

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Daniel D. Hall, Circuit Court Judge

Case No. 2018-CP-46-01592

RECEIVED

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SC Court of Appeals

Karen K. Baber, ... Appellant,

v.

Summit Funding, Inc., Appraisal Innovations, LLC, Brian L. Blue, The Gillen Law Firm, P.A.,
Michael F. Gillen, Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey, Robert Ouzts, Connie
Delaney, and Gloria Long-Robinson,

Of Which Summit Funding Inc., Allen Tate Co., Inc., Colleen Coesens, Jonathan Garvey, Robert
Ouzts, Connie Delany, and Gloria Long-Robinson are the Respondents.

RECORD ON APPEAL - VOLUME 1 of 3

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

Karen K. Baber,

Plaintiff,

vs.

Summit Funding Inc.; Appraisal
Innovations, LLC.; Brian L. Blue; The
Gillan Law Firm; P.A.; Michael F. Gillen;
Allen Tate Co., Inc.; Colleen Coesens;
Jonathan Garvey; Robert Ouzts; Connie
Delaney and Gloria Long-Robinson,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO. 2018-CP46-01592

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT SUMMIT
FUNDING'S MOTION TO DISMISS**

This matter was heard by the Court upon motion by Defendant, Summit Funding Inc. ("Summit"), to have Plaintiff's claims dismissed pursuant to Rule 12(b)(6), SCRPC. Present at the hearing was Susan E. Driscoll, counsel for Summit. Karen K. Baber, appeared *pro se*.

BACKGROUND

Plaintiff (borrower) brought this action against Summit (lender), alleging Summit failed to obtain a termite and home inspection report as required by their loan agreement. As a result, Plaintiff states five causes of action against Summit, seeking rescission of the loan agreement, reimbursement for all loan payments made, and damages incurred in repairing issues with the home. Plaintiff's causes of action against Summit include; mutual mistake, unilateral mistake, promissory estoppel, breach of contract and declaratory relief.

STANDARD OF REVIEW

The factual analysis of a Rule 12(b)(6) motion is confined to the four corners of the complaint, and all allegations of the pleading and the inferences reasonably deducible therefrom, are deemed admitted. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). "If the

facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper.” *Id.* Based on the facts as alleged by Plaintiff in the complaint, I make the following findings and conclusions.

DISCUSSION

To establish breach of contract, the facts must show the existence of a contract, its breach, and damages caused by the breach. *Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 705 S.E.2d 73 (Ct. App. 2010). A party to a written contract may also have the court determine the construction or validity of the writing and “obtain a declaration of rights, status or other legal relations thereunder”. S.C. Code Ann. § 15-53-30 (1976, as amended).

In this case, Plaintiff alleges the loan agreement required the termite and home inspection be obtained prior to the issuance of loan, Summit failed to get the reports as required, and as a result this failure, Plaintiff is entitled to have the loan rescinded and be reimbursed for payments and other damages. (Complaint ¶¶ 173-175). These statements (deemed admitted) are sufficient to support Plaintiff’s claims for breach of contract and declaratory relief.

Mistake is an equitable remedy used to invalidate the formation of a contract. *Harper v. McCoy*, 276 S.C. 170, S.E.2d 782 (1981). The mistake occurs in the terms of the contract, not in an error that occurs subsequent to the contract’s formation. *Id.* Further, promissory estoppel applies where there is no contract. See *Barnes v. Johnson*, 402 S.C. 458, 742 S.E.2d 6 (Ct. App. 2013).

Plaintiff does not allege there was a misunderstanding with the terms of the contract. Instead, Plaintiff relies on the terms of the loan and facts that occurred subsequent to the formation

of the contract to support her claims. These allegations do not state claims of mistake or promissory estoppel.

ORDER

Therefore, based on the Discussion above, it is hereby ordered:

1. Defendant's motion to dismiss is denied as to Plaintiff's claims for breach of contract and declaratory relief.
2. Defendant's motion to dismiss all other claims is granted and those claims are dismissed without prejudice.

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW



York Common Pleas

Case Caption: Karen K Baber VS Summit Funding Inc , defendant, et al

Case Number: 2018CP4601592

Type: Order/Other

So Ordered

s/ Teasa K. Weaver 3084

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
2018-CP-46-01592

KAREN K. BABER,

Plaintiff,

vs.

SUMMIT FUNDING, INC., APPRAISAL
INNOVATIONS, LLC, BRIAN L. BLUE, THE
GILLEN LAW FIRM, P.A., MICHAEL F.
GILLEN, ALLEN TATE CO., INC., COLLEEN
COESENS, JONATHAN GARVEY, ROBERT
OUZTS, CONNIE DELANEY, and GLORIA
LONG-ROBINSON,

Defendants.

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

THIS MATTER comes before the Court upon the Motion for Summary Judgment ("Motion") filed on March 5, 2019 by Defendants Allen Tate Co., Inc. ("Allen Tate"), Colleen Coesens ("Coesens"), Jonathan Garvey ("Garvey"), Robert Ouzts ("Ouzts") and Connie Delaney ("Delaney") (collectively, the "Tate Defendants"). The Court conducted a hearing in this matter on April 3, 2019 after proper notice to all parties. Present at the hearing were Plaintiff Karen Baber ("Baber"), counsel for the Tate Defendants, Thomas L. Ogburn III, counsel for Summit Funding, Inc., Susan Driscoll, and counsel for Appraisal Innovations, LLC and Brian L. Blue, Russell Racine.

In support of the Motion, the Tate Defendants presented the Motion, a supporting brief, the Plaintiff's deposition transcript and selective exhibits, the Tate Defendants' Requests for Admission and the Affidavit of Thomas L. Ogburn III. In opposition to the Motion, Baber presented an Affidavit of Plaintiff Karen K. Baber in Opposition to the Tate Defendants' Motion for Summary Judgment and attached exhibits ("Baber Affidavit").

As an initial point, Ms. Baber announced at the beginning of the hearing that Creighton Coleman was in the process of filing an appearance on her behalf in this matter. The undersigned contacted Mr. Coleman by telephone in open court. Mr. Coleman told the Court that he had agreed to meet with Ms. Baber on Friday, April 5, 2019, but had not yet agreed to represent her in this matter. Mr. Coleman confirmed that he was not representing Ms. Baber in defending the Tate Defendants' Motion. Based on this representation and Ms. Baber's presence in the courtroom, the Court exercised its discretion to proceed in hearing the Motion.

On April 8, 2019, after the hearing on the Motion, Mr. Coleman sent a letter to the Court announcing that he and Glenn Bowens were now representing Baber and requesting that the Court deny the Motion without prejudice because discovery was not complete. Mr. Coleman also requested that the Court set a supplemental hearing on the Motion at least 30 days later to allow he and Mr. Bowens ample time to review Baber's file, complete discovery and prepare a response to the Motion. The Tate Defendants opposed this request. Based on, among other things, Mr. Coleman's prior representation at the time of the hearing that he was not representing Baber, the fact that the Motion was based on Baber's own testimony and the prejudice that the Tate Defendants would suffer if the Court were to conduct another hearing on the Motion, Mr. Coleman's request is denied in the Court's discretion.

At the hearing, Counsel for the Tate Defendants objected to the Court's consideration of the Baber Affidavit in opposition to the Motion because, among other things: (1) the Baber Affidavit contains hearsay and does not comply with Rule 56(e), SCRCP; (2) Baber testified in her deposition that e-mails that she produced to all of the Defendants may have been the product of "cutting and pasting" multiple e-mails or combining multiple e-mails and the Tate Defendants

argued that most of the e-mails attached to the Baber Affidavit were not accurate representations of the actual e-mails; and (3) the Baber Affidavit may contain e-mails that were falsified, such as Exhibit 13 of the Baber Affidavit, which was not an accurate representation of Exhibit 14 from Baber's deposition. Additionally, the Tate Defendants objected to the Court's consideration of the Baber Affidavit to the extent that it contradicted her sworn deposition testimony. After reviewing and considering the Baber Affidavit the Court overrules the Tate Defendants' objection and has considered the Baber Affidavit in ruling on the Motion.

Based on the Court's review of the documents submitted by the parties, the pleadings in the Court's file and the arguments of counsel and Baber, the Court determines that there is no genuine issue as to any material fact in this matter and the Tate Defendants are entitled to judgment as a matter of law on all of Baber's claims against them. Therefore, the Court grants the Motion on the grounds set forth herein.

FACTS

1. Baber is a former South Carolina licensed real estate broker who has also worked for attorneys in handling real estate closings. (Deposition of Karen Baber ("Baber Dep."), pp. 22-23).

2. In January, 2015, Baber was searching for a home to purchase in Rock Hill, South Carolina. At the time, she was working with Garvey, who served as her real estate agent pursuant to an Exclusive Right to Buy Buyer Agency Contract signed by both Baber and Garvey. (Baber Dep. p. 36 and Ex. 4).

3. Between January 9, 2015 and January 11, 2015, Baber and Garvey exchanged several e-mails about a property located at 255 Rolling Ridge Road, Rock Hill, South Carolina.

("Property") (Baber Dep., Ex. 5-7). As part of those e-mails, Baber questioned Garvey about certain issues with the Property that she identified when she walked through the Property, including the condition of the air conditioning, water heater, gas pack, deck, stove, siding, bedroom ceiling, windows, and roof shingles, among other things. (*Id.*) As part of this exchange, Garvey provided Baber with the Residential Property Condition Disclosure Statement ("Disclosure Statement") signed by Gloria Long-Robinson, the owner of the Property. (Baber Dep. pp. 59-60 and Ex. 7).¹

4. In the Disclosure Statement, Long-Robinson represented that *she had actual knowledge of problems with twelve of the fourteen systems described on page 2 of the Disclosure Statement*, including: the water supply, water quality, water pressure, sanitary sewer, roof system, gutter system, plumbing system, electrical system, appliances, built-in systems and fixtures, heating system and cooling system. (Baber Dep., Ex. 7, p.2). Long-Robinson also disclosed on page 3 of the Disclosure Statement that she was also aware of problems caused by water during her ownership. (Baber Dep., Ex. 7, p. 3). Many of these systems Long-Robinson identified in the Disclosure Statement as having problems were the same items that Baber had already observed and questioned in her e-mail exchange with Garvey between January 9 and January 11. (*See*, Baber Dep. Ex. 5-7).

5. Shortly thereafter, Baber submitted a proposed Agreement/Contract to Buy and Sell Real Estate to Long-Robinson in which she offered to purchase the Property for \$145,000.00. (Baber Dep. p. 75). The offer includes, among other things, a requirement that Long-Robinson

¹ Ms. Long-Robinson was represented in the sale of the property by Delaney and Ouzts, who are also defendants in this matter. (Baber Dep. p. 29).

pay for a home warranty for Baber. (Baber Dep. Ex., 9, § 14). Long-Robinson ultimately did not agree to purchase a home warranty on the property. (Baber Dep. p. 75). After Long-Robinson refused to purchase a home warranty, Baber testified that Garvey agreed to pay for a home warranty, but admitted that “well, if you don't, I will, because we need one.” (Baber Dep. p. 76).

6. On or about February 19, 2015, Baber and Long-Robinson entered into an Agreement/Contract to Buy and Sell Real Estate (“Purchase Contract”) pursuant to which Baber agreed to purchase the property for \$145,000.00. (Baber Dep. Ex. 11). The Purchase Contract clearly indicated that Baber was purchasing the property “As-Is, Where Is, With all Faults” and the sale was contingent on Long-Robinson’s lender approving a short sale of the Property. (*Id.* § 28 and Short Sale Addendum). The Purchase Contract did not require that a home warranty be purchased. (*Id.* § 14). The Purchase Contract gave Baber the right to inspect the condition of the Property and to have the property inspected for wood infestation. (*Id.* §§ 8 and 11).

7. Most of Baber’s claims against the Tate Defendants are based on alleged representations made by the Tate Defendants and others prior to closing that termite and home inspections had been performed and came back clear or that such inspections were a condition on her closing of the loan. Baber claims that had she known the true condition of the Property, she would not have purchased it. (*See, e.g.*, Complaint ¶¶ 106, 135, 165).

8. Baber testified in her deposition that when she received the original appraisal of the Property on March 5, 2015 (Baber Dep. Ex. 16), she immediately questioned the accuracy of the appraisal because it did not identify the defects in Property she had spotted in January. (Baber Dep. pp. 110-113). More specifically, she was concerned that appraisal did not address:

a hole I thought I saw in the roof from the outside, two rusted holes in the air conditioner, the rotten and unsafe deck which I did not think met FHA standards, the rotten wood around the windows, window seals, overhangs, doors and signing, the gutters that were falling off and water spots in the ceiling.

(Baber Dep. pp. 112-113 and Ex. 17).

9. Baber closed on her purchase of the Property on May 29, 2015. (Baber Dep. P. 122). Immediately prior to closing, Baber notified Linda Mattison, the paralegal for the closing attorney, Michael Gillen, by e-mail that she “didn’t have a termite inspection done” and “did have an inspection/appraisal” which had been paid for. (Baber Dep. Ex. 14). Baber admitted in her deposition that she never received any bill for any inspections or any invoices for repairs to the Property prior to closing. (Baber Dep. pp. 90, 94).

10. As part of the closing, Baber concedes that she executed a Walk-Through Acknowledgment (“Acknowledgement”) in which she represented that she “accepts the repairs and condition of the property.” (Baber Dep. pp. 123-124 and Ex. 19). She also executed a Professional Services Disclosure and Election (“Professional Services Disclosure”) in which she did not indicate that she had selected anyone to perform a home inspection or a wood infestation inspection. (Baber Dep. p. 129 and Ex. 20).

11. Baber testified that within the first few days of her purchase of the Property on March 29, 2015 she was aware of the majority of the problems with the Property of which she now complains. (Baber Dep. pp. 130-131). She demanded a meeting with Coesens, Garvey and others at Allen Tate to discuss the Property and the fact that she did not receive a home warranty on the Property. (Baber Dep. 133-134).

12. Baber testified that she met with Coesens, Garvey and Ouzts on June 29, 2015. (Baber Dep. pp. 136-137). During that meeting, Allen Tate offered to pay Baber \$409.00 towards

the cost of a home warranty and asked her to sign a release of claims against Allen Tate and its agents in exchange for that payment. (Baber Dep. pp. 137-138).

13. On June 30, 2015, Baber purchased a home warranty (Baber Dep. Ex. 23). She received the \$409.00 payment and signed a General Release ("Release") in which she released "Allen Tate Co., Inc., its parent entities, predecessors, successors and assigns, officers, directors, brokers, agents, employees and related and affiliated companies" (which includes all of the Tate Defendants) from:

any and all manner of, disputes, actions claims, demands, and liabilities whatsoever in law or equity, including complaints to any professional association or commission, and all claims for contribution and indemnification, arising from and by reason of any and all known and unknown, foreseen and unforeseen, injuries and damages, and the consequences thereof, related to and associated with the Offer to Purchase and Contract dated February 15, 2015 and any and all transactions and circumstances regarding the property located at 255 Rolling Ridge Road, Rock Hill, South Carolina.

(Baber Dep. pp. 138 and Ex. 22). Baber admitted in her deposition that she signed the release, received the payment and gave up all rights and claims against the Tate Defendants. (Baber Dep. pp. 139-140). Baber further conceded in her deposition that she gave the Tate Defendants the Release in exchange for the Tate Defendants providing her with the funds to purchase a home warranty. (See, Baber Dep. pp. 139-140, 141).

14. Baber filed this action on May 29, 2018 and has alleged that the Tate Defendants and others failed to disclose material information concerning the condition of the house, that many people made false representations about what inspections were required, that inspections were

performed that showed no issues with the house and Baber was ultimately fraudulently induced to purchase the property through a conspiracy among the defendants.²

15. On August 8, 2018, the Tate Defendants served Requests for Admission on Baber pursuant to Rule 36, SCRCPP. As demonstrated in the Affidavit of Thomas L. Ogburn, Baber failed to timely respond to the requests for admission and failed to timely either seek an extension of time to respond or seek relief from the effects of Rule 36.

LEGAL STANDARD

Summary judgment shall be granted “if the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” Rule 56(c), SCRCPP. A party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 592, 545 S.E.2d 500, 505 (2001). “Once the moving party carries its initial burden, the ‘opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as the material facts but must come forward with specific facts showing that there is a genuine issue for trial.’” Id. “The party opposing summary judgment cannot simply rest on mere allegations and denials contained in the pleadings.” Id. at 593, 454 S.E.2d at 505, citing Rule 56(e), SCRCPP.

LAW/ANALYSIS

The Tate Defendants are entitled to summary judgment on all of Baber’s claims against them because there are no genuine issues of material fact and the Tate Defendants are entitled to

² All of Baber’s claims against Allen Tate Co., Inc. are based on the alleged acts of Coesens, Ouzts, Delaney and Garvey. (Complaint, ¶ 7-11). Baber does not allege any independent acts by Allen Tate Co., Inc.

judgment as a matter of law. Baber knowingly and voluntarily released all claims against the Tate Defendants when she executed the Release in exchange for the money to purchase a home warranty. As an additional ground for dismissal, the Tate Defendants are entitled to summary judgment on certain of Baber's claims against them because of admissions arising from Baber's failure to respond to Requests for Admission and on the remaining claim Baber admitted that she had no evidence to support it.

Release

The Release signed by Baber bars her claims in this action. All of Baber's claims against the Tate Defendants arise from her purchase of the Property on May 29, 2015, or from her execution of the Release shortly after closing. Baber testified that she was aware of the vast majority of alleged defects in the Property of which she now complains within a few days of closing and before she signed the Release. Baber further admitted in her deposition that she signed the Release in exchange for a payment of \$409.00 for a home warranty, that she received the funds and purchased the home warranty.

The clear, unambiguous language of the Release confirms Baber's deposition testimony and her understanding that she released all claims against the Tate Defendants based on a payment of \$409.00 for a home warranty, not based on any representations that Baber would be provided with copies of non-existent inspection reports. Therefore, the Tate Defendants' Motion should be granted and Baber's claims against the Tate Defendants should be dismissed, with prejudice.

Admissions by Plaintiff

The Tate Defendants are also entitled to summary judgment on Baber's second, third, fourth, eighth, and eleventh causes of action due to Baber's admissions arising from her failure to

respond to Requests for Admission and on Baber's first cause of action because Baber admitted that she had no evidence to support it.

Since Baber failed to timely respond to the Requests for Admission, it is deemed admitted for the purposes of this action that: (1) Baber was aware before she purchased the Property on May 29, 2015, that no termite inspection or home inspection had been performed on the Property; (2) she knew prior to purchasing the property that no CL-100 existed relating to the Property; and (3) she told one or more of the Tate Defendants that she did not want to pay for a home inspection or termite inspection. See, Hinson-Barr, Inc. v. Pinckard, 292 S.C. 267, 269-70, 356 S.E.2d 115, 116 (1987) ("Under Rule 36(a), SCRCp, all matters contained in a Request for Admission are admitted unless the party serves answers or objects within a certain time.").

Plaintiff's claims against the Tate Defendants in her Second, Third, Fourth, Eighth, and Eleventh causes of action are each based on alleged misrepresentations concerning whether a termite inspection or home inspection had been performed and the results of those inspections. (See, Complaint ¶¶ 112, 126, 132, 164, 180). Based on Baber's admissions, she was fully aware those inspections had not been performed and had told the Tate Defendants that she was not willing to pay for those inspections. Therefore, the Tate Defendants are entitled to summary judgment on those claims.

Finally, the Tate Defendants are entitled to summary judgment on Baber's first cause of action because Baber has conceded in her deposition that she has no evidence to support it. Baber's first Cause of Action alleges that Long-Robinson, Delaney, Ouzts and Allen Tate knew that the Disclosure Statement omitted material information concerning the condition of the Property.

(Complaint, ¶¶ 100-110).³ Baber admitted in her deposition that she had no evidence to support her First Cause of Action that Delaney and Ouzts knew that material information had been omitted from the Disclosure Statement. (Baber Dep. pp. 70-71). Therefore, the Tate Defendants are entitled to summary judgment on that claim as well. See, Chastain v. Hiltabidle, 381 S.C. 508, 520-21, 673 S.E.2d 826, 832-33 (Ct. App. 2009).

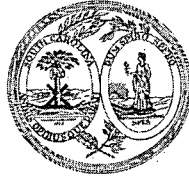
BASED ON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Mr. Coleman's request to deny the Motion and set a supplemental hearing is denied;
2. The Tate Defendants' objection to the Court's consideration of the Baber Affidavit is overruled; and
3. The Tate Defendants' Motion for Summary Judgment is granted and all of Plaintiff's claims against the Tate Defendants are dismissed with prejudice.

IT IS SO ORDERED.

[Signature contained on following page]

³ The Court previously dismissed the claims against Long-Robinson.



York Common Pleas

Case Caption: Karen K Baber VS Summit Funding Inc , defendant, et al

Case Number: 2018CP4601592

Type: Order/Summary Judgment

So Ordered

s/Daniel D. Hall 2753

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STATE OF SOUTH CAROLINA	)	
COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS
Karen K. Baber,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Summit Funding, Inc.; Appraisal	)	C.A. No.: 18-CP-46-1592
Innovations, LLC; Brian L. Blue; Allen	)	
Tate Co., Inc.; Colleen Coesens; Jonathan	)	
Garvey; Robert Ouzts; and Connie Delaney,	)	
	)	
Defendants.	)	
	)	

ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF SUMMIT FUNDING

THIS MATTER came before me on April 3, 2019, upon the motion for summary judgment filed by Summit Funding, Inc. (the "Motion"). Filed with the Motion were the Affidavits of Chris Anderson and Jana Catching. A transcript of the deposition Plaintiff was already on file with the Court. Summit Funding, Inc. (Summit) also submitted a memorandum in support (Memo in Support) of the Motion. Plaintiff submitted an affidavit in opposition to the Motion.¹

All parties received notice of the hearing on the Motion. Present at the hearing were Susan E. Driscoll for Summit; Thomas Lynn Ogburn, III for Allen Tate Co., Inc., Colleen

¹ Summit objected to the Court's consideration of Plaintiff's affidavit on the grounds: (1) the affidavit contains hearsay and does not comply with Rule 56(e), SCRCP; (2) Baber testified in her deposition that e-mails that she produced to all of the Defendants may have been the product of "cutting and pasting" multiple e-mails or combining multiple e-mails and Summit argued that most of the e-mails attached to the affidavit were not accurate representations of the actual e-mails; and (3) the affidavit may contain e-mails that were falsified. Additionally, Summit objected to the Court's consideration of the affidavit to the extent that it contradicted her sworn deposition testimony. The Court overrules Summit's objection and has considered the affidavit in ruling on the Motion.

Coesens, Connie Delaney, Jonathan Garvey and Robert Ouzts; Russell M. Racine for Appraisal Innovations, LLC and Brian L. Blue; and Karen K. Baber appeared *pro se*.²

Ms. Baber filed her Verified Complaint on May 29, 2018. In the Verified Complaint, the Fifth, Sixth, Seventh and Tenth Causes of Action were lodged against Summit. Summit filed a motion to dismiss under Rule 12(b)(6), SCRCP. On January 31, 2019, the Honorable Tessa K. Weaver entered an Order Granting in Part and Denying in Part Defendant Summit Funding's Motion to Dismiss. Pursuant to that Order, the Fifth, Sixth and Seventh Causes of Action were dismissed as to Summit, leaving only the Tenth Cause of Action. That Order was a final order and was not appealed.

Summary Judgment Standard

Summary judgment is an integral part of the rules of procedure, intended to expedite the disposition of cases not requiring the services of a fact finder. *Bankers Trust of S.C. v. Benson*, 267 S.C. 152, 226 S.E.2d 703 (1976). For a trial judge to grant summary judgment, it must be shown that further inquiry into the facts is not needed to clarify the application of the law. *Charleston Lumber Co., Inc. v. Miller Housing Corp.*, 318 S.C. 471, 458 S.E.2d 431 (Ct. App. 1995), *reh. den.*, *cert. den.* Summary judgment is also appropriate where a non-moving party submits a last minute affidavit contradicting prior sworn testimony leaving no doubt about the

² At the start of the hearing, Ms. Baber informed the Court that she was represented by Creighton B. Coleman; however, a phone call to Mr. Coleman informed the Court that as of the date and time of the hearing, Ms. Baber did not have legal counsel and was not represented by Mr. Coleman. The hearing proceeded forward. On April 8, 2019, after the hearing on the Motion, Mr. Coleman sent a letter to the Court announcing that he and Glenn Bowens were now representing Baber. He asked that the Motion be denied without prejudice because discovery was incomplete. Mr. Coleman also requested that the Court set a supplemental hearing on the Motion, providing at least 30 days time to review Baber's file, complete discovery and prepare a response to the Motion. Summit opposed this request. Based upon the fact Mr. Coleman had not been retained at the time of the hearing, the fact that the Motion was based solely on law, not any disputed facts and the prejudice that Summit would suffer if the Court were to conduct another hearing on the Motion, Mr. Coleman's request is denied.

sworn testimony. *McMaster v. Dewitt*, 411 S.C. 138, 767 S.E.2d 451 (Ct. App. 2014), *cert. den.* When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *USAA Property and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 661 S.E.2d 791 (2008), *reh. den.*; *Moore v. Barony House Restaurant, LLC*, 2009 WL 596610 (Ct. App. 2009).

Plaintiff is incorrect, as a matter of law without any necessity to inquire into the facts, that an alleged breach by Summit of any federal regulation enacted pursuant to the National Housing Act resulted in a private right of action on the part of a mortgagor for breach of contract or declaratory relief. Even if such a right existed, Plaintiff's cause of action for breach of contract is barred by the applicable statute of limitations. Based on the indisputable evidence, Summit is entitled to summary judgment as to the Tenth Cause of Action.

I. There is no private right of action available to a mortgagor for a mortgagee's alleged breach of a regulation enacted pursuant to the National Housing Act.

"As other courts have observed, the regulations promulgated under the National Housing Act govern relations between the mortgagee and the government, and give the mortgagor no claim for duty owed or for the mortgagee's failure to follow said regulations." *Mitchell v. Chase Home Finance, LLC*, 2008 WL 623395,*3 (N.D. Tex. 2008). "The overall purpose of the FHA mortgage insurance program is to encourage leading lenders, in exchange for a government guarantee of the loan, to extend mortgages to those carrying higher credit risks." *Wells Fargo Home Mortg., Inc. v. Neal*, 398 Md. 705, 719, 922 A.2d 538, 546 (Ct. App. 2007). "Thus, the regulations do not control directly the relationship between mortgagor and mortgagee and may not be invoked by the mortgagor as a sword in an offensive cause of action against the mortgagee." *Id.* "[T]he regulations exist primarily to govern the relationship between the

government and the mortgagee.” *Id.* at 720. “Therefore, [the government] uses the regulations to protect its interests and manage the program.” *Id.* “It appears well accepted [] that no private right of action exists under the HUD regulations.” *Dixon v. Wells Fargo Bank, N.A.*, 2012 WL 4450502, *6 (E.D. Mich. 2012).³

Plaintiff’s Tenth Cause of Action against Summit is based solely upon Summit’s alleged failure to “obtain a CL-100 and home inspection report” for the property that is the subject of this action. (Verified Complaint, p. 34, ¶ 174.) Plaintiff claims that Summit’s failure to do so was a violation of applicable FHA guidelines. (Verified Complaint, p. 34, ¶ 175.) Even if Summit were required under applicable regulations to obtain such reports, its alleged failure to do so does not confer a private right of action upon Plaintiff for affirmative relief and damages. The power to address any alleged noncompliance on the part of Summit rests with the federal

³ See *Federal National Mortgage Ass’n v. LeCrone*, 868 F.2d 190, 193 (6th Cir.1989) (“no express or implied right of action in favor of the mortgagor exists for violation of HUD mortgage servicing policies”). See also *PNC Bank, N.A. v. Van Hoornaar*, 44 F. Supp. 3d 846, 853 (E.D. Wisc. 2014) (“[T]he Court concurs with the courts that have held that such regulations do not confer a private right of action for affirmative relief and damages.”); *Collins v. BAC Home Loans*, 2013 WL 2249123, *3 (N.D. Ala. 2013) (“Federal courts throughout the country have repeatedly rejected similar attempts by borrowers to bring claims under the National Housing Act and its implementing regulations.”); *Meyer v. Citimortgage, Inc.*, 2012 WL 511995, *3 (E.D. Mich. 2012) (“It is well established that the National Housing Act and attending regulations do not expressly or implicitly create a private right of action to mortgagors for a mortgagee’s noncompliance with the Act or regulations”); *Kakarala v. Wells Fargo Bank, N.A.*, 2012 WL 1458235 (D. Ariz. 2012) (“Courts have routinely held that HUD regulations promulgated under the National Housing Act [] do not provide a claim to the mortgagor for duty owed or for the mortgagee’s failure to follow the regulations.”); *Wells Fargo Bank, N.A. v. Favino*, 2011 WL 1256771, at *12 (N.D. Ohio 2011) (finding no private right of action available to a mortgagor for a mortgagee’s noncompliance with the National Housing Act or breach of HUD regulations); *Scocca v. Cendant Mortg. Corp.*, 2004 WL 2536837, at * 1 (E.D. Pa. 2004) (“there is no private right of action against a mortgagee based on alleged violations of [HUD rules]”). The “National Housing Act and the regulations promulgated thereunder deal only with the relations between the mortgagee and the government, and give the mortgagor no claim to duty owed nor remedy for failure to follow.” *Roberts v. Cameron-Brown Co.*, 556 F.2d 356, 360 (5th Cir. 1977), citing *Baker v. Northland Mortgage Co.*, 344 F. Supp. 1385 (N.D. Ill. 1972).

government, not Plaintiff. Because there is no private right of action, the Tenth Cause of Action is hereby dismissed with prejudice.⁴

II. Even if Plaintiff had a private right of action against Summit, the statute of limitations expired prior to Plaintiff filing her Verified Complaint.

In South Carolina, the statute of limitations for a breach of contract action is three years. S.C. Code Ann. § 15-3-530(1) (2005). “Under the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered.” *Coastal States Bank v. Hanover Homes of South Carolina, LLC*, 408 S.C. 510, 517, 759 S.E.2d 152, 156 (Ct. App. 2014). “Pursuant to the discovery rule, a breach of contract action accrues not on the date of the breach, but rather on the date the aggrieved party either discovered the breach, or could or should have discovered the breach through the exercise of reasonable diligence.” *Id.*

Plaintiff selected Michael F. Gillen of the Gillen Law Firm as the closing attorney⁵ for her loan with Summit. (Verified Complaint, p.2, ¶6, Baber Depos. Tr., Ex. 20.) On May 27,

⁴ Even if there were a private right of action, Plaintiff failed to come forward with any specific regulation requiring Summit to provide either a CL-100, or a home inspection separate and apart from the appraisal performed by Appraisal Innovations, LLC. Under the Single Family Housing Policy Handbook 4000.1, the mortgagee is only required to obtain an “**Error! Main Document Only.** appraisal to verify the value of the Property and the Property’s compliance with HUD’s Minimum Property Standards.” (Handbook, Section II, Subsection A, Paragraph 1(b), Subparagraph iv(C).) Unless that appraisal discloses defective conditions, or the appraiser cannot determine whether the property meets those standards, there is no obligation on the part of the mortgagee to obtain any further inspections. **Error! Main Document Only.** (Handbook, Section II, Subsection A, Paragraph 3(a)(ii).) Here, the appraisal **Error! Main Document Only.** stated specifically that the requisite HUD guidelines had been satisfied. (Verified Complaint, p. 9, ¶ 36.) The appraiser did not note any necessary repairs that were required to have the property comply with the guidelines, nor did he note any termite damage or that the appraisal was made subject to an inspection by a qualified pest control specialist. (Baber Depos. Tr., Ex. 16.) Based upon the appraisal performed in this case, Summit had no obligation under any regulation to have any additional inspections performed on the property.

⁵ **Error! Main Document Only.** “There is no doubt that the general rule is that notice to the attorney is notice to the client, but the knowledge of the attorney must be acquired while acting for the principal, and the information must relate to a matter within the scope of his agency; the theory of the law being that the agent is presumed to have communicated to his principal knowledge which it was his duty to have communicated and which it is reasonable to suppose he did actually communicate.” *Strickland v. Capital City Mills*, 74 S.C. 16, 54 S.E. 220, 223 (1906). Gillen obtained all information related to the closing of the loan while acting as counsel to Plaintiff; therefore, any information provided to Gillen was presumed to be provided to Plaintiff. Plaintiff has not offered any evidence to rebut that presumption.

2015, Plaintiff confirmed by e-mail with Gillen's office that a termite inspection had not been done and the only home inspection that had been performed was the appraisal. (Baber Depos. Tr., Ex. 14.) That same date, Gillen's office provided Summit with a draft HUD-1 that had no reference to any fees incurred or paid for either a separate home inspection, or termite inspection. (Anderson Affidavit, Ex. A.) Summit responded to Gillen that the lines related to the termite and home inspection should be deleted, as no charges for either had been incurred. (Anderson Affidavit, Ex. A.) Those lines were deleted and the HUD-1 was finalized with no reference to a termite or home inspection. (Anderson Affidavit, Ex. A.)

As evidenced by the e-mail traffic, Plaintiff knew or should have known of the alleged breach of contract on May 27, 2015. She did not file an action against Summit until May 29, 2018. That is outside the three year statute of limitations applicable to a breach of contract action. Because the statute of limitations has run, the Tenth Cause of Action against Summit should be dismissed with prejudice.

III. Summit did not breach its contractual obligations to Plaintiff.

"In South Carolina, the formation of a contract is governed by well-settled principles. Quite simply a contract exists where there is an agreement between two or more persons upon sufficient consideration either to do or not to do a particular act." *Carolina Amusement Co., Inc. v. Connecticut Nat. Life Ins. Co.*, 313 S.C. 215, 220, 437 S.E.2d 122, 125 (Ct. App. 1993). "[T]here must be an offer and an acceptance accompanied by valuable consideration." *Id.*

In her Verified Complaint, Plaintiff alleges that by not getting either a home inspection or a CL-100, Summit failed to comply with the terms of the "loan agreement". (Verified Complaint, p. 34, ¶ 175.) Plaintiff failed to provide a copy of the alleged loan agreement and has

not produced any document executed by both parties through which Summit agreed, at no cost to Plaintiff, to provide both a home inspection and a CL-100.

The contractual relationship between Summit and Plaintiff began with a pre-approval letter, which contained certain conditions. (Baber Depos. Tr., Ex. 10.) If Plaintiff satisfied those conditions, the loan would fund. As evidenced by the Direct-Endorsement Approval for a HUD/FHA-Insured Mortgage, Plaintiff satisfied the conditions of the pre-approval letter and final approval of the loan was issued. (Baber Depos. Tr., Ex. 26.) The loan was funded and Plaintiff acquired the Property. (Baber Depos. Tr., pp. 196-197.) Summit did not breach its contract with Plaintiff.

NOW, THEREFORE, it is hereby

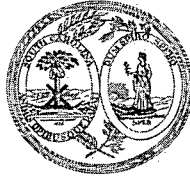
ORDERED that the Motion is granted; summary judgment is entered in favor of Summit; and Summit is hereby dismissed with prejudice as a party defendant.

AND IT IS SO ORDERED.

Date: _____

York, SC

Honorable Daniel D. Hall
Sixteenth Circuit
York County



York Common Pleas

Case Caption: Karen K Baber VS Summit Funding Inc , defendant, et al

Case Number: 2018CP4601592

Type: Order/Summary Judgment

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2019-05-29 14:44:40 page 8 of 8

ELECTRONICALLY FILED - 2019 May 29 3:03 PM - YORK - COMMON PLEAS - CASE#2018CP4601592

000025

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4601592

Karen K Baber
PLAINTIFF(S)

Appraisal Innovations Llc et al
DEFENDANT(S)

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.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

Plaintiff's Motion to Reconsider is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/29/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



York Common Pleas

Case Caption: Karen K Baber VS Summit Funding Inc , defendant, et al

Case Number: 2018CP4601592

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2019-07-29 10:38:56 page 3 of 3

ELECTRONICALLY FILED - 2019 Jul 29 10:41 AM - YORK - COMMON PLEAS - CASE#2018CP4601592

000028

The South Carolina Court of Appeals

Karen K. Baber, Appellant,

v.

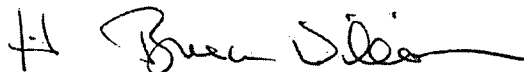
Summit Funding, Inc., Appraisal Innovations, LLC,
Brian L. Blue, The Gillen Law Firm, P.A., Michael F.
Gillen, Allen Tate Co., Inc., Colleen Coesens, Jonathan
Garvey, Robert Ouzts, Connie Delaney, and Gloria
Long-Robinson,

Of Which Summit Funding, Inc., Allen Tate Co., Inc.,
Collen Coesens, Jonathan Garvey, Robert Ouzts, Connie
Delaney, and Gloria Long-Robinson are the
Respondents.

Appellate Case No. 2019-001440

ORDER

After careful consideration, the motion to dismiss is denied.



FOR THE COURT

Columbia, South Carolina

cc:

Glenn E. Bowens, Esquire
Creighton B. Coleman, Esquire
Thomas Lynn Ogburn, III, Esquire
Susan Elizabeth Driscoll, Esquire
Montrio Montess Belton, Sr., Esquire

FILED

December 20, 2019

000029

Karen K. Baber
255 Rolling Ridge
Rock Hill, SC 29730
843-240-0083
Email: klkb1951@gmail.com
Plaintiff, Pro Se

STATE OF SOUTH CAROLINA
COUNTY OF YORK

KAREN K. BABER,

PLAINTIFF,

VS.

SUMMIT FUNDING, INC., A CALIFORNIA
CORPORATION; APPRAISAL INNOVATIONS, LLC, A
SOUTH CAROLINA LIMITED LIABILITY COMPANY;
BRIAN L. BLUE, AN INDIVIDUAL; THE GILLEN LAW
FIRM, P.A., A SOUTH CAROLINA PROFESSIONAL
ASSOCIATION; MICHAEL F. GILLEN, AN INDIVIDUAL;
ALLEN TATE CO., INC., A NORTH CAROLINA
CORPORATION; COLLEEN COESENS, AN INDIVIDUAL;
JONATHAN GARVEY, AN INDIVIDUAL; ROBERT OUZTS,
AN INDIVIDUAL; CONNIE DELANEY, AN INDIVIDUAL;
AND GLORIA LONG-ROBINSON, AN INDIVIDUAL,

DEFENDANTS.

IN THE COURT COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C/A NO:

2018CP4601592

VERIFIED COMPLAINT

(MEDIATION AND JURY TRIAL DEMANDED)

2018 MAY 29 AM 9:47
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

FILED-RECEIVED

Plaintiff Karen K. Baber ("Baber") hereby complains against Defendants Summit Funding, Inc ("Summit"), Appraisal Innovations, LLC ("AI"); Brian L. Blue ("Blue"), The Gillen Law Firm, P.A. ("the Firm"); Michael F. Gillen ("Gillen"), Allen Tate Co, Inc. ("Tate"), Colleen Coesens ("Coesens"), Jonathan Garvey ("Garvey"), Robert Ouzts

("Ouzts"), Connie Delaney ("Delaney"), and Gloria Long-Robinson ("Robinson" or "Seller"), and in doing so alleges, asserts and complains as follows.

PARTIES

1. Plaintiff Karen K. Baber is an individual residing in the State of South Carolina.

2. Defendant Summit Funding, Inc. ("Summit") is a California mortgage loan company registered to do and doing business in South Carolina.

3. Defendant Appraisal Innovations, LLC ("AI") is a South Carolina limited liability company engaged in the business of providing appraisals on the values of real properties in South Carolina.

4. Defendant Brian L. Blue ("Blue") is an individual residing in the State of South Carolina and upon information and belief is the owner, manager or employee of AI. At all times material herein, Blue was acting within the scope of his employment with AI, and AI bears responsibility and liability for all actions and omissions Blue took as alleged herein.

