Tully?

8 A Was he with Schumacher or with someone else?

9 Q No, he's with a company called Moisture Control
10 Experts.

11 A Right. Yes, sir.

12 Q Okay.

13 A I remember that name.

14 Q Do you remember him? Did -- did you talk --

15 A He wasn't Schumacher. No.

16 Q Right. But that's somebody that --

17 A Someone from Schumacher was there also.

18 Q Okay. And Schumacher hired Mr. Tully's company to come
19 out and look at --

20 A I assume.

21 Q -- the problem?

22 A Someone from Schumacher came one day and then Mr. Tully
23 came out with them another day.

24 Q Okay. And, did you speak with Mr. Tully about the --
25 his findings having looked at your home?

1 A He would not -- they would not discuss it with us.

2 Q Okay. Did they give you an answer after the fact?

3 A Their response they could not find any problems.

4 Q Okay. Did they say that Mr. Tully had determined that
5 -- that the air quality was satisfactory?

6 A That's what he said, I guess.

7 Q Okay. Let me ask you, how long did your daughter live
8 in the home before she vacated?

9 A She moved in in April 2014 and left in November 2017.

10 Q Okay. Where was the first location that you noticed,
11 or she noticed mold to your knowledge?

12 A We did not know what the problem was. She just knew
13 there was a problem. So, it was pinpointed in November
14 2017.

15 Q Okay. And where did that manifest?

16 A From the crawl space.

17 Q Okay. And, do we have any photos showing that?

18 A I don't think there's any photos of the crawl space,
19 but we have some.

20 Q Okay. Let's walk through some of these photos.
21 Looking at 1.1, tell me again where this is.

22 A In the attic.

23 Q Okay. And where is the mold?

24 A There's spots, all these white spots here, this here,
25 this here, and over in here [indicates].

1 Q Uh-huh (affirmative). And how do you know that that's
2 mold?

3 A That's just my opinion.

4 Q Okay.

5 A I was told by the professional that we hired.

6 Q Okay. Do you understand there's a difference between
7 regular mold and toxic mold?

8 A I know that there were 12 different types of mold that
9 were discovered.

10 Q Okay. But that doesn't --

11 A My daughter's allergic to all 12.

12 Q Okay.

13 MR. BARFIELD: And I'd move to strike that. Lack
14 of foundation.

15 Q But did --

16 A No, I have the -- I have proof --

17 Q Okay.

18 A -- well, we would have proof of that.

19 Q But it -- but my question was, are you aware that there
20 is toxic mold and non-toxic --

21 A I'm not real -- no, I'm learning more about mold each
22 and every day.

23 Q All right. So I'm going to show you 1.2. Where is
24 this photo?

25 A Upstairs in the attic.

1 Q Okay. And you contend that this is mold?

2 A I contend it's some type of bacterial growth, yes,
3 mold.

4 Q Okay. And, have you done a bacterial analysis of this
5 location to determine what that is?

6 A I don't know, sir.

7 Q Okay. And have you ever gone up there and wiped that
8 down?

9 A No.

10 Q Okay.

11 A I would not want to.

12 MR. RICKENBAKER: No, we sure wouldn't.

13 Q And --

14 A Have you wiped yours down in your attic? I'm sorry.

15 Q I don't go in my attic.

16 A I don't either. I assumed this was a brand new home.
17 The attic had not been entered into once Schumacher
18 closed that crawl space.

19 Q Okay. When were these photos taken by the way?

20 A May 2018.

21 Q Okay. And how long had the home been vacant at that
22 point?

23 A November.

24 Q Okay. And how do you -- do you keep the home air
25 conditioned while it's empty?

1 A Yes, sir.

2 Q What temperature?

3 A We -- we kept the thermostat, we keep it on about 73/74
4 during the summer, and in the winter time we kept it on
5 about 67.

6 Q Okay. And do you understand that -- that air
7 conditioning, the amount of air conditioning or lack
8 thereof can contribute to moisture inside of a house?

9 A But the house had been lived in prior to that.

10 Q I understand that, but it's been vacant for a number of
11 -- a number of months.

12 A But this was not -- the air conditioning was not
13 running during that time because it was winter, so...

14 Q Okay. All right, let's look at 1.3. What is -- what
15 is this photo of?

16 A I could not tell you what part of the air conditioning
17 unit it is because it was in the attic.

18 Q Okay. And 1.4, this is a comforter?

19 A A mattress.

20 Q A mattress. And, how old was this mattress when this
21 photo was taken?

22 A It was purchased when she moved into the home.

23 Q Okay. And, is it your contention that this is mold
24 growth on the mattress?

25 A Yes, sir.

1 Q All right. Are you certain that's not a stain of some
2 type?

3 A It's not a stain.

4 Q Okay. How do you know that?

5 A I know there's not stain -- so I know that Jennifer is
6 meticulous about what she does. So...

7 Q Okay. Have you asked her to confirm that that's not a
8 stain?

9 A Yes, sir.

10 Q Okay. Is this a register for the --

11 A I think it is. I --

12 Q -- air return?

13 A -- I'm not sure which -- which location it is. Yes,
14 sir.

15 Q Okay. All right. I'll represent to you that mine
16 looks like this too because it's dusty. Are you
17 certain that this is mold?