5. Defendant, The Gillen Law Firm, P.A. (the "Firm") is a South Carolina professional association or corporation.

6. Michael F. Gillen is an individual residing in the State of South Carolina. Gillen is an attorney licensed to practice and practicing law in South Carolina. Gillen acted as the closing attorney for Baber with respect to the purchase of the Property (as described below). At all times material herein, Gillen was acting within the scope of his employment with the Firm, and the Firm bears responsibility and liability for Gillen's actions and omissions as alleged herein.

7. Defendant AllenTate Co., Inc. ("Tate") is a North Carolina real estate company registered to do and doing business in South Carolina. Tate and its real estate agents named as defendants herein represented the seller of the Property subject of this lawsuit and Baber.

8. Defendant Colleen Coesens ("Coesens") is an individual residing in the State of South Carolina. Coesens **was the managing broker of Tate's offices in Rock Hill, South Carolina at the time the events alleged herein occurred.** At all times material herein, Coesens was acting within the scope of her employment with Tate, and Tate bears responsibility and liability for Coesens' actions and omissions as alleged herein.

9. Defendant Robert Ouzts ("Ouzts") is an individual residing in the State of South Carolina. Ouzts is a real estate agent employed by Tate and represented the seller of the Property at the closing of the sale of the Property to Baber. At all times material herein, Ouzts was acting within the scope of his employment with Tate, and Tate bears responsibility and liability for Ouzts' actions and omissions as alleged herein.

10. Defendant Connie Delaney ("Delaney") is an individual residing in the State of South Carolina. Delaney is a real estate agent employed by Tate. Delaney represented the seller of the subject Property and then relinquished that role to Ouzts when she began acting as the seller's attorney-in-fact under a power of attorney issued to her by the seller. At all times material herein, Delaney was acting within the scope of her employment with Tate, and Tate bears responsibility and liability for Delaney's actions and omissions as alleged herein.

11. Defendant Jonathan Garvey is an individual residing in the State of South Carolina. Garvey is a realtor also employed by Tate and acted as Baber's agent. At all times material herein, Garvey was acting within the scope of his employment, and Tate bears responsibility and liability for Garvey's actions and omissions as alleged herein.

12. Defendant Gloria Long-Robinson ("Seller" or "Robinson"), upon information and belief, is an individual residing in Maryland. Robinson was the owner and seller of the Property.

JURISDICTION AND VENUE

13. Jurisdiction is proper in this court pursuant to South Carolina Code 14-5-10.

14. Venue is proper in this court pursuant to South Carolina Code 15-7-30 because one or more of the defendants resides in this district, the causes of action asserted herein arose in this district, and the property at issue is in this district.

FACTUAL BACKGROUND

15. In 2014 Baber began looking to purchase a home in Rock Hill, South Carolina. Garvey was the realtor who showed Baber various properties.

16. Garvey recommended working with Summit to obtain a loan, and Baber began a loan pre-qualification process with Summit. Steve Reynolds ("Reynolds") was Summit's loan officer in the Charlotte, NC Summit office with whom Baber dealt in obtaining a loan.

17. In February 2015, Baber decided to make an offer on real property located at 255 Rolling Ridge Road, Rock Hill, SC (the "Property"). The Property was listed by

Tate. Delaney was the listing and/or seller's agent. Garvey was Baber's real estate agent. Both Garvey and Delaney were real estate agents with Tate.

18. Garvey provided Baber a copy of the SC Residential Property Condition Disclosure Statement dated March 28, 2014 for the Property ("Disclosure Statement"). The Disclosure Statement was signed by Seller and a second newer-dated Disclosure Statement was signed by Delaney, acting under a power of attorney for Seller.

19. The Disclosure Statement provided in part: "If a question is answered "yes" or asks for a description, then owner ***must explain or describe the issue or attach a descriptive report*** from an engineer, contractor, expert, or public agency. If owner attaches a report, owner shall not be liable for inaccurate or incomplete information in the report unless owner was grossly negligent in obtaining or transmitting the information." (Emphasis added). There were no explanations and no reports attached to the Disclosure Statement. No further explanations or reports were ever provided in connection with the Disclosure Statement.

20. The Disclosure Statement also provided in part: "If owner is assisted in the sale of property by a real estate licensee, owner remains solely responsible for completing and delivering this disclosure statement to the purchaser. ***The real estate licensee must disclose material facts about the property if the real estate licensee knows or reasonably should have known about the issue, regardless of owner responses on this disclosure.***" (Emphasis added). No agent for Seller disclosed any information regarding material issues with or about the Property.

21. Garvey stated to Baber that no descriptive reports in connection with the Disclosure Statement were needed because he believed that all of the fifteen items

marked "YES" by the Seller on the Disclosure Statement had been resolved; and if not, then these items would also be noted on the appraisal and the termite and home inspection reports that would be provided in connection with the purchase and sale of the Property.

22. Upon information and belief, both Baber's and Sellers' real estate agents knew the extent of the damage to the Property, but failed to disclose all relevant information to Baber.

23. Baber met with Garvey around the first week in February 2015 and through him made an offer to purchase the Property for the amount of \$145,000. Upon information and belief, Seller was in default on her mortgage and the Seller's lender who held a mortgage or trust deed on the Property had to approve the proposed "short-sale" of the Property.

24. Baber's purchase of the Property was made contingent upon "upon approval and acceptance of lender" and subject to a termite/wood infestation report ("CL-100") and a home inspection. Further, Summit required the CL-100 and a home inspection for the proposed FHA loan to be made to Baber.

25. Baber emailed Summit's loan officer, Reynolds, on February 11, 2015 about her concerns that so many items on the Disclosure Statement had been checked "Yes," and that the Property was to be purchased "as is." Reynolds responded back by email on February 12, 2015 stating: "Let's look at appraisal and this loan requires a termite inspection and a home inspection. We can look at rehab loan if there are too many repairs."

26. Baber reasonably relied upon the representations from Summit that a CL-100 and a home inspection report would be required to verify the condition of the Property before issuance of the anticipated loan.

27. When preparing the first offer to purchase and to alleviate some of Baber's concerns, Garvey suggested that Baber request Seller to pay for a home warranty. Garvey advised Baber that he would pay for the home warranty if Seller did not. Garvey said this was important because of the age of the house and because he believed that the house had been vacant for over two years.

28. In mid-February, 2015, Garvey advised Baber that the Seller's lender had approved the "short-sale" of the Property as proposed in Baber's offer to purchase. Seller electronically signed the offer on February 18, 2015, and Baber electronically signed on February 19, 2015. Garvey advised Baber that the home warranty could not be included in the actual purchase, but that he would pay for the home warranty.

29. Prior to the time of the signing of the offer to purchase the Property, Seller granted Delaney a power of attorney to act on Seller's behalf with respect to the purchase of the Property. Delaney ceased acting as Seller's real estate agent, and Ouzts was identified as real estate agent for the Seller. Ouzts also was employed by Tate.

30. Garvey told Baber that he could get a contractor, Robert Evans ("Evans"), to do the required home and termite inspection and that would be an expense outside of closing. Garvey suggested that Baber also hire Evans to make repairs and do some remodeling to the Property and the cost of the home inspection would be covered by what Baber was paying Evans to do that additional work.

31. Sometime between February 19, 2015 and February 27, 2015 Summit engaged Al to appraise the Property. Upon information and belief, Al is owned by Brian L. Blue and/or is Al's manager and/or primary employee.

32. On or about March 5, 2015, Garvey emailed to Baber a copy of the Appraisal signed by Blue on that date with an effective appraisal date of February 27, 2015. Garvey stated there was a known water leak which had to be found and repaired before the utilities could be turned on for the Appraisal Update and/or Completion Report.

33. Upon receiving the Appraisal, Baber attempted to contact Garvey about some of the items reported on the Appraisal. When unable to reach Garvey, Baber called Blue. Baber asked Blue about some of the items on his report. Blue advised Baber that he had walked through the Property and made the observations reported in the Appraisal to make sure that Summit could recover the amount of the loan being made to her, if Baber should default. Blue stated he was not supposed to talk to Baber and that Baber should contact Summit.

34. Baber called Summit's Charlotte, North Carolina office and discussed with the office manager some concerns she had about the Appraisal. Summit sent Baber an email that Summit had told Blue of Baber's concerns. Assuming that Summit had, in fact contacted Blue, his making no changes to the Appraisal provided further assurance to Baber that the Appraisal was materially accurate and that there were no material defects in the Property.

35. Between March 5 and March 11, 2015, Garvey advised Baber (via a telephone call and later confirmed via an email) that he and Evans had dug up the yard,

found the leak which was located at the water meter, that he (Garvey) had purchased the part and paid Evans for his help in fixing the leak.

36. On March 16, 2015 Garvey and Summit sent Baber a copy of the Appraisal Update and/or Completion Report dated March 12, 2015 (the "Completion Report"). In response to the question: "Have the improvements been completed in accordance with the requirements and conditions stated in the original appraisal report?" the Completion Report stated "YES. The subject property meets the standards put forth by the guidelines in HUD handbooks 4905.1 and 4150.2. The utilities and HVAC were on and functioning at the time of the inspection. The subject is complete. I certify that I have performed a visual inspection of the subject property to determine if the conditions or requirements stated in the original appraisal have been satisfied." The Certification was signed by "Brian Blue Appraisal Innovation LLC."

37. The copy of the appraisal Baber received with the Completion Report had color of the inside and outside of the house. Upon receipt of the appraisal, Baber contacted Garvey about what Baber believed were items which were not accurately represented by Blue including pictures supposedly taken between February 27, 2015 and March 12, 2015 by Blue showing no leaves under the carport and only a few leaves on the deck and in the yard. This was a concern because the entire yard, the deck and under the carport were covered with over one foot (1') of leaves. The pictures that appeared in the Completion Report were not current, because they also had been included in the Appraisal.

38. In response to Baber's stated concerns to Garvey in the preceding paragraph, Garvey told Baber to wait and see what the termite report showed and what

the home inspection showed because if there were errors they would definitely be addressed in these inspections which Summit required. If they were not noted in the inspections then that would mean that the items were not considered significant enough to be reported.

39. Baber also spoke to Reynolds about her concerns with the Appraisal, but was reassured by Reynolds who said "if the termite report and the inspections required too many repairs then we'll switch to a rehab loan."

40. On March 19, 2015 Ouzts advised Linda Mattison ("Mattison"), a paralegal at the Firm, and also advised Garvey, Delaney and Baber that "I have received an extension for this contract to 4/16/15 and the net proceeds required did not change."

41. Later in March 2015, Garvey advised Baber that Summit had approved Baber's loan subject to a satisfactory termite inspection (CL-100) and home inspection. The Buy/Sale Contract calling for closing on or before March 27, 2015 was extended to April 16, 2015. The closing was to take place at the Firm with Gillen to take responsibility as counsel to make sure that all necessary requirements were met for issuance of the loan to Baber thus enabling her to purchase the Property.

42. On April 21, 2015; Mattison advised Baber, Garvey and Reynolds that she had re-scheduled closing for April 29, 2015 and would need the closing package by April 27, 2015.

43. On April 21, 2015; Reynolds advised Baber and Mattison that closing could not occur on April 29, 2015 because Garvey had advised him that the termite report and home inspection had not yet been ordered.

44. Seller requested, through Delaney, that her lender agree to another extension. On May 19, 2015, Seller's lender approved another extension, and Buyer and Seller through her attorney-in-fact, Delaney, signed an ADDENDUM/AMENDMENT TO REAL PROPERTY to extend the contract until June 12, 2015.

45. On May 19, 2015, Reynolds wrote to Baber "I will call you in the morning to go over everything. I am trying to get you wrapped by this week to close next. I have left Jonathan [Garvey] a message about the termite report and inspection."

46. On May 27, 2015, Summit's California office sent an email to Mattison and Reynolds that the loan had funded.

47. On May 27, 2015 Mattison wrote: "Hi Karen, Left you [voicemail] and trying to get your settlement statement done. If so, have termite and home inspections been paid or do I need to pay at closing? Need to know today." Baber called Mattison and told Mattison that she (Baber) had just gotten off the phone with Garvey who had told her that he had gotten the home inspection report, but that she and Garvey did not talk about a termite report because Garvey was handling that. Mattison said she would call Garvey.

48. On May 27, 2015 Mattison wrote an email to Baber: "Hi Karen. Jonathan [Garvey] is bringing the reports to closing. He said they are clear and will be shown on the Settlement Statement as (POC)."

49. On May 27, 2015, Baber received an email from Reynolds: "Karen, I will call you in the morning to go over everything. Your termite inspection was condition of loan and was with inspection. Have a good night."

50. Baber sent Garvey a message asking him to be sure to bring the home warranty and also asked that he call Evans to meet Baber at the Property after closing to open the windows and talk about getting started on some painting and remodeling that Baber intended to do on the Property.

51. Closing of the purchase of the Property occurred on May 29, 2015 at the Firm's offices. Present at the closing were Baber, Gillen, Delaney and Garvey.

52. Mattison also was occasionally present at the closing, but only came into the room to notarize documents. Gillen went through the closing package.

53. Documents to be signed by Ouzts, as Seller's new agent, were signed outside of closing.

54. The closing of the purchase and the issuance of the loan from Summit were expressly made conditional on receipt of an appraisal ordered by Summit and the CL-100 and home inspection reports which were to have been ordered by Baber's agent; in this case Tate and Garvey.

55. On June 1, 2015 Mattison advised Baber that her check and copies of all the loan documents were available to be picked up. Baber asked Mattison whether Garvey had brought by the home warranty, but Mattison did not know.

56. The loan documents that Baber picked up that day did not include the promised CL-100 termite inspection, the home inspection report, or the home warranty (collectively the "Missing Documents"). Baber advised Gillen's office that her copies of the loan documents did not include the Missing Documents.

57. When Baber went to pick up the Missing Documents, she was told that her loan documents had been sent off to Summit, but that Gillen's office had failed to make

copies of the Missing Documents, probably because Garvey had brought them in late the prior afternoon. Mattison specifically told Baber that Gillen could not have signed the Closing Agent Certification without the CL-100 and home inspection report. Mattison apologized for failing to keep copies of the Missing Documents.

58. Baber then called Summit's Charlotte, North Carolina office to try to get copies of the missing CL-100 and home inspection report, but was told that the loan packages were sent directly to Summit's headquarters in California. Baber was again assured that the loan could not have closed or been funded without the CL-100 and home inspection report.

59. Baber called Garvey who sent an email and apologized and said they forgot to make a copy of the CL-100 and the home inspection report before taking the originals to Gillen. Baber also asked that Garvey please get her copies of the CL-100, the home inspection report, and the home warranty. Baber also asked Garvey to contact Evans to call Baber to schedule a time to come to the Property.

60. When Baber asked Garvey if she could come get the home warranty, Garvey told Baber that it took about a week to get it issued, and he would call when he received it.

61. In the first week of June 2015, Baber hired Ridling Pest Control ("Ridling") to come spray the Property to prevent termites. While there to provide the treatment, Ridling's employee pointed out rotten wood on the siding, windows, and deck and where he saw evidence of termites and water damage. He suggested that Baber get a copy of the CL-100 to verify whether the termite and/or water damage had been noted.

62. On June 5, 2015 Baber called Summit's office in California. A Summit employee told Baber it would take them about a week to process the loan package and that she should call back in a week and get copies of the inspections. Baber called back about a week later and was told that package had already been processed and been sent to storage. Summit assured Baber that the loan could not have funded without the CL-100 and home inspection reports.

63. On June 3, 2015 Rock Hill Utility came to the property to turn on the utilities. Baber found a note on the door from the Rock Hill Utility employee that he could not leave the water on because there was evidence of water running at the meter. Baber called and advised Garvey of what that note said, and Garvey said that it had to be a different leak because he helped fix the leak with Evans in March 2015 and the appraiser certified that the leak was fixed and the water was on.

64. Beginning June 3, 2015 Baber began to discover repairs that were needed that should have been disclosed on the Appraisal, the CL-100 and/or the Disclosure Statement. Some of these include:

- a. The disposal fell apart the first time water was turned on in the sink. It was being held together by plumber's tape.
- b. The downstairs heating and air conditioning unit was not working. The unit was rusted through and the electrical connections were broken off. Thus, the statement in the Completion Report that the HVAC was functioning was false.
- c. The windows would not open. They had been sealed with putty down the sides. When the windows were forced opened, it was discovered that the

seals were rotten and paper had been stuffed down into the seals for the windows to sit on and be held in place.

d. The backdoor exiting the master bedroom to go onto the deck was rotten and after several months the glass fell out of it.

e. The roof had holes in it, which neighbors told Baber had been caused by a severe hailstorm in 2011 which required everyone on the street to have their roofs replaced. Upon information and belief, Seller received over \$13,000 in insurance proceeds to replace the roof and repair siding on the Property, but she did not fix either. Seller thus knew that there were significant problems with the roof which had not been disclosed and for which no explanation or report had been provided. When Baber looked into the attic, she discovered that the holes from the hailstorm were actually visible from the attic of the Property and should have been visible to any person inspecting or appraising the Property. Thus, the statement in the Appraisal that the roof surface was "composite/average" was false. It can only be presumed that the Blue failed to go into the attic because in the Appraisal, he also said that the attic had "drop stair." That statement was false.

f. Electrical damage was present that had been caused by water getting into the electrical connections via roof leaks.

g. There were no working or connected fire/smoke detectors.

h. There was evidence of and damage from termites. There also were signs of water damage and dry rot.

i. There was black mold in the Property.

j. There was mildew under the carpets and in the padding in three of the five rooms downstairs.

k. There were multiple light fixtures that did not work, mainly due to water damage.

l. The deck had wood rot and was not safe as evidenced when a mover stepped through one of the boards of the deck.

m. Certain areas of the deck were over thirty-two inches above the ground, for which the FHA required protective railings.

n. The oven did not work.

o. The range had only two burners that worked. Someone had placed an insert into one side of the range making it appear to have two burners on the right hand side. This was apparently done for show since the right hand side had been a rotisserie and the non-working part was found under the cabinet.

p. The hot water heater was rusted through and did not work.

q. The house sits on a concrete slab. The statement in the Appraisal that there was a crawl space was false.

r. Two toilets did not work.

s. There were leaks in the ceilings in the upstairs bedrooms.

t. The gas logs were missing parts and did not work.

u. The front door and one back door had locks missing.

v. The dishwasher did not work.

w. The gutters were not just full of leaves but when removing the leaves, the gutters were falling off and boards behind the gutters were rotten.

x. There were no window screens even though the Appraisal stated that there were.

y. There was no porch as reported on the Appraisal.

65. In light of the defects listed in the preceding paragraph, Blue's statement in the Appraisal that the Property was in "average condition" was false. The statement that "[t]here were no signs of deterioration or needed renovation" was false. The statements in the Appraisal that "No needed repairs were noted at the time of the inspection," and that "[There are no] physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property" were either false or more likely indicate that Blue, in fact, never actually inspected the Property.

66. Garvey sent the false Appraisal to Baber to induce her to go through with the purchase of the Property and to convince her that the Appraisal, the non-existent home inspection report and the non-existent CL-100 report did or would show that the Property had no material defects and had a market value in excess of the purchase price.

67. Baber called Garvey every business day for over two weeks about the inspections and the warranty. Garvey finally admitted that he did not get the home warranty. Garvey apologized about the problems Baber was having with the house. He told Baber that he didn't understand why those problems had not shown up in the CL-100 or home inspection reports. Baber asked to meet with Coesens, the real estate broker for Tate's Rock Hill office.

68. During the last week in June 2015 Baber met with Coesens, Garvey and Ouzts. Coesens agreed that Tate would pay for a home warranty but needed a release

from Baber. Coesens asked Garvey about the water leak, specifically who fixed it and who was paid to do the work. Garvey told Coesens and Baber that he (Garvey) bought the part and that Robert Evans fixed the leak. That statement by Garvey was false.

69. In July 2015, Baber told Coesens she needed the termite report and the home inspection report. Coesens said she would get those if they could not find a copy in the office. In March 2016, Coesens admitted that there was no CL-100 or home inspection report and apologized to Baber.

70. Based upon the repeated representations from the Tate employees that Baber would be provided a copy of the CL-100 termite report and the home inspection report which would provide recourse for Baber because both those reports stated that there were no material issues with the Property; on July 1, 2015 Baber signed a release of liability against Tate and its employees.

71. The repeated representations by Garvey that Evans had fixed the water leak was false. In fact, Evans had never been to the Property prior to the closing.

72. In January 2016, the same Rock Hill Utility employee who had come to the Property on March 11, 2015 to turn the water on and then turn it off visited Baber at the Property. The water leak that was found in January 2016 was the same leak as existed from March 11, 2015. This was confirmed by the Rock Hill Utility employee who came to the Property in January 2016.

73. Reports from Rock Hill Utility show that the water was connected on March 11, 2015 but that it was turned off the same day.

74. The water to the Property was not on, and the plumbing was not working on March 12, 2015 when, in the Completion Report, Blue reported that the water leak had been fixed.

75. In fact, the water was not turned back on until June 3, 2015 by Baber.

76. In January or February 2016, Baber proceeded to have a plumber come to the Property to fix the leak. Since moving into the Property, Baber observed frequent water standing at the area of the water meter, exactly where the Rock Hill Utility employee had described. The plumber dug up this section of land and found the "part," which was supposedly a "T-connection" described by Garvey that Garvey had purchased and helped a plumber fix. Instead of being "fixed," the T-connection was being held together only by plumber's tape and was not stopping the pipe from leaking. The plumber's tape at the location of the water leak appeared to be the same tape holding together the garbage disposal.

77. Baber confronted Garvey with the information from her plumber who actually fixed the water leak. On March 16, 2016 Garvey wrote: "I contacted a plumber to come fix the issue, was there when the repair took place, bought the parts for the plumber and talked to the city of rock hill tech after he cut the water off and then back on when the repair was made to a cracked T- joint in the yard close to the meter. I notified your lender to send the appraiser back out as it was "subject to" the water being on to get the property appraised. The appraiser came out and cleared the appraisal. I then paid the plumber for his work out of my pocket. **We had a street key for the water turn off and on** but it didn't fit property so we had to call the city to help. I hope this helps as well". (Emphasis added).

78. On March 16, 2016 Ouzts wrote Baber: " Karen, I remember Jonathan and his plumber actually did the work to replace a damaged pipe tee where the irrigation splits off the main water line from the meter box to the house. ***I don't think they needed the assistance of the city to do this work since they had their own meter key to shut off and on the water to do this job.***" (Emphasis added).

79. On March 16, 2016, Blue and/or AI wrote to Baber stating: "An appraiser does not have utilities turned on or off. Only the seller or sellers agent can do that." Accordingly, Blue did not turn on the water when the Completion Report had been done.

80. Baber has now learned that the home warranty provided to her by Tate does not cover coverage for any repairs made necessary by events prior to June 1, 2015.

81. Upon learning that there was no home warranty coverage for the repairs needed to the Property as described in paragraph 64 above, Baber contacted Coesens again requesting the inspection reports and advising Coesens that the release was not valid.

82. Baber continued to call Garvey, Summit and Gillen to get a copy of the CL-100 and the home inspection reports to seek redress against those inspectors for their failure to observe the injuries and damages to the Property as set forth in paragraph 64. Although no one from Summit, Tate or the Firm could find these reports, they all continued to claim that the purchase could not have closed because a loan could not have been issued to Baber without the required CL-100 and valid and truthful home inspection report and that the termite inspector and home inspector could be held liable if there were errors in those reports.

83. In 2016 Baber began having asthma attacks, which Baber had not had for over ten years. Baber's attacks lessened considerably after Baber had carpet removed from Baber's bedroom and sitting area where moldy and mildewed carpet was found and was removed. Baber and the other residents of the Property had not caused any moisture on the carpet and were not the cause of the mold and mildew on the underside of the bedroom carpet.

84. Similarly, Baber's daughter and two grandchildren began experiencing breathing and allergy problems. By 2017, Baber's daughter had to see an allergy specialist and use a breathing machine at night to lessen the allergic reactions to allergents in the Property.

85. In April 2018 a specialist found that Baber's daughter had a "wart" on her thyroid which was caused by breathing in bacteria over an extended period of time. Surgery will be required to remove the growth on Baber's daughter's thyroid, and she will be out of work and does not get paid when out sick. The long term affects upon Baber's daughter from the exposure to the bacteria in the Property are not known. All these conditions to Baber's daughter have caused and continue to cause Baber severe emotional distress.

86. Baber's older granddaughter who also resides at the Property has begun having respiratory and other health problems in 2017. Beginning in the fall of 2017, Baber's granddaughter has had repeated contractions of strep throat, tonsillitis, pharyngitis and respiratory issues. She had to be put on a homebound program for missing so much school. The treating physicians have determined that Baber's granddaughter's condition is not just viral but is also being caused by breathing in

bacteria. The fact that Baber's granddaughter's health is being compromised because of the condition of the Property has caused and is causing Baber extreme emotional distress.

87. Due to the continuing health issue being suffered by residents at the Property, Baber had an environmental investigation performed and a report prepared. The report indicates that there are unknown allergents in the Property. It was further recommended that Baber, her daughter and granddaughters move from the Property while the house is treated to remove the bacterial and/or other allergents. Baber lacks the resources to be able to move herself or her family. Baber does not have the estimated \$20,000 required to make the Property safe from the bacteria and other allergents causing harm to Baber and her family. In addition to the direct physical harm, this also is causing stress and emotional distress to Baber.

88. Upon information and belief, Seller, Tate, and the realtors representing Seller, were fully aware of the poor condition of the Property, but failed to disclose that condition.

89. Had the true condition of the Property been disclosed, Baber would not have purchased the Property.

90. Had the true condition of the Property been disclosed in a home inspection report; the loan to purchase the Property never would have been approved for an FHA loan.

91. Had the existence of termites, water damage and dry rot been reported in a CL-100 Baber would never have purchased the Property, and Summit never would have funded the loan used to purchase the Property.

92. Given the true condition of the Property, Baber would have been unable to qualify for a rehabilitation loan to fix and repair the Property. The repairs necessary to fix the roof, siding, deck, window, electrical issues, appliances, water heater, and other items identified in paragraph 60 and/or those necessary to make the Property qualified for an FHA loan will cost in excess of \$200,000.

93. Baber has expended over \$25,000 in attempting to make repairs to the Property to make it safe for habitation.

94. Contrary to the representations made by Tate and its agents, particularly Garvey, there was no CL-100 termite inspection report ever prepared with respect to the Property.

95. Contrary to the representations made by Tate and its agents, particularly Garvey, there was no home inspection report ever prepared with respect to the Property. In fact, Evans never prepared such a report because he had never been to the Property prior to closing.

96. Contrary to the representations made by Tate and its agents, particularly Garvey and Ouzts, there was no repair made to the water leak in which he bought a "T-connection" and Evans repaired because Evans never went to the Property prior to closing.

97. The representations made by Tate were patently and knowingly false.

98. Tate and its other employees involved with the purchase of the Property by Baber knew that the representations as to the condition of the Property and the existence of the CL-100 and home inspection reports were false. Despite such knowledge, they failed to inform Baber of those facts prior to closing.

99. The acts and omissions constituting fraud and breach of fiduciary duty as set forth above were made intentionally, willfully, maliciously, or recklessly warranting an award of punitive damages against the defendants described herein, in an amount to be proven at trial.

FIRST CAUSE OF ACTION

(Claim for Fraud Against Seller, Tate, Delaney, and Ouzts)

100. Plaintiff incorporates by reference the allegations of paragraphs 1 through 95 above.

101. Seller and Delaney (acting as Seller's agent) executed the Disclosure Statement knowing that material information had been omitted from it describing the actual damage to the Property.

102. There were no explanations and no reports attached to the Disclosure Statement.

103. Seller, Delaney, Tate, and Ouzts knew that the Property was suffering material injuries and damages and needed significant repairs that were not disclosed.

104. Seller, Delaney, Tate and Ouzts had a duty to disclose material information regarding the condition of the Property, but they failed to do so.

105. Given the language in the Disclosure Statement and based upon further representations from Garvey that there were no material items needing repairs and/or that the matters in the Disclosure Statement had been repaired, Baber reasonably relied upon the misrepresentations and omissions of material facts contained in the Disclosure Statement and in Seller's, Delaney's, Tate's and Ouzts' failures to disclose material information.

106. Baber would not have entered into the purchase agreement or obtained the loan from Summit had she known the true condition and extent of damage and disrepair of and to the Property.

107. As a result of the fraud alleged herein, Baber has suffered damages as alleged above.

108. As a result of the fraud alleged herein, Baber is entitled to an award of punitive damages.

109. Baber is entitled to an award of her reasonable attorney fees and costs that she may incur in the course of this litigation.

110. Because the misrepresentations and omissions made by Delaney were made in the course of her employment with Tate, Tate is liable for all damages, punitive damages, fees and costs as requested herein.

SECOND CAUSE OF ACTION

(Fraud Against Tate and Garvey)

111. Plaintiff incorporates by reference the allegations of paragraphs 1 through 110 above.

112. Garvey made the following representations of material facts:

- a. That he had obtained a CL-100 report.
- b. That he had engaged Evans to conduct a home inspection report and obtained a home inspection report from him.
- c. That both the CL-100 report and the home inspection report showed that the Property was in good condition.

d. That Baber would have recourse against the termite inspector and the home inspector for any errors they had made regarding the condition of the Property.

e. That he and Evans had repaired the water leak in March 2015.

f. That the water was turned on when the Completion Report was made.

g. That Garvey had obtained a home warranty that would cover any necessary repairs to the equipment and appliances and other items in the Property.

113. The representations set forth in paragraph 112 were false and were known to be false by Garvey when those representations were made.

114. Baber reasonably relied upon those misrepresentations.

115. Had Baber known that the foregoing representations were false, she would not have purchased the Property and the loan from Summit never would have closed.

116. Baber has been injured and suffered damages as set forth above.

117. As a result of the fraud alleged herein, Baber is entitled to an award of punitive damages.

118. Baber is entitled to an award of her reasonable attorney fees and costs that she may incur in the course of this litigation.

119. Because the misrepresentations and omissions made by Delaney were made in the course of her employment with Tate, Tate is liable for all damages, punitive damages, fees and costs as requested herein.

THIRD CAUSE OF ACTION

(Claim of Conspiracy to Defraud Against Seller, Tate, Garvey, Cousens, Delaney, Ouzts, Al and Blue)

120. Plaintiff incorporates by reference the allegations of paragraphs 1 through 119 above.

121. Seller, Tate, Garvey, Cousens, Delaney, Ouzts, Al, and Blue conspired with one another to commit fraud.

122. All the Defendants named in this Third Cause of Action knew that Seller, Garvey, and Blue had made the misrepresentations and omissions set forth above.

123. Al and Blue were instrumental to the conspiracy. The Appraisal was materially false. Blue did not inspect the Property as the Appraisal claimed. There were clear defects and damage to the Property that would have been observed by Blue.

124. The Completion Report was false because the water leak had not been repaired and the water was not turned on when Blue claimed that he had been back to the Property to verify that the leak had been repaired. The HVAC was not working because the air conditioner was not operating.

125. The object of the conspiracy was to cause Baber to purchase the Property thereby entitling the Seller to be relieved of liability on her home mortgage; providing a commission to Tate, Delaney, Cousens, Ouzts, and Garvey; and to provide income to Blue to perform the Appraisal on the Property.

126. The conspiracy involved the misrepresentations and omissions set forth above and in substantial acts of lulling towards Baber by repeatedly telling her that the CL-100 and home inspection reports had been prepared, that the reports showed the Property to be free of any material defects, that the same had been provided to Summit to allow for the closing of the loan, and that those reports would be provided to Baber even after the closing.

127. Baber has been injured and suffered damages as set forth above.

128. As a result of the conspiracy to defraud as alleged herein, Baber is entitled to an award of punitive damages.

129. Baber is entitled to an award of her reasonable attorney fees and costs that she may incur in the course of this litigation.

130. Because the misrepresentations, omissions and acts of Garvey, Ouzts, Delaney, and Cousens were made in the course of their employment with Tate, Tate is liable for all damages, punitive damages, fees and costs as requested herein.

FOURTH CAUSE OF ACTION

(Negligent Misrepresentation Against Tate and Ouzts)

131. Plaintiff incorporates by reference the allegations of paragraphs 1 through 130 above.

132. As set forth more particularly above, Tate and Outz misrepresented that the loan from Summit to Baber to purchase the Property included and had to include a CL-100 report and a home inspection report showing that there were no major defects in the Property and that copies of the same would be provided to Baber.

133. If not made intentionally, those representations were made negligently and without sufficient investigation to verify that the CL-100 and home inspection reports even existed, much less that the reports had been provided to Summit to allow the loan to Baber to close and that they showed that the Property was clear of any major defects that would have failed to meet FHA guidelines.

134. Under all the circumstances, Baber's reliance upon the negligent misrepresentations set forth above was reasonable.

135. Had Baber known the true condition of the Property and known that the representations set forth above were false, she never would have purchased the Property.

136. Baber has been injured and suffered damages as set forth above.

137. Baber is entitled to an award of her reasonable attorney fees and costs that she may incur in the course of this litigation.

138. Because the negligent misrepresentations and omissions of Outz and Coesens were made in the course of her employment with Tate, Tate is liable for all damages, fees and costs as requested herein.

FIFTH CAUSE OF ACTION

(Mutual Mistake Against Summit)

139. Plaintiff incorporates by reference the allegations of paragraphs 1 through 138 above.

140. The loan made by Summit to Baber was conditioned upon a CL-100 and home inspection report to insure that the Property met FHA requirements, was safe and habitable, and had sufficient value in its true condition to merit the issuance of the loan.

141. The existence of the CL-100 report showing no termite damage or dry rot was material to the issuance of the loan.

142. The existence of a home inspection report showing compliance with FHA guidelines and showing no material defects to the Property was material to the issuance of the loan.

143. Both Baber and Summit were mutually mistaken that a CL-100 and a home inspection report had been issued and that both reports showed that the Property complied with FHA guidelines and no major defects with the Property.

144. Had the true condition of the Property been known, and/or had it been known that no CL-100 or home inspection report had been obtained, the loan from Summit to Baber never would have been executed.

145. As a result of the mutual mistake, the loan should be rescinded, Baber should be relieved of any further liability on the loan and is entitled to have all prior amounts paid by Baber to Summit or Summit's successors refunded to her.

SIXTH CAUSE OF ACTION

(Claim of Unilateral Mistake Against Summit)

146. Plaintiff incorporates by reference the allegations of paragraphs 1 through 145 above.

147. The loan made by Summit to Baber was conditioned upon a CL-100 and home inspection report to insure that the Property met FHA requirements, was safe and habitable, and had sufficient value in its true condition to merit the issuance of the loan.

148. The existence of the CL-100 report showing no termite damage or dry rot was material to the issuance of the loan.

149. The existence of a home inspection report showing compliance with FHA guidelines and showing no material defects to the Property was material to the issuance of the loan.

150. Baber took all reasonable actions to insure that the CL-100 and home inspection reports had been received by Summit and was repeatedly assured that they had been prior to the closing; otherwise, the closing could not have taken place.

151. Baber was unilaterally mistaken that a CL-100 and a home inspection report had been issued and that both reports showed that the Property complied with FHA guidelines and no major defects with the Property.

152. Had the true condition of the Property been known, and/or had it been known that no CL-100 or home inspection report had been obtained, the loan from Summit to Baber never would have been executed.

153. As a result of her unilateral mistake, Baber should be relieved of any further liability on the loan from Summit and is entitled to have all prior amounts paid by Baber to Summit or Summit's successors refunded to her.

SEVENTH CAUSE OF ACTION

(Claim of Promissory Estoppel Against Summit)

154. Plaintiff incorporates by reference the allegations of paragraphs 1 through 153 above.

155. Baber entered into the loan agreement with Summit based upon the representations that the loan would only close if a satisfactory CL-100 and home inspection report was received prior to the closing.

156. Summit represented that it had received those reports.

157. Baber has repeatedly requested that Summit provide her copies of the CL-100 and home inspection reports and although no such reports were ever provided, she

was continually assured that such reports existed and that the loan could not have closed without those reports being received.

158. Baber has reasonably relied upon Summit's representations that the loan would not close without the CL-100 and home inspection reports.

159. Baber would not have entered into the loan with Summit if the CL-100 and home inspection reports showing that the Property complied with FHA requirements and that there was no termite, wood rot or other material damages to the Property or the components within the Property.

160. Summit thus represented that the Property met FHA guidelines.

161. Summit should be promissory estopped from using the Property as security for the loan that was issued or hold Baber liable for any such loan until all improvements and repairs are made to correct the issues set forth in paragraph 64 above.

162. Unless and until Summit provides funding for all necessary repairs and improvements to make the Property compliant with FHA guidelines and to make it safe and habitable, Baber should not be required to make any further payments on the loan and all prior payments should be refunded.

EIGHTH CAUSE OF ACTION

(Claim of Professional Negligence Against Tate and Garvey)

163. Plaintiff incorporates by reference the allegations of paragraphs 1 through 162 above.

164. Tate and Garvey, acting as Baber's agent were negligent in the manner that services were provided to her. Among other things:

- a. Garvey and Tate failed to order, obtain and provide to Baber the CL-100 and home inspection report that would have disclosed the true condition of the Property.
- b. Garvey and Tate failed to insist upon full disclosures in the Disclosure Statement from Seller including full descriptions and reports.
- c. Garvey and Tate failed to procure the homeowner's warranty promised by Garvey to be issued

165. As a result of Tate's and Garvey's professional negligence, Baber has purchased a Property which she never would have purchased.

166. Baber has been injured by Tate's and Garvey's negligence in that she has been required to make loan payments on the Property; has been required to incur expenses attempting to make the Property more safe and habitable; has endangered her health and safety and that of her family members who reside with her, and such residents have, in fact, suffered injuries as a result of exposure to allergents and contaminants; has endangered herself and her family members by living in a residence that has unsafe electrical systems; and has caused severe emotional distress to Baber knowing that she and her family members are being exposed to health, fire, and safety issues while residing at the Property.

167. As a result of the foregoing acts of negligence, Baber has suffered injuries and damages as set forth above for which Tate and Garvey should be held liable as set forth above.

NINTH CAUSE OF ACTION

(Claim for Professional Negligence and Breach of Fiduciary Duty Against the Firm and Gillen)

168. Plaintiff incorporates by reference the allegations of paragraphs 1 through 167 above.

169. Gillen and the Firm owed a fiduciary duty to Baber of competence and loyalty and were negligent.

170. Gillen and the Firm breached their fiduciary duties to Baber, by among other things:

- a. Failing to obtain a CL-100 report.
- b. Failing to obtain a home inspection report.
- c. Failing to immediately take steps to rescind the loan upon learning that the CL-100 and the home inspection report had not been obtained.

171. As a result of the foregoing, Baber has been injured and damaged as set forth above.

TENTH CAUSE OF ACTION

(Claim for Breach of Contract and Declaratory Relief Against Summit)

172. Plaintiff incorporates by reference the allegations of paragraphs 1 through 171 above.

173. The loan from Summit to Baber required that prior to the issuance of the loan that a CL-100 and home inspection report be obtained on the Property.

174. Summit failed to obtain a CL-100 and home inspection report on the Property.

175. As a result of Summit's failure to comply with the loan agreement or otherwise by failing to get the required CL-100 and home inspection report, Baber should no longer be held liable for any amounts allegedly due on the loan, and any and all amounts she has paid in connection with the loan should be returned.

176. In addition, it was reasonably foreseeable that if the condition of the Property did not meet FHA guidelines or was otherwise unsafe, that repairs and improvements would be made to make the Property more safe and habitable. Accordingly, Summit should be required to reimburse Baber for all such costs.

177. Baber is also entitled to recover any and all reasonable attorneys fees and costs incurred in pursuing this cause of action.

ELEVENTH CAUSE OF ACTION

(Declaratory Relief Against Tate, Garvey, Ouzts, Delaney and Cousens)

178. Plaintiff incorporates by reference the allegations of paragraphs 1 through 177 above.

179. Baber executed a Release to Tate, Garvey, Ouzts, Delaney and Cousens be invalid based upon fraud or mistake.

180. More particularly, Baber executed the July 1, 2016 release based upon repeated representations from the Tate employees that Baber would be provided a copy of the CL-100 report and the home inspection report which would provide recourse for Baber because both those reports stated that there were no material issues with the Property.

181. In fact, there was no CL-100 or home inspection report as represented. Baber has no recourse against any party who performed such inspections.

182. The representations that such reports existed were made intentionally or mistakenly.

183. In either case, Baber is entitled to a declaration that the release she signed was procured by fraud or mistake and is thus of no force or effect.

DEMAND FOR JURY AND MEDIATION

184. Baber hereby demands mediation and a jury trial in the event that mediation is unsuccessful in resolving the causes of action set forth in this Verified Complaint.

DATED this 28 day of May, 2018.

Karen K. Baber
Karen K. Baber
Plaintiff, Pro Se

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

VERIFICATION

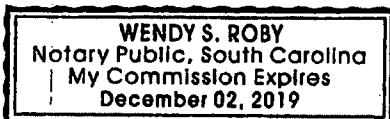
Karen K. Baber, being duly sworn, says that she is the Plaintiff herein and has read the foregoing Verified Complaint and knows the contents thereof, that the same is true of her own knowledge, except as to matters therein stated to be alleged on information and belief; and to those matters she believes them to be true.

Karen K. Baber
Plaintiff, Karen K. Baber

SWORN to and Subscribed before me this 28 day of May, 2018.

Wendy S. Roby
Notary Public of South Carolina

My Commission expires December 02, 2019.



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
2018-CP-46-01592

COUNTY OF YORK

KAREN K. BABER,

Plaintiff,

vs.

SUMMIT FUNDING, INC., APPRAISAL
INNOVATIONS, LLC, BRIAN L. BLUE, THE
GILLEN LAW FIRM, P.A., MICHAEL F.
GILLEN, ALLEN TATE CO., INC., COLLEEN
COESENS, JONATHAN GARVEY, ROBERT
OUZTS, CONNIE DELANEY, and GLORIA
LONG-ROBINSON,

Defendants.

ANSWER

NOW COMES Defendants Allen Tate Co., Inc. ("Allen Tate"), Colleen Coesens ("Coesens"), Jonathan Garvey ("Garvey"), Robert Ouzts ("Ouzts"), and Connie Delaney ("Delaney") (collectively, the "Tate Defendants"), by and through undersigned counsel, and responds to the allegations in Plaintiff's complaint as follows:

FIRST DEFENSE – Rule 12(b)(6)

Plaintiff's Complaint fails to state claims upon which relief may be granted. Among other things: (1) the Agreement/Contract: To Buy and Sell Real Estate (Residential) executed by Plaintiff, as buyer, on February 19, 2015 and by Defendant Gloria Long-Robinson, as seller, on February 18, 2015, clearly demonstrate that Plaintiff knew that she was purchasing the property "as-is, where-is, with all faults"; and (2) Plaintiff signed a release of liability against the Tate Defendants. Therefore, this action should be dismissed pursuant to Rule 12(b)(6), SCRPC.

SECOND DEFENSE

The Tate Defendants hereby respond to the specifically numbered allegations of Plaintiff, Karen Baber's ("Baber") complaint as follows:

1. Admitted.

2. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

3. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

4. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

5. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

6. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

7. It is admitted that Allen Tate is a North Carolina corporation that is authorized to do business in South Carolina. It is further admitted that Allen Tate is a real estate sale company and that its agent, Garvey, represented Baber in the purchase of the property at issue in this dispute and that its agents, Ouzts and Delaney, represented Gloria Long-Robinson ("Seller"), the seller of the property located at 255 Rolling Ridge Road, Rock Hill South Carolina ("Property"). Except as admitted herein, the remaining allegations of this paragraph are denied.

8. It is admitted that Coesens is an individual who resides in the State of South Carolina. It is further admitted that at the time of the sale of the Property, Coesens was the Broker-in-Charge of Allen Tate's offices in Rock Hill, South Carolina. The remaining allegations of this paragraph are conclusions of law rather than averments of fact and, therefore, the same are denied.

9. It is admitted that Ouzts is a citizen and resident of South Carolina. It is further admitted that Ouzts is a real estate agent with Allen Tate and that Ouzts represented the Seller of

the Property along with Delaney. The remaining allegations of this paragraph are conclusions of law rather than averments of fact and, therefore, no response is required. The remaining allegations of this paragraph are conclusions of law rather than averments of fact and, therefore, the same are denied.

10. It is admitted that Delaney is a citizen and resident of South Carolina. It is further admitted that Delaney is a real estate agent with Allen Tate and that Delaney represented the Seller of the Property along with Ouzts. It is denied that she relinquished the role of Seller's agent and that she generally acted as the Seller's power of attorney. The remaining allegations of this paragraph are conclusions of law rather than averments of fact and, therefore, no response is required.

11. It is admitted that Garvey is a citizen and resident of South Carolina. It is further admitted that Garvey is a real estate agent with Allen Tate and that Garvey represented Baber in the purchase of the Property. The remaining allegations of this paragraph are conclusions of law rather than averments of fact and, therefore, no response is required. The remaining allegations of this paragraph are conclusions of law rather than averments of fact and, therefore, the same are denied.

12. Admitted

Jurisdiction and Venue

13. The allegations of this paragraph are conclusions of law rather than averments of fact and, therefore, no response is required.

14. The allegations of this paragraph are conclusions of law rather than averments of fact and, therefore, no response is required.

Factual Background

15. It is admitted that in 2014, Baber looked for possible homes to purchase in Rock Hill, South Carolina and that Garvey showed various properties to Baber. It is also admitted that, Garvey had worked with Baber and shown her various houses off and on for most of the prior ten years. Except as admitted herein, the remaining allegations of this paragraph are denied.

16. Admitted.

17. It is admitted that in February, 2015, Baber made a formal written offer to purchase. It is further admitted that Delaney was the listing agent for the Property, that Garvey was Baber's real estate agent and that both Delaney and Garvey were agents for Allen Tate. Except as admitted herein, the remaining allegations of this paragraph are denied.

18. It is admitted that Garvey provided Baber with a copy of the SC residential Property Condition Statement for the Property signed by the Seller and dated March 28, 2014 ("Disclosure Statement"). Except as admitted herein, the remaining allegations of this paragraph are denied.

19. The contents of the Disclosure Statement speak for themselves and any allegations that contradict the terms thereof are denied. Except as admitted herein, the remaining allegations of this paragraph are denied.

20. The contents of the Disclosure Statement speak for themselves and any allegations that contradict the terms thereof are denied. Except as admitted herein, the remaining allegations of this paragraph are denied.

21. Denied.

22. Denied.

23. Admitted.

24. The allegations of this paragraph refer to the content of Baber's written offer, the terms of which speak for themselves and any allegations that contradict the terms thereof are denied. Except as admitted herein, the remaining allegations of this paragraph are denied.

25. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

26. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

27. It is admitted that when Garvey and Baber prepared the first offer to purchase the Property, Garvey suggested that Baber request that the Seller pay for a home warranty. Except as admitted herein, the remaining allegations of this paragraph are denied.

28. It is admitted that in mid-February, Garvey advised Baber that the Seller's lender had approved a short sale of the property for a price of \$145,000 and that the Seller had refused to pay for a home warranty. It is admitted that Seller signed the offer on February 18, 2015 by hand and Baber electronically signed the offer on February 19, 2015. Except as admitted herein, the remaining allegations of this paragraph are denied.

29. Denied.

30. Denied.

31. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

32. It is admitted that on or about March 5, 2015, Garvey provided Baber with a copy of the appraisal and the content of the appraisal speaks for itself. It is also admitted that Garvey told Baber that there was a "subject to" line on the appraisal relating to the utilities not being on. Except as admitted herein, the remaining allegations of this paragraph are denied.

33. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

34. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

35. It is denied that Garvey ever told Baber that Robert Evans ever did anything to repair the property. It is admitted that Garvey advised Baber that Ronnie Moore of Maxamillion Handyman dug up the yard, found the leak and that Garvey had purchased the parts and paid Moore to fix the leak. Except as admitted herein, the remaining allegations of this paragraph are denied.

36. The contents of the Appraisal speak for themselves and any allegations that contradict the terms thereof are denied. Except as admitted herein, the remaining allegations of this paragraph are denied.

37. The content of the appraisal report speaks for itself. Except as admitted herein, the remaining allegations of this paragraph are denied.

38. Denied.

39. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

40. To the extent that the contents of this paragraph reference a written communication, the content of that communication speaks for itself and any allegations contrary to that content are denied.

41. It is admitted that the closing date was extended from March 27, 2015 to April 16, 2015 and that Gillen was to close the loan. Except as admitted herein, the remaining allegations of this paragraph are denied.

42. The allegations of this paragraph reference a written communication, the content of which speaks for itself and any allegations contrary are denied.

43. Denied.

44. It is admitted that on May 19, 2015, Baber and Seller executed an Addendum/Amendment to Agreement/Contract to Buy Real Estate through which they agreed to extend the closing date until June 12, 2015. Except as admitted herein, the remaining allegations of this paragraph are denied.

45. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

46. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

47. It is denied that Garvey told Baber that he had gotten a home inspection report or termite report and that Garvey was handling aa termite report. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

48. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

49. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

50. Denied.

51. It is admitted that the parties executed the closing documents on May 29, 2015 in the office of Gillen. It is further admitted that Baber arrived at Gillen's offices early and

executed the closing documents prior to Garvey or Delaney arriving at the office. Except as admitted herein, the remaining allegations of this paragraph are denied.

52. Since Baber arrived at the closing early and executed the documents prior to Garvey or Delaney arriving, the Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

53. It is denied that Ouzts would have signed any documents at closing. The remaining allegations of this paragraph are denied.

54. Denied.

55. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

56. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

57. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

58. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

59. Denied.

60. Denied.

61. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

62. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

63. It is admitted that in March, 2015, Ronnie Moore of Maxamillion Handyman dug up the yard, found the leak in the water line and that Garvey had purchased the parts and paid Moore to fix the leak. The Tate Defendants are without information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph, and, therefore, the same are denied.

64. It is denied that Baber requested to have a termite inspection of the Property prior to purchasing the Property. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph and all subparagraphs, and, therefore, the same are denied.

65. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

66. Denied.

67. It is admitted that Baber called Garvey after the closing on the property to ask about a warranty. It is specifically denied that Garvey was obligated to provide a home warranty. It is also admitted that Baber contacted Coesens, who was the broker in charge of Allen Tate's office in Rock Hill. Except as admitted herein, the remaining allegations of this paragraph are denied.

68. It is admitted that Baber met with Coesens and Garvey and that Coesens offered to pay for a home warranty in exchange for a release of all claims. It is further admitted that the parties discussed that in March, 2015, Ronnie Moore of Maxamillion Handyman dug up the yard, found the leak in the water line and that Garvey had purchased the parts and paid Moore to fix the leak. Except as admitted herein, the remaining allegations of this paragraph are denied.

69. It is admitted that Baber contacted Coesens and asked for a copy of the CL-100 and that Coesens said she would look through her file and provide Baber a copy if one existed. It is further admitted that Coesens spoke with Garvey and learned that Baber had chosen to not have a termite inspection. Except as admitted herein, the remaining allegations of this paragraph are denied.

70. It is admitted that Baber signed a release of all claims against the Tate Defendants in exchange for payment of an amount necessary for Baber to purchase a home warranty. Except as admitted herein, the remaining allegations of this paragraph are denied.

71. Denied.

72. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

73. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

74. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

75. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

76. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

77. It is admitted that Baber contacted Garvey and complained that the water leak had not been properly fixed. The remaining allegations of this paragraph refer to an e-mail from Garvey, the content of which speaks for itself and any allegations that contradict the terms

thereof are denied. Except as admitted herein, the remaining allegations of this paragraph are denied. .

78. The allegations of this paragraph refer to an e-mail from Ouzts, the content of which speaks for itself and any allegations that contradict the terms thereof are denied. Except as admitted herein, the remaining allegations of this paragraph are denied.

79. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

80. It is denied that the Tate Defendants provided Baber with a home warranty. Rather, Allen Tate paid Baber an amount sufficient for her to purchase a home warranty in exchange for a release of all claims against the Tate Defendants. Except as admitted herein, the remaining allegations of this paragraph are denied for lack of information necessary to form a belief as to the truth thereof.

81. It is admitted that Baber again asked for copies of the termite and home inspection reports, even after being reminded that Baber had chosen to not have the home inspected or a termite inspection performed. It is further admitted that Baber sent Coesens a letter in which she purported to declare the release "void." Except as admitted herein, the remaining allegations of this paragraph are denied.

82. It is denied that Baber continued to call Garvey about the CL-100 and home inspection reports. It is also denied that Garvey told Baber that the loan from Summit could not have closed without a CL-100 or home inspection report or that the home inspector or termite inspection could be held liable if there were errors in the reports. Except as admitted herein, the remaining allegations of this paragraph are denied for lack of information necessary to form a belief as to the truth thereof.

83. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

84. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

85. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

86. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

87. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

88. Denied.

89. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

90. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

91. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

92. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

93. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied.

94. It is admitted that no CL-100 termite inspection report was ever prepared because Baber refused to pay for one. Except as admitted herein, the remaining allegations of this paragraph are denied.

95. It is admitted that no home inspection report was ever prepared because Baber refused to pay for one. Except as admitted herein, the remaining allegations of this paragraph are denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

First Cause of Action

100. The Tate Defendants incorporate by reference their responses to the allegations contained in paragraphs 1 through 99 as if fully set forth herein.

101. Denied.

102. The allegations of this paragraph refer to the content of the Disclosure Statement, the terms of which speak for themselves and any allegations that contradict the terms thereof are denied. Except as admitted herein, the remaining allegations of this paragraph are denied.

103. Denied

104. The allegations of this paragraph are conclusions of law rather than averments of fact and, therefore, no response is required. To the extent that a response may be required, it is denied that this is a complete and accurate statement of the law.

105. Denied.

106. The Tate Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, the same are denied

107. Denied.

108. Denied.

109. Denied.

110. Denied.

Second Cause of Action

111. The Tate Defendants incorporate by reference their responses to the allegations contained in paragraphs 1 through 110 as if fully set forth herein.

112. Paragraph 112 and all of its subparts are denied.

113. Denied.

114. Denied.

115. Denied.

116. Denied.

117. Denied.

118. Denied.

119. Denied.

Third Cause of Action

120. The Tate Defendants incorporate by reference their responses to the allegations contained in paragraphs 1 through 119 as if fully set forth herein.

121. Denied.

122. Denied.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

128. Denied.

129. Denied.

130. Denied.

Fourth Cause of Action

131. The Tate Defendants incorporate by reference their responses to the allegations contained in paragraphs 1 through 130 as if fully set forth herein.

132. Denied.

133. Denied.

134. Denied.

135. Denied.

136. Denied.

137. Denied.

138. Denied.

Fifth Cause of Action

139. The Tate Defendants incorporate by reference their responses to the allegations contained in paragraphs 1 through 138 as if fully set forth herein.

140. The Fifth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

141. The Fifth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

142. The Fifth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

143. The Fifth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

144. The Fifth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

145. The Fifth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

Sixth Cause of Action

146. The Tate Defendants incorporate by reference their responses to the allegations contained in paragraphs 1 through 145 as if fully set forth herein.

147. The Sixth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

148. The Sixth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

149. The Sixth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

150. The Sixth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

151. The Sixth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

152. The Sixth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

153. The Sixth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

Seventh Cause of Action

154. The Tate Defendants incorporate by reference their responses to the allegations contained in paragraphs 1 through 153 as if fully set forth herein.

155. The Seventh Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

156. The Seventh Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

157. The Seventh Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

158. The Seventh Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

159. The Seventh Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

160. The Seventh Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

161. The Seventh Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

162. The Seventh Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

Eighth Cause of Action

163. The Tate Defendants incorporate by reference their responses to the allegations contained in paragraphs 1 through 162 as if fully set forth herein.

164. Denied.

165. Denied.

166. Denied.

167. Denied.

Ninth Cause of Action

168. The Tate Defendants incorporate by reference their responses to the allegations contained in paragraphs 1 through 167 as if fully set forth herein.

169. The Ninth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

170. The Ninth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

171. The Ninth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

Tenth Cause of Action

172. The Tate Defendants incorporate by reference their responses to the allegations contained in paragraphs 1 through 171 as if fully set forth herein.

173. The Tenth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

174. The Tenth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

175. The Tenth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

176. The Tenth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

177. The Tenth Cause of Action is directed to a defendant other than the Tate Defendants and, therefore, no response is required.

Eleventh Cause of Action

178. The Tate Defendants incorporate by reference their responses to the allegations contained in paragraphs 1 through 177 as if fully set forth herein.

179. Denied.

180. Denied.

181. Denied

182. Denied.

183. Denied.

Demand for Jury Trial

184. The allegations of this paragraph are conclusions of law rather than averments of fact and, therefore, no response is required.

THIRD DEFENSE – Standard of Care

The Tate Defendants complied with the applicable standard of care.

FIFTH DEFENSE – Estoppel

Baber executed a Professional Service Disclosure and Election in which Allen Tate recommended that Baber obtain a home inspection and a wood infestation inspection. However, Baber ignored those recommendations and told Garvey that she did not need either inspection. Therefore, Baber should be estopped from pursuing her claims.

SIXTH DEFENSE – Waiver/Release

On July 1, 2015, in exchange for good and valuable consideration, Baber knowingly and voluntarily waived and released all claims against the Tate Defendants relating to

[A]ny and all, and all manner of, disputes, actions, claims, demands, and liabilities whatsoever in law or equity, including complaints to any professional association and/or commission, and claims for contribution and indemnification, arising from and by reason of any and all known and unknown, foreseen and unforeseen, injuries and damages, and the consequences thereof, related to and

associated with the Offer to Purchase and Contract dated February 15, 2015 and any and all transactions and circumstances regarding the property located at 255 Rolling Ridge Road, Rock Hill, South Carolina..

SEVENTH DEFENSE – Property Sold “As Is”

Both the Agreement/Contract: to Buy and Sell Real Estate (Residential) and the Closing Instructions from Select Portfolio Serving, Inc. executed by Baber made it clear that the Property was being sold on an “as is” basis and Baber purchased the Property on that basis.

EIGHTH DEFENSE – Acceptance of Property

Baber closed on the Property and, by doing so, accepted the Property in its then existing condition. Said acceptance of the Property bars Baber’s claims against Allen Tate.

NINTH DEFENSE – Comparative Negligence

If it is determined that any of the Tate Defendants was negligent in any respect and that this negligence was a proximate cause of Baber’s injuries and damages, which is denied, then Baber, was also negligent and her negligence was the direct and proximate cause of Baber’s own injuries and damages. Baber’s negligence was either (a) greater than the alleged negligence of any of the Tate Defendants, in which case Baber should be denied any recovery from any of the Tate Defendants; or, alternatively (b) equal to or less than the alleged negligence of the Tate Defendants, in which case Baber’s recovery from the Tate Defendants , if any, should be reduced in proportion to the amount of her own causative negligence.

TENTH DEFENSE – Assumption of the Risk

Plaintiff assumed the risk of damage to the Property when she purchased the Property on an “as-is, where-is, with all faults” basis as set forth in the Agreement/Contract: To Buy and Sell Real Estate (Residential) Plaintiff executed on February 19, 2015.

ELEVENTH DEFENSE – Punitive Damages

The award of punitive damages in this action, under the circumstances as alleged by the Plaintiff, would be a violation of the South Carolina Constitution and the Constitution of the United States, and said constitutional defenses are pled in bar to Plaintiff's claims for punitive damages.

TWELFTH DEFENSE

The Tate Defendants reserve the right to amend and supplement the forgoing defenses based on information determined during discovery or at any trial of this action.

WHEREFORE, the Tate Defendants pray the Court as follows:

1. That Plaintiff have and recover nothing from the Tate Defendants and that the claims against the Tate Defendants be dismissed, with prejudice;
2. That the Tate Defendants have and recover their costs incurred in defending this action, to include their reasonable attorney's fees; and
3. For such other and further relief as may be just and proper.

This the 30th day of July, 2018.

POYNER SPRUILL LLP

/s/ Thomas L. Ogburn, III

Thomas L. Ogburn III

S.C. State Bar No. 11761

301 South College Street, Suite 2300

Charlotte, North Carolina 28202

Telephone: 704-342-5250

Facsimile: 704-342-5264

E-Mail: togburn@poynerspruill.com

ATTORNEYS FOR DEFENDANTS ALLEN
TATE CO., INC., COLLEEN COESENS,
JONATHAN GARVEY, ROBERT OUZTS, AND
CONNIE DELANEY

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Karen K. Baber,)

Plaintiff,)

vs.)

Summit Funding, Inc.; Appraisal)
Innovations, LLC; Brian L. Blue; The Gillen)
Law Firm, P.A.; Michael F. Gillen; Allen)
Tate Co., Inc.; Colleen Coesens; Jonathan)
Garvey; Robert Ouzts; Connie Delaney; and)
Gloria Long-Robinson,)

C.A. No.: 18-CP-46-1592

Defendants.)

ANSWER OF SUMMIT FUNDING

Answering in full the Complaint against it, defendant Summit Funding, Inc. (Summit), respectfully submits as follows. Each and every allegation of the Complaint not specifically admitted herein is denied.

For a First Defense

1. Plaintiff's claim against Summit for breach of contract is barred by the expiration of the applicable statute of limitations and should be dismissed with prejudice.

For a Second Defense

2. Summit hereby reiterates all of the foregoing allegations as fully as if set forth verbatim herein.

3. Plaintiff's claim against Summit for breach of contract is barred by the doctrine of unclean hands.

For a Third Defense

4. Summit hereby reiterates all of the foregoing allegations as fully as if set forth verbatim herein.

5. There is no relationship between Summit and Plaintiff other than a creditor-debtor relationship, which is governed by the terms of the loan documents as may be affected by applicable statutory law.

6. Summit owed no duties to Plaintiff outside of those specifically set forth in the loan documents.

7. As the loan documents between Plaintiff and Summit created no duty on the part of Summit to obtain either a home inspection or a termite inspection on Plaintiff's behalf, there has been no breach of contract and the Tenth Cause of Action against Summit should be dismissed with prejudice.

For a Fourth Defense

8. Summit hereby reiterates all of the foregoing allegations as fully as if set forth verbatim herein.

9. Prior to closing on the loan that is the subject of this action, Plaintiff acknowledged and agreed there had been no termite inspection performed on the property. A copy of her acknowledgment is attached hereto as **Exhibit A**.

10. Through her actions, Plaintiff voluntarily and intentionally abandoned her right under the contract of sale to have a termite inspection performed.

11. As a result of Plaintiff's waiver, there has been no breach of contract and the Tenth Cause of Action against Summit should be dismissed with prejudice.

For a Fifth Defense

12. Summit hereby reiterates all of the foregoing allegations as fully as if set forth verbatim herein.

13. Prior to closing on the loan that is the subject of this action, Plaintiff acknowledged and agreed there had been a home inspection performed on the property. *See Exhibit A.*

14. As a result of Plaintiff's acknowledgment of the performance of a home inspection, she is equitably estopped from asserting any cause of action against Summit based upon any alleged failure to perform a home inspection.

For a Sixth Defense

15. Summit hereby reiterates all of the foregoing allegations as fully as if set forth verbatim herein.

16. Paragraphs 1 and 2 of the Complaint are admitted.

17. Summit lacks sufficient knowledge or information to form a belief as to the allegations contained in paragraphs 3 through 12, inclusive, of the Complaint and, therefore, such allegations are denied.

18. Paragraphs 13 and 14 do not contain any factual allegations and are, instead, legal conclusions that do not require a response from Summit. To the extent these paragraphs do contain any factual allegations against Summit, such allegations are denied.

19. Summit lacks sufficient knowledge or information to form a belief as to the allegations contained in paragraph 15 of the Complaint and, therefore, such allegations are denied.

20. As to the allegations of paragraph 16, Summit admits Steve Reynolds was employed by it in 2014 and 2015. Summit lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in paragraph 16 of the Complaint and, therefore, such allegations are denied.

21. Summit lacks sufficient knowledge or information to form a belief as to paragraphs 17 through 23, inclusive, of the Complaint and, therefore, denies these paragraphs.

22. Paragraphs 24 through 26, inclusive, of the Complaint are denied.

23. Summit lacks sufficient knowledge or information to form a belief as to paragraphs 27 through 30, inclusive, of the Complaint and, therefore, denies these paragraphs.

24. Paragraph 31 of the Complaint is admitted.

25. Summit lacks sufficient knowledge or information to form a belief as to paragraphs 32 and 33 of the Complaint and therefore, denies these paragraphs.

26. Paragraph 34 of the Complaint is denied.

27. Summit lacks sufficient knowledge or information to form a belief as to paragraph 35 of the Complaint and therefore, denies this paragraph.

28. Paragraph 36 of the Complaint is admitted.

29. Summit lacks sufficient knowledge or information to form a belief as to paragraph 37 of the Complaint and therefore, denies this paragraph.

30. Paragraphs 38 and 39 of the Complaint are denied.

31. Summit lacks sufficient knowledge or information to form a belief as to paragraph 40 of the Complaint and therefore, denies these paragraphs.

32. Paragraph 41 is denied.

33. Summit lacks sufficient knowledge or information to form a belief as to paragraph 42 of the Complaint and therefore, denies this paragraph.

34. Paragraph 43 of the Complaint is denied.

35. Summit lacks sufficient knowledge or information to form a belief as to paragraph 44 of the Complaint and therefore, denies this paragraph.

36. Paragraphs 45 through 49, inclusive, of the Complaint are denied.

37. Summit lacks sufficient knowledge or information to form a belief as to paragraphs 50 through 53, inclusive, of the Complaint and therefore, denies these paragraphs.

38. Paragraph 54 of the Complaint is denied.

39. Summit lacks sufficient knowledge or information to form a belief as to paragraphs 55 through 57, inclusive, of the Complaint and therefore, denies these paragraphs.

40. Paragraph 58 of the Complaint is denied.

41. Summit lacks sufficient knowledge or information to form a belief as to paragraphs 59 through 61, inclusive, of the Complaint and therefore, denies these paragraphs.

42. Paragraph 62 of the Complaint is denied.

43. Summit lacks sufficient knowledge or information to form a belief as to paragraphs 63 through 81, inclusive, of the Complaint and therefore, denies these paragraphs.

44. Paragraph 82 of the Complaint is denied.

45. Summit lacks sufficient knowledge or information to form a belief as to paragraph 83 through 90, inclusive, of the Complaint and therefore, denies these paragraphs.

46. Paragraph 91 of the Complaint is denied.

47. Summit lacks sufficient knowledge or information to form a belief as to paragraphs 92 through 98, inclusive, of the Complaint and therefore, denies these paragraphs.

48. Paragraph 99 of the Complaint is denied.

49. In response to paragraph 100 of the Complaint, Summit reiterates all of its foregoing admissions, denials and allegations set forth in paragraphs 1 through 48, inclusive, as fully as if set forth verbatim herein.

50. The First, Second, Third, Fourth, Eighth, Ninth and Eleventh Causes of Action are not against Summit. To the extent any of the allegations in these Causes of Action are against it, Summit denies the allegations.

51. The Fifth, Sixth and Seventh Causes of Action against Summit have been dismissed by order of this Court.

52. In response to paragraph 172 of the Complaint, Summit reiterates all of its foregoing admissions, denials and allegations set forth in paragraphs 1 through 51, inclusive, as fully as if set forth verbatim herein.

53. Paragraphs 173 through 177, inclusive, of the Complaint are denied.

WHEREFORE, having fully answered the Complaint, Summit asks that the claims against it be dismissed with prejudice, for an award of its attorneys' fees and costs, and for such other and further relief as appears to the Court to be proper.

Charlotte, NC

Date: 02/14/2019

DRISCOLL SHEEDY, P.A.

By: s/Susan E. Driscoll
Susan E. Driscoll
11520 N. Community House Road
Suite 200
Charlotte, N.C. 28277
(704) 341-2101 - Telephone
(704) 341-2105 - Facsimile
sdriscoll@driscollsheedy.com

ATTORNEYS FOR SUMMIT

Exhibit A

Susan Driscoll

From: Karen Baber <baberkaren@yahoo.com>
Sent: Wednesday, May 27, 2015 4:03 PM
To: Linda Mattison; Jonathan Garvey; Steve Reynolds
Subject: Re: closing

didn't have termite inspection done...

did inspection/appraisal and that has been paid for

NOTE TO JONATHAN AND STEVE - PLEASE CALL LINDA IF ANYTHING ELSE - THANKS

On Wednesday, May 27, 2015 2:49 PM, Linda Mattison <linda@gillenlawfirm.com> wrote:

Hi Karen

Left you vm msg and trying to get your settlement statement approved so we can close Fri. Did you have a termite and home inspection done? If so, have they been paid or do I need to pay at closing. Need to know by today.

Thanks

Linda M. Mattison, Paralegal
Gillen Law Firm, PA
1803 Ebenezer Road
Rock Hill, SC 29732

803-327-0777 (Direct)
803-327-5011 (Fax)

State of South Carolina.,)
)
)
County of York.)

In the Court of Common
Pleas for York

Case No.: 2018-CP-46-01592

Karen K. Baber.,)

Plaintiff.,)

-vs-)

Summit Funding, Inc.,)

Appraisal Innovations. LLC,)

Brian L. Blue,)

The Gillen Law Firm. P.A.,)

Michael F. Gillen,)

Allen Tate Co., Inc.,)

Colleen Coesens,)

Jonathan Garvey, Robert)

Ouztx, Connie Delaney,)

and Gloria Long-Robinson)

Defendants.)

Transcript of Record
Motion for
Summary Judgment

April 3, 2019
York, South Carolina

B-E-F-O-R-E:

The Honorable Daniel D. Hall, Judge

B-E-F-O-R-E:

Ms. Karen K. Baber
Pro Se

Mr. Thomas Lynn Ogburn, III
Poyner Spruill, LLP
301 S. College St., Ste. 2900
Charlotte, North Carolina 28202
togburn@poynerspruill.com
(704) 342-5258

Attorney for Defendants Allen Tate Co., Inc.,
Colleen Coesens, Jonathan Garvey,
Robert Ouztx, and Connie Delaney

Wanda S. Nelson, CVR-M
Official Court Reporter
Sixteenth Judicial Circuit
Union and York Counties
To The Honorable Daniel D. Hall

COPY
000096

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

No witnesses were called.

Court Reporter Certificate Page P.69

Also Appearing:

Ms. Susan Elizabeth Driscoll

Driscoll Sheedy, P.A.

11520 N. Community House Road

Suite 200

Charlotte, NC 28277

sdriscoll@driscollsheedy.com

(704) 341-2103

Attorney for Defendant Summit Funding

I-N-D-E-X

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>

No Exhibits were received into the record.

1 (YORK COMMON PLEAS COURT IN SESSION WEDNESDAY, APRIL
2 3, 2019 AND ON THE RECORD IN THE MATTER OF KAREN BABER
3 VERSUS SUMMIT FUNDING, ET AL, AT 09:17 A.M.)

4 THE COURT: The next matter this morning is the case
5 of *Karen Baber versus Summit Funding*. This is 2018-CP-46-
6 01592. What's before the Court this morning it appears
7 that the Defense has filed a Motion for Summary Judgment
8 and they wished to be heard this morning.

9 Ms. Baber, do you have an attorney?

10 MR. BABER: He's in the process of filing
11 representation papers now.

12 THE COURT: All right. Who is that attorney?

13 MR. BABER: Mr. Creighton Campbell.

14 THE COURT: I'm sorry. If you would stand so I can
15 hear you.

16 MR. BABER: Mr. Creighton Campbell.

17 THE COURT: Creighton Campbell?

18 MR. BABER: Yes, sir, out of Winnsboro. And also his
19 co-counsel is Glenn Rawlings.

20 THE COURT: Today do they represent you?

21 MS. BABER: Today I'm representing myself. They're in
22 the process of -- I retained them on Monday.

23 THE COURT: You are retaining them on this coming
24 Monday?

25 MR. BABER: No, this past Monday.

1 THE COURT: You have retained them. Have they
2 contacted Mr. Ogburn?

3 MS. BABER: No, sir. I did not know this until Monday
4 afternoon and he has not filed the papers yet for
5 representation so he told me to come and ask for a
6 continuance as he files the papers for representation.

7 THE COURT: Tell me his name again. Mr. Campbell?

8 MS. BABER: Yes, Creighton.

9 THE COURT: And when did you meet with Mr. Campbell?

10 MS. BABER: I met with him on Monday. I was supposed
11 to meet with him over a week ago but I had the flu and so
12 we met on Monday.

13 THE COURT: If we called his office right now would
14 they say they represent you?

15 MS. BABER: If you ask for him you should yes, sir.

16 THE COURT: Give me his phone number.

17 MS. BABER: I don't know.

18 THE COURT: Mr. Ogburn, do you have any idea who Mr.
19 Creighton Campbell is?

20 MR. OGDEN: Your Honor, I don't. I've got a laptop
21 here and I'm happy to look up a number for him.

22 THE COURT: We're gonna call him.

23 MR. OGBURN: And this is news to us.

24 MS. BABER: And I also have here, your Honor, --

25 THE COURT: Now the Clerk has indicated that you had

1 indicated to her this morning that it was Creighton
2 Coleman. He is from Winnsboro.

3 MS. BABER: Okay. I'm sorry, your right.

4 THE COURT: Is it Creighton Coleman or Creighton
5 Campbell?

6 MS. BABER: Yes, sir, Creighton Coleman. I'm sorry. I
7 have a note down here about Mr. Campbell.

8 THE COURT: Well here's the thing, Ms. Baber, what the
9 Court needs to do right from the get go, if you have an
10 attorney then you have a right to have that attorney here
11 Now I'm gonna call Mr. Coleman right now and find out if he
12 represents you.

13 MS. BABER: Okay.

14 THE COURT: Just have a seat and we'll give him a
15 call.

16 MS. BABER: Can I go ahead and give these letters that
17 I gave to you to the Defense?

18 THE COURT: About your medical condition?

19 MS. BABER: Yes.

20 THE COURT: You can give it to the Defense, yes.

21 (DOCUMENTS RECEIVED BY THE DEFENSE FROM PLAINTIFF.)

22 A. Coleman and Tolen Law Firm.

23 THE COURT: Yes, this is Judge Hall from York. May I
24 speak to Mr. Coleman?

25 A. Hello.

1 THE COURT: Creighton, this is ---

2 MR. COLEMAN: Hey, Judge.

3 THE COURT: --- Dan Hall. You're on the microphone
4 in the courtroom up here in York.

5 MR. COLEMAN: Okay.

6 THE COURT: We have a hearing that was scheduled this
7 morning, a Mrs. Karen Baber is here, she has a case against
8 the defense Summit Funding and their here with their
9 attorneys. Ms. Baber is indicating when I ask her if she
10 had an attorney that you were in -- she said in the process
11 of representing her. Do you represent her?

12 MR. COLEMAN: Not at this time. I mean I met with her
13 and this is not a simple kind of case where -- I mean she
14 came to see me --

15 THE COURT: All right. Now listen to me, you're on --
16 we got you on the microphone. My question simply -- in
17 open court my question simply is do you represent her
18 today?

19 MR. COLEMAN: Not at the time, no.

20 THE COURT: All right. Well we're gonna go forward
21 with the hearing this morning. It's been properly noticed
22 and if at some point, depending where we are in the future,
23 if you represent her and you file a letter of
24 representation we'll be glad to hear from you. But at this
25 point you do not represent her?

1 MR. COLEMAN: Not at this time. I talked to her ---

2 THE COURT: Okay.

3 MR. COLEMAN: --- and we tentatively scheduled for her
4 to come in Friday so we could talk further and get more
5 involved. When she came to see me she needs to have the
6 Summons and Complaint. She had some of the motions and
7 that kind of stuff but I wasn't going to just drop
8 everything that I had and get into this complicated thing
9 in two days notice to the court for a summary judgment
10 motion.

11 THE COURT: All right. Well that's fine. You know
12 she continues to talk to you we will deal with that, but
13 for purposes of the day we're gonna go forward with this
14 hearing today

15 MR. COLEMAN: Okay.

16 THE COURT: All right, thank you.

17 MR. COLEMAN: Thank you, Judge.

18 THE COURT: All right, Ms. Baber, Mr Coleman clearly
19 indicated that he has spoken to you but he does not
20 represent you ---

21 MS. BABER: Yes, sir.

22 THE COURT: --- for today.

23 MS. BABER: I'm going in Friday and we're supposed to
24 sign the paperwork and take all the complaints and -

25 THE COURT: Well we're gonna go forward with this

1 hearing today. Now listen to me just a second.

2 MS. BABER: Okay.

3 THE COURT: And let me be sure that Mr. Ogburn, is it
4 Driscoll?

5 MS. DRISCOLL: Driscoll, yes, sir, your Honor.

6 THE COURT: Ms. Driscoll, both understand, she has
7 provided me with a letter this morning from a doctor that
8 she has some issues where she may just have to get up and
9 leave the courtroom. If she does we'll deal with that,
10 give her an opportunity to do that.

11 Where we are, Ms. Baber, is that the Defense has filed
12 a Motion for Summary Judgment so I'm gonna hear from them
13 and what their position is on that. As soon as they get
14 through with their argument then I'll be glad to hear from
15 you.

16 All right, Mr. Ogburn.

17 MR. OGBURN: Your Honor, may it please the Court.

18 My name is Tate Ogburn and I'm here on behalf of who
19 we call the Tate defendants and those are the defendants in
20 this matter of Jonathan Garvey, Connie Delaney, Robert
21 Ouztx, Colleen Coesens, and Allen Tate Company, Inc. All
22 of the individuals are agents of Allen or real estate
23 agents with Allen Tate Company, Inc.

24 And I think it would be helpful for me to walk through
25 each party's role in this transaction. The transaction

1 involves the sale -- the purchase of a house by Ms. Baber.

2 Jonathan Garvey was actually Ms. Baber's real estate
3 agent. Connie Delaney and Robert Ouztx represented the
4 seller Gloria Long-Robinson. Colleen Coesens was the
5 broker in charge of the Rock Hill office for Allen Tate.
6 She had no involvement in the actual sale of the house but
7 was involved in a post-sale meeting in which Ms. Baber
8 agreed to sign a release of all claimed in exchange of
9 payment of the cost of a home warranty.

10 Now although the claims against Allen Tate Company are
11 based on the acts of this individual so there is no
12 independent claims that would lead to claims against Allen
13 Tate. As your Honor is aware Ms. Baber has filed a one
14 hundred and eighty-four paragraph eleven claim complaint,
15 and in this complaint she attempts to circumvent the effect
16 of a release she signed that releases all claims against
17 the Tate defendants, and she alleges that there was a vast
18 conspiracy among her realtor, the realtor for the seller's,
19 her finance company, and the closing attorney to hide the
20 fact that there were no termite inspections or home
21 inspections of the house performed prior to her purchasing
22 it.

23 She ask for damages from all of the Tate defendants
24 for the alleged defects in a home she purchased as is and
25 with knowledge of the defects at the time she closed on the

1 purchase.

2 Now the Tate defendants strongly dispute her
3 allegations of what was said and what was done. But
4 regardless for the purposes of summary judgment we're
5 entitled to summary judgment when you look at Ms. Baber's
6 own testimony in the light most favorable to her.

7 The testimony would show that she signed a release of
8 all claims shortly after she purchased the home in exchange
9 for payment of the cost of a home warranty. And then
10 alternatively we're moving for summary judgment on the
11 grounds that she has made admissions by failing to respond
12 to request for admissions that entitle us to summary
13 judgment on all but one claim and that's to the remaining
14 claim. She has no evidence to support that cause of
15 action.

16 Now, she has ask in her opposing affidavit for
17 additional time under Rule 56(F) to supplement the record
18 for summary judgment based on discovery she has sent out.
19 Now our summary judgment motion is based on her own
20 testimony. We don't have competing affidavits from my
21 clients so no discovery from us is going to change her
22 testimony in this case.