18 A I was told, and believe that it is to be mold.

19 Q Okay. Have you tried wiping this down?

20 A Yes, sir.

21 Q Okay. When?

22 A I don't remember the exact date, but she's tried to
23 clean all of the returns.

24 Q Okay. And -- and it -- and then it ends up like this
25 again?

1 A No, sir.

2 Q Okay.

3 A Because it wouldn't come off. It would not be like
4 that again. It would stay that way.

5 Q So this is -- this is -- whatever this substance is, it
6 can't be wiped off?

7 A It stays like that. Yes, sir. With whatever we used.

8 Q And 1.6, this -- I'll concede that there's rust in this
9 pictures. I have no idea --

10 A Yes, sir.

11 Q -- what this is, but --

12 A It's something in the attic connected to the air
13 conditioning.

14 Q Okay.

15 A A brand new air conditioning.

16 Q Well, it's -- it's not brand new, is it, it's --

17 A Well, it was --

18 Q -- about five years old now?

19 A -- purchased -- no, I -- I -- the rust pan already had
20 to be -- it would have rust in the drain pan. It
21 already had begun.

22 Q Did you contact the air conditioning manufacturer about
23 a warranty claim?

24 A A warranty claim?

25 Q Yes, ma'am.

1 A No, sir, we were concerned about the mold.

2 Q Okay. Well, you'll -- you'll concede that mold and
3 rust are different things, right?

4 A But there's mold on this. The mold is what we were
5 concerned with.

6 Q I see rust. Where is the mold?

7 A This is mold. I would concede that to be mold. Back
8 in here it was mold.

9 Q What -- to me that looks like oxidation. That's a --
10 that's a -

11 A That's your -

12 Q -- that a -- is that --

13 A That's your opinion, sir.

14 Q Well, I'm --

15 A Are you a professional air --

16 Q I'm not, but --

17 A -- condition man?

18 Q I'm not but I'm not --

19 A Well then.

20 Q -- I'm not here claiming mold damages. You are. So
21 what I'm asking you is, how do you know --

22 A I can't --

23 Q -- that this is mold?

24 A -- I can't determine.

25 Q Okay.

1 A Now, you want me to go back and crawl in the space, I
2 can go back and check it out.

3 Q No.

4 MR. PARKER: We'll let Mr. Barfield --

5 A We'll let you go look.

6 MR. PARKER: -- do it.

7 Q I'd be happy to.

8 A I can say one thing, Schumacher's man didn't stay in
9 that attic space too long before he came running out
10 the house. I'll --

11 Q Okay.

12 A -- put it that way.

13 Q All right. 1.7, what is a photo of?

14 A It's part of the return of the air conditioning. I
15 don't know.

16 Q All right. And --

17 A That's duct work.

18 Q Duct work. And this is the front of the home. The --

19 A Yes, sir.

20 Q -- there's no mold visible on the front of the home,
21 right?

22 A Not that I have found.

23 Q All right. Well, let's talk about then your damages
24 claim. First off your -- are you aware that your
25 pleadings in this case have limited your damages to

1 less than \$75,000?

2 A It's my understanding that if we went above that it
3 would go to Federal Court. Is that correct?

4 Q That is correct --

5 A All right.

6 Q -- but -- all right. The flooring has not been
7 replaced, correct?

8 A Not yet.

9 Q Okay.

10 A We've gotten work -- my husband's been in the hospital
11 so that's why we haven't been able to attend to things
12 --

13 Q Okay. How --

14 A -- as rapidly as would've liked.

15 Q How many estimates have you gotten for that flooring?

16 A My daughter did a lot of the leg work because I was
17 with my husband.

18 Q Okay.

19 A I think she got three.

20 Q Okay.

21 A Three.

22 Q But where'd this \$22,000 figure come from?

23 A I think that was through Lowes.

24 Q Okay.

25 A She got a price on laminate because of just the cost

1 **effectiveness, but we had hardwood.**

2 Q Uh-huh (affirmative). This rent number that -- explain
3 that to me again. The mortgage is \$1,000 a month
4 roughly, and the house had been vacant for 14 months;
5 is that where --

6 A **Yes, sir.**

7 Q -- that number is derived from?

8 A **Yes, sir.**

9 Q Were you planning to rent this house out to somebody?

10 A **No, that's a loss of money that we would be able to if
11 we had though.**

12 Q But -- but this house was supposed to be occupied by
13 your daughter, correct?

14 A **Yes, sir, it is.**

15 Q Okay. And was she paying --

16 A **She was trying --**

17 Q -- rent?

18 A **Yes, she was paying.**

19 Q Okay. Is she paying any --

20 A **No.**

21 Q -- rent at this point?

22 A **She's not able to work.**

23 Q Okay. Have you tried to rent it to somebody else?

24 A **No, sir.**

25 Q Okay. She was not able to work you said?

1 A She has not been able to work recently, no, sir.

2 Q Okay. And, why is that?

3 A Because of her health condition, emotional condition,
4 her mental condition.

5 Q Okay. What's this -- what's this business with the
6 car, having the car cleaned, how is that related in any
7 way to the house?

8 A She transferred some of her personal belongings that
9 had mold on them and it developed into the carpet.

10 Q Okay. And -- but you don't --

11 A And in the seats.

12 Q -- have any -- you didn't -- you don't -- as we sit
13 here today you don't have any expert testimony to
14 support that --

15 A We had it quoted by --

16 Q -- conclusion?

17 A -- BioSweep.

18 Q Okay.

19 A We had it treated.

20 Q Clean/repair sub-floor and joist \$10,000, who was
21 proposing to do that?

22 A We haven't procured the person yet or made a final
23 selection, no, sir.

24 Q Okay. So where is that \$10,000 figure coming from?

25 A That's just an estimate that we have received.

1 Q Okay. But you don't have that --

2 A No, sir, I don't have --

3 Q -- here today?

4 A -- with me today.

5 Q Okay. And, as I recall, you said that it's -- it's not
6 yet been determined that that needs to be done?

7 A I know that we were told that there was some mold from
8 underneath the crawl space, that was noticeable, and
9 joist, and we are not sure when they take up the other,
10 if we're -- it's possible and probable that we'll have
11 to --

12 Q Okay.

13 A -- do some replacement.

14 Q Gotcha. So, I imagine that this -- if it's -- if it
15 needs to be done at all a simple cleaning is far less
16 expensive than cleaning and --

17 A If it's --

18 Q -- replacement of structural members, right?

19 A Only if it's going to get rid of the problem
20 permanently.

21 Q Okay. This furniture replacement, is this the same
22 furniture that was cleaned --

23 A No, sir.

24 Q -- for \$1,000?

25 A We have to have the antique furniture cleaned.

1 Q Okay. And which furniture was replaced? It says --
2 I'm sorry, it says sofa, recliner, mattress set.

3 A Yes.

4 Q Is that the mattress that we had the photo of?

5 A The mattress set has to be replaced. The sofa.
6 There's one of the large recliners. There are dining
7 room chairs. There are upholstered side chairs.