23 Your Honor, Ms. Baber on, I guess, on Saturday night
24 sent me an affidavit in opposition to the motion for
25 summary judgment and we'd like to object to the Court's

1 consideration of that affidavit and move to strike that
2 affidavit on several grounds.

3 One is that the affidavit contains hearsay. It
4 contains communications with the paralegal for the closing
5 attorney, and we representatives of Summit Funding, and
6 hearsay is not appropriate for a summary judgment
7 affidavit. If you look at paragraphs 27(d), 28, 29, 31,
8 32, 36, 44, and 48, they all reference communications with
9 parties other than my client and those are hearsay
10 communications and we believe that's inappropriate and we
11 object to the Court's consideration of the affidavit.

12 We also object to the Court's consideration to the
13 emails attached to the affidavit in that Ms. Baber admitted
14 in her deposition that the emails she produced in the
15 defendant's may have been the product of cutting and
16 pasting multiple emails. She admitted in at least one
17 instance that an email that she was given was probably not
18 an accurate representation of a single email but a
19 consolidation of multiple emails.

20 She also testified that she combined emails that may
21 have been separated originally when she produced documents
22 to us. Now the parties -- the defense are concerned that a
23 majority of the emails attached to her affidavit may have
24 been falsified. For example, if you look at Exhibit 13 to
25 her affidavit your Honor, and I'm happy to hand up a copy

1 of Exhibit 13 for your consideration.

2 THE COURT: I may have it right here. Yes. Go ahead
3 and hand that up.

4 MR. OGBURN: Okay. Ms. Baber, do you need a copy of
5 Exhibit 13 of your affidavit?

6 MS. BABER: No, sir, I have it. I'll be addressing
7 that as well.

8 (DOCUMENTS RECEIVED UP BY THE COURT.)

9 THE COURT: If I have my head down while y'all are
10 talking I don't mean to be showing you any disrespect. I'm
11 reading off some e-filings. Yes, go ahead.

12 MR. OGBURN: Your Honor, if you look at Exhibit 13 the
13 page 1 with the exhibit sticker on the front is the copy of
14 an email that I used in the deposition. And that is laid
15 out -

16 THE COURT: I'm sorry, this is marked Exhibit 14.

17 MR. OGBURN: Yeah. That is Exhibit 14 to her
18 deposition. It's Exhibit 13 to her affidavit.

19 THE COURT: All right. Go ahead.

20 MR. OGBURN: And if you'll look at that the first page
21 that's marked as Exhibit 14 is the email that we used in
22 her deposition, and if you look at it you can see that it
23 reads like a normal email. It reads from top to bottom
24 from the most recent email to the earliest email as is
25 usual and customary.

1 Page 2 was not a part of that exhibit and it repeats
2 the most recent email from page 1 with no header as to who
3 from or when. It then flows from earliest to most recent
4 going from top to bottom which is the opposite way emails
5 usually print. And if you look there is a line across the
6 page that makes it look like that email was cut and pasted.

7 Now, your Honor, the first page is an accurate
8 representation of an email used in a deposition. The
9 second page is not. So that's an example of our concerns
10 about the emails that are attached to her affidavit.

11 We also note that virtually all of the emails in her
12 affidavit that are not in the deposition exhibits are
13 emails that were forwarded to third parties. They were
14 forwarded either to a UPS store or to Sharon Cook who is an
15 investigator with the South Carolina LLR. None of those
16 emails represent the original versions of those emails. So
17 we're concerned about the accuracy of those emails attached
18 to her affidavit.

19 Finally, we also object to the consider of the --
20 consideration of the affidavit to the extent that it
21 contradicts her deposition testimony and is essentially a
22 sham affidavit.

23 And, your Honor, I got a case I'm happy to hand up --
24 I'll give a copy to Ms. Baber -- of *Cauthron v. Brown* where
25 the South Carolina Supreme Court talked about the inability

1 to use affidavits to contradict sworn deposition testimony.

2 If I may approach, your Honor?

3 (DOCUMENT RECEIVED UP BY THE COURT.)

4 MR. OGBURN: So those are our objections to the
5 affidavit she's provided in response. Your Honor, I'm
6 happy to go forward with the argument, I'm happy if you
7 want to address the affidavit now, however you wanted to
8 handle that.

9 THE COURT: All right. Let me hear your argument as
10 well and then we'll give Ms. Baber an opportunity.

11 MR. OGBURN: Okay. Your Honor, my argument's based on
12 the testimony in Ms. Baber's deposition. Now in her
13 deposition she testified she is a former South Carolina
14 licensed real-estate broker who also worked for attorneys
15 in handling real-estate closings. In January of 2015 she
16 was searching for a home to purchase in Rock Hill, South
17 Carolina. Jonathan Garvey was her real-estate agent. And
18 between January 9th and January 11th of 2015 Ms. Baber and
19 Garvey exchanged several emails about a property located at
20 255 Rolling Ridge Road and those emails are attached to our
21 Motion for Summary Judgment.

22 They are attached, they were exhibits in the
23 deposition and they are attached to our Motion for Summary
24 Judgment. As part of those emails she questioned Garvey
25 about certain issues of the property that Ms. Baber

1 identified when she walked through the property including
2 the condition of the air conditioning, the water heater,
3 the gas pac, the deck, stove, siding, fedder in ceilings,
4 windows, roof shingles among other things.

5 Now as part of this exchange Mr. Garvey provided Ms.
6 Baber with the residential property-condition disclosure
7 statement signed by Gloria Long-Robinson who was the owner
8 of the property at the time. In that disclosure statement
9 Ms. Long-Robinson represented she had actual knowledge of
10 problems of twelve of the fourteen systems described on
11 page 2 of the disclosure statement. All but two of them
12 she said had problems and that included the water supply,
13 water quality, water pressure, sanitary sewer, roof system,
14 gutter system, plumbing system, electrical system,
15 appliances, built in systems and fixtures, heating system
16 and cooling system. Ms. Long-Robinson also disclosed on
17 page 2 of the disclosure statement that she was aware of
18 the problems caused by water during her ownership.

19 Now interestingly many of these systems that she
20 identified in the disclosure statements as having problems
21 were the exact same items that Ms. Baber had identified in
22 her emails with Mr. Garvey when she visited the property.
23 So shortly after the email exchange and the receipt of the
24 disclosure statement Ms. Baber provided or submitted a
25 proposed agreement to buy sell real estate to Ms. Long-

1 Robinson for a hundred and forty-five thousand dollars.
2 And that original offer had a requirement that Ms. Long-
3 Robinson pay for a home warranty and Ms. Long-Robinson
4 wasn't willing to pay for a home warranty and so after she
5 refused Ms. Baber testified it was her understanding that
6 Jonathan Garvey agreed to pay for a home warranty but
7 admitted that if he didn't buy one she would because she
8 thought it was important.

9 On February 19th Ms. Baber and Ms. Long-Robinson
10 actually entered into a contract for the sale of the
11 property. The contract clearly makes it clear that the
12 house is being sold as is, where is, and with all faults,
13 and it was contingent on Ms. Long-Robinson's lender
14 approving a short sale. It did not require that a home
15 warranty be purchased.

16 Now most of Ms. Baber's claims against the Tate
17 defendants are based on alleged representations that were
18 made by the Tate defendants, the closing attorney, and
19 Summit Funding prior to closing that termite and home
20 inspections had been procured and that they came back
21 clear, or, that those inspections were a condition of her
22 loan.

23 Now ultimately Ms. Baber claims in her complaint that
24 had she known the true condition of the property she never
25 would have bought it. But interestingly when she testified

1 that when she received the original appraisal she
2 immediately questioned the accuracy of the appraisal
3 because the appraisal did not note the defects in the
4 property that she had noticed. And we've attached as -- to
5 our motion for Summary Judgment the Exhibit 16 which is a
6 complaint Ms. Baber sent to the appraisal company and it
7 says she was very concerned that appraisal didn't address a
8 hole she thought she saw in the roof from the outside; two
9 rusted holes in the air conditioner, the rotten and unsafe
10 deck which she didn't think met FHA standards; the rotten
11 wood around the windows and window seals, over hangs, doors
12 and siding, and the gutters that were falling off and water
13 spots in the ceiling.

14 Despite the fact that she questioned the condition of
15 the house when she first saw it, and that she received a
16 disclosure statement that indicated that there problems
17 with twelve of the fourteen systems on page 2, and that she
18 immediately noticed when she got the appraisal that the
19 appraisal did not raise the problem she had identified she
20 closed on the purchase.

21 And interestingly immediately prior to closing she
22 notified Linda Mattison, the paralegal for the closing
23 attorney, by email that she did not have a termite
24 inspection done, and that she did have an inspection slash
25 appraisal which it had already been paid for.

1 As part of the closing Ms. Baber executed additional
2 documents one of which was a walk through acknowledgment in
3 which she represented that she accept the repairs and the
4 condition of the property. And she executed a professional
5 service's disclosure and election in which she did not
6 indicate that she had wanted to choose anybody to perform
7 the home inspection or wood infestation inspection.

8 Now Ms. Baber testified that within the first few days
9 after she purchased the house she was aware of the majority
10 of the problems with the property that she now complains
11 about in the law suit. She demanded a meeting with Ms.
12 Coesens, Mr. Garvey, and others at Allen Tate to discuss
13 the property and the fact that she didn't receive a home
14 warranty. She testified that she met with them on June
15 29th of 2015 and she closed on the sale of the property on
16 May 29th so approximately a month later.

17 Now during that meeting Allen Tate offered to pay her
18 four hundred and nine dollars towards the cost of a
19 warranty and ask her to sign a release of all claims in
20 exchange for that payment. Ms. Baber purchased a home
21 warranty, she received the money, and she signed the
22 release. The release says that she releases Allen Tate
23 Company, it's parent entities, predecessors, successors and
24 assigns, officers, directors, brokers, agents, employees
25 and related and affiliated companies from all claims and

1 related to and associated with the purchase contract, and
2 any and all transactions and circumstances regarding the
3 property located at 255 Rolling Ridge. A full complete and
4 final release of all claims against Allen Tate, and it's
5 agent, for anything having to do with this property.

6 So in summary, during her deposition she admitted when
7 she first saw the property she identified problems. She
8 signed a purchase contract to buy it as is where it is.
9 She received a disclosure statement that indicted that
10 there were problems with the property. When she received
11 the copy of the appraisal she complained that the appraisal
12 didn't note the problems with the property, and she had
13 signed disclosure forms around the time of closing in which
14 she acknowledged having walked through the house accepting
15 the house as is in which she acknowledged that she had not
16 requested a termite inspection or a home inspection.

17 Now remember, because she's a former real estate
18 broker in South Carolina and she's worked for attorneys on
19 real-estate closings. Despite that fact she closed as is
20 on the purchase of a property having not seen or received
21 any copies of termite inspections, or house inspections,
22 that she now complains about she should have seen.

23 And if her affidavit is true then she ask numerous
24 people throughout the process before the closing about
25 inspections. After closing and after she was aware of the

1 defects she signed the release of claims.

2 So, your Honor, our argument, our primary argument on
3 summary judgment is that she was a sophisticated person who
4 is experienced in real estate; she signed a release of all
5 claims after she was aware of problems with the house, and
6 that release was based on Allen Tate paying her money for
7 the warranty. And if you look at her testimony that's what
8 she says.

9 I've cited in my brief the testimony from her
10 deposition where I say, what is your understanding of the
11 effect of Exhibit 22, the release? And Ms. Baber testified
12 that they were going to honor Jonathan's promise to pay for
13 the warranty.

14 Okay. And they paid you money used to buy warranty,
15 correct?

16 Correct.

17 And in exchange you were doing what?

18 Sign away my last child and everything else.

19 Giving up all rights and claims against them?

20 Yes.

21 Your Honor, if you look at pages 136 to 142 of the
22 deposition there is no testimony that that release was
23 contingent on receiving copies of the reports because what
24 Ms. Baber's claiming to avoid the release is that there was
25 fraud; that they didn't tell her that there were no reports

1 and that they told her they would give her reports. That
2 contradicts the testimony that she paid -- she received
3 money for a warranty in exchange for the release.

4 So the clear unambiguous language of the lease
5 confirms her deposition testimony and all of the Tate
6 defendant's are entitled to summary judgment on that point.

7 Your Honor, should you decide that we're not entitled
8 for summary judgment on the release, then there are other
9 grounds on summary judgment, and that has to do with
10 request for admissions that we served on Ms. Baber back in
11 August of last year. And Ms. Baber's second, third,
12 fourth, eighth, and eleventh causes of actions are based on
13 alleged misrepresentations that the termite and home
14 inspections had been performed and showed that the house
15 was satisfactory.

16 We served request for admissions on August 8th that in
17 part said she told Allen Tate not to buy a termite
18 inspection; she told Allen Tate she didn't want a home
19 inspection, and we served the request for admissions by
20 first class mail on the address set out in the complaint.
21 The responses were due on September 12th. We waited
22 another 30 days to see if she would respond. And we sent
23 her a letter on October 25th demanding responses to the
24 interrogatories and request for productions we had served
25 simultaneously.

1 Ms. Baber did email me on November 2nd saying she
2 never received any of the discovery and we attempt to
3 respond by November 27th. She ultimately did serve
4 responses but until I guess her affidavit she had never
5 requested relief from the effect of Rule 36.

6 So based on those request for admissions we would be
7 entitled to summary judgment on her second, third, fourth,
8 eighth and eleventh causes of action which would leave one
9 cause of action and that's the first cause of action that
10 alleges that Ms. Delaney, Mr. Ouzts, who both were the
11 seller's agent, knew that the disclosure statement omitted
12 material information concerning the condition of the
13 property.

14 Now this is the disclosure statement that where Ms.
15 Long-Robinson said there were problems with twelve of the
16 fourteen systems on page 2. This is also the cause of
17 action where your Honor has already dismissed the claims as
18 to Ms. Long-Robinson.

19 Ultimately Ms. Baber testified she didn't have any
20 evidence that Delaney and Ouzts had knowledge of anything
21 that wasn't disclosed. I ask her in paragraph 103 in the
22 complaint, you say seller Delaney, Tate and Ouzts knew the
23 property was suffering from material injuries and damages
24 and needed significant repairs that were not disclosed.

25 How do you know Ms. Delaney and Mr. Ouzts knew there

1 were repairs that were not disclosed?

2 She answered, it would be their job as a realtor to
3 know. And there are as we went along in the process they
4 knew.

5 Well how do you know that?

6 And she testified, well, I never talked to them so I
7 don't know first hand they knew.

8 Based on that testimony she has no evidence that those
9 clients had some knowledge of problems with the property
10 other than the multitude of problems that were disclosed in
11 the disclosure statement and we'd be entitled to summary
12 judgement.

13 Your Honor, in closing we would ask that the Court
14 strike her affidavit as containing hearsay. It's clear
15 from her testimony she voluntarily and knowingly released
16 all claims against the Tate defendants when she executed
17 the release. Alternatively she failed to respond to the
18 request for production; she doesn't have grounds, evidence
19 for a first cause of action. And all of the claims against
20 the agents, for the seller, her own agent, the broker in
21 charge who wasn't even involved in the transaction, and
22 Allen Tate Company Inc., should be dismissed.

23 Your Honor, there is one other matter. Ms. Baber has
24 served upon the Tate defendants seventy-five request for
25 admissions, thirty-eight interrogatories, and twelve

1 request for production of documents. Our deadline to
2 respond to that is currently April 19th and on Saturday
3 night she sent an email requesting to depose all of my
4 clients on April 16th. We would ask that should the Court
5 decide to take this matter under advisement, that the Court
6 enter an order giving us two weeks from the date that the
7 order -- an order to deny is entered so an order denied be
8 entered to respond to her discovery, and also staying all
9 further discovery until two weeks after your Honor were to
10 issue an order.

11 Your Honor, that completes our argument.

12 THE COURT: All right. Thank you, Mr. Ogburn.

13 And Ms. Driscoll, you're not a part of this motion
14 today are you?

15 MS. DRISCOLL: That's correct, your Honor. Summit has
16 filed a separate motion for summary judgment that is for
17 hearing today as well.

18 THE COURT: Its not scheduled to be heard today?

19 MS. DRISCOLL: Yes it is scheduled to be heard today.

20 THE COURT: Well let's do this. Okay, I see that on
21 my list. Let me do this. Let me hear Ms. Baber as to Mr.
22 Ogburn's motion and then I'll come back to Ms. Driscoll.

23 MS. DRISCOLL: Thank you, your Honor.

24 THE COURT: And then is it Mr. Racine?

25 MR. RACINE: Yes, sir.

1 THE COURT: You have no motion pending before the
2 Court today?

3 MR. RACINE: No, your Honor, just observing.

4 THE COURT: Okay. All right, thank you.

5 All right, Ms. Baber, I'll be glad to hear from you as
6 to -- and Ms. Baber, what are you handing up to the Court?

7 MS. BABER: That's just a courteous copy of my
8 response.

9 THE COURT: All right.

10 MS. BABER: I would like to note that I received -

11 MADAM COURT REPORTER: Judge, --

12 THE COURT: You're going to need to speak --

13 MADAM COURT REPORTER: Get her on the mic. She's on
14 the opposite side of the table.

15 THE COURT: You're gonna need to move over in front of
16 the mic, Ms. Baber, so I can hear you and also so the court
17 reporter can hear everything you're saying.

18 Let me do this. At the top of this stack of material
19 you have passed up to the Court is an affidavit of
20 Plaintiff Karen Baber and I assume this is the affidavit
21 that Mr. Ogburn has objected to the Court taking into
22 consideration as far as this motion; is that correct?

23 MR. OGBURN: Your Honor, I haven't seen --

24 THE COURT: And you probably hadn't seen it either.

25 It is a --

1 MR. OGBURN: Is it like twenty-seven pages?

2 THE COURT: Twenty -- yes.

3 MR. OGBURN: Your Honor, I imagine that is the same
4 one.

5 THE COURT: All right. Well let me hear Ms. Baber
6 first on his objection to the Court considering this --
7 it's actually including the signature page and certificate
8 of service. It's 29 pages.

9 MR. OGBURN: Your Honor, that is at 56 numbered
10 paragraph?

11 THE COURT: I'm sorry.

12 MR. OGBURN: Is it 56 numbered paragraph? I imagine
13 it's the same one.

14 THE COURT: Let me make sure. And again I have not
15 read it other than just -- it's just been presented to the
16 Court and yes it is 56 numbered paragraphs.

17 MR. OGBURN: Yes, sir, your Honor. And I believe she
18 actually filed that Monday morning.

19 MS. BABER: I sent you a copy on -- yes I did on
20 Monday.

21 THE COURT: Let me make sure. Let me see if its part
22 of the --

23 MS. BABER: I did not receive your -- I still have not
24 been served on your memorandum.

25 MR. OGBURN: You received it by email, right?

1 MS. BABER: I did but you and Ms. Driscoll said we
2 don't accept that legally so, and I know you received yours
3 yesterday.

4 THE COURT: All right. Here's the thing -- hold on
5 just a second. Did you electronically file your affidavit,
6 Ms. Baber?

7 MS. BABER: Yes, sir.

8 MR. OGBURN: Your Honor, I think that I saw a copy
9 that was hand stamped. I don't believe she filed it
10 electronically.

11 MS. BABER: No, I can't do that, I had to file it at
12 the Clerk's office.

13 THE COURT: All right. I have that before me. I have
14 not looked at it and certainly haven't considered it.

15 MR. OGBURN: And, your Honor, we're not objecting on
16 the grounds of timely service or whether it was filed.

17 THE COURT: Okay. I'm sorry, it was filed.

18 All right, Ms. Baber, I'll be glad to hear from you
19 first on the issue about whether the Court should even
20 consider looking at your affidavit. He's saying that it
21 should be excluded because of the amount of hearsay in it.

22 I'll be glad to hear you on that.

23 MS. BABER: No, sir, there's not any hearsay. He
24 referenced I made a comment at the deposition which went
25 over six hours and I have health issues as you see. We had

1 no breaks. I think by the end of the day --

2 THE COURT: I still can't -- maybe you need to come up
3 here to the podium. I cannot understand a word you're
4 saying.

5 MS. BABER: Is that better?

6 THE COURT: No, ma'am. You're going to need to come
7 to the podium.

8 MADAM COURT REPORTER: Would you please, ma'am?

9 MS. BABER: Can you hear me now? Is that better?

10 THE COURT: That's better.

11 MS. BABER: Okay. Regarding comments that were made
12 in the deposition, I'd like for us to go on the record as I
13 have not had an opportunity to read that deposition. I
14 assume it's accurate. The gentleman whose company was
15 supposed to send me a copy, he's been out of town. I've
16 not gone to his office to review it, I have ask for an
17 appointment, and some of the information in there if you go
18 to different parts of the deposition that's addressed
19 concerning I said the comment that it was hearsay
20 concerning Ms. Delaney and I believe it was Robert Ouzts.

21 Was that your comment that they did not --

22 THE COURT: You need to address the Court.

23 MS. BABER: Okay. I was trying -- his comment was as
24 far as hearsay. When I went into this contract in February
25 of 2015, yes it's true that I worked for a real-estate

1 attorney, amazing man retired, we did a lot of loan
2 closings. And so as far as hearsay when I went to the
3 deposition a particular question he ask as far that I said
4 that they, you know, about the damage they then, I believe
5 it was Mr. -- excuse me, not Jonathan Garvey, but Mr. Ouzts
6 and also Ms. Coesens. That was because we didn't discuss
7 it that day and I was in a meeting. The reason they knew
8 of what was going on -- and this is not particularly
9 addressed -- is that the appraisal which he's referenced
10 was falsified, and that will go into my general release,
11 and all of this will be shown in the depositions and in the
12 discovery release.

13 The damage which was mentioned in all of these
14 documents I was told was cleared. The walk through that he
15 mentioned, that is a real estate document, that is not a
16 part of the contract. The -- one was contingent, it was
17 not an as is where is with all defaults. It was an as is
18 where is with all defaults contingent upon the lender's
19 requirements. This line, regardless of what they want to
20 claim, was an FHA loan. It required certain things. It's
21 three percent down. It's actually called a walk and ready
22 line.

23 These things which I questioned were discussed with
24 Robert Ouzts. Robert Ouzts was the one who had the
25 utilities supposedly turned on and off. We found out they

1 were not turned back on for the appraisal. That's direct
2 fraud. Ms. Coesens when I was at the meeting and obtained
3 a release she looked at me, and these emails are here, and
4 she said Ms. Baber we will find the CL-100. It was
5 required. You could not have closed without it. So, the
6 fact that this loan -- I will quote what I was told by --
7 office and a lot of others. The whole system failed.

8 And with the discovery that will be made very clear
9 and I can go through some of this now and show that to the
10 Court.. Also I just -

11 THE COURT: Let me do this. Obviously you have
12 submitted, and you have given me an extensive packet here,
13 and you don't need to go through all that, I'll go --

14 MS. BABER: Okay. And also, Mr. Ogden --

15 I have not talked to him. I have not --

16 THE COURT: Hold on a just a second.

17 MS. BABER: I'm sorry.

18 THE COURT: Here's the thing. You need to talk to the
19 Court.

20 MS. BABER: Okay. I'm sorry.

21 THE COURT: If you need to talk to the attorneys you
22 can do that before you get in here ---

23 MS. BABER: Okay.

24 THE COURT: --- or after we leave but right now you
25 need to talk to me.

1 MS. BABER: Okay. He served, I believe it was on
2 Thursday night, a memorandum. I have not received that
3 officially. I received an email and he and Mr. Sculp have
4 told me that that's not considered acceptable and we have
5 to do everything -- I have to file it and they have to
6 receive it. He received his copy of my responses, the one
7 he wants to throw out. I have not received his. So I have
8 not received a copy of the deposition to go through nor
9 have I received a legal serving from this last week.

10 Like I said before as far as the fraud, Mr. Ouzts he
11 was the original -- he was kind of like the manger of the
12 company of Allen Tate at the time. The original listing
13 agent was Connie Delaney, then Mr. Ouzts took over for
14 that. The realtor's are required to know on the LLR the
15 defects and they have to disclose those with reports. None
16 of those reports were attached. If the reports are not
17 attached then they are liable should the condition still
18 exist.

19 So the real estate licensing must disclose material
20 facts about the property if the real estate licensing knows
21 or reasonably should have known regardless of what owner
22 responses. Your Honor, none of those were attached.

23 When you go to a loan closing there are several things
24 with the FHA loan that has to happen. Now Ms. Driscoll's
25 gonna, once again, deny that which is not accurate. This

1 loan was a government insured loan, and you'll see in the
2 information I have there are certain requirements.

3 The reason I knew that these things had to been done,
4 and they had to be clear, is because of the experience in
5 real estate. When you go to a loan closing -- I cannot
6 tell you the number of times we went for a closing, I can't
7 order those, I'm not allowed to get a key, I'm not allowed
8 to do that. That has to be done by the realtor's or the
9 attorney. When we got to the closing table and they said,
10 you know, where's the termite report, where's the home
11 inspection if it was required, and we would have to
12 postpone.

13 There are emails in here which truly will show that as
14 well. The closing attorney could not close it's loan
15 without those items. Jonathan Garvey represented at
16 closing that he would bring those before the closing
17 package could be released. The reason some of the mails
18 and everything are kind of jumbled is my computer crashed
19 and I had to go in physically and try to copy and put them
20 into a document which I could send to the regulators at
21 that time. And so there were 600 pages and they -- I took
22 what they sent back to me and I forwarded to their -- in
23 their discovery.

24 Regarding the general release, let me go ahead and
25 address that. When I moved into the house -- and one of

1 the emails he quotes is taken out of context -- we were
2 once again going -- we postponed closing like four times.
3 They didn't hear everything then. On the 25th of May we
4 were notified that we were not going to be closing because
5 someone had not received all the documents to close, other
6 requirements. On the 27th I was on the phone with Jonathan
7 Garvey and I said I'd like to go back over to the house and
8 just do a walk through and check on some things while we're
9 waiting to close. And we talked about the appraisal, we
10 talked about the home inspection which I thought I did
11 have. And the reason I thought I had that --

12 THE COURT: All right. Let me do this. I need to --
13 I will need to decide this based on what you're complaint
14 and what you ---

15 MS. BABER: Okay.

16 THE COURT: --- and what you have filed. It would not
17 be productive for me to hear you go into all the details of
18 what you allege did or didn't happen. I mean you've
19 already alleged those in all your documents; is that
20 correct?

21 MS. BABER: Okay. So just address the fraud?

22 THE COURT: Well --

23 MS. BABER: That's the main thing that they
24 misrepresented and --

25 THE COURT: All right. Let me hear you on the fraud.

1 MS. BABER: Okay. As far as Allen Tate real estate is
2 concerned they are responsible for obtaining the home
3 inspection and the termite report which they said they did.
4 It's required by the loan; we could not close without it.

5 THE COURT: Have you spelled all that out? You
6 spelled all that out in -

7 MS. BABER: It is.

8 THE COURT: All right.

9 MS. BABER: Now what may not be spelled out is on in
10 March of 2015 the property had a leak and Jonathan Garvey
11 stated that he and Robert Evans who was a contractor and
12 was gonna do repairs on the house had fixed the leak.

13 The appraisal could not be certified until all
14 utilities were on and functioning. The appraisal was
15 certified on March the 12th of 2015. Jonathan Garvey at
16 the deposition showed a bill that I've never seen before
17 claiming that everything like I said had been fixed. What
18 I found out was that the utilities were turned off. Not
19 the power, but the water was turned off on March the 11th
20 the same day it was turned on because the leak still
21 existed.

22 On March the 12th Jonathan Garvey accompanied --
23 supposedly accompanied the appraiser to the property and
24 certified there were not leaks. He got up into the attic
25 with the pull down stairs. They had checked the wood rot;

1 all of these items. The fact of the matter is however,
2 your Honor, is the water was not on. The appraisal could
3 not have been certified. There were no drop down stairs.
4 There were -- in South Carolina you are required -- and I
5 have this in the documentation -- to obtain the CL-100
6 under certain conditions. For example, on a slab --

7 THE COURT: Hold on just a minute.

8 Mr. Jones, what we're gonna do is we're gonna take a
9 break in just a second on this one before we get to the --
10 I'll take care of y'all's matter. If y'all want to have a
11 seat back in that conference room on the left I'll be back
12 there in about five minutes.

13 MR. JONES: Yes, sir. Sounds perfect.

14 THE COURT: All right, go ahead.

15 MS. BABER: So I'll just kind of finish up with the
16 facts. But Mr. Ouzts is the individual who had the water
17 turned on and had it turned off. Jonathan Garvey stated
18 that they were there and everything had been checked. In
19 order for any of this to have happened even if they were
20 right on some of the other items that -- as far as the
21 release for, or whatever, the fact was the appraisal was
22 required, it had to be accurate, it was falsified. That
23 was known by Mr. Ouzts one of the realtor's who had become
24 the listing agent. The reason I know -- because that was
25 not hearsay, your Honor. That was the fact that he was the

1 agent, he's the one who had the water turned on and off;
2 he's the one the water department notified and told him the
3 water could not be on.

4 Ms. Connie Delaney was also -- I did not talk with
5 her. She became the listing agent and went from being the
6 listing agent into the power of attorney for the seller.
7 At the -- when I moved in the house when we left closing
8 Jonathan Garvey was -- I was calling Robert Evans who I was
9 told had done this inspection. As far as not getting the
10 termite inspection I was on the phone with --

11 THE COURT: Here again, we're not here to try the
12 case.

13 MS. BABER: I know. I'm just saying -- you ask me
14 about the -- not the hearsay. Okay.

15 THE COURT: Anything else that you need to say that's
16 not including in here that you --

17 MS. BABER: I think it's included but let me just make
18 this clear as far as the four hundred and nine dollars.

19 At that meeting when I signed that I was very excited
20 about that. I thought this is great. I can -- I have to
21 wait 30 days but all these things had gone wrong and Ms.
22 Coesens said well that's just -- I've never seen anything
23 like this before. Well, Ms. Baber, I will go get you the
24 termite inspection. What I found out 9 months later, as
25 everything began to kind of come apart, is the

1 falsification of the appraisal. I want to make sure that's
2 understood very clearly in there. The -- Mr. Evans had not
3 gotten an inspection as I was told he had. And they had
4 misrepresented this the entire time.

5 When I signed this release these individuals sat in
6 this meeting and told Ms. Coesens that they had paid to fix
7 this leak. She left this meeting and she said, Ms. Baber,
8 I'm gonna go find your CL-100. I'm gonna go find this
9 report. We couldn't have closed without it. I thought
10 that they were helping me go find the individual who messed
11 up. That's what I thought.

12 I did not know the difference until March or in May of
13 2016 when I talked to the home office of Allen Tate in
14 Raleigh and I told him what had happened. I told him real
15 inspectors come out to the house. There had been a
16 referral made from -- to a contractor, and this is in here
17 as far as a witness, who worked for Allen Tate who called
18 me and said I'm sending someone else because I'm afraid for
19 your safety. This was all known. Jonathan did not
20 disclose this. All of this will come out in the discovery.

21 So from the time I signed this release, and I do have
22 a copy of the cancellation of the release that was dated in
23 -- I have to look it up -- but it's in this material. And
24 the reason I cancelled it was fraudulent inducement and
25 this is very clear is exactly what they did.

1 So I went from having this house into finding out all
2 these disclosures and things were wrong, and the reason I
3 didn't know, and they did know, is because they were at the
4 property which supposedly is these things were done; the
5 inspections were done; they falsified the appraisal. they
6 knew the leak was not fixed. they knew all these issues
7 existed. and they would have shown up on an accurate
8 appraisal; it would have shown up in the CL-100.

9 I can't -- you know, I have no authority or right to
10 take a loan contract which has federal requirements and
11 which is underwritten by the federal government and say I
12 don't want this. In this documentation for this, and also
13 for Summit, I have a copy of the loan package where it says
14 these are items which you can shop for. Required items,
15 not maybe's. Its on the good faith estimate. That cannot
16 be changed.

17 THE COURT: All right. Well I have what you've passed
18 up and it appears to be -- I don't know, 30, 40 marked
19 spots that you want the court to look at. I'll take a look
20 at those. I am not going to consider the affidavit when I
21 make my ruling, so the affidavit that she filed Monday of
22 this week I am not going to consider that. However I'll
23 consider the other material. So if you'd have a seat.

24 Ms. Driscoll.

25 MS. DRISCOLL: Yes, your Honor. And the only reason I

1 rise at this time is because Ms. Baber filed a similar
2 affidavit in response to our motion.

3 THE COURT: And I won't consider it as well.

4 MS. DRISCOLL: Thank you, your Honor.

5 MS. BABER: Your Honor, may I make another comment
6 though about ---

7 THE COURT: Hold on just a second.

8 MS. BABER: --- the timing about filing things?

9 THE COURT: Hold on just a second.

10 MS. BABER: Okay.

11 THE COURT: I'm gonna give Ms. Driscoll and
12 opportunity ---

13 MS. BABER: Okay.

14 THE COURT: --- to address the Court on her motion and
15 then I will give you an opportunity to respond.

16 MS. BABER: Okay.

17 THE COURT: However we'll take a break and I'm gonna
18 take care of a couple of other matters that won't take but
19 just a few moments and then you all refresh yourselves and
20 we'll be back in here in about ten minutes.

21 MS. BABER: Okay.

22 (COURT AT EASE AT 10:14 A.M.)

23 (COURT BACK IN SESSION AT 10:33 A.M.)

24 THE COURT: All right, we're back on the record of
25 Baber, Summit Funding and others 2018-CP-46-1592.

1 Ms. Baber, I'm going to give you another opportunity
2 to speak once I hear from Ms. Driscoll. Is there anything
3 you want to say at this point?

4 MS. BABER: No, sir.

5 THE COURT: All right. Ms. Driscoll, I'll be glad to
6 hear you on your motion.

7 MR. OGBURN: Your Honor, may I respond to one thing
8 Ms. Baber said?

9 THE COURT: Yes. Yes.

10 MR. OGBURN: Ms. Baber said that she has not received
11 a copy of her deposition. There is an entire copy of her
12 deposition attached to our Motion for Summary Judgment so
13 she has received a copy. There is a dispute between Ms.
14 Baber and the court reporter on reviewing it and getting a
15 copy and things like that, but I just wanted to be clear
16 that there is a copy, a full copy of her deposition in the
17 record and we gave her, although I only attached some of
18 the exhibits, we gave her copies of all the exhibits at the
19 deposition.

20 The only other thing, and Ms. Driscoll will address
21 this, is she has copies of the deposition testimony from
22 Ms. Baber talking about the emails and the cutting and
23 pasting and so I will let her provide that.

24 THE COURT: All right. Thank you.

25 All right, Ms. Driscoll, I'll be glad to hear from

1 you.

2 MS. DRISCOLL: Good morning, your Honor.

3 THE COURT: And you're here on behalf of?

4 MS. DRISCOLL: Summit Funding.

5 THE COURT: Summit Funding. Yes, ma'am.

6 MS. DRISCOLL: Yes, sir, your Honor.

7 Your Honor, Mr. Ogburn just mentioned the deposition
8 excepts, I'm happy to hand those up to the court if you
9 would like those for the record.

10 THE COURT: Yes, hand those up.

11 MS. DRISCOLL: If I can approach, your Honor.

12 THE COURT: Yes.

13 (DOCUMENTS RECEIVED UP BY THE COURT.)

14 MS. DRISCOLL: And, your Honor, during the break I
15 also provided Ms. Strait with highlighted copies of the
16 out-of-state cases that I reference in my memorandum just
17 for the Court's convenience.

18 THE COURT: Yes, ma'am.

19 MS. DRISCOLL: Good morning, your Honor. Again, Susan
20 Driscoll here on behalf of Summit Funding. This is our
21 motion for summary judgement. Before the Court this
22 morning is our motion, we e-filed a memorandum in support
23 this morning, copies were handed to opposing counsel -- I'm
24 sorry, to co-defense counsel and Ms. Baber this morning.

25 And I have a curtsey copy for the Court if you would

1 like one, but I believe Ms. Strait has updated your --

2 THE COURT: Yes, she has. Yes, thank you.

3 MS. DRISCOLL: Your Honor, I'm not going to reiterate
4 the facts that Mr. Ogburn laid out. I just want to clarify
5 my client's role in this transaction. My client was the
6 lender who provided the loan that allowed Ms. Baber to
7 acquire the property that is the subject of this action.

8 At the beginning her verified complaint listed several
9 causes of action against my client. Several of those were
10 dismissed after we filed a motion to dismiss under Rule
11 12(b)(6). As of today there is one remaining cause of
12 action against Summit and that is for breach of contract.
13 As set forth in our motion we believe that that remaining
14 cause of action against my client should be dismissed, and
15 outlined in the memo are five bases for that dismissal.
16 The first being that there is no private right of action
17 against my client for any alleged violation of the National
18 Housing Act, or any regulation their under.

19 Second, your Honor, there is no contract between my
20 client and Ms. Baber under which my client was obligated to
21 provide either a home inspection separate and apart from
22 the appraisal or a CL-100.

23 Third, your Honor, under no regulation issued by HUD
24 or South Carolina is there a requirement of a separate home
25 inspection or CL-100.

1 Fourth, your Honor, Ms. Baber knew at the time of
2 closing that there had been no CL-100 or separate home
3 inspection and she elected to close anyway.

4 Finally, your Honor, even if she had a cause of action
5 against my client, the statute of limitations on that cause
6 of action ran prior to her filing the verified complaint.

7 And, your Honor, the basis for the tenth cause of
8 action appears as paragraphs 173 through 177 of the
9 verified complaint. There she alleges two main facts.

10 First, she claims that the loan required a CL-100 and
11 a separate home inspection that were different from the
12 appraisal provided by Appraisal Innovations.

13 Second, she says that a quote "loan agreement between
14 her and Summit obligated Summit to provide a home
15 inspection and a CL-100 separate from that appraisal."

16 Her claim against Summit is based solely on it's
17 alleged failure to obtain either of these inspections. The
18 loan from Summit to Ms. Baber is federally insured by the
19 Federal Home Administration an agency created by the
20 National Housing Act which is now a part of the Department
21 of Housing and Urban Development.

22 As to the existence of a private right of action
23 courts in Alabama, Arizona, Arkansas, Illinois, Maryland,
24 Michigan, Ohio, Pennsylvania, and Texas, and Wisconsin as
25 well as the District Sixth Circuit Court of Appeals have

1 all examined this issue and have universally held that
2 quote "the National Housing Act and the regulations
3 promegated thereunder deal only with the relations between
4 the mortgagee and the government and give the mortgagor no
5 claim to duty owned nor remedy for failure to follow."

6 And that quote, your Honor, is from *Roberts versus*
7 *Cameron Brown Company* 556 F.2d 356. That is from the Fifth
8 Circuit Court of Appeals.

9 As stated by the Fifth Circuit in *Baker* quote "a
10 private cause of action would not further the goals of the
11 National Housing Act. It would delay full closure and the
12 ultimate losses to HUD would be much greater since interest
13 will continue to run in favor of the mortgagee and the
14 property may deteriorate. Further, an implied ---

15 (COUGHING FROM PLAINTIFF.)

16 MS. DRISCOLL: --- cause of action will discourage
17 private investment and interfere with the primary
18 jurisdiction of HUD to approve and supervise HUD programs."

19 And that appears at page 361 of *Roberts*.

20 More recently the Eastern District of Michigan
21 recognized the long standing laws established in *Baker* when
22 it stated quote "it is well established that the National
23 Housing Act and attending regulations do not expressly or
24 implicitly create a private right of action to mortgagors
25 or a mortgagee's non-compliance with the Act or its

1 regulations." That appears in *Myer versus City Mortgage*
2 *Inc.*, 2012 WL 511995 Eastern District of Michigan 2012.

3 The remainder of the cases addressing the issue, your
4 Honor, are cited in my Memorandum and unless the Court
5 would like me to I see no need to -

6 THE COURT: I'll go over that.

7 MS. DRISCOLL: Thank you, your Honor.

8 So in summary, your Honor, even if as Ms. Baber
9 alleges Summit had violated any of the regulations enacted
10 under the National Housing Act, that violation does not
11 provide her with a private right of action against Summit.