8 Q Uh-huh (affirmative). The HVAC repair for \$3,500,
9 what, that's been done, right?

10 A Yes, sir.

11 Q What was done?

12 A UV light. They had put in a switch, a bacterial pad, a
13 drain pan, re-sealed duct work, and clean.

14 Q Okay. And who performed that work?

15 A CC Myers.

16 Q Okay. And were they the ones that determined that that
17 work needed to be done?

18 A Yes, sir.

19 Q Okay. Next item is moisture barrier replaced. What is
20 your understanding of what a moisture barrier is?

21 A My understanding? I'm not in construction, but I'm
22 just thinking that it's a pad of protection, of thick,
23 I don't want to say plastic, some type of plastic
24 material that's placed up under you that prevents the
25 moisture from getting through the ground into the home.

1 Q Okay. And, I --

2 A And then to keep --

3 Q -- that's pretty good.

4 A -- out --

5 Q That's pretty good summary actually to my understanding
6 as well. It's a thick sheet of plastic that -- that
7 does just that. Who performed that replacement for
8 \$9,400?

9 A **ESS.**

10 Q And who's ESS?

11 A **Environmental something.**

12 Q Okay. And, what was wrong with the original moisture
13 barrier to your understanding?

14 A It was so thin you could poke your finger right through
15 it, and it didn't go all the way to the sides, and I
16 forget what else they said.

17 Q Well, that's okay.

18 A It didn't cover 100 percent of the ground, as I -- up
19 the foundation walls and columns. There's fungal
20 growth on joist and sub-floor at the time of the
21 inspection.

22 Q All right. Wiping and cleaning house for \$1,500, what
23 is -- what is that?

24 A That's disinfecting the -- the wood cabinets, the
25 sheetrock, and of course material. Just wiping it down

1 and disinfecting. Clean anything that maybe there.

2 Q Okay. Now, I don't mean to be facetious, but you'll
3 agree with me that a house needs to be cleaned
4 regardless. And there's different levels of cleaning,
5 right?

6 A I was going to say with Pine-Sol and bleach and
7 whatever else it would take to kill any kind of mold.

8 Q Okay. And where did that \$1,500 figure come from?

9 A That was an estimate that was given to us.

10 Q Okay. Clean and repair drains, what -- are you talking
11 about shower drains and sink drains?

12 A I'm talking about all the drains. There's something --
13 my daughter says there's something that comes up out of
14 the drains periodically. And also the soaker tub, it
15 was supposed to be installed so that we could just pull
16 the front part off and access it to do cleaning. It
17 was not -- we didn't realize until afterwards it was
18 not that we could do that, it's actually nailed in
19 permanently so it has to be re-configured. But the
20 plumbing part of it, there's bacteria or something in
21 the drains that my daughter won't even step foot in it.

22 Q Have you -- have you witnessed that yourself?

23 A Yes, I have looked in the kitchen drains and I have
24 looked at the shower drains, and there --

25 Q And -- and you --

1 A -- is something foreign that's in it.

2 Q Well, what does it -- what does it look like?

3 A Black, brownish. Sometimes it's kind of white.

4 Q Okay. And it -- and it comes up through the drain?

5 A Sometimes you can see it with the drain -- on top of
6 the drain.

7 Q Okay. Have you attempted to address that with --

8 A Yes, she's poured -- I bet we have used 200 gallons of
9 vinegar because she Googled that vinegar and was told
10 vinegar kills things. So we, yes, we have tried to
11 address that.

12 Q Gotcha. Have you -- have you called a plumber about
13 that issue?

14 A Yes, we've had someone come out.

15 Q Okay. Did they do anything to address it?

16 A No, we have -- we haven't done it yet.

17 Q Okay. That's where the \$2,200 estimate --

18 A Yes.

19 Q -- came in? Gotcha. How many times have you tried to
20 enlist the help of Schumacher Homes since you started
21 experiencing these problems?

22 A Well, in December they told us they couldn't find
23 anything. And I think the first of the year we tried
24 to get response, and it took us forever to get the
25 report. We finally went and picked it up. I called

1 and said, "I'm coming to get the report and I want it
2 now." And, I have never been able to -- they're saying
3 there's nothing that they could do.

4 Q Okay. When you say the report, is this the report
5 you're talking about?

6 A Probably so, yes, sir.

7 Q Okay. You've seen a copy of this --

8 A Yes.

9 Q -- before?

10 A Yeah, I had to pick it up.

11 Q All right, and this is the one from Terry or Terrance
12 Tully that we talked about earlier?

13 A I -- I assume -- yeah, I assumed he -- I don't know who
14 did the report.

15 Q Okay.

16 A That would be conjecture on my part.

17 Q Okay. And the conclusion in this report, is it, "Upon
18 inspecting all areas of concerns of the homeowner I
19 found no signs of visible mold through the major areas
20 that were concerning the homeowner. One being a
21 sweatshirt which came back with light amounts of
22 ascospores, which is an allergen, and the other white
23 substance on the back right bedroom came back clean
24 with no fungi detected. The master bedroom closet,
25 which was the furthest room away from open windows and

1 doors was tested and air quality came back at
2 acceptable levels."