12 Alleged violations of the regulations or any other
13 underwriting criteria of FHA, or any other division of HUD,
14 are between Summit and HUD, not Summit and Plaintiff.

15 So as a result, your Honor, Plaintiff has no claim
16 against Summit for the alleged failure to obtain either of
17 the requisite inspections.

18 Next, your Honor, I'll address the alleged loan
19 agreement that Plaintiff refers to in her verified
20 complaint. She has not produced a copy of any document
21 executed by both Plaintiff and Summit pursuant to which
22 Summit agreed to provide either of the inspections at
23 issue. Summit's contractual obligation to Plaintiff was
24 created when it agreed by a preapproval letter to fund a
25 loan in her name so that she could acquire the home that is

1 the subject of this action.

2 If Plaintiff satisfied the conditions in that
3 preapproval letter the loan would fund. Plaintiff did
4 satisfy those conditions and Summit funded the loan which
5 closed on May 29th of 2015. Upon her execution of a note
6 and a mortgage Summit funded the loan and allowed Ms. Baber
7 to purchase the home.

8 Summit met it's contractual obligations to Plaintiff
9 when it provided the money for her to purchase the home.
10 It had no other contractual obligation to Ms. Baber so
11 there has been no breach.

12 In addition, your Honor, in her deposition Ms. Baber
13 admitted that it was her responsibility to select and pay
14 the inspector. She selected Robert Evans to perform these
15 inspections, however, she never paid him to do so. Absent
16 her scheduling the inspections and then paying for them the
17 inspections could not have been performed.

18 Under South Carolina law quote "the party seeking to
19 recover damages for a breach of contract must demonstrate
20 that he has performed his part of the contract or at least
21 that he was at the appropriate time able ready and willing
22 to perform them." And that quote comes from *Hotel and*
23 *Motel Holdings LLC v. BJC Enterprises LLC*, 414 S.C. 635,
24 and that's a Court of Appeals case from 2015.

25 Because Ms. Baber failed to perform her obligations to

1 schedule and pay for any inspections under any alleged
2 agreement she can't then turn around and sue Summit for
3 breach of that same agreement.

4 So, your Honor, first we say there was not agreement.
5 Second, and ever if there were, it was her responsibility
6 to schedule and pay for the inspections; because she failed
7 to do so, that agreement could not come to fruition.

8 Next, your Honor, the applicable regulations for this
9 loan are set forth in the *FHA Single Family Housing Policy*
10 *Handbook*. Those regulations contain no requirement on the
11 part of Summit to obtain either of these inspections.
12 Instead Plaintiff was to obtain an appraisal of the
13 property to determine if the property met minimum property
14 requirements for standards established by HUD.

15 That appraisal would be provided to the lender and the
16 lender would review the appraisal. Unless the appraisal
17 disclosed certain defective conditions, there was no
18 obligation on the part of Summit to perform any further
19 inspections. As acknowledged by Ms. Baber in her verified
20 complaint the appraisal did not disclose any such defective
21 conditions but instead stated that the property met the
22 standards established by HUD. Based on that representation
23 in the appraisal Summit had no further obligation to
24 perform any inspections under the HUD regulations.

25 Further, your Honor, Plaintiff had acknowledge that at

1 the time of closing none of these inspections had been
2 performed. And specifically, your Honor, at 2:49 on May
3 27th, 2015 Linda Mattison who is a paralegal with the
4 Gillian Law Firm, and the law firm shows it by Plaintiff to
5 act as her closing attorney, emailed Ms. Baber asking if
6 she had a termite and home inspection performed on the
7 property. Ms. Baber responded to that email that the
8 appraisal had been performed but she did not have the
9 termite inspection done.

10 And your Honor, I have a copy of that email that was
11 admitted into evidence at Ms. Baber's deposition but I'm
12 happy to pass -

13 THE COURT: Yes, if you'd pass that up.

14 MS. DRISCOLL: If I can approach, your Honor?

15 THE COURT: Yes.

16 (DOCUMENTS RECEIVED UP BY THE COURT.)

17 MS. DRISCOLL: Later that afternoon after receiving
18 that email from Ms. Baber Ms. Madison emailed Summit with a
19 copy of the proposed HUD for review and approval by Summit.
20 And that email appears as Exhibit A to the Anderson
21 Affidavit that is attached to my Motion for Summary
22 Judgment.

23 Accompanying the email from Ms. Madison was a draft
24 HUD and on that draft HUD line 1302 Termite Inspection and
25 line 1303 Home Inspection were both left blank. The draft

1 HUD contained no cost for either home inspection or a
2 termite inspection. At 7:21 p.m., that same evening May
3 27th, May Cha of Summit replied to Ms. Madison and ask that
4 lines 1302 and 1303 be removed from the HUD as there were
5 not charges for either of those services.

6 At 9:04 on May 28th, 2015 Ms. Madison responded to Ms.
7 Cha's email with a revised HUD-1 that eliminated any
8 reference to lines 1302 and 1303 and ask HUD to -- I'm
9 sorry, ask Summit to approve the document. 1:06 p.m., ---

10 (PLAINTIFF COUGHING/HEARING PROCEEDINGS DIFFICULT.)

11 MS. DRISCOLL: --- that afternoon Ms. Cha responded to
12 Ms. Madison that the HUD was approved and attached a copy
13 of the approved HUD to that email which contained no
14 reference to either a home inspection or a termite report
15 and was stamped approved by May Cha at 9:53 a.m., May 28th,
16 2015.

17 That same afternoon Paiton Drew, who is the assistant
18 closing coordinator for Summit, responded to Ms. Cha's
19 email that the HUD-1 had been reviewed and approved by the
20 requisite branch of Summit as well, so as of May 28th
21 Summit had communicated with Ms. Baber's counsel. The HUD
22 which contained no reference to either a home inspection or
23 a termite inspection had been approved as there were no
24 charges for either because neither was performed.

25 So as of the date of closing which is confirmed by the

1 email traffic between the Plaintiff and her attorney and
2 Plaintiff's attorney and Summit Ms. Baber knew that no
3 separate home inspection or CL-100 had been performed on
4 the property. She knew she had not paid any party to
5 perform either inspection. She knew and proceeded to close
6 on the loan and in doing so she waived her right to proceed
7 against Summit for any alleged failure on it's behalf to
8 provide either of the inspections.

9 Finally, your Honor, as established by both her
10 deposition testimony, and the affidavits of the Summit
11 employees, Plaintiff and her attorney were aware as of May
12 25th, 2015 that no separate home inspection or CL-100 had
13 been performed on the loan. She acknowledged that fact by
14 emailing Ms. Madison, and Summit acknowledged that fact to
15 Ms. Madison by emails on May 27th and 28th. Because
16 Plaintiff knew on those dates that there were no separate
17 inspections the three year statute of limitations for which
18 she had to bring an action breaching the alleged
19 requirement to provide those inspections began to run at
20 the latest on May 28th, 2015. Ms. Baber did not file her
21 complaint until May 29th, 2018 which is outside the three
22 year period.

23 This is a breach of contract action, not an action
24 secured by a mortgage. Summit is not suing Plaintiff to
25 enforce the terms of the note, so despite Ms. Baber's

1 opinion to the contrary, the 20 year statute to be used on
2 a contract secured by a mortgage is inapplicable.

3 In summary, your Honor, I would just go back through
4 the basis that we have. There's no private right of action
5 for a mortgagor to sue a mortgagee for it's alleged failure
6 to comply with HUD requirements. That is well established
7 federal law. Nor was there any type of contractual
8 obligation on the part of Summit related to any inspections
9 of the home separate and apart from any of the requirements
10 of the HUD regulations, i.e., obtaining the appraisal.

11 Summit's only obligation to Ms. Baber was to fund the
12 loan that allowed her to purchase the home. Summit did so
13 and fulfilled it's contractual obligation to Plaintiff.
14 Even if there were a viable breach of contract claim the
15 deadline for Ms. Baber to bring that action expired on May
16 28th of 2018. She did not file this action until May 29th,
17 2018. On any one of these separate routes Plaintiff's
18 cause of action against Summit should be dismissed with
19 prejudice.

20 THE COURT: All right. Thank you, Ms. Driscoll.

21 Ms. Baber, I'll be glad to hear from you. Again,
22 you're gonna need to come to the podium so the court
23 reporter and I can hear you. Yes, Ms. Baber.

24 MS. BABER: Okay. I was just looking at my notes,
25 your Honor. Concerning -- to address some of the issues

1 that I won't go back all into them with Tate and Summit. I
2 want to correct the date as far as her saying that things
3 happened on the 28th or the 27th and that is not accurate.

4 When you're closing a real estate loan you can't get
5 things until the last minute. They have to be within a
6 certain time frame of closing. As far as the documents
7 that she's referring to, your Honor, with Ms. Cha with
8 Summit Funding, those were internal documents between her
9 and -- you know, my counsel or my loan closing agent. I
10 did not have those, I've never seen them until she recently
11 provided them. They have nothing to do with my knowledge
12 or not knowledge.

13 What I do know is that this loan was a FHA loan and
14 did require the CL-100, required the home inspections. It
15 doesn't matter who paid for 'em; doesn't matter if they
16 were given to me, it's totally irrelevant. And you will
17 see in emails from -- and letters from Summit Funding --
18 you will see from -- I got another package of the
19 information and the complete loan package in 2016 when I
20 was addressing this -- a letter from the law office it said
21 Ms. Baber come by and get a copy. We could not have closed
22 this without the CL-100, without the home inspection, it's
23 required.

24 There are also emails in there during my meetings in
25 2016 with Summit Funding where they acknowledged that they

1 would get a CL-100, they would go find it. And they
2 finally came back and said we're sorry we didn't get it.
3 There's acknowledgment though all the emails through all
4 these months these things were required.

5 As far as, again, Mr. Evans who was supposed to be
6 doing the repair work on my home, as far as upgrades, when
7 I moved in I was told by Jonathan Garvey that he was a home
8 inspector. He was incorporating the 10,000 dollars
9 upgrades I was making in with that inspection. I did not
10 find out that he was not a home inspection and that he had
11 not been going to repair the leak until 2016.

12 During this entire time I continued to believe that
13 they were looking to find the person, like I said, that you
14 had to have it. Your Honor, when you go through this
15 documentation you will see emails from Summit Funding, you
16 will see emails from Ms. Cha, you'll see emails from Linda
17 Mattison; you also have a copy of the closing package. The
18 contract that they keep referencing was as is, where is --
19 I believe I addressed this already -- contingent upon the
20 requirement of the lender. FHA require these items. Like
21 I said it was not optional. If I don't want to pay for
22 them, if I didn't want to give somebody -- a check and
23 give it to me that's fine. I would not been able to close,
24 I would have had to walk away.

25 In the Exhibits, and I'll just go over them, I know

1 you have a copy of them, your Honor. In the final HUD
2 statement they may have been removed and if they were then
3 that's an internal thing with Ms. Cha. There was no money
4 on there that had to be paid because I was being provided
5 those outside of closing. You see that on closing
6 documents all the time, POC. I believe that had happened.
7 I believe Jonathan Garvey had provided those and Mr. Evans
8 had provided those.

9 On No. 6 on the final HUD required services that you
10 can shop for. These are charges that are owed services
11 that are required to complete your settlement. We can
12 identify the providers but you chose what you want. That's
13 listed here and I've had that highlighted for your Honor.

14 On May the 27th that evening at 9:28 they've been
15 referencing you knew you didn't have it, you knew you
16 didn't have the inspections. I received an email from Steve
17 Reynolds on his letterhead said, "Karen, I will call you in
18 the morning. Your termite inspection was a condition of
19 the loan and was with the inspection" -- he's talking about
20 the home inspection -- have a great night."

21 On Wednesday, May 27th Linda Mattison, "I'm trying to
22 get your settlement package done. Have these things been
23 paid for?" They were not paid for at closing, they were
24 paid for outside of closing supposedly by Jonathan Garvey
25 and Mr. Evans.

1 On May 27th, 2015 at 5:06 Linda Mattison the paralegal
2 writes me an email. "Hi, Karen. I called Jonathan he said
3 there was a termite and home inspection. That is good
4 because we cannot close without them. He has sent them to
5 C Reynolds. He said to put them as POC."

6 On June the 1st, 2015 Linda Mattison said "Jonathan
7 did not bring the inspections on Friday you ask about. He
8 is supposed to bring them today. I have copied the loan
9 package for him to come by the office to pick up. The
10 check for Allen Tate is also ready. We will mail the
11 package this afternoon after he brings the termite home
12 inspection."

13 When we left closing that morning, your Honor, Mr.
14 Gillen put the papers down and he said, you know, we got
15 nine closings today. We have to have everything mailed out
16 by Tuesday. I can't disburse the checks I can't disburse
17 anything. I think the confusion with all of this under for
18 me and for everybody is is Summit Funding fund these loans
19 even though the requirement to the -- and that's in the
20 closing package -- to the lender. Ms. Cha was "do not
21 close until you have these items." Summit Funding through
22 their Charlotte office or a familiar office and through
23 emails to my attorney, not to me, I didn't have direct
24 communication, confirmed that they have received these
25 items. That was not accurate.

1 Being in real estate I know you have to have 'em. The
2 damages to the house I would not have closed if this had
3 been disclosed. They talk about an appraisal. Yes it had
4 to have an appraisal. And if the appraisal didn't show
5 something then you know you didn't have to have these
6 reports and all of that. The problem again, your Honor,,
7 is the appraisal was falsified. Jonathan Garvey was
8 supposedly there, Roberts Ouzts knew about it because he's
9 the one who had the power turned on and off in his name.
10 They knew there was no accurate appraisal; they knew that
11 it was falsified; therefore, you could not have had a loan,
12 you could not have had a legitimate loan.

13 On the closing statement on line -- let's see -- 804
14 it says appraisal evaluation it says that they had been
15 paid for. If you go on down and you were to add up all the
16 cost and put all of those together on what was to pay out
17 at closing and what had to be you would see that the --
18 there were no charges shown to HUD that's she's referenced
19 and that's because they did not collect those. It did not
20 mean they were required, just means they didn't collect
21 'em.

22 On itemization of amounts financed in the closing
23 package line 1301 required services that you can shop for.
24 1302 she mentions that Ms. Cha removed those. She removed
25 those because they were not collecting it at closing, not

1 because the item itself was not required.

2 I have another exhibit with that same form. And where
3 I signed that believing that these items had been obtained
4 or the loan could not have closed. The undersigned, which
5 was me, acknowledged receiving and reading a completion of
6 this disclosure. Without those I was not obligated to take
7 this loan and would not have.

8 On June the 1st, 2015 Linda Mattison writes me,
9 "Karen, I've copied your loan package, can you come by the
10 office and pick it up?" I believe I've already -- I think
11 I've got that in here twice.

12 When I went by to pick up the copy -- my copy of the
13 loan package -- and Jonathan Garvey I thought at that point
14 was actually bringing the warranty as well -- they hired
15 some other people to come in because they had so many
16 copies to make --

17 THE COURT: I'm going to ask you to slow down just a
18 little bit so I can -

19 MS. BABER: Okay. I'm just trying to hurry us along.

20 So when I went to the office on that Monday after loan
21 closing -- and I was getting some money back -- I did not
22 use all the escrow money at closing. I had I think about
23 1200 dollars left so I went and pick up my check to get a
24 copy of the termite report and to get a copy of the home
25 inspection. I was still trying to get in touch with Robert

1 Evans who Jonathan Garvey had told me had done the
2 inspections and there, again, the email they keep
3 referencing on the 27th was a conversation about things I
4 did not have. I as the purchaser could not order those
5 items. I cannot authorize to have the power turned on.
6 That has to be done through my realtor.

7 On March the 29th, 2016 when I found out from the
8 water department I found out from a realtor at -- who is
9 one of the witnesses at Allen Tate's office -- he sent a
10 real home inspector out there because they did have
11 knowledge about the house and met with -- I did not meet
12 with Ms. Coesens at that time but she wrote me this
13 communications with Jonathan Garvey, Robert Ouzts and a Mr.
14 -- I don't know how to pronounce his name, anyway he's Tom
15 Conagon's or something like that, and he became involved
16 and he also involved at that time, once they had found out
17 what they had done, they told me they referred me to their
18 counsel.

19 On March the 29th, 2016 "Ms. Baber," -- this is from
20 Connie Coesens -- "I will get you a copy of the CL-100.
21 I've also been in touch with the City of Rock Hill to
22 ascertain that they were indeed at the site of the leak on
23 the day Jonathan maintains the repair was made. The
24 supervisor is providing me with the documentation. One way
25 or another I will confirm." Also that day --

1 THE COURT: All right. Again, these are all documents
2 that ---

3 MS. BABER: Yes.

4 THE COURT: --- have marked in the package --

5 MS. BABER: Basically what its showing, your Honor, is
6 that they knew they had to have 'em. They knew that I
7 thought I had 'em. For nine months they have been telling
8 me I had 'em. I will note one email on that day where she
9 actually states is a FHA requirement.

10 THE COURT: All right. I'll go through those.

11 MS. BABER: Okay.

12 THE COURT: Anything else that --

13 MS. BABER: I will date -- I would like to address the
14 one on May -- from Summit Funding on May the 4th, 2016.

15 "Ms. Baber, here is your appraisal. The closing
16 package have the termite report and the inspection. I can
17 give you the number for the department in California for
18 you to contact. We don't keep copies of the closing
19 package. Steve needed these" -- and he was handling the
20 mortgage broker -- "before he could request the loan to be
21 funded."

22 THE COURT: Now you're talking about May of 2016 is
23 what you said?

24 MS. BABER: That's when I found out that they did not
25 do the CL-100. I did not know before that date.

1 THE COURT: Okay. All right. I got that.

2 MS. BABER: Okay. During all these nine months I
3 thought I had a legitimate appraisal. I did not. I
4 thought that I had a termite inspection and they were
5 trying to find it so that I could go after the termite
6 person -- the termite inspector who failed to report all
7 the damage. And I thought that Allen Tate Real Estate was
8 helping me.

9 I also reported all of this immediately through
10 several different avenues to Summit Funding in California.
11 And you should have -- you will have in these as well where
12 they responded back saying we couldn't have closed it
13 without it. One is from Larry Robinson in 2016. A copy of
14 that was also sent to regulators at Banking and Finance of
15 South Carolina.

16 THE COURT: All right. I'll go through that whole
17 package ---

18 MS. BABER: Okay.

19 THE COURT: --- that you have provided.

20 MS. BABER: All right now going to some of the other
21 documents.

22 THE COURT: Well those documents are in the file. I
23 will go over those and you've certainly marked them very
24 clearly for me.

25 MS. BABER: Yes, sir. I would like to address the

1 one issue where she keeps saying that it wasn't required,
2 only an appraisal was required. That's not accurate and
3 that shows in here why it's not.

4 THE COURT: Well she's not saying that it wasn't
5 required. She's saying it was not or law required -- the
6 way I understood her argument is that Summit Lending was
7 not required to do that.

8 MS. BABER: Summit Funding could not -- they don't
9 order it, right. Okay. That has to be done by -- I can't
10 order it.

11 THE COURT: All right.

12 MS. BABER: Okay. They have to confirm in order to
13 meet the loan requirements of FHA to the U.S. Government
14 under the HUD program. Under this FHA loan these --

15 THE COURT: And who do you alleged or represented to
16 Summit Funding that all the requirements had been met?

17 MS. BABER: Summit Funding? I have no idea.

18 THE COURT: You just said that Summit Funding does not
19 have to -- they don't require that.

20 MS. BABER: No, they do require it.

21 THE COURT: What you're arguing is that they -- and
22 her argument is that they're required under the contract to
23 provide funds for the loan. Who represented -- what you're
24 saying is that for it to be a FHA -- if I understand you
25 right -- for it to be an FHA approved loan somebody has to

1 represent that the termite inspection was done and all the
2 other stuff was done. And that somebody has to satisfy ---

3 MS. BABER: Right.

4 THE COURT: --- Summit Lending that that is done. Who
5 do you allege represented to Summit Lending that it was all
6 done?

7 MS. BABER: I think Summit Funding made a mistake.

8 THE COURT: Now it can't be thinking. I mean who do
9 you allege? Did you allege that in your complaint that
10 Summit Funding, that a particular entity, or person,
11 misrepresented to Summit Funding?

12 MS. BABER: Summit Funding I believe made a mistake.
13 I believe Summit Funding when she sent -- when Ms. May sent
14 out and said we are clear to close that meant that they had
15 received all the requirements and had processed those.

16 In one of the loan documents it actually says to the
17 loan processor do not close this loan until you have
18 received the requirements. Summit Funding funded this loan
19 without having received the requirements.

20 THE COURT: Right.

21 MS. BABER: I couldn't provide those.

22 THE COURT: And her argument is that she doesn't have
23 to do that.

24 MS. BABER: Well legally she does.

25 THE COURT: All right. Anything else?

1 MS. BABER: Here's the direct endorsement. It's in
2 your -- in the package ---

3 THE COURT: All right. I'll go through everything
4 that's in that.

5 MS. BABER: --- that shows it as well. There is also
6 a copy of the appraisal that's marked. There was no
7 accurate appraisal.

8 THE COURT: Then you've certainly provided me with a
9 extensive package of information to review. I'll do that.

10 MS. BABER: Okay. Thank you, your Honor.

11 THE COURT: Thank you. I'm curious, what's happened
12 to the house?

13 MS. BABER: I spent over a hundred thousand dollars
14 trying --

15 THE COURT: I mean does anybody live in it?

16 MS. BABER: My granddaughters and I and my daughter
17 live in it.

18 THE COURT: I can't hear -- you keep --

19 MS. BABER: I live in the house.

20 THE COURT: Hold on just a minute.

21 MS. BABER: Okay.

22 THE COURT: You speak a little bit fast for my slow
23 ears. Is there someone living in the house now?

24 MS. BABER: Yes, sir.

25 THE COURT: Who is that?

1 MS. BABER: Myself, my daughter, and my two
2 grandchildren.

3 THE COURT: Okay. Thank you.

4 MS. BABER: Okay. The house is not safe. It had
5 electrical issues. None of the appliances work. All of
6 this is in there.

7 THE COURT: All right. Thank you. I'll go through --
8 anything further that the court needs to hear from Ms.
9 Driscoll or --

10 MS. BABER: And I know that --

11 THE COURT: Hold on just a minute. Ma'am.

12 MS. BABER: Okay. I'm sorry.

13 THE COURT: You were getting ready to say something.

14 MS. BABER: I'm sorry. I believe you said that you
15 were not going to accept my affidavit.

16 THE COURT: As far as -- you have filed it. I'm not
17 going to accept it in considering these motions today, the
18 Summary Judgment Motion. All right. Thank you.

19 Ms. Driscoll, anything you'd like to say?

20 MS. DRISCOLL: Very briefly, your Honor. First I
21 would just reiterate for the record my objection to
22 consideration of the emails and hearsay also by Ms. Baber.

23 Next, your Honor, even if there were this alleged FHA
24 requirement, if Summit failed to meet it that is between
25 Summit and -- between HUD and Summit and not Summit and

1 Plaintiff. She has no private right of action against
2 Summit based on any alleged failure to meet an FHA loan.

3 Further, your Honor, emails between my client and her
4 attorney constitute emails between my client and her. The
5 closing was between her and her ---

6 (PLAINTIFF COUGHING LOUDLY>)

7 MS. DRISCOLL: --- agent. That is the law in South
8 Carolina. I can quote from *Strickland versus Capitol City*
9 *Mills* where it says there is no doubt that the general rule
10 is the notice to the attorney is notice to the client.

11 So when my client corresponded with the closing
12 attorney prior to closing that there had been no termite
13 inspection or separate home inspection that was tantamount
14 to corresponding with Ms. Baber.

15 And finally, your Honor, any claims that she may have
16 against the closing attorney, the appraiser, or the agents,
17 based on their failure to get inspections have no bearing
18 on her contractual claim against Summit. The only contract
19 between Ms. Baber and Summit was to fund the loan which
20 Summit did once Ms. Baber submitted all the requirements.

21 They funded the loan and allowed her to purchase the
22 home.

23 THE COURT: All right. Thank you.

24 MS. DRISCOLL: Thank you, your Honor.

25 MS. BABER: Your Honor.

1 THE COURT: Just briefly, Ms. Baber.

2 MS. BABER: Okay. Summit funded this loan without the
3 requirements therefore ---

4 THE COURT: All right. You've made that clear.

5 MS. BABER: --- and therefore that statement is not
6 accurate.

7 THE COURT: I understand the argument. And that's a
8 legal argument that I have to determine. You believe that
9 because it was an FHA -- I believe your argument is is
10 because it was an FHA approved loan that Summit Lending was
11 required to make sure that all FHA requirements were met.

12 MS. BABER: Yes, sir.

13 THE COURT: All right. Thank you.

14 MS. BABER: If it was so stated on the closing
15 statements which it was.

16 THE COURT: All right. Thank you.

17 All right, that concludes this hearing.

18 What I'm gonna do is I will rule by the end of next
19 week. We will stay any time as far as time required to
20 answer. I believe there was a production of documents or
21 some other issues.

22 MR. OGBURN: Yes, your Honor. I have a deadline two
23 weeks from this Friday to respond to request for
24 admissions.

25 THE COURT: Well that two weeks will not start again

1 until I rule.

2 MS. OGBURN: Okay.

3 THE COURT: So we'll stay that time.

4 MS. DRISCOLL: And your Honor, we also have the same
5 pending discovery for Ms. Baber so I would just ask for
6 that extension as well.

7 THE COURT: All right. Both of those will stay that
8 time until --

9 MS. BABER: And, your Honor, I --

10 THE COURT: The clock won't start ticking again until
11 I issue a ruling.

12 MR. OGBURN: Okay. And then as to the request to
13 depose our clients that any further discovery would be
14 stayed as well, correct?

15 THE COURT: Yes. Yes. And hopefully I'll rule by the
16 end of next week.

17 MS. DRISCOLL: Thank you, your Honor.

18 THE COURT: All right. Thank you.

19 (COURT IN RECESS AT 10:54 A.M.)

20 (END OF TRANSCRIPT OF RECORD.)

21

22

23

24

25

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 3rd day of April, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda S. Nelson
Wanda S. Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: September 21 / 2019

COPY

000164

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Karen K. Baber,)
)

Plaintiff,)
)

vs.)
)

Summit Funding, Inc.; Appraisal)
Innovations, LLC; Brian L. Blue; The Gillen)
Law Firm, P.A.; Michael F. Gillen; Allen)
Tate Co., Inc.; Colleen Coesens; Jonathan)
Garvey; Robert Ouzts; Connie Delaney; and)
Gloria Long-Robinson,)

C.A. No.: 18-CP-46-1592

Defendants.)
)
)

NOTICE OF AND MOTION TO DISMISS SUMMIT FUNDING AS A PARTY

PLEASE TAKE NOTICE that as a timely response to the Complaint served upon it, defendant Summit Funding, LLC (Summit), through its undersigned counsel, hereby moves, pursuant to Rule 12(b)(6), SCRCPP, at such time and place as is convenient to the Court and counsel, but no sooner than ten (10) days from the date of service hereof, for entry of an order dismissing with prejudice Summit as a party from this action, for failure to state facts sufficient to constitute a cause of action against Summit.

The Complaint includes Summit as a party defendant on the basis of its alleged failure to obtain a CL-100 and home inspection report. Four causes of action against Summit are based on this allegation: a) rescission based on mutual mistake; b) rescission based on unilateral mistake; c) promissory estoppel; and d) breach of contract.

In evaluating a motion to dismiss, the Court must determine if “the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.” *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). Under the ruling in *Roundtree Villas Ass’n, Inc. v. 4701 Kings Corp.*, 282 S.C. 415, 321 S.E.2d 46 (1984), inspections performed on behalf of a lender are for the protection of the lender, not the borrower, is there any duty imposed upon the lender to see that the borrower is getting a job free from any defect. In *Roundtree*, a purchaser “attempted to impose liability upon a lending institution because of faulty construction”, but the Court “refuse[d] to extend such liability[.]” *Id.* at 422, 321 S.E.2d at 50. See also *Regions Bank v. College Ave. Development, LLC*, 2010 WL 985298 (D.S.C. 2010). Summit was neither a seller of the home in question, nor did it have any part in the construction of the home. As set forth in the Complaint, Summit was involved only in providing financing for Plaintiff to acquire the home. Summit acted solely as a lender and, any decision made as to whether or not to require any home inspection¹ or termite testing prior to funding the loan was solely for Summit’s benefit and protection, not Plaintiff.

On the face of the Complaint as construed under applicable law, the Complaint fails to state facts sufficient to constitute a cause of action against Summit. Summit should be dismissed as a party defendant, and the allegations against Summit and/or the Property should be stricken from the Amended Complaint.

¹ There is no FHA requirement of a home inspection separate and apart from the appraisal. (FHA Handbook 2015, p. 45, provided by the Department of Housing and Urban Development at <http://www.fhahandbook.com/docs/fha-handbook.pdf>, a copy of which is attached at **Exhibit A.**) According to Plaintiff’s own complaint, an appraisal of the property was performed. (Complaint, p.8, ¶ 31.) There is no FHA requirement of termite inspection, unless such is noted in the appraisal, which in this case it was not. (FHA Handbook 4150.2, which is referenced by Plaintiff in paragraph 36 of her Complaint..)

WHEREFORE, Summit asks that this Motion be granted, Summit be dismissed with prejudice as a party to this proceeding, and the allegations against Summit be stricken from the Complaint.

Date: 06/28/2018

DRISCOLL SHEEDY, P.A.

By: s/ Susan E. Driscoll

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Charlotte, N.C. 28277
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Facsimile - (704) 341-2105
sdriscoll@driscollsheedy.com

ATTORNEYS FOR SUMMIT

Exhibit A

The 2015 FHA Loan Handbook

A Home Buyer's Guide to the
Federal Housing Administration's
Home Loan Program

by Brandon Cornett

If the FHA appraiser finds an item that needs to be repaired, he will make a note of that particular repair requirement. If the appraiser makes a subsequent visit and finds that all items have been fixed, he will give the property a "green light." He will note in his report that the house meets all of the FHA's property requirements. At this point, all property-related restrictions will be lifted, and the loan will be allowed to proceed.

The FHA Appraisal (and "Inspection") Process

There is a lot of misinformation online regarding the FHA appraisal and inspection process. As a result, it is a common source of confusion for home buyers. So let's clear the air:

- HUD does *not* require FHA borrowers to have a home inspection. But they encourage it.
- HUD *does* require an appraisal to be completed by an FHA-approved home appraiser.
- The primary purpose of the appraisal is to determine the current market value of the home, for lending purposes.
- In addition to appraising the value of the home, the appraiser will also perform a basic inspection to make sure the home is safe and habitable. But this is not a complete home inspection – not the kind you would get from a professional home inspector.
- In a sense, the FHA appraiser performs double duty. He or she determines the current market value of the home (primary mission), while also doing a basic inspection to ensure the home is habitable.
- I recommend that you have a complete home inspection of the property, *in addition to* the partial inspection that is part of the FHA appraisal process.

The Wisconsin Association of Realtors does a good job explaining the "double duty" concept that applies to FHA appraisers. Here is an excerpt from an FHA-related article on their website:

In an FHA loan, it's the responsibility of the FHA appraiser to confirm that the property meets FHA standards. The appraiser will note property condition defects on the property and suggest repairs or changes on the FHA appraisal report. Often these defects must be repaired as a condition of the FHA loan. -Source: *"Cause and Effect: The Home Inspection and Mortgage Relationship,"* by Cori Lamont, www.wra.org

So, while HUD does not require a full and independent home inspection, they do require the HUD-certified appraiser to inspect the premises for certain issues. If the appraiser finds any HUD violations (such as safety and habitability issues), he or she will report them to the loan agent. These items must be repaired before the loan can proceed. The HUD-approved appraiser serves a dual function in this regard.

When writing this chapter of the book, I sought clarification from a handful of lenders. I asked them to clarify the appraisal and inspection requirements for FHA loans. One of the best

2/15/2019

Karen K. Baber
Baber vs. Summit Funding, Inc., et al.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

2018-CP-46-01592

KAREN K. BABER,

Plaintiff,

vs.

SUMMIT FUNDING, INC., APPRAISAL
INNOVATIONS, LLC, BRIAN L. BLUE,
THE GILLEN LAW FIRM, P.A.,
MICHAEL F. GILLEN, ALLEN TATE CO., INC.,
COLLEEN COESENS, JONATHAN GARVEY,
ROBERT OUZTS, CONNIE DELANEY, and
GLORIA LONG-ROBINSON,

Defendants.

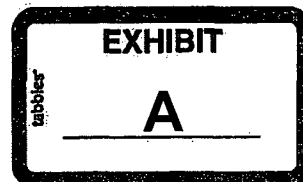
DEPOSITION

OF

KAREN KIRBY BABER

Taken By Defendant
Rock Hill, South Carolina
February 15, 2019

Reported by:
KATHY A. CORTOPASSI, RMR, CRR, CCP, CBC
Registered Merit Reporter
Certified Realtime Reporter



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* * * * *



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Also Present: Jonathan Garvey



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* * * * *

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1 On February 15, 2019, commencing at 9:00 a.m.,
2 the deposition of KAREN KIRBY BABER was taken pursuant
3 to notice and pursuant to Rules 26 and 30 of the South
4 Carolina Rules of Civil Procedure, on behalf of the
5 Defendants at 331 East Main Street, Suite 200, Rock
6 Hill, South Carolina.

7 * * * * *

8 MR. OGBURN: Go ahead and mark this as
9 Exhibit 1.

10 (Whereupon, Exhibit 1 was marked for
11 identification and is attached to the
12 transcript.)

13 KAREN KIRBY BABER, upon first being duly
14 sworn, testified as follows:

15 EXAMINATION BY MR. OGBURN:

16 Q Ms. Baber, the court reporter will keep the
17 official set, but I'm giving you a copy for your
18 files. If you had a lawyer here, I'd give your
19 lawyer a copy.

20 A Okay.

21 Q Ms. Baber, my name is Tate Ogburn, and I'm here
22 representing what we've called the Tate Defendants,
23 and those are the Allen Tate.

24 Ms. Baber, are you recording this?

25 A Yes, sir.



1 Q Why are you recording this?

2 A Because I'm representing myself and because, quite
3 honestly, a lot of information I've gotten from
4 everybody has not been accurate and I am very sick
5 and I want to make sure that I, you know, properly
6 understand what you say and also what I say. I've
7 been up since 4:00 this morning very sick, going to
8 be leaving here and going to the hospital. It's so
9 that I can kind of make sure I have my thoughts
10 together and make sure what I say, not so much what
11 you say, but what I say is accurate.

12 Q Are you aware that the court reporter is taking
13 down what you say verbatim?

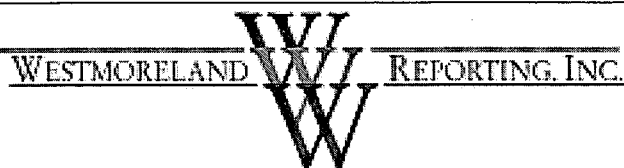
14 A Yes, sir. And I also know that it costs me to get
15 that. So if she can take it down, I don't see why
16 I can't do it.

17 MR. RACINE: Just a second, Ms. Baber. I'm
18 Russ Racine. I represent Mr. Blue. You said
19 you were going to go to the hospital
20 immediately following this deposition?

21 THE WITNESS: I may.

22 MR. RACINE: Do you need to go now?

23 THE WITNESS: No. I've been to the doctor off
24 and on this week. I had notified, I believe,
25 your office of what I told y'all I was worried



1 about, maybe I would have to excuse myself,
2 happened last night. And so I had been very,
3 very sick all night. And so I've had some
4 medication I've been trying to -- I'm very
5 shaky. I didn't take some medication so that
6 I could try not to be out of it.

7 Q Have you had your deposition taken before?

8 A In -- a long time ago, yeah.

9 Q Okay. So you understand how this works, I'm going
10 to ask you a series of questions.

11 A Okay.

12 Q You've been sworn in. You're testifying just like
13 we were in the courthouse and you're testifying in
14 the courtroom for a judge.

15 A Yes, sir.

16 Q And you have sworn to tell the truth, the whole
17 truth, and nothing but the truth; correct?

18 A Yes, sir.

19 Q And I want to make sure that you understand the
20 questions I ask. So if you don't understand the
21 question, ask me to ask it again.

22 A Okay.

23 Q Also, the court reporter is taking down exactly
24 what you say, so she cannot transcribe if you shake
25 your head yes or no.



1 A I understand.

2 Q So I ask that you give a verbal yes or no response.

3 A Okay.

4 Q And I will -- I'll try to remind you if I see you
5 shaking your head.

6 A Okay.

7 Q Are you taking any medications today that might
8 influence your ability to understand the question
9 or to answer them?

10 A I have taken something to control pain last night.
11 And nausea, I took that about 2:00 this morning.
12 Most of that has worn off. I am in pain. But I
13 have not taken anything for it because of the
14 reason of this deposition.

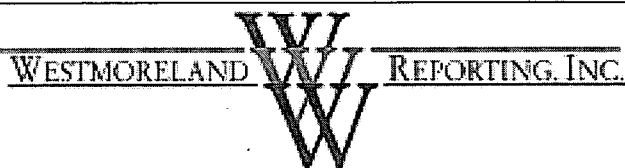
15 Q Okay. So does any of that -- would any of that
16 affect your ability to either understand the
17 question I ask or answer them?

18 A I don't believe so. It might take me a minute to
19 think through it more so than, like, just a quick
20 answer off my head, but I should be fine.

21 Q Okay. Then the other thing is: Let me know if you
22 need to take a break; okay?

23 A I will.

24 Q The only thing I ask is if I have asked you a
25 question and you need to take a break, that you



1 answer the question and we take the break after
2 you've answered the question.

3 A Okay.

4 Q If you'll state your full name for the record,
5 please?

6 A Karen Kirby Baber.

7 Q Okay. I'm going to show you what's been marked as
8 Exhibit 1. Tell me if you recognize that.

9 A Yes.

10 Q Is that a copy of a Notice of Deposition I sent
11 you?

12 A Yes.

13 Q And is that in the lawsuit Karen K. Baber v. Summit
14 Funding, Inc., et al?

15 A Yes.

16 Q Is that a lawsuit that you filed in York County?

17 A Yes.

18 Q And you're appearing pursuant to this Notice of
19 Deposition; correct?

20 A Yes.

21 Q Ms. Baber, if you could state your full name for
22 the record.

23 A Karen Kirby Baber.

24 Q Okay. Ms. Baber, you have produced a lot of
25 documents to us as part of this lawsuit; correct?



1 A Yes.

2 Q And a lot of those documents contain email
3 exchanges between either you and the real estate
4 agents or you and Summit or you and Sharon Cook at
5 LLR; correct?

6 A Yes, sir.

7 She has would also have been what you have.
8 And those emails were sent to her from emails and
9 communications with the parties, with the
10 Defendants.

11 Q So in your communications with Sharon Cook, you
12 forwarded her copies of emails that were between
13 the parties as part of the sale of the house;
14 correct?

15 A Yes.

16 Q Did you modify the content of any of the emails
17 that you sent to LLR?

18 A No.

19 I had difficulty copying them because it was
20 from an old email that I didn't have anymore. And
21 so I had to kind of cut and paste. I couldn't do a
22 direct follow-up because I no longer had the email.

23 Q Did you modify the text in any of the emails?

24 A Not that I recall.

25 Q In order for her to write it down accurately, --



1 A Okay.

2 Q -- please allow me to finish asking the question.

3 A Okay.

4 Q And I will try to allow you to finish the answer --

5 A Okay.

6 Q -- before we go.

7 So for the emails that you provided us, did
8 you edit any of the text in those emails?

9 A Not that I recall. Unless you're referring to
10 editing as combining emails where they may have
11 been separated originally.

12 Q Okay. But if there is an email in there from Linda
13 Madison to you, you didn't edit the text of that
14 email?

15 A Not that I recall.

16 Q So are all of the emails that you provided to
17 LLR true and correct copies of emails that were
18 either sent to you or received by you as part of
19 the sale of the house?