3 A When they did the air quality -- well, they did not
4 tell us prior that we were supposed to have the windows
5 closed for a certain amount of time prior to this
6 testing.

7 Q Uh-huh (affirmative).

8 A And so they were a little bit frustrated with us that
9 we had actually had windows and some doors open, but we
10 did not know that we were not supposed to. We were not
11 given instructions about what they needed us to do
12 prior to this testing. So he decided to go into the
13 closet --

14 Q Okay.

15 A -- and get that, but the doors and windows had been
16 opened prior to that testing, which she said they do
17 not like to have --

18 Q Okay.

19 A -- it that way. But I said, we did not know any
20 different.

21 Q Okay.

22 A We were not told.

23 Q And he did some -- did you notice he was doing some
24 stuff where he put tape down on surfaces and pulled up
25 the tape and --

1 A He would -- we did not follow him around, sir.

2 Q Okay. Well, he -- he -- in his conclusions he talks
3 about the tape lift findings and he's got --

4 A I don't know what he taped with.

5 Q -- photos of putting tape down and --

6 A Yes, sir.

7 Q -- such. And his tape lift findings say, "Direct bulk
8 air lift sample taken from the back right bedroom.
9 Left corner came back showing no fungi detected."

10 A I know that we -- she was going to try to have just the
11 carpets cleaned thinking that it was an issue, why the
12 carpets -- and the gentleman who came out tested it and
13 it was too much moisture in the carpets. He would not
14 even --

15 Q Uh-huh (affirmative).

16 A -- attempt to clean it. And he said, you know, he
17 said, "I'm not supposed to tell you this or show you
18 this," but he did the moisture reading and it was way
19 out of control.

20 Q Uh-huh (affirmative).

21 A That was in the bedroom.

22 Q Okay. And Mr. Tully says, "Carpet padding did show
23 signs of dampness around the wall perimeters and dry in
24 the center of the rooms in both master bedroom and back
25 right bedroom, which may be caused by shampooing or

1 cleaning the rugs and padding not totally dry around
2 the perimeters at the time of my inspection."

3 A We didn't -- she did not have the carpets cleaned
4 because they would not do it because it was too much
5 moisture there.

6 Q Well, you mentioned that on the day he came out there
7 you had the windows opened. Did she ever have the
8 windows open?

9 A Yes, we have our windows open occasionally, yes. We
10 live in the country.

11 Q Okay. You ever had rain get in through the windows?

12 A If you don't get to the rain in time to -- the window
13 in time to shut it sometimes, yeah, that happens, but -
14 -

15 Q Okay.

16 A -- that was not the case.

17 Q All right, so, despite having received this report from
18 Mr. Tully you believe he -- he got it wrong?

19 A Yes, sir, I do.

20 Q Okay. But you don't have a counter report with you
21 today to --

22 A We had the ESS report. I don't know if Mr. Parker has
23 it with him or not.

24 Q Okay. I've not seen that, but that's okay.

25 A But yes, we do have a counter report.

1 Q All right. I tell you what, I'd like to enter this.

2 MR. PARKER: We object. He can't -- in a default
3 I don't think he can introduce evidence. He can cross-
4 examine the witnesses.

5 MR. BARFIELD: I think I probably can. We've
6 discussed it, but it's up to you.

7 THE COURT: I don't think you can in a default
8 hearing. I don't think --

9 MR. BARFIELD: All right. Well, what I'd like to
10 do then is mark it for identification for the record.

11 THE COURT: Okay. That'd be fine.

12 MR. BARFIELD: All right.

13 THE COURT REPORTER: You want to just do it
14 Defendant's 1, or do --

15 MR. BARFIELD: Well --

16 THE COURT REPORTER: -- or do you want to do it as
17 Court exhibit?

18 MR. BARFIELD: Court exhibit.

19 THE COURT REPORTER: Okay.

20 [Whereupon, Court's Exhibit No. 1 is marked for
21 identification but not admitted.]

22 MR. BARFIELD: If I may confer with Mr. --

23 THE COURT: Sure.

24 MR. BARFIELD: -- Fluharty for two minutes? See
25 if he's got anything that I'm --

1 THE COURT: Sure. We'll just take a short break.

2 MR. BARFIELD: That'd be great. I think we're
3 about done.

4 [Briefly off the record from 12:41 p.m. to 12:43 p.m..]

5 THE COURT: Okay.

6 MR. BARFIELD: That's all we have.

7 THE COURT: Okay.

8 MR. PARKER: All right. We'll swear in Mr.
9 Rickenbaker.

10 (Steve L. Rickenbaker, having been first duly
11 sworn, testifies as follows:)

12 DIRECT EXAMINATION OF MR. RICKENBAKER BY MR. PARKER

13 Q And please state your full name?

14 A It's Steve L. Rickenbaker.

15 Q And Mr. Rickenbaker, your wife Faye's testified
16 earlier. How long have y'all been married?

17 A Phew.

18 Q You know, I shouldn't ask that kind of hard question.

19 A Six -- let's see --

20 MRS. RICKENBAKER: If you say 60, it probably
21 feels like 60.

22 A No, when we got married it was in the 60s.

23 THE WITNESS: Wasn't it?

24 MRS. RICKENBAKER: '67, yeah. Fifty-one years.
25 Excuse me, I'm not supposed to answer for him.

1 A Fifty-one years. Fifty-one years.

2 Q And, you heard her testimony about the condition of the
3 house y'all bought for your daughter to live in --

4 A Yes.

5 Q -- from Schumacher?

6 A Yes.

7 Q Is -- is what she testified to was accurate?

8 A Just as accurate as it could be.

9 Q Is there anything you'd like to add to anything she
10 said?

11 A Well, it's hard to see your daughter when you're laying
12 up in the hospital with a broken neck and pneumonia,
13 and then your daughter comes in crying that she's sick
14 and got this white bacteria running out of her arm.
15 That's just hard to take. It's hard to take. And
16 yeah, everything that Faye said was correct.