20 A To the best of my recollection.

21 Q I'm going to mark this as Exhibit 2.

22 A And the emails could also include communications
23 that were verbal.

24 Q How would an email contain a communication that was
25 verbal?



1 A We were going over the email. And maybe she made a
2 note or I made a note on it. And then put it in
3 the record that way.

4 (Whereupon, Exhibit 2 was marked for
5 identification and is attached to the
6 transcript.)

7 Q Okay. I'm going to show you what's been marked as
8 Exhibit 2.

9 A Okay.

10 Q Do you recognize that email?

11 A To the best of my recollection, it's been a long
12 time ago; but yes, sir.

13 Q Is that an email from Mr. Garvey to you and then
14 your response on June 1st, 2015?

15 A I don't see a response on here..

16 Q Up at the top where it says, "both done"?

17 A I don't know what that's referring to.

18 Q Okay. I'll represent --

19 A I was no longer able to open that email, that
20 referenced the document.

21 Q Down at the bottom of the document, below where it
22 says Jonathan Garvey in an email address, --

23 A Ah-huh.

24 Q -- can you read that language that says, "I have a
25 few things"?



1 A "Left in my file that I need. I'll send them right
2 quick for signatures. J."

3 MR. OGBURN: Okay. Mark this as Exhibit 3.

4 (Whereupon, Exhibit 3 was marked for
5 identification and is attached to the
6 transcript.)

7 MR. OGBURN: They're your copies.

8 THE WITNESS: Okay.

9 Q I'm going to have you look at Exhibit 3.

10 A Ah-huh.

11 Q I want you to compare it to Exhibit 2.

12 A Ah-huh.

13 Q I'll represent to you that Exhibit 3 is a copy of a
14 document we received from you.

15 A Is this 3?

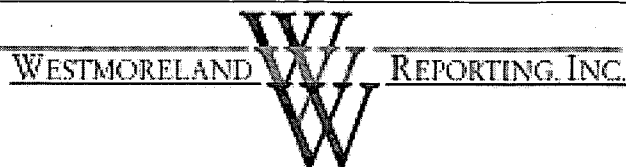
16 Q It is. If you want to work on the ones that are --
17 you can keep these. But why don't you work off the
18 ones that have been labeled because they will be
19 easier to keep them.

20 A Okay.

21 Q So I'll represent Exhibit 3 is a document we
22 received from your files.

23 A Ah-huh.

24 Q Down at the bottom is a notation that says, "Baber
25 0923." We added Bates numbers to the documents.



1 A Ah-huh.

2 Q Because you had a lot of duplicate emails, and we
3 wanted to try to keep everything separate.

4 A Right.

5 Q So does this appear to be a copy of the same email
6 as Exhibit 2?

7 A It would seem to be.

8 Q Okay. I want you to read the text below Jonathan
9 Garvey's email address.

10 A "I will drop off," do you mean about that one?

11 Q Start with "I have."

12 A "I have a few things left in my file that I need.
13 I will send them right quick for signatures. J
14 Will drop off warranty. Called Robert. But he has
15 not returned call. Did you call him?"

16 Q Okay. And how is that different from Exhibit 2
17 that I have shown you?

18 A That would probably been the one that he most
19 likely sent after that when I asked him about that
20 and when I combined them from the old email I had.

21 Do you notice at the top, this is the Yahoo?
22 And some of those I had difficulty -- in fact, you
23 should have one copy in your file where, like, all
24 the emails were on top of each other. So it was
25 difficult to put, you know, put those in order.



1 Q Did you add the language on the email?

2 A Not that I recall.

3 Q Not that you recall.

4 The language that says, "will drop off
5 warranty. Called Robert. But he has not returned
6 call. Did you call him?", did you add that
7 language?

8 A No, sir, not that I recall.

9 Q Can you explain to me why Exhibit 3 and Exhibit 2
10 are different?

11 A Like I said, probably because they were -- when I
12 combined the emails looking from the Yahoo and had
13 to go through and copy everything, probably he
14 responded and I just put them all together.

15 Q Okay. So are your emails accurate representations
16 of all the emails? Or in copying/pasting, did
17 stuff get moved around and added?

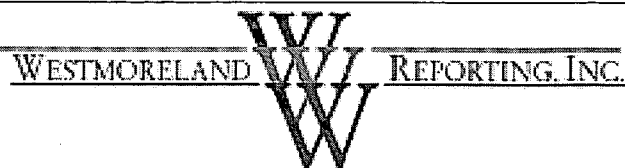
18 A That's possible.

19 Q That's possible?

20 A Not added. But it could have been this email was
21 put onto this one in order to copy it.

22 Q So the emails you gave us may not be accurate
23 representations of the actual email exchange
24 between the parties?

25 A No, that would not be correct.



1 Q It would be? They are accurate?

2 A Yes.

3 Q Okay. Again, why does your email contain
4 additional language than the Exhibit 2 email?

5 A That would have been additional email that Jonathan
6 had sent. If it's not already together and I would
7 have put them together. Because I could no longer
8 get into the Yahoo, so I cut and pasted. And
9 because that was accurate of what was happening at
10 the time.

11 Q Do you have any other names that you go by or have
12 gone by in the past?

13 A I don't believe so.

14 Q No. So no other marital name or?

15 Okay. Ms. Baber, how old are you?

16 THE REPORTER: I'm sorry. There was no
17 answer. You went like that (Indicating.) but you
18 didn't --

19 MR. OGBURN: I'm sorry.

20 THE WITNESS: Oh, I'm sorry. What was the
21 question, any other names?

22 Q Have you ever gone -- have you ever had a married
23 name or a name where you were divorced or anything?
24 It's always been Karen Baber?

25 A Before I got married, it was Karen Kirby. But my



1 granddaughters call me Nana, but that's it.

2 Q And when were you married?

3 A November 19th of 1971, I think.

4 Q And are you still married?

5 A No.

6 Q Did you get divorced?

7 A Yes.

8 Q When did you get divorced?

9 A It was 18 years later, so I don't remember.

10 Q Okay. So in the late '80s?

11 A We were married for about 18 -- 18, 19 years.

12 Q And, Ms. Baber, how old are you?

13 A 67.

14 Q Okay. And where do you currently reside?

15 A 255 Rolling Ridge Road, Rock Hill, South Carolina,
16 29730.

17 Q And how long have you lived there?

18 A Since June the 3rd of 2015.

19 Q Where did you live before that?

20 A On Goodplace Road. I don't remember the number.

21 Q Where was it? What town was that?

22 A Rock Hill.

23 Q How long did you live at Goodplace Road?

24 A Lived there for about a year.

25 Q Okay. How about before that?



1 A Before that I lived in Southern Pines, North
2 Carolina.

3 Q Do you remember the street address?

4 A Not off the top of my head. I lived there for
5 about a year and a half. I lived with my mother
6 from 2006 until we put her in a nursing home in
7 June -- I lived with her in 2006. She went to an
8 assisted living in 2012. And I rented a house at
9 that point.

10 Q Okay. Did you live with your mother in Southern
11 Pines?

12 A Yes. Whispering Pines.

13 Q Is that in?

14 A North Carolina.

15 Q North Carolina?

16 What's the highest level of education you
17 completed?

18 A Associate's Degree.

19 Q And where's that from?

20 A Central Piedmont.

21 Q And when did you obtain that?

22 A Probably been '70, the spring of '71?

23 Q And I know you have one daughter. Do you have any
24 other children?

25 A I have two daughters.



1 Q And one of them is named Crystal?

2 A Ah-huh.

3 Q What's the other's name?

4 A Dawn.

5 Q Okay. Are you currently employed?

6 A Yes.

7 Q Who do you work for?

8 A United States Government.

9 Q Doing what?

10 A I work with the Census Bureau.

11 Q And what's your -- what are your job duties?

12 A I am a field rep.

13 Q And what does a field rep do?

14 A Collect data for the different agencies tied up
15 within the Census Bureau.

16 Q Okay. How long have you worked for the government?

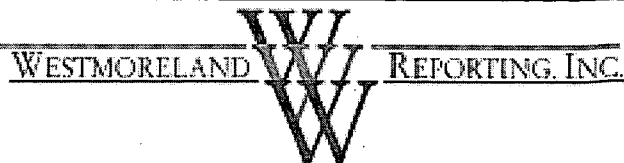
17 A About 12 years.

18 Q Okay. Where'd you work before that?

19 A I took a break when I first moved in with my
20 mother. Before that, I worked for Dick Arnold.
21 And I did do some work for Dick whenever I moved to
22 North Carolina, as well.

23 Q And Mr. Arnold is an attorney in South Carolina;
24 right?

25 A He's retired, yes, sir.



1 And I also did -- I filled in for some
2 attorneys, different ones, in Moore County. Like,
3 if someone went in to have a baby or something like
4 that, they would call and I would just fill in.

5 Q Okay. And what type of work did you do for the
6 attorneys?

7 A Just legal, you know, type documents, research
8 titles, closing packages.

9 And the same thing with Mr. Horn. He also had
10 some government contracts, and we worked on those.

11 Q So, some of your work for the lawyers involved the
12 steps necessary to close loans?

13 A Yes.

14 Q And it involved sale of properties?

15 A Yes.

16 Q And you did that for both Mr. Arnold and then just
17 on an as-needed basis for lawyers in Moore County?

18 A Yes.

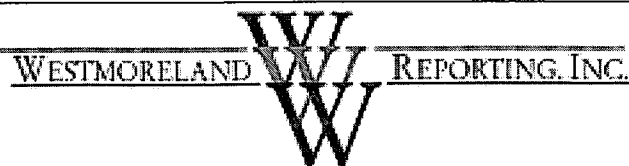
19 And that wasn't always real estate. That was
20 just if they were having a need.

21 Q Do you have any other -- any other jobs in the past
22 that involve residential real estate?

23 A Yes, sir.

24 Q What was that?

25 A In, let's see. In the late '70s or '80s, I



1 obtained a real estate license. I obtained a
2 broker's license. And I worked for a company doing
3 compliance where I traveled and taught compliance
4 throughout the country with real estate and with
5 securities.

6 Q Okay. Who'd you get your -- what state did you get
7 a broker's license in?

8 A South Carolina.

9 Q Okay. Any other sort of professional licensing?

10 A The securities license.

11 Q Okay. And who was that with?

12 A That was issued in South Carolina. I was with
13 Merrill Lynch, with E.F. Hutton. I think it was
14 Bank of America. And I went to work for the -- I
15 was asked to do some investigative work with the
16 South Carolina Securities Department.

17 Q Who were you working for in doing that?

18 A I worked for the Secretary of State.

19 Q Ms. Baber, have you ever been involved with a court
20 proceeding prior to this one?

21 A Yes, sir.

22 Q Okay. How many do you think you've been involved
23 in?

24 A I had to testify on different accounts with -- as
25 an expert witness with securities and with



1 insurance. I also was an expert witness in
2 undercover operation with the FBI involving
3 securities fraud. So I'd say as far as going to
4 court, I was also subpoenaed to testify in a
5 securities fraud situation up in Virginia, I
6 believe it was. I can't remember exactly.

7 Q And were those cases in which you were a party or
8 you were purely a witness?

9 A I was a witness in some of them. And then some of
10 them were because of the -- one of them, for
11 example, was a case that Mr. Arnold was involved
12 in. And I was an expert witness in that.

13 Q Okay. Did you ever live in Florence County?

14 A I did.

15 Q Do you remember a case you filed against NC&B in
16 Florence County? Or that was filed against you?

17 A No, sir.

18 Q Do you remember filing a case against Chevy Chase
19 Bank?

20 A No, sir.

21 Q Do you remember filing a case against a person
22 named Mr. Wigs?

23 A No, sir.

24 Q Okay. How many lawsuits have you been a party to,
25 not merely a witness but a named party?



1 A I have no idea.

2 Q More than one?

3 A I would have to go back and look and see what
4 you're referencing to because the kind of work I
5 did, there could be numerous ones. I would have to
6 divide those up and see what you were referencing.

7 Q What do you mean "the kind of work I did?"

8 A Well, I worked with the different agencies and
9 would be either a witness or --

10 Q I'm talking about civil lawsuits where you were the
11 Plaintiff. Not criminal. Not investigations. Not
12 things where you're an expert witness.

13 A I'd have to see the documents which you're
14 referring to. I don't recall.

15 Q Do you remember filing a lawsuit in Florence County
16 against Aubrey Richardson?

17 A That one sounds familiar. I think it was about a
18 rental house, possibly? But I don't recall.

19 Q How about do you remember filing one in Florence
20 County against George Leeris?

21 A Yes.

22 Q What was that about?

23 A That was during Hurricane Hugo. And it involved an
24 office that we had through A.L. Williams. And he
25 claimed that I did not -- it had something to do



1 with a check. I don't remember if he brought a
2 lawsuit that I had not paid a check or had stopped
3 payment on a check and shouldn't have. And I won
4 the lawsuit in court.

5 Q And did you file -- do you remember a lawsuit filed
6 against Tire Recyclers?

7 A I remember being a party to some legal work that
8 was done with Tire Recyclers.

9 Q Do you remember filing a lawsuit against them in
10 Florence County?

11 A No, sir.

12 Q Do you remember -- do you ever remember that a
13 lawsuit that Bank Carolina First Bank may have
14 filed against you in Florence County?

15 A No, sir.

16 Q Do you remember a lawsuit that South Carolina Bank
17 and Trust would have filed against you in
18 Georgetown County?

19 A No, sir.

20 Q Have you ever had a judgment entered against you, a
21 Civil judgment?

22 A I don't recall. Not to my recollection. If you
23 can show me some paperwork, I can certainly go back
24 and look.

25 Q Have you ever been charged with a crime other than



1 a speeding ticket?

2 A No, sir.

3 Q Have you ever filed bankruptcy?

4 A I would have to go back and look. If it was, it
5 was a long time ago. Probably during the divorce.

6 Q Did you ever file bankruptcy when you lived in
7 Florence, South Carolina?

8 A If I did, that would have been during the divorce.

9 Q There's a 1992 bankruptcy where the debtor is Karen
10 K. Baber living at 733 Corbett Place, Florence,
11 South Carolina?

12 A That would have been --

13 Q Would that have been you?

14 A That would have been probably during the divorce
15 proceedings.

16 Q Okay. How many different --

17 A I don't recall all of that.

18 Q How many different real properties have you owned?

19 A Let's see. We owned -- my husband and I owned one
20 on Congaree Drive in Florence. And then moved from
21 there on Mosswood. And that's when we got the
22 divorce, during that time.

23 Q Is that -- do you remember any others?

24 A Properties that we owned?

25 Q Yes. Or that you were part owner, whether or not



1 it was with your husband or not.

2 A Corbett Drive.

3 Q Okay.

4 A And a condo in Rose Inlet.

5 Q Okay. Any others?

6 A The one I'm in now.

7 Q So approximately five, at least five?

8 A Was that five?

9 Q Congaree, Mosswood, Corbett Drive, the condo and
10 the Rolling Ridge, that's five.

11 A Okay.

12 Q Any other -- I mean, could it be more than five?

13 A Not that I recall, unless I was -- I know my mom
14 and dad and my brothers had different properties
15 from time to time. And all of us would be possibly
16 on those deeds or something like that, which could
17 also refer back to some of the other things you're
18 talking about.

19 Q Now, as I told you, I represent Allen Tate
20 Companies and the real estate agents in the
21 lawsuit. And I'm going to ask you a lot of
22 questions about the transaction. But I want to
23 start with each of my Defendants. And I want you
24 to tell me what their role was in the transaction,
25 who they represented. We don't need to get into



1 the whole transaction right now.

2 Jonathan Garvey?

3 A He was my agent.

4 Q So, -- and you were the buyer of the property?

5 A Yes.

6 Q Okay.

7 Robert Ouzts?

8 A Robert Ouzts was the listing agent after Connie
9 Delaney became the seller's power of attorney. I
10 remember going in and Jonathan explaining that to
11 me, and that was kind of weird.

12 Q And what did you understand Ms. Delaney's role was?

13 A I believe she was the original listing agent. And
14 then when she moved, Jonathan explained that
15 because it was all in one company, at first they
16 were both going to be the listing agent, and then
17 she became the power of attorney and Robert Ouzts
18 was listed as the listing agent, to my knowledge.

19 And I believe that was all shown on the
20 original contract, which was a paper contract of
21 which I never got a copy.

22 Q Okay. And Colleen Cousins?

23 A Excuse me. I will have to keep drinking.

24 She was the broker.

25 Q Okay. Was she involved in the transaction at all?



1 A Not to my recollection, not that I know until March
2 of 2016.

3 Well, I'll take that back. I had a meeting
4 with her in June of 2015.

5 Q And that was after you had bought the house?

6 A Yes.

7 Q Okay. Do you remember when Mr. Arnold retired from
8 practicing law?

9 A He retired about three years ago, I believe.

10 Q Is Mr. Arnold giving you advice with regard to this
11 case?

12 A He is looking at documents for me. I'm having him
13 proofread things.

14 Q Is he writing things for you?

15 A No, sir.

16 Q Are you represented by an attorney?

17 A No, sir.

18 Q Okay. As part of our document request, why have
19 you not produced any email exchanges with
20 Mr. Arnold?

21 A Concerning this case?

22 Q Yes.

23 A I really haven't -- I've discussed it over the
24 phone with him.

25 Q But you haven't sent him documents to review?



1 A I don't remember sending him any documents. He and
2 I have discussed quite a bit of things, especially
3 concerning the -- Mr. Gillen.

4 Q So have you emailed Mr. Arnold anything about this
5 case?

6 A I emailed him recently the documents that I
7 received from the court about the dismissals. I
8 have read to him over the phone the different
9 issues. We have discussed the fact that -- I don't
10 recall actually sending him any emails. I could
11 have. But I was -- up until he retired, I was
12 still -- I would go down to South Carolina and do
13 some typing for him and, you know, still help him
14 with some of his work.

15 Q Was he retired at the time you bought the house?

16 A Let's see. That was in 2015? I think he retired
17 in 2016. There, again, I'm not sure on that.

18 Q Who is Robert Evans?

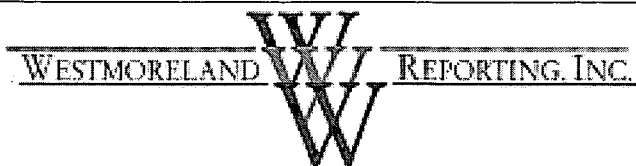
19 A Robert Evans is a contractor that Jonathan
20 introduced me to.

21 Q And how do you know him?

22 A Through Jonathan.

23 Q Did Jonathan introduce you to him, or did Robert
24 introduce you to Jonathan?

25 A No, Jonathan introduced me to him.



1 Q And where does Mr. Evans live?

2 A I don't know. I'd have to look at the notes I gave
3 you for the witnesses.

4 Q And do you know what type of contracting work he
5 does?

6 A He just does general contracting.

7 Q Do you know if he specializes in anything?

8 A I don't.

9 I believed when I bought the house, he did.
10 But then I found out afterwards in 2015 that he did
11 not..

12 Q Has he ever visited the house?

13 A No.

14 There again, I thought he had, but he had not.

15 Q How does he relate to this case?

16 A Jonathan had been referred to my daughter, and we
17 were thinking about buying the house over on
18 Goodplace. And it needed a lot of work. And I
19 knew I didn't want to stay there.

20 So Jonathan suggested that Robert come over.
21 And he came over and went through the house and
22 basically said the house was -- that particular
23 house had a lot of structural damage, and he didn't
24 recommend that -- he thought it would be more work
25 and was not worth the price.



1 Q I thought you just said that Mr. Evans hadn't
2 visited the house.

3 A The house I rented.

4 Q Okay. Sorry.

5 A When I first met him.

6 And then I began to look at houses. And
7 Jonathan would recommend some houses. Then I'd ask
8 Robert to go, you know, take a look at them and see
9 what he thought, because I had limited funds on
10 what I could do something with.

11 And I had planned to use Robert to -- whatever
12 house I found, usually you want to make upgrades.
13 And I planned to use him.

14 Q Did you ever tell Robert Evans that you knew he
15 didn't have anything to do with the Rolling Ridge
16 property, but your attorney told you that you had
17 to name him, talk about him in the complaint?

18 A I didn't have an attorney.

19 Q I understand.

20 Did you ever tell Robert Evans that you knew
21 he wasn't involved in the Rolling Ridge, but that
22 your attorney told you you had to name him in the
23 complaint?

24 A He's not named in the complaint.

25 Q Robert Evans' name is not found in the complaint?



1 A Only as a witness.

2 Q That's my question.

3 Did you ever tell Mr. Evans that you knew he
4 wasn't involved in the house, but your attorney
5 told you you had to talk about him in the
6 complaint?

7 A My attorney I don't have.

8 Q Okay. So you never said that statement to
9 Mr. Evans?

10 A I told Mr. -- I don't remember what I said to
11 Mr. Evans.

12 I found out when I moved into the house that
13 Mr. Evans had not been to the house, that he was
14 not qualified to do a CL-100, that he was not
15 qualified to do an inspection report, and that I
16 began calling him from the closing where Jonathan
17 was present to come over and open the windows,
18 because all the windows were shut. And I did not
19 believe that was safe. So I began calling him at
20 that point. And he didn't return my calls.

21 It was months later when I finally got in
22 touch with him. Jonathan called him when I moved
23 in the house.

24 And I told Jonathan that the air conditioner,
25 which I was concerned about, was not working.



1 Mr. Evans sent out Mike somebody. And according to
2 Mike, Jonathan said to Mr. Evans, "Can you send
3 somebody over there to fix that thing as cheaply as
4 possible?"

5 Mr. Mike, whatever his name was, came to the
6 house. I asked him specifically. He said, "This
7 thing doesn't work." And I said, "How long have
8 you worked for Robert?" He said, "A long time." I
9 said, "Do you think he inspected this?" He said,
10 "No, he would never have approved this, that this
11 was a working air conditioning unit."

12 Q Let's take it back a step.

13 When did you first meet Mr. Garvey?

14 A I guess it would have been in 2014 because that's
15 when I moved to Rock Hill.

16 Q When did you first begin working with him in
17 looking at houses?

18 A I would imagine that would have been in 2014.

19 Q So, between the time you started working with him
20 and you bought Rolling Ridge, a year?

21 A I don't think it was that long because it's
22 probably six months before I really started
23 looking.

24 Q So you hadn't had a relationship with Mr. Garvey
25 over five years or more looking at houses?



1 A No.

2 Q So it was less than six months?

3 A I didn't live here.

4 Q Okay.

5 MR. OGBURN: Let's mark this up as Exhibit 4.

6 (Whereupon, Exhibit 4 was marked for
7 identification and is attached to the
8 transcript.)

9 Q I'll give you a second to look at this. Tell me
10 when you're ready.

11 A Okay.

12 Q Do you recognize that document?

13 A Not really. But it appears to be my signature.
14 And that's about the time I would have been
15 starting to really look at houses with Jonathan in
16 2015.

17 Q Okay. Does it say it's an exclusive right to buy,
18 buyer agency contract?

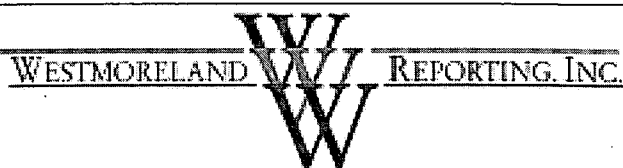
19 A Yes.

20 Q You understand this to be your agreement to engage
21 Mr. Garvey as your real estate agent?

22 A Yes.

23 Q What did you understand his role was as a real
24 estate agent?

25 A He was going to try to help me find a property that



1 would suit me and my family.

2 Q Okay. And then once he found it, once y'all
3 identified a property, what would be his role?

4 A To act as the agent for me as the purchaser.

5 Q I'm going to have you look at Page 2 of this
6 document. Do you see Section Number 12?

7 A Ah-huh.

8 Q Okay. Can I have you read Section 12 for the
9 record, please?

10 A "Buyer acknowledges that Broker is being retained
11 today as a real estate agent and not as an
12 attorney, tax adviser, lender, surveyor, engineer,
13 home inspector or other professional service
14 provider. Buyer agrees to seek professional
15 service concerning the condition of the property,
16 legal, tax and other professional services."

17 Q Was that your understanding when you signed this
18 agreement?

19 A Yes, sir.

20 My understanding is that he would assist me on
21 doing all those things. I legally could not do
22 them.

23 Q How did you -- how long did it take y'all to
24 identify a property once you started working with
25 Mr. Garvey?



1 A Oh, gosh. I think we actually started working
2 before then, because that was about the time that
3 we signed the contract. So I had started working
4 with him in probably 2014 to see if he found a
5 short sale or a foreclosure or would call him about
6 a house and several houses that we were going to go
7 look at got sold quickly.

8 I did not want to stay where I was. And so we
9 became, probably near the end of 2014, began to
10 look at more, became more engaged in looking at
11 properties. He sent me pages of, you know, houses.

12 Q Okay. How many different properties do you think
13 y'all looked at before you settled on this one?

14 A I have no idea.

15 Q More than 10?

16 A I don't remember whether we actually went to the
17 properties or whether we'd just go by and look at
18 them.

19 I would find properties. I'd ask him to check
20 them out. And then he would call me back on all of
21 them and say, "This one has a contract. I don't
22 think this would work for you."

23 Q So y'all discussed numerous other properties?

24 A Yes.

25 Q Before you found the Rolling Ridge?



1 A Yes.

2 And even after Rolling Ridge, because of the
3 concerns on possible work needing to be done, we
4 continued to look at other properties in case this
5 one did not work out.

6 Q Okay. Who first identified the property at 255
7 Rolling Ridge Road?

8 A He sent me a list, I guess. I didn't even know
9 where Rolling Ridge Road was, so I don't recall.

10 Q So you believe Jonathan may have found it?

11 A That would be my recollection.

12 Q Okay. When did you first visit the property?

13 A It would -- I imagine it would have been in
14 January. Of 2015.

15 Q January '15?

16 A We may have gone in December, I don't recall.

17 Q Okay. What interested you about the Rolling Ridge
18 property?

19 A We knew we had discussed the price range I probably
20 needed to stay in and was looking for something.
21 My two grandchildren lived with me and my daughter,
22 and we were trying to look at something that had
23 space that we could -- with a teenager and a little
24 one could all survive in without killing each
25 other. So, yeah, the space.



1 And something that -- I had \$10,000 to work
2 with. And so I needed to make sure that it was not
3 anything that I could not afford.

4 Q Okay. When you say you had 10,000 to work with?

5 A Like, if we needed to paint, to make improvements
6 with. And I had \$10,000 to be able to put down
7 closing costs.

8 Q When did you learn that the Rolling Ridge property
9 was being sold as-is?

10 A Every property we looked at, that's pretty common
11 to put as-is, where-is. But it's always contingent
12 upon the requirements of the lender.

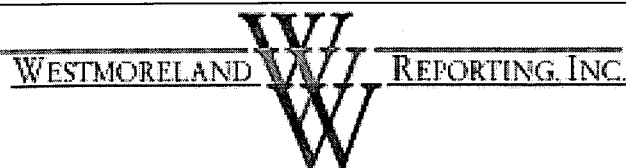
13 Q Okay. So what is your understanding what "as-is"
14 means in a real estate transaction?

15 A That you're looking at it at that point as exactly
16 that, where it is, how it is.

17 But you have the protections of the -- what I
18 qualified for and the type of loan I qualified for,
19 that it has to be -- you don't have a right as an
20 as-is/where-is to waive the requirements of the
21 lender.

22 Q And we'll talk about the loan. I'm talking about
23 buying the house. Because you're buying the house
24 from the seller; right?

25 A Right, right.



1 Q And as-is is between you and the seller; right?

2 A Right.

3 And then you make your counteroffers for them
4 to fix certain things if you find something that's
5 not accurate.

6 Q Okay. Did you -- had you dealt with as-is
7 properties in any of the paralegal work you did for
8 the law firms?

9 A Yes.

10 Q Okay. So you knew what an as-is property was?

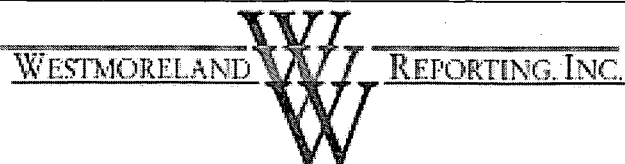
11 A To my recollection, we never had a property that
12 was as-is/where-is that didn't require something
13 when a mortgage was involved.

14 Q Did you think you might be able to buy the property
15 for less money because it was as-is?

16 A I don't even think we offered. I don't remember
17 what it was listed for.

18 But, no. The as-is/where-is really didn't
19 come into play because I knew that having looked at
20 the house and based on what I believed to be
21 accurate, I believe that -- and there were emails
22 to Jonathan on that -- that there were certain
23 items which the seller or the appraiser and things
24 would identify and that the lender would require.

25 Q How many times did you visit the property before



1 you bought it?

2 A I don't recall.

3 Q Give me a guess. I won't hold you to it. It's
4 been three years.

5 A Maybe three. I really don't recall.

6 Q More than five, do you think?

7 A I don't recall.

8 Q Was the property occupied or vacant?

9 A Vacant.

10 Q What was your understanding as to how long the
11 property had been vacant?

12 A My understanding is that she moved in -- I thought
13 it was 2014. But I believe in court she said she
14 moved in 2013. In one of her answers to when I
15 filed the lawsuit. I know that the neighbor said
16 that she walked away in 2014.

17 Q Okay. But when you visited the house, you
18 understand that it had been vacant for a little
19 while; correct?

20 A Yes.

21 Q Did you walk throughout the property when you
22 visited it?

23 A I did.

24 Q Okay. Where'd you go in the house when you visited
25 the first time?



1 A Where?

2 Q Ah-huh.

3 A What do you mean by "where"?

4 Q Did you walk through the entire downstairs?

5 A Yes, sir.

6 Q Did you walk through the entire upstairs?

7 A Yes, sir.

8 Q Did you go up in the attic?

9 A No, sir.

10 Q No, you did not?

11 A No.

12 Q Was there a garage on the house?

13 A No.

14 Q There's no garage on the house?

15 A No.

16 Q Is there a basement?

17 A No.

18 Q Is there a crawl space?

19 A No.

20 Q Is it built on a slab?

21 A Yes.

22 Q Anywhere else you visited in the house other than

23 the living areas?

24 A Not unless you're aware of something I don't know.

25 Q And what was the condition of the property when you



1 first visited it?

2 A It looked to be in good, fairly good shape. It
3 definitely needed painting. I wasn't happy with
4 that.

5 I had made notes; such as, there was a yellow
6 spot in the ceiling in the small bedroom upstairs.
7 So I questioned if there had been a leak.

8 Some of the rails in the bathrooms had been
9 pulled out of the wall. The rails, based on
10 information Jonathan had checked on a house across
11 the street from me on Goodplace that came on the
12 market. It sold pretty fast. And I had gone over
13 there and knew the requirements that FHA had
14 required of that house.

15 The rails were not on the -- all of the deck,
16 and the deck was very high, so I didn't think it
17 met safety regulations. So we talked about that.

18 We had talked about it was strange that there
19 seemed to be some type of caulking in between the
20 windows. And there was some kind of insulation
21 sticking out of the bottoms of the windows. And
22 Jonathan said she probably just did that when she
23 was moving and not coming back.

24 I wanted to make sure that we checked the roof
25 because of the leak, what appeared to be the leak.



1 He gave me a copy of the disclosure form. And
2 we went through that.

3 There were no utilities on, so therefore
4 nothing could be checked.

5 Some of the carpet appeared to, you know,
6 maybe need to be replaced. There was a dark spot
7 at the front door.

8 That's one thing I know that when Mr. Arnold
9 was doing real estate, it was not unusual to have
10 rot at a front door. And so you'd have to postpone
11 closing while that got fixed.

12 There was holes in some of the siding.
13 Jonathan and I walked around the house and made
14 notes of that. And he gave me a price on what he
15 thought how many of them would have to be -- that
16 it could actually be repaired and the whole piece
17 not replaced. We've talked about that. So we
18 talked about the condition of that.

19 The appliances were old. I did ask about did
20 he know anything if they'd been replaced.

21 We looked at the hot water heater, and it had
22 a lot of rust on it. And I questioned is that
23 something -- if it was possible.

24 The outside unit had two big rusted holes in
25 it. And I said we need to check on that.



1 Q The air conditioner?

2 A Ah-huh, the downstairs unit.

3 The front door, I think the handle was
4 missing. They had to rig the -- you know, to get
5 in and out of the house.

6 The yard had about 1-1/2 foot of leaves on it.
7 So we had to brush through the leaves. At the
8 house, there was a foot and a half on the carport
9 on the garage -- I mean, on the carport and on the
10 deck.

11 So we went through it the first time. It
12 looked clean.

13 And always my position was I've got \$10,000,
14 that's it. And so we've got to make sure. And he
15 said, well, all of these will be noted. They would
16 go through the LLR. If there was anything that
17 really was a serious situation, that everything
18 would have to be noted in all the inspections.

19 Q Okay. But when you looked at the house when you
20 first visited, I mean, you've kind of given me a
21 list of things that you noticed that could be
22 issues; right?

23 A That I asked him about, what he thought.

24 MR. OGBURN: And I'm going to give you what
25 we'll mark as Exhibit 5. I'm sorry. I lose



1 track of exhibits all the time. Are we at 5?
2 MR. RACINE: 5.

3 (Whereupon, Exhibit 5 was marked for
4 identification and is attached to the
5 transcript.)

6 Q And I'll represent to you this is a series of
7 emails I think went back and forth between you and
8 Mr. Garvey, say, around January 10th of 2015.

9 Does any of this look familiar to you?

10 A Yes, sir.

11 Q And if we'll start -- the oldest one's at the
12 bottom. So if we start on the bottom of Page 2,
13 top of Page 3?

14 A I apologize for that. When you're trying to get
15 old emails and trying to put everything together,
16 everything was not always the right order.

17 Q What do you mean?

18 A Well, I mean, like I told you earlier, when I was
19 going back and putting emails together for the LLR,
20 or even for myself, then, you know, some I could
21 transfer to another computer. Some of them had to
22 be copied and printed and then put together.

23 Q So the emails in the documents you gave us may not
24 be in the right order sequentially?

25 A Right. You had about 600 pages.



1 Q Okay. Let's look at the bottom of Page 2, top of
2 Page 3.

3 A Okay.

4 Q There's a Friday, January 9th email from you. This
5 starts, "Can I get back in the house tomorrow?" Do
6 you see that?

7 A On Page 2?

8 Q Bottom of Page 2.

9 A Yes.

10 Q Okay. And I'm going to walk through -- a lot of
11 these you've already talked about, but you raised
12 some of the same questions about issues that you've
13 identified.

14 So you asked about the air conditioning unit.
15 And you noticed rust on one of the units; is that
16 correct?

17 A Correct.

18 Q You also questioned about the dishwasher.

19 A Yes.

20 Q Okay. Then we'll go to the middle of Page 2,
21 Saturday, January 10th email?

22 A Okay.

23 Q And then you've got this email that starts with,
24 "Like to take some measurements and check some
25 things?"



1 A Ah-huh.

2 Q So you say you want to make an offer of 145,000
3 with up to 10,000 in repairs and improvements;
4 correct?

5 A Yes.

6 Q What do you mean by "make an offer of 145 with up
7 to 10,000 in repairs?"

8 A As I told you earlier, I had about \$10,000 to work
9 with.

10 Q When you talked about "make an offer of 145 with up
11 to 10,000 in repairs," what did you envision to pay
12 for those repairs?

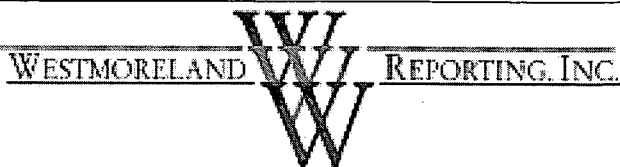
13 A When I'm talking about repairs, improvement, that
14 was money that I had to make those improvements and
15 repairs.

16 Q Okay. So in this email, when you asked to make
17 that offer, that \$10,000 in repairs, as part of the
18 offer, you would agree to pay for 10,000 in
19 repairs?

20 A And it really wasn't part of the offer. I was just
21 saying let's make 145 as our offer and see if
22 they'll take that so that I would have money to do
23 the things I wanted to do.

24 Q Okay.

25 A And some of that, because Jonathan had told me that



1 if they did require safety, the rails on the deck,
2 that he'd come throw some up.

3 Q Okay. So you said up to 10,000 -- I'm going to
4 have you just read that whole sentence.

5 A "Make offer of 145,000 with up to \$10,000 in
6 repairs/improvements to include the deck."

7 And that was because I did not feel like the
8 deck was safe. I could not see at that point, by
9 the way, the bottom of the deck because of the
10 leaves.

11 Q And I'm going to ask you -- because in the record,
12 we're not going to be able to tell the difference
13 between your reading something and when you're
14 embellishing. Read it first, and then if you want
15 to add something, that's fine.

16 A "To be made the week before closing. Attorney to
17 be, to pay/reimburse repairs - buyer to use
18 contractors, et cetera, who they feel comfortable
19 with and will provide ahead of time --"

20 MS. DRISCOLL: I'm sorry, Ms. Baber. I'm
21 going to interrupt you to keep Mr. Ogburn's
22 idea going of keeping the record clear so that
23 it's not confusing.

24 Can you start from the beginning and
25 read? Because I don't want what your



1 additions were to be confusing in this record.

2 So if you could just start from the
3 beginning of that email and read so that we
4 are clear?

5 THE WITNESS: Let me back up, too.
6 Because when we're talking about this 10,000,
7 there was also the 10,000 that I had to be
8 able to put down. Okay. So there were two
9 10,000s.

10 So on some of the emails, things are
11 probably kind of thrown together because I do
12 know there were different places, I don't know
13 if here or maybe as I'm reading I'll find it,
14 where I ask him if they could make some of
15 these repairs. And he said, "We don't know.
16 We have to see."

17 So what this 10,000 could be a
18 combination of both of those, I don't really
19 recall; okay?

20 Q Okay. Start with "make offer of" and read --

21 A "Make offer of 145,000 with up to \$10,000 in
22 repairs and improvements to include the deck to be
23 made the week before closing with the closing
24 attorney to pay/reimburse repairs. Buyer to use
25 contractors, et cetera, who they feel comfortable



1 with and will provide that ahead of time to seller
2 for bank approval. Front of house siding to be
3 repaired/replaced and owner windows in den," and I
4 don't know what that means.

5 Q What does it say? For the record?

6 A It says "dr." Probably dining room. Because those
7 were sealed shut.

8 "Carpet to be replaced in upstairs to match
9 the carpet which has been replaced on stairs. New
10 countertops in the kitchen. Replace stove and
11 purchase refrigerator. Repair deck to meet
12 HUD safety requirements. Paint inside of house."

13 Q I'll stop you there.

14 A Okay.

15 Q So on this Saturday, January 10th emails with
16 Mr. Garvey, you're saying the deck needs to be
17 repaired, front of the house siding needs to be
18 repaired?

19 A Ah-huh.

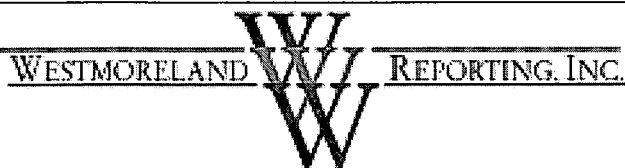
20 Q You want to replace the owner windows in the den
21 and dining room; is that correct?

22 A Let's see. Where's the windows?

23 Q On the house.

24 A Front of house repaired or replaced.

25 So it was not necessary to replace the windows



1 at that time. It might have been to repair them.
2 They would not open. So we did not know the
3 condition at that time.

4 Q Okay. But you recognized there could be an issue
5 with those windows; correct?

6 A I just thought they -- according to Jonathan, she
7 had sealed them because she had moved. So I didn't
8 think there was any kind of repair issues. It was
9 just we need to have them opened. That was a
10 requirement.