17 MR. PARKER: We don't have anything further.

18 MR. BARFIELD: I don't have anything of Mr.
19 Rickenbaker.

20 MR. PARKER: We would like to introduce into
21 evidence the exhibits, Your Honor.

22 MR. BARFIELD: I've got no objection to the
23 photographs. I'll re-state my previous objection to
24 the summary of damages that are not supported by
25 documentation. So, again, while I don't have a problem

1 with her having testified to the content of those
2 documents, I don't think they're appropriate as an
3 exhibit.

4 THE COURT: I disagree. I think she verified
5 them. I'm going to admit them all.

6 [Whereupon, Plaintiff's Exhibit No. 1.0 through
7 1.9, 2 and 3 are admitted into evidence.]

8 MR. PARKER: Thank you. And that's all we have,
9 Your Honor.

10 THE COURT: Okay. Do you want to say anything in
11 closing?

12 CLOSING STATEMENT BY MR. PARKER

13 MR. PARKER: Your Honor, I think you've heard the
14 evidence and we will rely upon your view of it, and --

15 THE COURT: Okay.

16 MR. PARKER: -- I think that that clearly the
17 evidence supports the documents that we presented.
18 Thank you.

19 THE COURT: Okay.

20 CLOSING STATEMENT BY MR. BARFIELD

21 MR. BARFIELD: Well, Your Honor, first off, thank
22 you. And by the way, thank you folks for being here.
23 I'm sorry y'all are going through a tough time.

24 But I, for the record, I would simply, to the
25 extent that I need to, re-raise my -- my prior motions

1 regarding the jury trial and the subject matter of
2 jurisdiction issues. Beyond that I -- I don't believe
3 that they have supported their claim with sufficient
4 evidence.

5 First off, they've -- they've not come with an
6 expert to connect the dots to say that any construction
7 deficiencies are responsible for the issues they're
8 complaining of. And furthermore, I don't think they've
9 -- they've shown that the issues they complain of are
10 what they are. I think it's -- it's lay person
11 observation. You know, there's no indication that the
12 flooring needs to be replaced, that those joist need to
13 be replaced or repaired. I'm dubious of -- of the
14 notion that a car has been somehow infested by mold
15 from a home, and -- and so forth. I -- I just don't
16 think they have met the burden of proof to show that
17 the -- that the problems with the home complained of in
18 the complaint were the proximate cause of the damages
19 that they are claiming. And, I think even in a default
20 situation that is required. They have to connect the
21 dots and show that these items are both reasonable and
22 necessary to address the problems complained of with
23 the home. And I just don't think they have met the
24 burden. So with that, I will rest.

25 THE COURT: Anything?

1 MR. PARKER: Nothing, Your Honor.

2 CLOSING STATEMENT BY THE COURT

3 THE COURT: Okay. Okay, well, I disagree with
4 you. I think they've established the damages, and I'm
5 going to issue a ruling in favor of the Plaintiff for
6 \$71,249.99. If y'all will prepare an order.

7 MR. PARKER: Thank you.

8 THE COURT: Okay.

9 MR. BARFIELD: All right.

10 (WHEREUPON, AT 12:48 P.M., THE PROCEEDING OF THE
11 ABOVE-ENTITLED MATTER WAS CONCLUDED.)

12 (*This transcript may contain quoted material.
13 Such material is reproduced as read or quoted by the
14 speaker.)

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)	
)	CASE NO. 2018-CP-18-01194
)	
MARJORIE FAYE RICKENBAKER)	HEARING PROCEEDINGS
AND STEVE L. RICKENBAKER,)	
)	
PLAINTIFFS,)	
)	
VS.)	
)	
SCHUMACHER HOMES OF SC, INC.,)	
)	
DEFENDANT.)	

Be it known that I took the foregoing hearing; and for the State of South-Carolina-at-large;

The foregoing transcription represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Witness my hand and seal this 26th day of December, 2018



Suesan L. Richardson, Notary Public for SC

Notary in and for the State of South Carolina

My Commission Expires: August 24, 2027



DO NOT
REMOVE
THIS
MARKER

EXHIBIT
1.0
P. 088



2007-2008 ISuzu SUV
 Risk of injury or death if you do not wear your seat belt.
 Please don't drink and drive.
 Please don't drink and drive.
 Please don't drink and drive.
 Please don't drink and drive.
 Please don't drink and drive.

EXHIBIT
 1.1

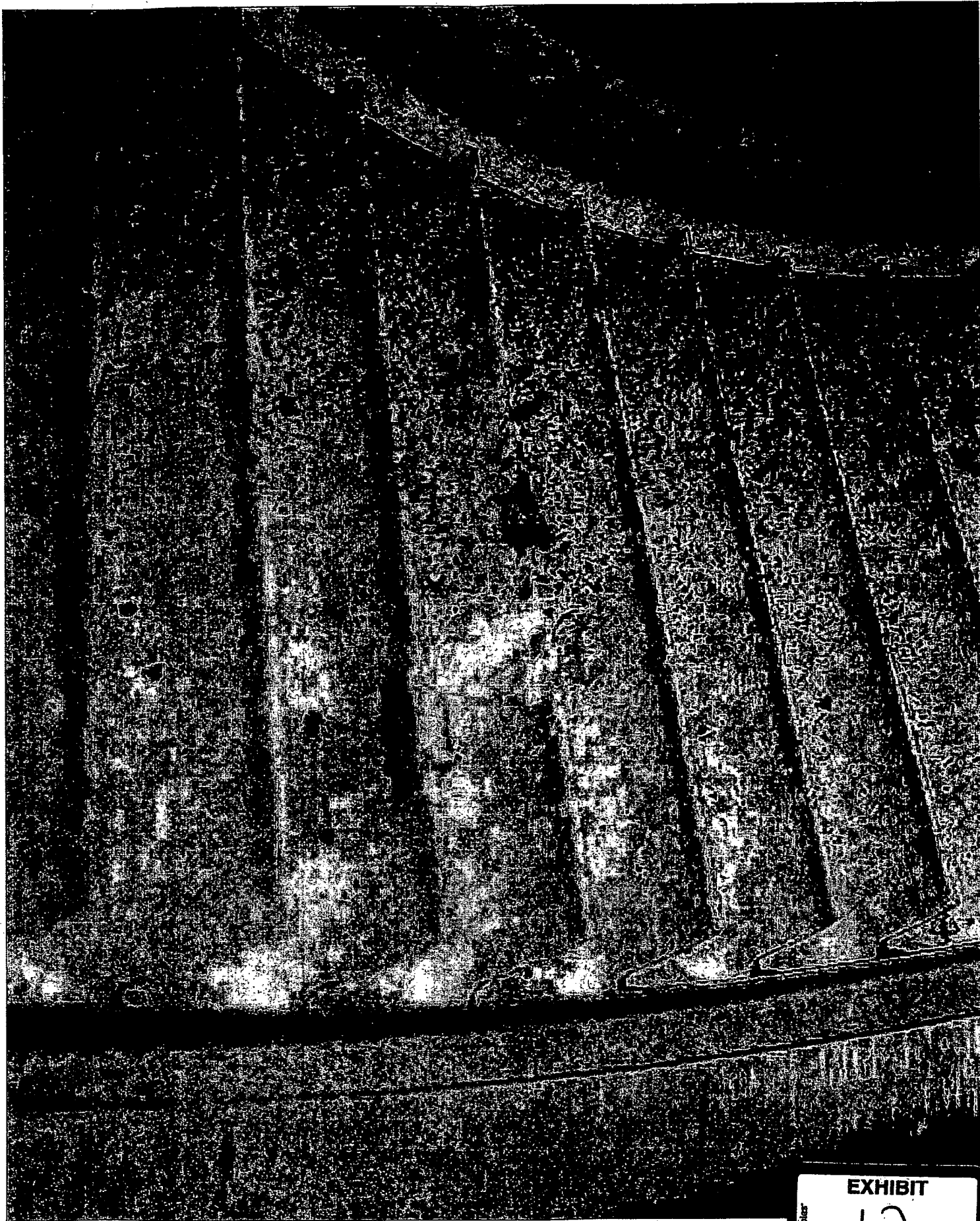


EXHIBIT
1.2
R. 090

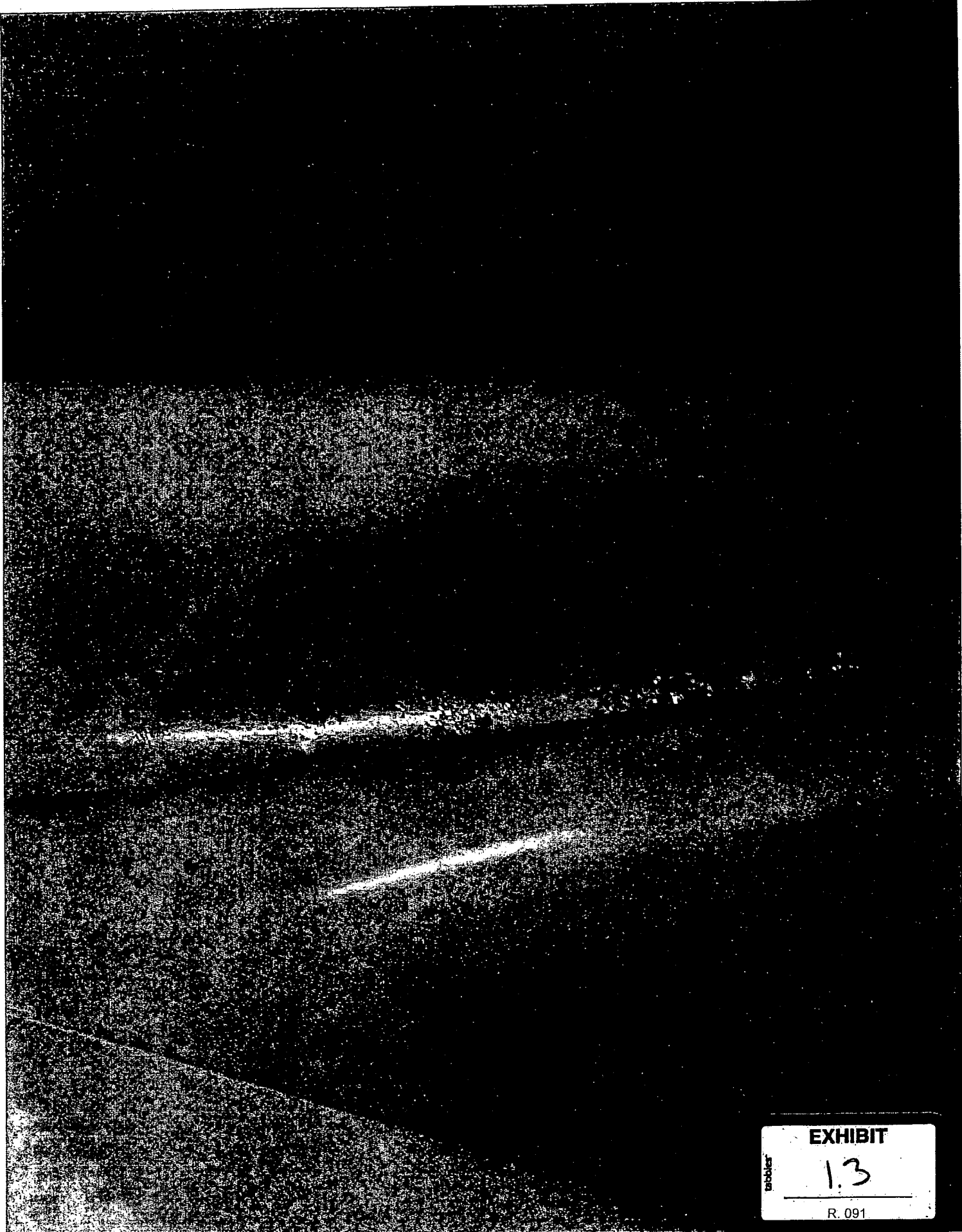


EXHIBIT
1.3
R. 091

R. 092

14

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EXHIBIT

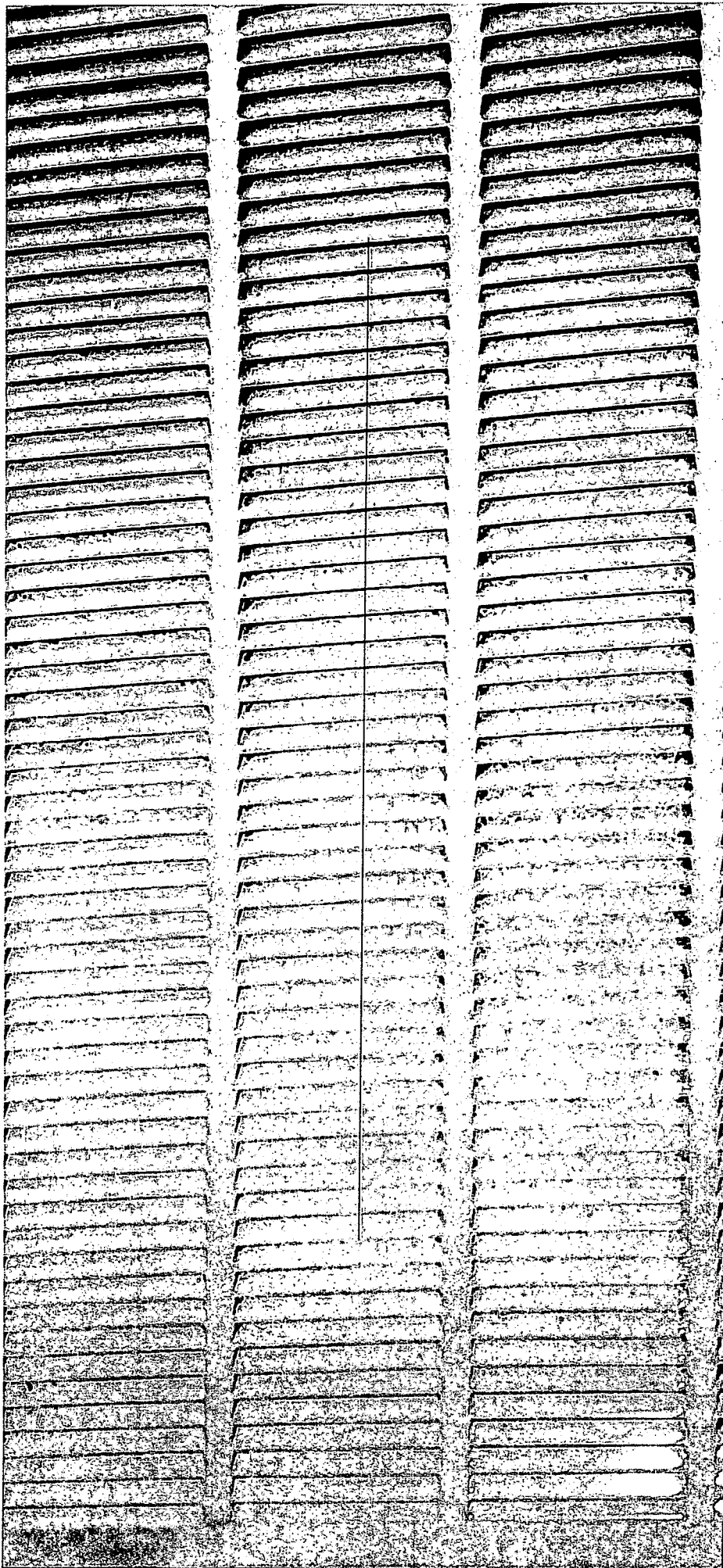


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1.5
R. 093

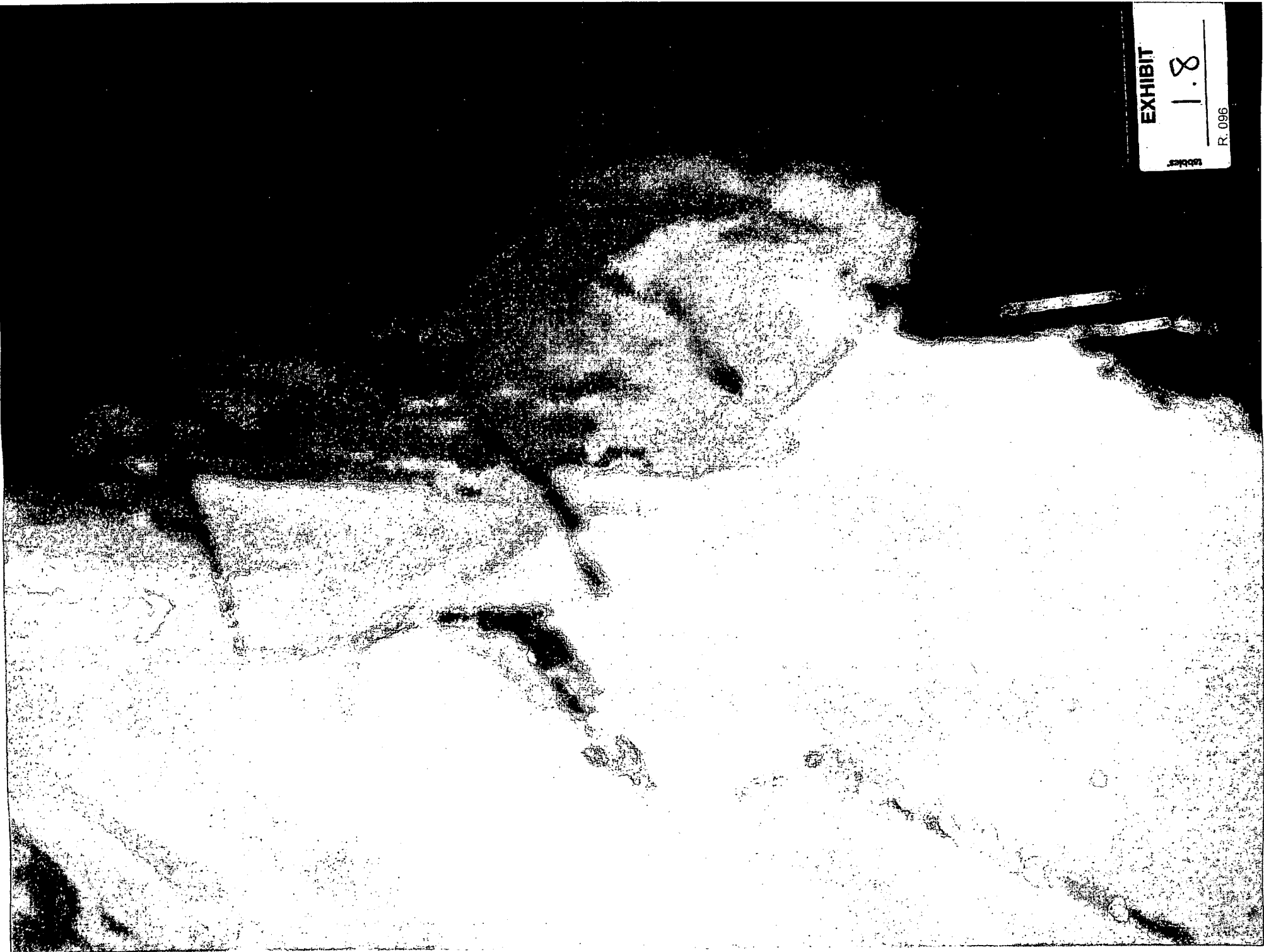


EXHIBIT

R 094



tabbles[®] EXHIBIT
1.7
R. 095



EXHIBIT

1.8

R. 096

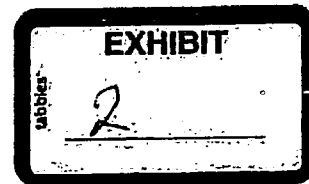
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EXHIBIT
1.9
R. 097

DAMAGES
Faye and Steve Rickenbaker

HVAC Repair	\$3,500.00
Moisture Barrier Replaced	\$9,400.00
Flooring Replaced (Estimated)	\$22,000.00
Furniture Cleaning	\$1,000.00