11 Q And then you were looking to replace the carpet
12 upstairs?

13 A Right.

14 Q New countertops in the kitchen?

15 A Ah-huh.

16 Q Say yes or no again --

17 A Yes.

18 Q -- because she has to write it down.

19 Replace the stove and purchase refrigerator.

20 A Yes.

21 Q And then, again you talk about repairing the deck;
22 is that correct?

23 A Yes.

24 Q Okay. Let's go to page -- the first page of
25 Exhibit 5.



1 Okay. There's an email about a third of the
2 way from the bottom, Saturday, January 10th at
3 5:25?

4 A Yes.

5 Q Okay. Can I have you read -- start reading where
6 it starts FYI?

7 A "For your information, lady at appliance place said
8 the oven will have to have a vent above it. Said
9 best would be to probably get a microwave with a
10 vent -- said they don't make that size." Only
11 size -- I don't know what that means anymore. "And
12 no one using burners in the middle of the bar.
13 Let's not forget about fixing ceiling and bedroom
14 where there was a leak and make sure the leak has
15 been fixed. Have a good weekend. I'm available
16 all day [and] tomorrow..."

17 Q So in this email, you've identified a possible
18 issue with the oven; is that correct?

19 A The oven at that point, it was just old. And we
20 didn't know how I was -- that was part of my
21 \$10,000.

22 Q Okay.

23 A Also, I was mistaken in believing that it would be
24 a requirement to have a vent above that. So that
25 was my assumption at the time that I made that



1 statement.

2 Q Okay. But the next sentence talks about fixing the
3 ceiling in the bedroom where there was a leak?

4 A Ah-huh.

5 Q So you were aware there had been a leak at some
6 point?

7 A It appeared to be that way.

8 Q Okay. Let's look at the top email which is on
9 Exhibit 5, top email, first page, Saturday,
10 January 10th at 9:17 p.m.

11 I want to look at -- read the -- not the first
12 paragraph, but read the second paragraph.

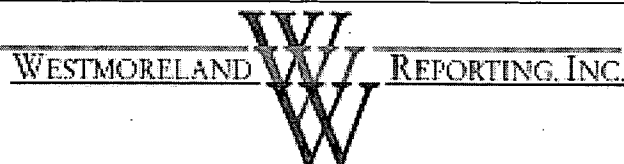
13 A "Need to have for the ceiling to be fixed shingles
14 replaced and check for leaks."

15 Q Okay. What do you mean by shingles replaced?

16 A If you looked at the house from the outside, and
17 where the leak was in the bedroom, if there was a
18 leak, there was something yellow. There was two
19 gray spots on the roof, if you had gone straight
20 up, which would make sense that maybe that's where
21 a leak was.

22 So we need to make sure that that had been
23 fixed, if there was, in fact, if it had not been,
24 and those shingles replaced.

25 Q Okay. And then I'm going to go down to the line



1 that starts, "Will be curious about siding." Do
2 you see that?

3 A How far down are you?

4 Q I'm about one, two, three, four, five, six
5 paragraphs down, starts, "will be curious about
6 siding."

7 A Yes.

8 Q Okay. Can I get you to read that entire paragraph?

9 A >About siding what they require and I guess things
10 have changed. Inspectors in the past would never
11 have -- would never pass on windows that won't
12 close and, et cetera, like these are."

13 Q So would these -- were there issues with the
14 windows you're talking about in this email?

15 A Yes.

16 Q And what do you remember those issues to be?

17 A What we've already addressed, that the windows were
18 sealed shut. And according to what I had
19 remembered in the past, then -- and I believe there
20 actually is in one of the information on what the
21 appraiser has to do, all windows -- you have to
22 have at least one window that can open. And it did
23 not appear any window would open.

24 Q Okay. I'm going give you what we're going to mark
25 as Exhibit 6.



1 A Okay. Thank you.

2 (Whereupon, Exhibit 6 was marked for
3 identification and is attached to the
4 transcript.)

5 Q And give you a second to look at it.

6 A Okay.

7 Q Just an email between you and Mr. Garvey from
8 Sunday, January 11th?

9 A It appears to be.

10 Q Okay. And it's more -- it's entitled, "Windows."
11 Correct?

12 A Yes.

13 Q Okay. I'm going to have you look at the second
14 paragraph.

15 A Ah-huh.

16 Q That starts, "Think sellers." So would you read
17 that sentence?

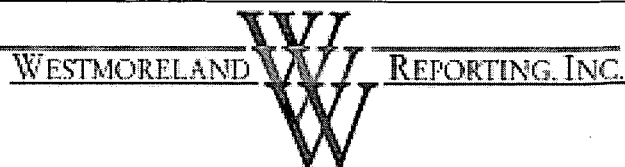
18 A "Think sellers will have to fix siding patch and we
19 can power wash."

20 Q So, again, that's talking about repairs that needed
21 to be made to the siding; correct?

22 A Yes.

23 Q And we go to the fifth paragraph down that starts,
24 "Appliances."

25 A "Appliances and installation, fix siding, leaks,



1 maybe paint. Appliances, basic stuff and deck will
2 have to be repaired and rails as required by
3 insurance company, roof shingles, et cetera."

4 Q So, again, you're talking about issues with the
5 roof shingles, the deck, the rails, the siding,
6 leak of the house?

7 A Based on what it appeared to be from the ground.

8 Q Okay. Okay. When do you recall first receiving
9 the disclosure statement from the seller?

10 A I believe it was on the kitchen table when we
11 walked through the house the first time.

12 Q But you received it about the time you visited the
13 house in January 2015; correct?

14 A I believe that would be right.

15 Q I'm going to mark this as Exhibit 7.

16 A What I recall.

17 (Whereupon, Exhibit 7 was marked for
18 identification and is attached to the
19 transcript.)

20 Q I'll give you a chance to look at it.

21 A I'm good.

22 Q Now, I want you to look at all the pages in it.

23 A Yeah, I've done that a lot.

24 Q Okay. So what is Exhibit 7?

25 A What's the name of the document?



1 Q Well, let's start on the first page.

2 A Okay.

3 Q First page of Exhibit 7, is that an email from
4 Jonathan to you on January 10th? It starts, "Here
5 are the disclosures or Rolling Ridge"?

6 A Yes.

7 I believe there was more, actually, on another
8 page that also related to that email that they're
9 not together.

10 Q Yeah. In fact, the email two exhibits back we went
11 through.

12 A Where they got all mixed. Some of them weren't all
13 together.

14 Q That's correct.

15 So this Exhibit 7 email I think is actually
16 also part of Exhibit 5?

17 A Right, right.

18 Q And then attached to the first page of Exhibit 7 is
19 what document?

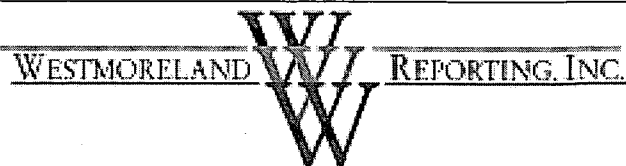
20 A The South Carolina Disclosure Form.

21 Q Is that your understanding that this is the South
22 Carolina Disclosure Form you received?

23 A To the best of my recollection.

24 Q Okay. And who signs the disclosure statement?

25 A The seller.



1 Q Okay. And what's your understanding of the purpose
2 of the disclosure statement?

3 A To make you aware of the items which would need to
4 be addressed, if there were issues, that there had
5 to be reports on them.

6 If there were no reports, then according to
7 Jonathan, these were things that the appraiser
8 would look at, the inspections would look at,
9 because all of these things were issues, then
10 chances are the house would not meet with the
11 requirements for me to purchase the house.

12 Q Okay. So the disclosure statement is a disclosure
13 by who?

14 A The seller.

15 Q And the seller to prospective purchasers; correct?

16 A Yes.

17 But it's also -- it's given not to me
18 directly, but it's given to me through my agent.

19 Q Okay. I'll have you look at Page 3 of the Exhibit
20 7, which is, I believe, Page 2 of the disclosure
21 statement.

22 A All right.

23 Do you want 2 of 5, not 3 of 5?

24 Q 2 of 5, that's correct. Okay.

25 What do you understand -- if Ms. Long-Robinson



1 marked yes on an item, what do you understand that
2 to mean?

3 A That those are things that need to be checked, that
4 she believed there could possibly be issues.

5 Q Okay. Will you list -- will you read all the items
6 that she has marked yes on?

7 A Water supply, water quality, water pressure,
8 sanitation, water -- well, she's got water, city
9 sewage, pipes. Those weren't marked yes, though.
10 Roof system, gutter system, plumbing,
11 electrical, appliances, built-in fixtures,
12 mechanical systems, heating systems, cooling
13 systems.

14 Q Okay. So what items did she mark that she was not
15 aware of a problem with?

16 A Number B, she put that apparently that she believed
17 that she had fixed the problem.

18 Q Okay.

19 A And number 2B.

20 Q We're talking about just Page 2 of 5 right now.

21 A Okay.

22 Q And how about Section 3, number 12. Is that marked
23 no?

24 A Yes.

25 Q And that's mechanical systems, pumps, garage door



1 opener, filtration, energy equipment safety, other;
2 correct?

3 A Yes, sir.

4 I don't even know that the house had any of
5 that.

6 Q So of the items that she marked yes or no, all but
7 one are marked yes that she believed there were
8 problems with the house; correct?

9 A Yes.

10 Q Let's look at Page 3 of 5.

11 Is there any other items that she marked that
12 she was aware of problems?

13 A Problems caused by.

14 And number 5, number 19?

15 Q Section 5, number 19, that's "problems caused by
16 fire, smoke or water to the property during your
17 ownership?"

18 A Yes.

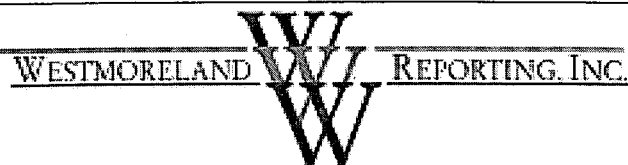
19 Q Did she circle anything on that form?

20 A Water.

21 Q To you, is that her disclosing that there had been
22 problems caused by water while she owned it?

23 A Yes.

24 The best I can recall, Jonathan believed that
25 was related to Page 2 of 5, number B.



1 Q Okay. Section 4, on Page 4 of 5? So what did she
2 put in Section 9?

3 A Bathroom hose broke. Replace flooring on first
4 level except family room.

5 Q And what's your understanding of the meaning of
6 that?

7 A That the bathroom hose broke and they replaced the
8 flooring on the first level except the family room.

9 MR. OGBURN: Why don't we take a quick break.

10 Is that okay with you?

11 (Recess held.)

12 MR. OGBURN: We'll go back on the record.

13 Okay.

14 Q Ms. Baber, in your lawsuit, you claim that there's
15 fraud in this disclosure statement; correct?

16 A Ah-huh.

17 Q I'll get your answer yes or no, remember?

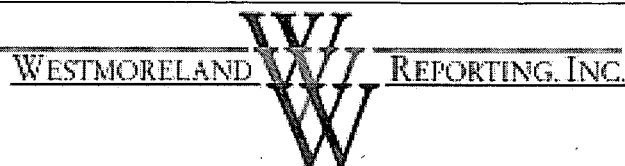
18 A Yes, yes.

19 Q It's hard for her to write down ah-huhs or un-uns.

20 So what, in this disclosure statement, do you
21 believe is fraudulent?

22 A I'm not exactly sure how you're asking the
23 question.

24 Her failure to provide the reports with that
25 indicated, according to what Jonathan told me, that



1 this would go to the appraiser; and if he found
2 anything, then it would be noted and we'd go back
3 and look at that.

4 And you'll also find that referenced in some
5 emails.

6 So these things were damages. They were
7 there.

8 Q Okay. What do you mean by "these things"?

9 A The things that she marked yes.

10 Q So there were problems with the house?

11 A Yes.

12 Q Okay.

13 A And so the failure to provide those supposedly,
14 from what I was told, indicated that everything had
15 been fixed.

16 Q So --

17 A And, therefore, and also the -- my understanding
18 was the realtor had to also acknowledge that these
19 were yeses, and so maybe fraud's not the right
20 word, but there were errors because there was
21 failure to provide the reports with this.

22 Q So do you believe that there's anything in that
23 disclosure statement that is inaccurate on its
24 face?

25 A Without the reports, then I don't know how to



1 answer your question.

2 Q Well, --

3 A I believe it's accurate from the standpoint of her
4 yeses were correct.

5 Q Okay.

6 A Okay.

7 If you put, then, the failure of the -- to
8 make the report complete, the reports that were
9 needed with it, it is not correct.

10 Q Okay.

11 A I may not be saying that right.

12 Q I think I understand you.

13 So your claim for fraud is not that she has
14 checked a yes and it should have been a no or vice
15 versa? You believe that it is fraud because there
16 should be additional reports included with this
17 disclosure?

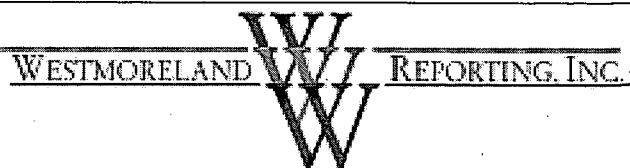
18 A Yes.

19 Q Okay.

20 A And that her answers, for example, and with
21 information with Jonathan, that there were
22 problems. For example, she said the rails were on
23 there when she moved.

24 Q But that's not in this report; right?

25 A No. It was in the pictures.



1 Q You have included a claim for fraud against
2 Ms. Delaney and Mr. Ouzts arising out of this
3 disclosure statement in the lawsuit; correct?

4 A I would have to go back and look at it.

5 MR. OGBURN: Mark this as Exhibit 8.

6 THE WITNESS: Some of my terminology putting
7 it together at the last minute since I believed
8 everybody would be honest and having to do it at
9 the last day.

10 (Whereupon, Exhibit 8 was marked for
11 identification and is attached to the
12 transcript.)

13 Q I'll have you look at Exhibit 8 and identify it.

14 A In here?

15 Q I'm sorry?

16 A What do you want me to look at this?

17 Q I'm going to have you look at -- that's Exhibit 8.
18 I'm going to have you look at it and tell me what
19 it is.

20 A The complaint.

21 Q Is that the true and correct copy of the complaint
22 you filed in this lawsuit?

23 A It appears to be.

24 Q Okay. So I'm going to have you turn to Page 24.

25 A Okay.



1 Q Do you see your first cause of action?

2 A Yes.

3 Q Who is your first cause of action against?

4 A Seller Tate, Delaney and Ouzts.

5 Q Okay. And in Paragraph 1, I'm sorry. Read
6 Paragraph 101.

7 A "Seller and Delaney, acting as seller's agent,
8 executed the disclosure statement knowing that the
9 material information had been omitted from it
10 describing the actual damage to the property."

11 Q Okay. So the fraud, going back, it's not that it's
12 inaccurate. It's that the reports had been left
13 out of it; correct?

14 A Yes.

15 Q Did Delaney sign the disclosure statement?

16 A There was one disclosure statement that she did
17 sign, but I don't have a copy of that.

18 Q I'm going to have you look at the last page of
19 Exhibit 7.

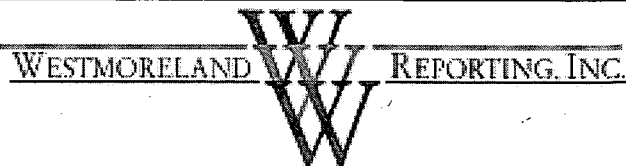
20 A In here?

21 Q No.

22 Exhibit 7 is the disclosure statement we were
23 looking at.

24 A Referring to this page?

25 Q Down at the top, disclosure of information on



1 lead-based paint?

2 A Yes.

3 Q Is that the document that Ms. Delaney signed?

4 A She did sign that one, it appears.

5 Q Are there other disclosure documents she signed?

6 A To my best recollection, there is an electronic
7 signature somewhere. I do not have that.

8 Q On what?

9 A I believed on this. But I do not recall.

10 Q Remember, when we read the transcript, we're not
11 going to know what "this" is.

12 A On the disclosure statement. There was one
13 disclosure statement which I recall -- I believe I
14 recall that she did -- Ms. Delaney did sign it, but
15 I'm -- that's just what I believe. Not
16 necessarily. I do not have a copy.

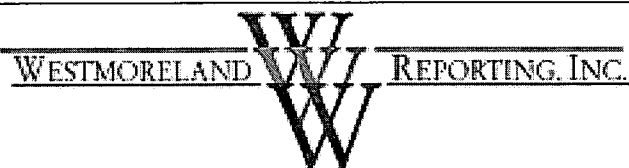
17 Q You do not have a copy?

18 A I haven't found one. It would be customary that as
19 the listing agent, that there would be one
20 somewhere.

21 Q Well, look at Exhibit 7 again. And on the final
22 page, which is the lead disclosure, are there
23 signature lines for agents?

24 A Yes. You're talking about --

25 Q Exhibit 7, the disclosure statement.



1 I'll tell ya' what, Ms. Baber --

2 A This is Exhibit 5.

3 Q Let's work off the ones for the record. Why don't
4 you set yours over here so we don't get them mixed
5 up.

6 A So this is 7, not 5.

7 Q This is Exhibit 7.

8 A Okay.

9 Q That's correct.

10 So I'm going to have you look at Exhibit 7.
11 Other than the lead disclosure that's the final
12 page, --

13 A Ah-huh.

14 Q -- is there a signature line for an agent on that
15 document?

16 A No.

17 Q But you believe it's customary for the agent to
18 sign the disclosure?

19 A I would imagine so.

20 Q Even though there's no signature line on the page
21 for them to sign?

22 A Or for them to certainly be aware, as is stated
23 above in the above paragraphs.

24 Q Now, how do you know that Delaney and Ouzts knew
25 that the disclosure statement was inaccurate?



1 A How did I know?

2 Q Yes.

3 A They are the listing agents. They have gone
4 through the house. It's their responsibility to
5 know the reasons why some things would be marked
6 yes.

7 The real estate licensing disclose material
8 facts about the property. The real estate
9 licensing knows or should have known about the
10 issue regardless of owner responses to the
11 disclosure.

12 Q And you're reading off the first page of the
13 disclosure statement --

14 A I am.

15 Q -- of Exhibit 7; correct?

16 In Paragraph 103 of the complaint, you say,
17 "Seller Delaney Tate and Ouzts knew the property
18 was suffering from material injuries and damages
19 and needed significant repairs that were not
20 disclosed."

21 How do you know that Ms. Delaney and Mr. Ouzts
22 knew that there were repairs that were not
23 disclosed in Exhibit 7?

24 A It would be their job, as the realtor, to know.

25 And there are -- as we went along in the



1 process, they knew.

2 Q How do you know they knew?

3 A Well, I had never talked to them, so I do not know
4 firsthand they knew.

5 Q Okay. So you didn't talk to Delaney and you didn't
6 talk to Ouzts; correct?

7 A I did talk to Ouzts.

8 Q Before you bought the property?

9 A Before we closed.

10 Q Before you closed.

11 Did you ever have a conversation with Delaney?

12 A I don't recall.

13 Q Was your decision to purchase the house based on
14 what was in the disclosure statement?

15 A No.

16 Q No. Why not?

17 A The decision to purchase the house was based upon
18 the price and if these items were, if true, then
19 they either had to be corrected or I would have to
20 walk away.

21 Q Okay.

22 Did you ever ask the owner to fix any issues
23 with the house?

24 A She had moved. I don't communicate, as you know,
25 with the seller. My communications would be with



1 my broker, with my agent.

2 Q I understand.

3 But through your agent, did you ever ask the
4 owner to fix any of the problems with the house?

5 A I believe we had -- to the best of my recollection,
6 I believe we had some emails where I asked Jonathan
7 to see if they could.

8 He explained to me that this was a short sale.
9 And it would have to go through the short sale
10 bank. And that she had walked away three years
11 earlier. She had no money to fix anything.

12 Q What's your understanding of what a short sale is?

13 A Basically, they're selling it for less than what
14 the value is, has been marked down substantially,
15 probably to get rid of the property. I don't know
16 the exact definition.

17 Q Did you ever deal with short sales when you worked
18 for Mr. Arnold or the attorneys in Moore County?

19 A I don't recall.

20 Q Do you recall when you first put an offer in?

21 A Let me correct that. I didn't work with any
22 realtors as far as like things like this in Moore
23 County.

24 Q Attorneys.

25 A With attorneys.



1 I mean, I just went in and did paperwork and
2 stuff. I didn't really -- I was basically like a
3 clerk in Moore County, okay.

4 Q Do you recall when you put -- first put an offer in
5 on the house?

6 A January of 2015.

7 Q Did you ask to sell -- as part of an offer to
8 purchase the house, did you ask the seller to pay
9 for a warranty as part of the sale?

10 A Yes.

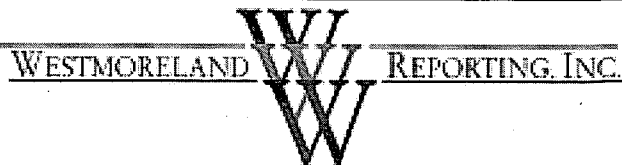
11 Q Why did you want a warranty on the property?

12 A Because the age of the house, I felt like it was a
13 good idea. And Jonathan really encouraged it, and
14 I agreed with him.

15 And the reason the warranty came up is when we
16 first sat down in his office and we were doing the
17 contract, at that particular time some of the
18 realtors in town were offering, like, \$200 towards
19 your moving expenses and things like that.

20 Tate did not have any offers, and so we
21 discussed the home warranty, and that we definitely
22 needed one, we believed, because of the age of the
23 property. And because she had been out for so
24 long.

25 And so we asked her to -- if she would pay for



1 that.

2 Q Okay.

3 A And the first contract had that in there; but, like
4 I said, I never got a copy of the paper contract.
5 If you have one, I would love to have it.

6 MR. OGBURN: 9.

7 (Whereupon, Exhibit 9 was marked for
8 identification and is attached to the
9 transcript.)

10 Q I'm going to hand you what's going to be marked as
11 Exhibit 9. I'm going to give you a chance to look
12 through it. Just let me know when you're done.

13 A Okay.

14 Q Do you recognize this document?

15 A No.

16 Q Does that appear to be your signature on Page 7?

17 A Yes.

18 Q And you talk about a paper document. Did you put
19 in an offer to buy the property that was
20 handwritten on a contract similar to this?

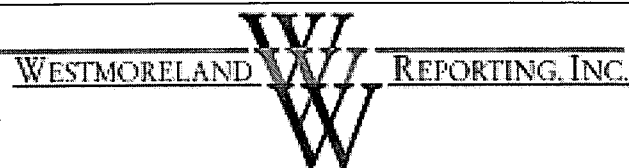
21 A Yes.

22 Q Could this be that offer?

23 A It's possible. I was looking through.

24 Q And take as much time as you need.

25 A It's been so long ago. We had so many offers. I



1 know we did the paper contract, and Jonathan told
2 me not to sign the check -- not to date the check
3 until we got the approval.

4 Yes, because I believe on Page 4 of 8, it says
5 that the seller would pay the \$409.

6 Q And Section 14 on Page 4?

7 A Yes.

8 Q And that's the home warranty section?

9 A Yes.

10 Q So this Exhibit 9 is the first offer to buy the
11 house. And I'll go back to Page 1.

12 A It would appear to be so.

13 Q Okay. Purchase price \$145,000; is that correct?

14 A Yes.

15 Q And this is the Rolling Ridge property.

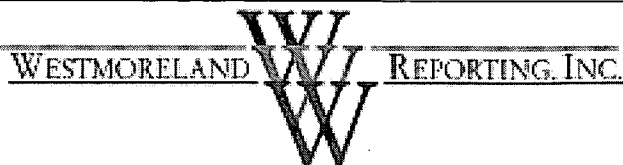
16 And then as you've indicated on Page 4 of 8,
17 you did ask that the seller pay for a home
18 warranty; is that correct?

19 A Yes.

20 Q Did the seller eventually buy a home warranty on
21 this?

22 A I was told she did not.

23 Jonathan had said -- we talked about
24 exclusively, very -- a lot of discussions -- and
25 decided -- I told him well, it was important



1 enough.

2 He and I agreed that -- he said, well, since
3 he couldn't do anything like the 200 some of the
4 other companies were doing, that he would pay for
5 the warranty. And I said, well, if you don't, I
6 will, because we need one.

7 Q Okay. You actually asked the buyer to pay for it
8 first?

9 A But I mean after that.

10 Q The seller. You were the buyer.

11 A But after that.

12 For some reason, the seller didn't pay for it,
13 then he said he would pay for it. And I said,
14 well, if you can't pay for it, then I'll pay for
15 it.

16 Q Okay. So did you ask for a home warranty because
17 you knew that there were things that were going to
18 need to be fixed?

19 A No.

20 He just explained that with the house, the age
21 it is, it had been vacant for so long, it was
22 something that he recommended and I agreed.

23 Q Did you ever tell Mr. Garvey you didn't have a lot
24 of money to work with?

25 A He knew I had \$10,000 to work with.



1 Q And that \$10,000 was to either make repairs, put
2 down on the cost of the house, or pay for closing
3 costs?

4 A No. There was another \$10,000 to put down, the
5 money I needed for the closing cost and for -- I
6 think that ended up being a little bit -- I think I
7 got back a check maybe about 15, 12, \$1500 at
8 closing. I don't remember exactly.

9 Q So you had \$20,000?

10 A Yes.

11 Q \$20,000, 10 for closing costs, 10 for repairs?

12 A Yes. That would be my best recollection.

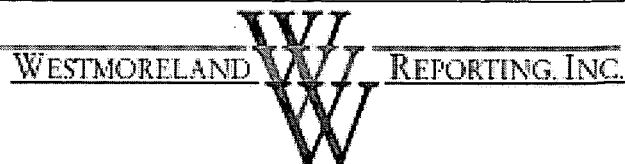
13 Because he and I went through about -- I got
14 bids on how much it would cost to paint.

15 I got -- before we even closed, I got -- I
16 wanted to remodel one of the rooms and put a
17 little, like, bunk bed type situation in the
18 granddaughters' rooms that lived with me. I got
19 prices on that.

20 I, at that point, believed that Mr. Evans was
21 going to be doing that. And I was just in the
22 process of getting some ideas of costs.

23 Q Did you ever have a conversation with Mr. Garvey
24 about termite inspections or home inspections?

25 A Yes.



1 Q And what were those conversations?

2 A Those were required.

3 Q What do you mean?

4 A They're just another -- they're always required and
5 a part of the loan, and so --

6 Q Okay. Who said that during the conversation?

7 A He did.

8 And it was -- it's a known fact.

9 Q I'm not asking about known facts. I'm asking about
10 conversations between --

11 A He did.

12 We specifically looked at the spot at the
13 front door.

14 We specifically looked at what was the rotten
15 places on the deck -- I mean, on the deck and on
16 the siding.

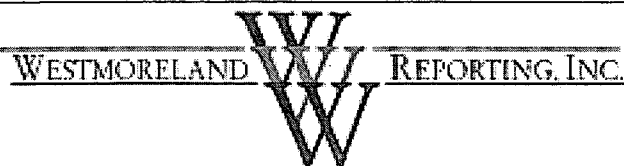
17 We specifically looked at areas which appeared
18 to be rotten.

19 And that with a -- in South Carolina, based
20 upon the knowledge I already had anyway, a CL-100
21 is required.

22 Q Is required by who?

23 A Fannie Mae on this type of loan.

24 And also in South Carolina, if a property is
25 only slab, the CL-100 is required.



1 And also if you go to any attorney --

2 Q By who?

3 A It's a requirement of South Carolina in purchasing
4 a loan, for that loan to be approved, there's
5 certain conditions which must be met.

6 Q So all that has to do with financing.

7 A With financing.

8 Q If you were going to pay cash for the house and not
9 get a bank involved, is a termite inspection
10 required?

11 A I can't answer that because I don't know.

12 Q Okay. Did you ever tell Mr. Garvey you didn't want
13 to pay for a termite inspection?

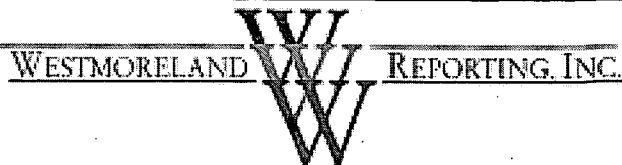
14 A No.

15 Q Did you ever tell him you didn't want to pay for a
16 home inspection?

17 A No.

18 Q Did you ever tell him that -- tell Mr. Garvey that
19 Mr. Evans would handle any repairs that needed to
20 be made?

21 A Mr. Garvey told me that. Mr. Garvey told me that
22 Mr. Evans would inspect the house and as -- because
23 of that, that he would include the cost of the
24 termite inspection and the home inspection and the
25 repairs, the \$10,000, because he was going to be



1 doing the work.

2 Q Since who was going to be doing the work?

3 A Mr. Evans.

4 Q So who decided to have Mr. Evans inspect the
5 property? Is that your decision?

6 A That was just the decision Robert and I -- Robert
7 -- Jonathan and I made together.

8 He had -- Mr. Evans had been looking at
9 properties. Jonathan would tell me about a house
10 in 2014. He'd send Robert over to check on it.

11 And like I told you, Jonathan was at the house
12 when he introduced me to Mr. Evans when he came to
13 the house on Goodplace. And he said you don't need
14 to do this house. So I trusted the relationship
15 between Jonathan and Mr. Evans, that we would do
16 what we need to do.

17 And we always had the option to walk away,
18 which we did, on many houses.

19 Q Did you ever have any conversations directly with
20 Mr. Evans about either termite inspections or home
21 inspections?

22 A I don't recall.

23 I know I talked to him about the things I was
24 finding at the house that -- I wanted to move a
25 wall. I told him the things I wanted to do. And



1 he told me that he believed he could do that within
2 the \$10,000.

3 Q Who's your lender?

4 A Summit Funding.

5 Q Did you get pre-approved with Summit Funding?

6 A Yes.

7 Q Were you pre-approved by the time you made your
8 offer to purchase the property?

9 A No, I don't believe so.

10 Q Was it around the time you made the offer to
11 purchase the property?

12 A To my best recollection, we put in the contract,
13 and then Jonathan contacted Summit Funding. And
14 the process began with that.

15 MR. OGBURN: Exhibit 10.

16 (Whereupon, Exhibit 10 was marked for
17 identification and is attached to the
18 transcript.)

19 Q Do you recognize the document that's attached as
20 Page 2 to Exhibit 10?

21 A I don't.

22 Q You don't?

23 You never seen this before?

24 A I don't recall this document. I don't believe
25 that's any of the documents that I sent to you.



1 Q Do you remember ever getting pre-approved with
2 Summit Funding?

3 A I don't recall.

4 Q The first page of Exhibit 10 is an email between
5 Mr. Reynolds and Mr. Garvey. It says,
6 "Pre-approval for Karen Baber."

7 Do you have any reason to believe this is an
8 inaccurate copy of a pre-approval from Summit
9 Funding?

10 A No, I did not.

11 Q Look at the conditions and requirements on Page 2.
12 Do you see where those are listed Number 1 through
13 10?

14 A I do.

15 Q What does it say about termite report?

16 A Termite report, if applicable.

17 Q Did it say termite report is required?

18 A No.

19 Q It says "if applicable." Correct?

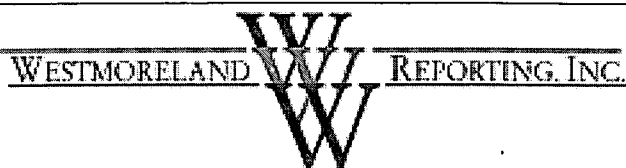
20 A Yes.

21 Q Did it say anything about a home inspection?

22 A No.

23 Q So is a home inspection a condition for your loan
24 with Summit Funding?

25 A Yes.



1 Q According to this pre-approval letter, is a home
2 inspection a condition of your loan with Summit
3 Funding?

4 A Not according to that letter.

5 Q And a termite report is only a condition if
6 applicable; correct?

7 A No.

8 Q According to this pre-approval, does it say that a
9 termite report is a condition if applicable?

10 A If applicable.

11 MR. OGBURN: Mark this Exhibit 11.

12 (Whereupon, Exhibit 11 was marked for
13 identification and is attached to the
14 transcript.)

15 Q I'll give you a chance to look at this. Let me
16 know when you're ready.

17 A Okay.

18 Q Do you recognize this document?

19 A I do.

20 Q Is this the agreement to buy and sell real estate
21 that was signed between you and Ms. Long-Robinson?

22 A Yes.

23 I believe there's another one after this, as
24 well. But I could be wrong on that.

25 Q What is the date on the signatures on this one?



1 A February the 18th, 2015.

2 Q That's when Ms. Long-Robinson signed it?

3 A Ah-huh.

4 Q And how about when did you sign it?

5 A February 19th.

6 Q Okay. And that's not a handwritten signature; is

7 it?

8 A Of mine?

9 Q Yes.

10 A No.

11 Q Did you electronically sign documents in this

12 situation?

13 A Yes.

14 Q So that's your electronic signature on the

15 document; correct?

16 A Yes.

17 Q Okay. Were there other documents you

18 electronically signed in this transaction?

19 A Yes.

20 Q Tell me how that would work.

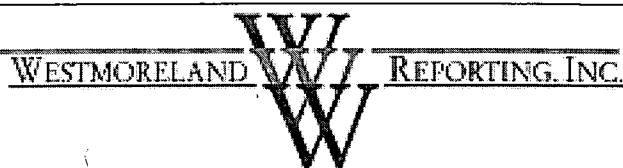
21 A Jonathan would send them and say hit the button.

22 And it would put my initials on it.

23 Q So you would electronically press a button, and it

24 would sign it on your behalf?

25 A Ah-huh.



1 It always bothered me that that's the way
2 things are done now.

3 Q But you didn't refuse to use electronic signatures?

4 A No, I did not.

5 Q So what was the final purchase price you agreed on
6 with Ms. Long-Robinson?

7 A 145,000.

8 Q I'll have you look at Page 3 of 8, Section 8.

9 A Yes.

10 Q Do you see that's entitled, "Repair procedure"?

11 A Yes.

12 Q I'm going to read the first sentence of A. I want
13 you to tell me whether I read it correctly.

14 "Buyer, at buyer's expense, shall have the
15 privilege and responsibility of inspecting the
16 structure, square footage, environmental concerns,
17 including, but not limited to, mold, radon, gas,
18 lead-based hazards including lead-based paints,
19 wetlands study, appurtenant buildings, heating
20 systems, air conditioning systems, electrical
21 systems, plumbing systems, water supply systems,
22 water waste systems, as well as appurtenant
23 equipment or appliances."

24 Did I read that correctly?

25 A Yes.



1 Q What did you understand that this section gave you
2 the right to do?

3 A I had the right to have those inspected and to
4 ensure that everything was in good working order.

5 Q Okay. Based on your understanding of your contract
6 with Ms. Long-Robinson, are you required to have an
7 inspection?

8 A That's really not her concern.

9 Q Well, but between you and -- this is a contract
10 between you --

11 A Right.

12 Q -- between you and Ms. Long-Robinson; right?

13 A Right.

14 Q Do you have to have one?

15 A Does she think I have to have one?

16 Q Yes.

17 A I have no idea.

18 Q It says you had the privilege and responsibility;
19 correct?

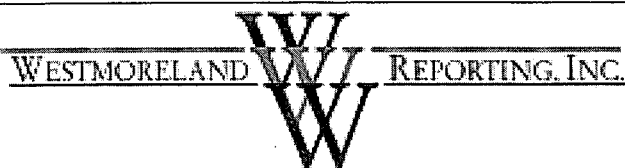
20 A Right.

21 Q It doesn't say that you have to have an inspection;
22 correct?

23 A No.

24 Q Was an inspection performed on this house?

25 A No.



1 Q Not at all?

2 A No.

3 Q Did you ask to have the house inspected when you
4 signed this contract?

5 A Yes.

6 It was also a condition of the loan.

7 Q Is there a deadline to perform inspections?

8 A Here it had March the 15th of 2015. But it was
9 extended.

10 Q Did you ever see an inspection of the house?

11 A No.

12 Q Why not?

13 A They didn't get one.

14 Q Did you ever ask to see an inspection of the house?

15 A Yes.

16 Q Before you bought the house?

17 A Yes.

18 Q What were you told?

19 A I was told that it was clear and they could not
20 close the house, the attorney could not. And
21 Summit could not fund the loan without having
22 everything cleared. And that was in the closing
23 instructions to the attorney.

24 Q And who told you that?

25 A It was in the closing instructions.



1 Q Okay. So, the -- okay.

2 A And also Jonathan.

3 Q Who told you that the inspection was clear?

4 A Jonathan, Summit, and Mr. Gillen.

5 Q Did you ever ask to see a copy of the inspection?

6 A Yes.

7 Q And why weren't you given a copy of the inspection?

8 A Because they hadn't done it.

9 Q Were you surprised, with all the issues you had
10 identified in the house that we went through in
11 January, that it came back clear?

12 A Absolutely.

13 Q Did you question?

14 A I did.

15 Q Do you believe that the appraiser conducted any
16 sort of inspection on the property?

17 A No. And I know that for a fact.

18 Q Okay. Well, did you believe it was the appraiser's
19 responsibility to inspect the property?

20 A It was his responsibility to inspect it according
21 to the terms that he is called for. And if
22 anything is noted on that, then it has to be
23 referred to, then it would have to be further
24 inspections, such as a CL-100.

25 However, in South Carolina -- and I go back to



1 that. And I don't have the code with me. I'm sure
2 that you do. Concerning South Carolina, South
3 Carolina's the number one state in the country
4 concerning termite inspections. And the home
5 inspection, both of those are required.

6 I don't know if they're required on every
7 FHA loan. They are required --

8 Q But they're required with the lender; right?

9 A Yes.

10 Q They're not required in a transaction to buy a
11 house if you pay cash?

12 MS. DRISCOLL: Objection to form.

13 THE WITNESS: Right.

14 Q Your position is that they're required by the
15 lender; right?

16 A Yes.

17 Q Okay. If you pay cash, there's not a statute that
18 says these are required?

19 A That's information I would not know.

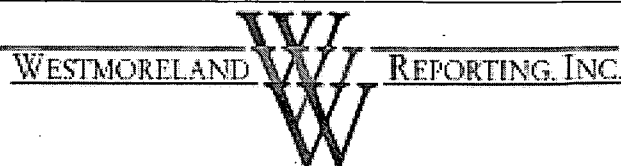
20 Q Okay.

21 Who paid for the inspection?

22 MR. RACINE: Objection.

23 THE WITNESS: The inspection was supposed to
24 be out of pocket.

25 Q Paid for by who?



1 A It was going to be included in the repairs of the
2 \$10,000 which Mr. Evans was doing.

3 Q So you were going to pay for the inspection?

4 A Yes.

5 Q Did you ever get a bill for an inspection?

6 A No, because it was going to be paid with the
7 \$10,000 that Mr. Evans was doing. Doing the
8 inspections and including that in his \$2,000.

9 Q Did you ever pay Mr. Evans anything?

10 A No.

11 MR. OGBURN: Mark this as Exhibit 12.

12 (Whereupon, Exhibit 12 was marked for
13 identification and is attached to the
14 transcript.)

15 Q Give you a second to look at this document. Do you
16 recognize it?

17 A I do.

18 Q Can you tell me what this document is?

19 A It's part of the settlement statement.

20 Q Okay. Is this what is commonly referred to as the
21 HUD statement?

22 A Yes.

23 Q Is this the HUD statement from your purchase of
24 Rolling Ridge?

25 A Yes, I believe it's missing a page.



1 Q What page is missing?

2 A There's a page that specifically says the items
3 which you have a right to pay for.

4 And every time I get something from any of
5 you, that's not on there; but I had included it in
6 my information to you.

7 Q Is that part of the final HUD? Or is that part of
8 the good faith estimate that you received?

9 A No, it's part of the HUD.

10 Q So you believe there's another page that's missing
11 from this document?

12 A Yes.

13 Q Okay.

14 Is that your signature on the first page?

15 A Did you look at Number 301? Required services that
16 you can shop for, from GFE, Number 6. I do not see
17 that page as attached.