Wiping/Cleaning House	\$1,500.00
Clean/Repair Drains	\$2,200.00
Washer/Dryer	\$1,000.00
Furniture Replacement (Sofa, Recliner, Mattress Set)	\$5,000.00
C&C Myers Inspection	\$259.99
Car Clean	\$250.00
Rent (1 Year, 2 Months)	\$14,000.00
Clean/Repair Sub-floor & Joist	\$10,000.00
Alpine Air Inspection	\$140.00
Move Items	\$1,000.00
TOTAL	\$71,249.99



DAMAGES
Faye and Steve Rickenbaker

HVAC Repair	\$3,500.00
Moisture Barrier Replaced	\$9,400.00
Flooring Replaced (Estimated)	\$22,000.00
Furniture Cleaning	\$1,000.00
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C&C Myers Inspection	\$259.99
Car Clean	\$250.00
Rent (1 Year, 2 Months)	\$14,000.00
Clean/Repair Sub-floor & Joist	\$30,000.00
Alpine Air Inspection	\$140.00
Move Items	\$1,000.00
TOTAL	\$91,249.99



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
In the Court of Common Pleas for the First Circuit

Walter H. Sanders, Jr., Special Referee

Case No. 2018-CP-18-01194

RECEIVED

SEP 12 2019

SC Court of Appeals

Marjorie Faye Rickenbaker and Steve L. Rickenbaker Respondents,

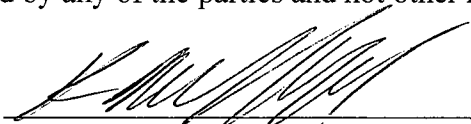
v.

Schumacher Homes of South Carolina, Inc. Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel for Appellant hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not other material.

September 10, 2019



M. Dawes Cooke, Jr.
K. Michael Barfield
Anna L. Strandberg
P.O. Drawer H
Charleston, SC 29402
(843) 577-7700
Attorneys for Appellant