18 Q But there are no charges listed under 301; correct?

19 A Those are found on the Form GFE and also through
20 members pages in the closing package identifying --

21 MS. DRISCOLL: I'm sorry. It looks like maybe
22 there's two 301s. And it could possibly be 1301.

23 Are you looking on the first or the second page?

24 THE WITNESS: I was looking on the second
25 page.



1 MR. OGBURN: Oh, you're correct. It looks
2 like -- second page, do you see how the number
3 goes 800, 900, 1,000?

4 THE WITNESS: Yeah.

5 Q 1100. Then it seems to go to 201, 301?

6 A Right. It should be 13. Okay.

7 Q Is it possible that the 1,000's been cut on that?

8 A That's possible.

9 Q So when you and I have been talking about 301, we
10 really meant 1301?

11 A Yes.

12 MR. OGBURN: Thanks for that correction.

13 MS. DRISCOLL: No problem.

14 THE WITNESS: And then in the other
15 requirements of the loan closing package, it's
16 identified numerous times.

17 Q Okay. So you think GFE Number 6 should be
18 incorporated in this HUD statement?

19 A Yes.

20 Q Are you aware of any -- can you identify any
21 charges on here for either a termite inspection or
22 a regular home inspection?

23 A No.

24 Q They're not listed on this document; correct?

25 A No.



1 Q On Exhibit 12?

2 A That's included.

3 No. Not in your Exhibit 12.

4 Q But it would be on GFE Number 6?

5 A Yes.

6 Q If we had that page?

7 A Yes.

8 Q Is the appraisal cost listed on Exhibit 12?

9 A Not on this one. It would be on the attached page.

10 Q I'm going to have you look at Page --

11 A On the one we're missing.

12 Q Look at Page 2 of 3.

13 A Ah-huh.

14 Q Look at the 804.

15 A Okay.

16 Q What is 804? Line 804 show --

17 A I thought you asked me. That's the appraisal.

18 Q So it does show a cost for an appraisal?

19 A Right. That came out of the \$500 deposit that I
20 paid.

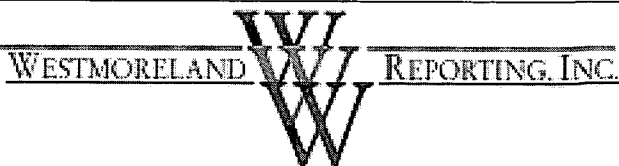
21 Q Okay. It says POC next to the \$413?

22 A Right.

23 Q What do you understand POC to mean?

24 A Pay Outside of Closing.

25 Q So does that mean that that payment was made



1 outside the attorneys' closing office?

2 A Yes. That was the part of the \$500 deposit.

3 Q But the -- and you see the \$500 deposit on 704 is
4 POC, as well?

5 A Yes.

6 Q Okay.

7 A Pay Outside Closing.

8 Q And I think I asked you about the house inspection.

9 Was it your understanding that you would
10 ultimately pay for the house inspection and the
11 termite inspection?

12 A That was included in what Mr. Evans was going to do
13 in the upgrades to the house.

14 Q But, again, you've never paid Mr. Evans anything?

15 A No.

16 Q Never received an invoice for either a termite
17 inspection --

18 A Because he didn't go -- Jonathan didn't go.

19 Q Let me finish my question, please.

20 A Okay.

21 Q You never received an invoice for a termite
22 inspection or a home inspection?

23 A No.

24 Q Is Mr. Evans a licensed termite inspector?

25 A I thought he was. I did not find that out until



1 after closing.

2 Q Did you check to see whether he was a licensed --

3 A I did not.

4 Q Again, please let me ask --

5 A I'm sorry.

6 Q I take a little while to ask my questions
7 sometimes.

8 A I apologize.

9 Q Let me get my question out.

10 So, what problems have you found with the
11 house now that you weren't aware of that you think
12 would have been identified by the inspection?

13 A How much time you got? I believe there's a list
14 somewhere.

15 Q Do you want to look at your complaint?

16 A No, that's okay. We can just go through them.

17 Q It might be quicker. Because I think you've got a
18 list in the complaint.

19 A I know there's a list in the -- in the records and
20 everything I sent you. In requests for documents,
21 yeah.

22 MR. OGBURN: Exhibit 13.

23 (Whereupon, Exhibit 13 was marked for
24 identification and is attached to the
25 transcript.)



1 THE WITNESS: This is which one?

2 Q Exhibit 13. I'm going to have you look at that
3 document and identify it, please.

4 A This is the complaint?

5 Q No, Ma'am. I believe it's your responses to our
6 interrogatories.

7 A Okay. Page 12, maybe?

8 Q Let me get you to identify the document first. Are
9 these your responses --

10 A Yes.

11 Q -- to our interrogatories and requests for
12 production?

13 A Yes.

14 Q And you're looking at, is it page --

15 A Page 12.

16 Q Page 12, Interrogatory Number 4.

17 We asked you to set forth an itemized
18 statement of all damages, exclusive of pain and
19 suffering, claimed to have been sustained by you.

20 A Yes.

21 Q And you listed a response that included Items
22 A through DD.

23 A Yes.

24 Q Problems with the house. These are the problems of
25 the house that we've discussed -- that you --



1 strike that.

2 The question I asked was: What problems with
3 the house have you now found that you think would
4 have been identified by an inspection had one been
5 performed?

6 A Yes.

7 Q Is the list from A through DD those problems?

8 A Z would not have been in the inspection. It would
9 have been noted in inspection.

10 But the inspection would not have done an
11 environmental report. But that would have been
12 triggered by the inspections and by the termite
13 report because the damage had been found.

14 The others would have been -- had been
15 discovered in the other inspections, yes.

16 Q Is this -- is A through DD a full and complete list
17 of what you believe are the defects in the house
18 that would have been identified by inspections had
19 one been performed?

20 A To my best recollection.

21 But this was done in two thousand and -- I
22 believe over a year ago. And as I have continued
23 to -- I'm not sure that the -- let me look at S.
24 Carpet padding from -- apparently the same leak had
25 been removed.



1 I'm not sure if there's a reference here at
2 the time I did this, the termite inspection, I
3 don't think, had been done.

4 But that would have been -- yeah. P, termite
5 infestation.

6 To the best of my recollection, that's a
7 fairly accurate.

8 There may be a few things missing since then.

9 Q I'm going to have you turn back to the contract to
10 buy the property.

11 A The contract agreement?

12 Q Yes.

13 MS. DRISCOLL: Is that Exhibit 11?

14 MR. OGBURN: Exhibit 11.

15 THE WITNESS: Okay.

16 Q Okay. I'm going to have you look at Page 4 of 8,
17 Section 11.

18 A Okay.

19 Q Okay. Who does the contract say will pay for a
20 termite inspection?

21 A The buyer.

22 Q And that would be you; correct?

23 A Yes.

24 Q You have never paid for one; correct?

25 A Right.



1 Well, no, I have. Not before the sale.

2 Q Yeah. I'm talking about before the closing on the
3 property.

4 A Yes.

5 Q But you have gotten a termite inspection
6 subsequent?

7 A Yes.

8 Q And I believe I asked you before: Did you ask that
9 the property be inspected for termites?

10 A Yes.

11 Q And who did you ask?

12 A Jonathan was getting that.

13 It had to be ordered -- to the attorney into
14 Summit before it could be closed.

15 Q Who did you ask to do a termite inspection?

16 A I did not.

17 Q You didn't ask anybody?

18 A No. I didn't know who to ask. I depended on my
19 agent.

20 Q So did you have conversations with Mr. Garvey about
21 getting a termite inspection?

22 A Yes.

23 Q And it was your understanding he was lining that
24 up?

25 A Yes.



1 Q Did you have any conversations with the closing
2 attorney about a termite inspection?

3 A Yes.

4 Q This is Mr. Gillen?

5 A Yes.

6 Q What did you talk to him -- what conversations did
7 you have with him about a termite inspection?

8 A One was required. And he was getting it from --
9 Mr. Garvey was bringing that.

10 Q Okay. Did you ever tell Linda Madison that you did
11 not get a termite inspection?

12 A Yes.

13 Q Why did you tell her you didn't get a termite
14 inspection?

15 A Because I was on the telephone with her on the
16 27th. And she called. And she said, "Did you" --
17 I had just gotten off the phone with Jonathan
18 saying I wanted to go back to the property. He
19 said we did not have time and that it had
20 been inspected. And she asked about the
21 inspections.

22 I said, "I just got off the phone with
23 Jonathan. He said I didn't need to go back and
24 look at everything because the inspection was done.
25 He had gotten that. He said I had that. He was



1 bringing it."

2 She said, "Have you gotten" -- she was
3 referring to "have you gotten" a copy is what she
4 was referring to a termite inspection.

5 And I said, "No, I had not gotten it." I was
6 talking about I had not gotten it from Jonathan,
7 not that I had not gotten it at all.

8 Q Okay. So in your email exchange with Ms. Madison,
9 you were saying that you didn't get a copy of it?

10 A Right.

11 Q Okay.

12 A Because she could not, you know, her thing was she
13 was calling Jonathan because they could not close
14 without it.

15 MR. OGBURN: I'll go to Exhibit 14.

16 (Whereupon, Exhibit 14 was marked for
17 identification and is attached to the
18 transcript.)

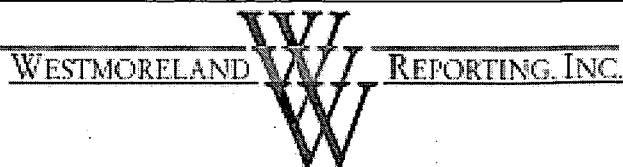
19 Q Okay. Ms. Baber, is this the email that we were
20 just discussing?

21 A To my best recollection, this came from her, so --

22 Q And this is the email exchange between Ms. Madison
23 and you on May 27th?

24 A To the best of my recollection.

25 Q Okay. And in that email inspection, does Ms. --



1 email exchange, does Ms. Madison say, "Did you have
2 a termite and home inspection done?"

3 A Yes.

4 Q And is the response, "Didn't have termite
5 inspection done"?

6 A Right.

7 Q "Did inspection/appraisal and that has been paid
8 for"?

9 A Right.

10 Q Did you --

11 A That was via the conversation that I had just had
12 on Wednesday morning with her and her conversations
13 with Jonathan. Because they were trying to get the
14 closing package together. And if there was not
15 one, then she had to get one ordered.

16 And I know that factually, having worked for
17 an attorney, the closings that got postponed
18 because we got to closing, it was not one. And we
19 had to postpone the closing to get it.

20 Q Have you had the house inspected for termites after
21 you bought it?

22 A Yes.

23 Q And when did you have it inspected?

24 A I believe it was officially last year. We have a
25 copy of the inspection. Joe Rigland came to the



1 house. He was recommended to me to do some work.
2 From a friend of my daughter's.

3 And when I moved -- when I was getting ready
4 to go into the house, the house was filled with
5 those little white spider webs all over it. And so
6 before we moved in, I wanted the house sprayed. So
7 he came over and sprayed the house.

8 And I showed him -- he went through the back
9 door. And we talked about that he did termite
10 inspections. I said, "I didn't know that." I
11 said, I'm waiting on -- I said, "I want to get a
12 bond." It would make more sense to get it from
13 Mr. Evans since he did it. And he said, "Yeah,
14 that's usually what you do, you get the bond from
15 whoever did the inspection." And I said, "Well,
16 I'll go ahead and see if he's going to get me a
17 bond. If not, I'll get it from you."

18 He and I looked at the places at the front
19 door. And I said, "I thought that would have had
20 to have been written up." They're not going to
21 talk about each other. He just kind of shrugged
22 his shoulders. He said, "Yeah, I'm kind of
23 surprised that was not noted."

24 He mentioned the deck, the wood rot. He said,
25 "Are you really -- I'm surprised these things were



1 not noted."

2 Q And this is in 2018, last year?

3 A No. No, sir. This is when he first came to spray
4 the house in -- the first week in June.

5 Q When did he?

6 A In 2015 when I moved in.

7 Q I'm sorry. You wandered a little there. Because
8 you started out by saying --

9 A Mr. Rigland came to the house in June 2015 when I
10 moved in.

11 Q To do what?

12 A He came for the purpose of spraying for bugs and to
13 get rid of the spiders before we moved in.

14 Q Okay. But this was after you had closed on the
15 purchase of the house?

16 A Yes. Yes.

17 Q Okay. And what happened during that meeting?

18 A That meeting? I showed him the things I was
19 concerned about. He kind of said he was a little
20 surprised that the termite inspection would not
21 have noted those. And I said, "Well, apparently
22 there's nothing there."

23 And so he -- you know, he sprayed. He came
24 out about -- he did our spray. He came out about
25 every couple of weeks. I told him I never could



1 get a copy. I kept trying to get a copy from
2 Jonathan of the termite inspection. He said he
3 would like to see it. Asked him how much it would
4 cost me to get another one. This was months later.

5 And then last year, after we pulled up the
6 carpet and we found mold and termites, then he came
7 out and did the termite inspection.

8 Q Okay. So you didn't have a termite inspection done
9 until actually 2018?

10 A Right. And a lot of that was old damage.

11 Q Why did you wait until 2018 to have a termite
12 inspection performed?

13 A Because I spent a lot of money to try to help make
14 the house safe. The back door fell in because it
15 was rotten. People stepped through the deck.

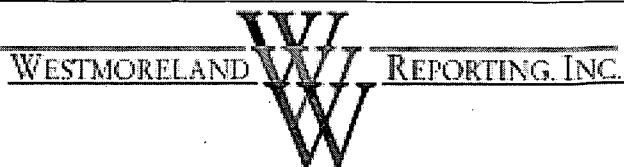
16 Q Let me ask you about the appraisal.

17 Was it your understanding that the appraisal
18 was also an inspection in the property?

19 A There was a checklist they had to do. And it's not
20 as detailed except I did receive an email from --
21 in 2016 from Ms. Cohens [sic] that said in a Fannie
22 Mae loan such as this --

23 Q I'm sorry. Let me ask the question again. I think
24 you're getting off my question.

25 A Okay.



1 Q Was it your understanding at the time that the
2 appraisal also served as an inspection on the
3 property?

4 A A type of inspection, yes.

5 Q And what do you think the appraiser was
6 inspecting -- again, at the time, what was your
7 understanding of what the appraiser was inspecting?

8 A To determine if all utilities were functioning.

9 There were certain items that he had to
10 inspect, such as the -- they were marked on there,
11 you know that, for example, that the appliances
12 were working. He had to make a head and shoulders
13 examination of the ceiling. I'm sure you've got
14 the list there. But there were items that he had
15 to go through. And he had to know that there were
16 any defects.

17 Q Did -- was it your belief that the appraisal served
18 as a house inspection?

19 A No.

20 Q At the time you thought an appraisal and a house
21 inspection were two different things?

22 A Yes.

23 Q Who performed the appraisal?

24 A Brian Blue.

25 Q When did you first receive a copy of the appraisal?



1 A I believe it was -- it was either the day of or the
2 day after he went to the house in February the -- I
3 don't remember the date -- 29th, maybe.

4 MR. OGBURN: Mark this as 14 -- 15.

5 (Whereupon, Exhibit 15 was marked for
6 identification and is attached to the
7 transcript.)

8 THE WITNESS: Number 15?

9 THE REPORTER: Yes.

10 Q Do you recognize this email?

11 A I don't recall it, but I'm sure it's correct.

12 Q Does it appear to be an email from you to
13 Mr. Reynolds, Mr. Garvey, Bob Baber, and Crystal
14 Greene, closing appraisal file?

15 A Yeah. That came in from Summit Funding.

16 Q Do you have any reason to believe that you didn't
17 have the appraisal after March 5th?

18 As of March 5th, you had a copy of the
19 appraisal?

20 A By the first appraisal. There were two.

21 Q Two full-blown appraisals, or was there an update
22 on the original?

23 A There was an update on the original.

24 MR. OGBURN: Mark this as 16.
25



1 (Whereupon, Exhibit 16 was marked for
2 identification and is attached to the
3 transcript.)

4 Q Do you recognize this document?

5 A I suppose it's the one he did first? Would be my
6 guess.

7 Q Do you have any reason to believe that this is not
8 the copy of the original appraisal?

9 A By original, you're talking about the one he did in
10 February?

11 Q The one that you received by March 5th of 2015.

12 A No, I don't.

13 Q How much did the house appraise for?

14 A 100 and -- I don't remember. 156, maybe? 160
15 something?

16 Because I know I made the comment that I was
17 surprised that the appraisal -- when I called
18 Jonathan, I said, "Was that good?" And he said
19 yes.

20 Q So Page 2 of 6 down at the bottom.

21 A Yes.

22 Q So it appraised how much?

23 A 166,000.

24 Q 166,000. And was that significantly more than you
25 were paying for it?



1 A Yes.

2 Q Does that surprise you?

3 A I didn't know what things appraised for, so I
4 really don't remember. I don't recall.

5 Q Do you think you were getting a good deal?

6 A Yeah.

7 Q I'll have you look at Page 2 of 6.

8 A Okay.

9 Q Do you see down on the left side where it says
10 "reconciliation?"

11 A Yes.

12 Q Okay. And then there is a series of boxes where it
13 says, "this appraisal is made" and the first box is
14 "as-is." Do you see those?

15 A Ah-huh.

16 Q Are any of those boxes checked?

17 A No.

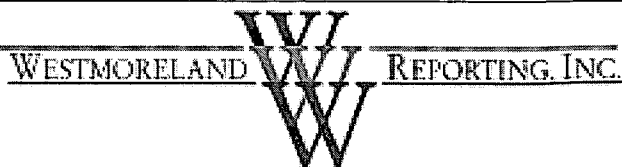
18 Well, "subject to the following required
19 inspection based on...condition [of] deficiency"
20 repairs "utilities being turned on."

21 MR. RACINE: Objection. That's a
22 misstatement.

23 THE WITNESS: Pardon?

24 MR. RACINE: Can you read that again?

25 MR. OGBURN: Read it completely.



1 THE WITNESS: "Subject to the following
2 required inspection based on extraordinary
3 assumption that the condition or deficiency
4 does not require alteration or repair subject
5 to utilities being turned on."

6 Q And what was your understanding of that language?

7 A That this was his appraisal. And that he would go
8 back to the property and confirm his findings.

9 Q All the findings?

10 A I would imagine. In case he found something that
11 was not correct.

12 Q What did you --

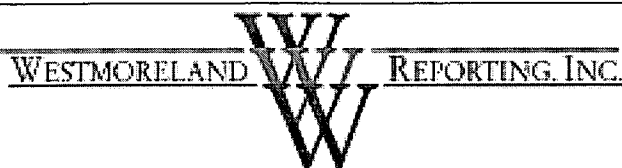
13 A I can't tell you what his understanding was. I'm
14 not an appraiser.

15 Q I'm asking what your understanding was when you saw
16 that.

17 A I don't know that I paid a whole lot of attention
18 to that particular phrase. I went through the
19 appraiser -- appraisal and was concerned and made
20 my concerns made known to Jonathan and to Summit
21 Funding.

22 Q So what were you worried about in terms of the
23 accuracy of the appraisal?

24 A Well, the first thing, the pictures were not made
25 at the time of the appraisal.



1 Q Were you concerned about how it described the
2 condition of the house?

3 A Yes.

4 Q What worried you about that?

5 A There were no -- he didn't note any deficiencies.
6 And I didn't understand how that was possible for
7 him to say that -- I have to go back and read it.

8 Q Did you know there were problems with this house
9 that were not identified in the appraisal?

10 A I knew from the list I had asked to be checked, and
11 I was told that they would show up on the
12 appraisal.

13 There's an email from Jonathan which he says
14 specifically, "let's see what the appraiser has to
15 say."

16 MR. OGBURN: Mark this as 18? Or 17?

17 (Whereupon, Exhibit 17 was marked for
18 identification and is attached to the
19 transcript.)

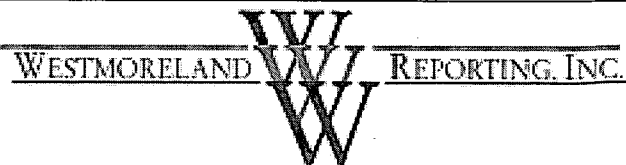
20 Q Do you recognize Exhibit 17?

21 A I was still on this one. Yes.

22 Q Can you tell me what Exhibit 17 is?

23 A It's what I sent to the bond company concerning the
24 appraisal in 2016.

25 Q Is it a complaint you filed against Mr. Blue?



1 A Yes.

2 Q Did you file a complaint because of what you
3 believed were inaccuracies in the appraisal?

4 A Yes.

5 And because water was never turned on.

6 Q Okay. I'm going to have you look at the paragraph
7 on the bottom of the first page. And I'm going to
8 read some language. I want you to let me know
9 whether I read this accurately.

10 A Okay.

11 Q Do you see where it says, "it was not"?

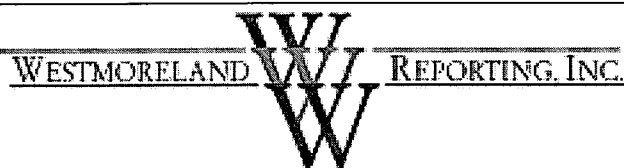
12 A Which page?

13 Q The bottom of the first page.

14 A Okay.

15 Q I'm going start reading there.

16 "It was not to be a simple as-is purchase.
17 When I first received a copy of the report, I
18 called Mr. Blue because I was concerned about items
19 which I thought would have been noted. These
20 included but were not limited to a hole I thought I
21 saw in the roof from the outside, two rusted holes
22 in the air conditioner, the rotten and unsafe deck
23 which I did not think met FHA standards, the rotten
24 wood around the windows, windowsills, overhangs,
25 doors and siding, the gutters that were falling



1 off, and the water spots in the ceiling."

2 Did I read that sentence accurately?

3 A Yes.

4 Q So when you first got this appraisal, those items,
5 those problems with the house were not listed in
6 the appraisal, and that concerned you?

7 A Yes.

8 Q Tell me your understanding of why the water line
9 needed to be repaired.

10 A I really don't know. I was just informed by
11 Jonathan that there was a leak. And that they were
12 going out to -- he was meeting the -- well, his
13 story changed several times on that.

14 He told me -- and I cannot find this email. I
15 had requested it back from the LLR.

16 Q Okay. Why do you think the water leak needed to be
17 repaired?

18 A Because Jonathan told me there was a leak.

19 Q Okay. Was it part of a water line into a house?
20 Or was it part of an irrigation system for the
21 yard?

22 A He said that it -- they spent -- I don't remember.

23 He said that -- what I recall was that he said
24 he spent all day with Mr. Evans digging up the yard
25 to find the leak and that they had found it at the



1 water meter.

2 Q Were you there when the leak was repaired?

3 A No.

4 Q Do you know where the leak was repaired? The
5 location of the leak?

6 A Where it was supposed to have been repaired, yes.

7 Q Which was where?

8 A At the water meter.

9 Q How do you know that?

10 A That's where Jonathan had identified where it was.
11 And just took out the part that he brought and paid
12 Mr. Evans to repair.

13 Q Okay. And do you believe the leak was not
14 repaired?

15 A It was not.

16 Q Okay. Why do you believe that?

17 A Because the water department had to come turn the
18 water back off on the 11th of March when they
19 turned it on because there was still a leak.

20 MR. OGBURN: I'm going to mark this as 19.

21 THE REPORTER: That's 18.

22 MR. OGBURN: I'm sorry?

23 THE REPORTER: That's 18.

24 MR. OGBURN: 18. I'm sorry. 18.

25



1 (Whereupon, Exhibit 18 was marked for
2 identification and is attached to the
3 transcript.)

4 Q I'm going to have you look at 18. Have you ever
5 seen that document?

6 A I have not.

7 Q I will tell you that this is an invoice I received
8 from Mr. Garvey for repair work done at Rolling
9 Ridge.

10 A Okay.

11 Q Do you believe that this invoice is inaccurate?

12 A I would not know.

13 Q Do you believe that no work was done out there?

14 A Depends on what you mean by work.

15 Q Was -- okay. Well, let me ask you. Was --

16 A The leak was not repaired.

17 Q The leak -- was any work performed on the leak?

18 A There appeared to be.

19 Q So was there an attempt at a repair?

20 A I wasn't there. I can tell you what we found when
21 I moved in. But I can't -- I was not there.

22 Q Okay.

23 A According to the water department, the leak was not
24 fixed.

25 Q Was the water department there?



1 A They were there that morning, yes.

2 Q They observed the repair?

3 A They met the plumber and turned on the water. They
4 did not stay while the repair was fixed.

5 Q What is the prob -- why do you believe the leak was
6 not repaired?

7 A I can't answer that. I wasn't there.

8 Q Okay. Was there subsequently a leak on the water
9 line?

10 A That was the same leak when I moved in as was
11 present when the gentleman -- water tank was there
12 on the 11th of March.

13 Q Did you have somebody else fix a water leak?

14 A Yes.

15 Q Okay. When was that?

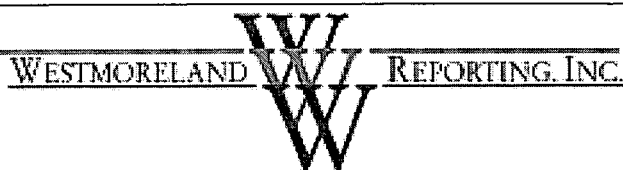
16 A That was -- that would have been around February of
17 2016.

18 Q And so after you had been in the house for six
19 months?

20 A Yes.

21 Q Were you aware of a water -- any sort of leak in
22 the water line before February of 2016?

23 A In -- when I moved in, and the water was turned on,
24 the 3rd -- or the utilities were turned on on the
25 3rd of June.



1 The water department came to the house, turned
2 on the water and then turned it off and left a note
3 on my door saying they could not leave the water on
4 because no one was home and the water was running.

5 I called them and told them I thought the leak
6 had been fixed, and they said, well, something's --
7 there's a leak.

8 I called Jonathan. And I said, "Jonathan,
9 they turned the water back off because there's a
10 leak." He said, "Well, it couldn't have been the
11 leak we're talking about because I was there when
12 it was fixed." And I said, okay.

13 So I called the water department back and I
14 told them to go ahead and turn the water back on
15 and we would have to, you know, I'd have to get
16 somebody out to find the leak.

17 Q Okay. And this is early June?

18 A This was June the 3rd.

19 Q Right after you bought the house?

20 A Yes.

21 Q So you turned the water back on. Did you notice a
22 leak between then and February 2016?

23 A I wasn't in there.

24 Q You didn't move in the house?

25 A Oh, I thought you meant 15. Yes, I have a report



1 from the water department that there was a UCG port
2 that showed the usage was too much for the number
3 of people in the household and the water being
4 used.

5 Q So based on that report, you believe there was a
6 leak?

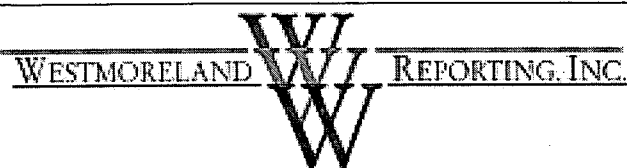
7 A Yes.

8 And also, the water department told me that if
9 it was not the leak, if Mr. Garvey was saying that
10 the leak which was present, which when the water
11 department came on the 11th of March, then that
12 meant there was a leak.

13 In detail, that meant there had to be a leak
14 from the meter to the street, which was county, or
15 it had to be in the street, which was state. And
16 they said, "Mrs. Baber, it's going to take us a
17 good while to get the county out here and the state
18 out here to find this leak." I said okay.

19 There was a big puddle of water. My front
20 yard looked like a pond. And they got the county
21 out. They got the state out. I don't know the
22 dates on that. And the water bill continued to be,
23 I thought, too high. I was working with the water
24 department on that.

25 In February, I believe it was, of 2016, I got



1 a knock on the door. It was the same technician
2 who had been there when this -- on the 11th when
3 Jonathan had said he was there. If he was there,
4 he was not there when the plumber was there and the
5 tech was there.

6 And the same water tech came to the door. And
7 he said, "Ms. Baber, it's the same leak." He said,
8 "This is the leak we found. I was there."

9 And besides throwing a tantrum and thanking
10 him very much, I said, "Are you sure?" He said,
11 "Yes, Ma'am."

12 And I then got one of my neighbors, who's a
13 contractor, to get one of his plumbers to come
14 over, which he did, which you have a video of,
15 which you have pictures of. The pipe that Jonathan
16 described was the pipe area that was leaking. And
17 it was put together by plumbers tape. So had it
18 been fixed? Sure. And as soon as the water got
19 turned back on, it busted.

20 Q You said that you've still got the piece that was
21 fixed?

22 A I do.

23 Q Can you describe what it looks like?

24 A It's a white little thing.

25 Q White PVC pipe?



1 A Yes. The one he described.

2 Q Is it an angle?

3 A I can't tell you anything about plumbing. I don't
4 know.

5 Q Is it a junction where a couple pipes come
6 together?

7 A I believe so.

8 All I know, it's the one that they said it was
9 leaking. It's the same pipe that was leaking when
10 the tech was there.

11 Q Is it possible that the leak was repaired and then
12 began leaking later?

13 A Only if that happened the same day.

14 Q Only if it happened the same day.

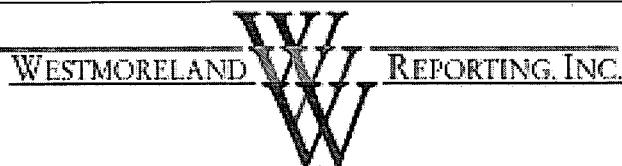
15 A Because the utilities were turned off on March the
16 11th. So, therefore, the utilities were not on
17 when the appraiser came back on the 12th.

18 Q Do you have any reason to think that this invoice
19 is wrong and that this work was not performed,
20 showing you Exhibit 18?

21 A I have no idea. The man's dead, so we can't ask
22 him.

23 Q Do you know who Ronnie Moore is?

24 A No. Except that he said that's who fixed it. And
25 that's not who -- let me see the date of that



1 again. See, on March the 11th, 2015, is when he
2 says that he paid him.

3 However, when I met with -- not that they'd
4 admit it, but when I met with Jonathan and Colleen
5 Coesens and Mr. Ouzts in June several weeks later
6 after I moved in and we did the release so they
7 would get the warranty, she asked Jonathan
8 specifically, "Who paid for the part?" Jonathan
9 said he did. He said he paid Robert Evans to fix
10 the part.

11 So I was not aware of this man or probably
12 until 2016 when I contacted whoever it was with
13 Allen Tate. And then the names of people started
14 changing.

15 Q Who did you -- who was your understanding -- what
16 was your understanding of who fixed the water leak
17 originally? Not now. Not after you bought the
18 house.

19 A Originally?

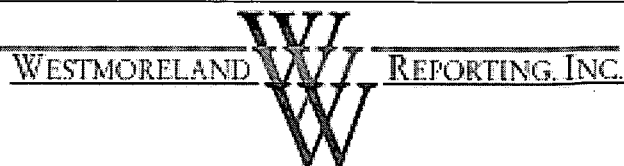
20 Q Yes.

21 A Was Jonathan and Evans.

22 Q Did you ever talk to Evans about it?

23 A No.

24 Q In that video you sent us, you tell the guy who
25 does -- who's in the video that you spoke with the



1 contractor who performed the repair work.

2 A Yes, I did.

3 Q Who was that?

4 A I talked to the one who said he was supposed to
5 have repaired it.

6 Q Who was that?

7 A That would have been Robert Evans.

8 Q But you just said you didn't talk to Robert Evans
9 about this.

10 A Okay. I'm not understanding your question.

11 Q Did you ever have a conversation with Robert Evans
12 about repairing the water line?

13 A I don't recall. I did talk to him about had he
14 ever been to the house. What date that was, I
15 can't tell you. I don't recall.

16 Q When did you close on the property?

17 A May the 29th, 2015.

18 Q Did you walk through the house prior to closing?

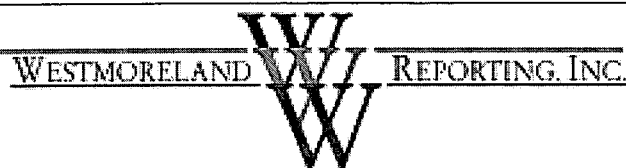
19 A Not right before it. Jonathan told me we didn't
20 have time.

21 Q Did you do -- when was the last time you walked
22 through the house before you closed?

23 A I don't recall.

24 Q Was it within a couple weeks of closing?

25 A I doubt it. I don't know.



1 Q You doubt it? You think it had been more than a
2 couple weeks?

3 A I don't recall.

4 Q When you closed?

5 Did you ever walk through the house to see if
6 the issues that were raised in your January emails
7 had been fixed?

8 A The last time I walked through the house, the house
9 looked exactly as it did when I first went through
10 the house. And I was told that there were no
11 issues. If there had been issues, the appraiser
12 would have noted them, as would have the
13 inspectors.

14 MR. OGBURN: 20.

15 THE REPORTER: 19.

16 MR. OGBURN: 19. I'm sorry. I'm running
17 late.

18 (Whereupon, Exhibit 19 was marked for
19 identification and is attached to the
20 transcript.)

21 Q I hand you what's been marked as Exhibit 19. Do
22 you recognize this document?

23 A Yes.

24 Q What is this document called?

25 A The walk-through acknowledgement.



1 Q Is that your signature down on the bottom?

2 A Yes.

3 Q And what is the date you signed this?

4 A On closing.

5 Q Okay. Does -- do you see where you've initialed at
6 the top?

7 A I do.

8 Q It says, "Buyer has completed the walk-through and
9 verifies that the property is in the same or
10 similar condition absent normal wear and tear that
11 it was at the time of the execution of the
12 agreement"?

13 A Yes.

14 Q Do you see that?

15 Had you walked through the house?

16 A Since I purchased it? I mean, since I did the
17 contract?

18 Q Before you signed this document.

19 A Yes.

20 Q So did you do a walk-through and inspect the house?

21 A I did a walk-through.

22 Q You did. When?

23 A You asked me earlier how many times I've been to
24 the house. I've been to the house numerous times.
25 I've walked through it.



1 Q But when -- at closing, you signed a statement you
2 had walked through the house and said the condition
3 of the house is in same or similar condition as
4 when you signed the contract; correct?

5 A Yes.

6 Q And when you signed the contract, you were aware of
7 issues that needed to be repaired; correct?

8 A There were issues which I believe need to be
9 repaired. However, that was subject to the
10 inspections and the appraisals.

11 Q I'm going to have you look next -- do you see your
12 second initial down?

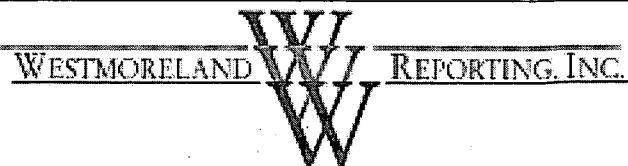
13 A Ah-huh.

14 Q Second sentence. "Buyer accepts repairs and
15 condition of the property"?

16 A Yes.

17 Q Were you aware that at the time you signed this
18 document, you were accepting the condition of the
19 house as it was at that moment?

20 A I believed I was purchasing the house as it was
21 having no defects based on the reports of the
22 agents and the required reports to get the loan. I
23 depended upon the expertise of my agent, Jonathan
24 Garvey, and the expertise and the requirements of
25 the lender and the reports that had to be repaired.



1 Q Did you ever see any evidence of repairs that had
2 been prepared on the house, I mean, evidence of
3 repairs that had been performed on the house, like
4 invoices from contractors?

5 A They told me there were none needed.

6 Q Did you ever see any?

7 A No.

8 Q Did you ever see a report from anybody saying --

9 A No.

10 Q -- that work had been performed on the house?

11 A They told me it was not needed.

12 Q Who told you it was not needed?

13 A Jonathan did.

14 Q Did you not ask to see it?

15 A There was nothing to report.

16 Q Because there were no repairs needed is what you're
17 saying?

18 A But that's not accurate. Because there was no
19 inspections done.

20 Q Who attended the closing?

21 A I did. Jonathan did. Connie Delaney did. And she
22 signed for the seller and the attorney.

23 Q Were all of y'all present at the closing at once?

24 A Yes.

25 Q Explain to me how the closing happened. How did it



1 work? You walked in. You sat down and what
2 happened?

3 A The attorney went through the papers. This was
4 handed to me by -- this was not in the closing
5 package.

6 Q By "this," we're talking about Exhibit 20?

7 A Yes.

8 That was handed to me by -- as we were getting
9 ready to leave. This was handed to me by
10 Ms. Delaney. She did like that after saying, "sign
11 that." That was not part of the closing package.

12 Q Okay. Did you read it before you signed it?

13 A She just said she needed me to sign another one.

14 Q Did you read it before you signed it?

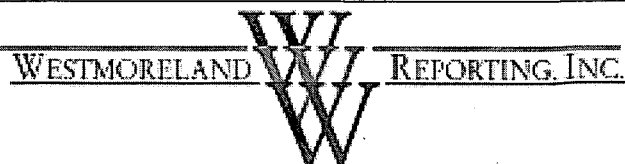
15 A Yes.

16 MR. RACINE: Just to be clear. That's
17 Exhibit 19.

18 MR. OGBURN: Oh, it is. I'm sorry. She
19 labeled it 20. Thank you. No. No. Ms. Baber had
20 labeled it 20. You got it correct, 19.

21 THE WITNESS: Thank you. Blame it on me. I'm
22 old. So says my grandchildren.

23 Q So all three of you, all of y'all were in the room
24 together. Mr. Gillen walked through the loan
25 documents?



1 A Yes.

2 Q And you signed the documents?

3 A Yes.

4 Q And Ms. Delaney signed on behalf of the seller?

5 A Yes.

6 Q And Mr. Garvey was present.

7 A Yes.

8 Q Any other agents besides Ms. Delaney and

9 Mr. Garvey?

10 A Not that I recall.

11 Q Okay. So you did not appear an hour early for the

12 closing?

13 A I don't know. They kept changing the time schedule

14 on us.

15 Q You didn't execute the documents before Mr. Garvey

16 got there?

17 A No. He was sitting right to my left.

18 Q Okay. You didn't meet him in the parking lot as he

19 was arriving after you had signed all the

20 documents?

21 A No. He was sitting right there. Because when I

22 went up to get up to leave, I said, "I'm going to

23 go ahead and call Robert and see if he can meet me

24 at the house to get the windows open."

25 Q After the closing --



1 A Or at least that's my recollection.

2 Q Did you sign any documents after the closing?

3 A What documents are you referring to?

4 Q Mr. Garvey send you anything to sign after the
5 closing?

6 A I don't recall.

7 MR. OGBURN: I'm going to mark this as
8 Exhibit 20.

9 (Whereupon, Exhibit 20 was marked for
10 identification and is attached to the
11 transcript.)

12 MR. OGBURN: I'll go through this, then we'll
13 take a break.

14 Q Are you ready?

15 Do you recognize Exhibit 20?

16 A Not really. But I'm sure -- I would imagine it's
17 correct.

18 Q And we talked about you electronically signing
19 documents?

20 A Yes.

21 Q Is this your electronic signature on this document?

22 A I would imagine.

23 MR. OGBURN: Did -- let's take a short break.

24 (Recess held.)

25 MR. OGBURN: Go back on the record.



1 Q Okay. So we're starting now after closing. So you
2 own the house.

3 A Okay.

4 Q When did you first discover problems with the house
5 that needed to be repaired?

6 A When I moved in the first week.

7 Q Okay. And what problems did you find that first
8 week?

9 A Gosh. Air conditioning unit was not working, the
10 one that I had asked about the holes. The range
11 didn't work. The -- all the lights didn't work.
12 Of course, we've already mentioned about the water
13 because the water department had shut it off on the
14 3rd.

15 The toilets didn't work. The neighbor came
16 over, and he's a contractor, and wanted to know if
17 I wanted him to go ahead and put a roof on the
18 house, and I said it didn't need one. And he said
19 uh, yeah, it does. He said, "You don't see the
20 holes up there?" I said, "Yes, but they told me
21 that had been fixed." He said, "No, it wasn't."

22 There was a leak. We started changing light
23 bulbs and putting lights in. And the fixtures
24 didn't -- many of the light fixtures didn't work.

25 We turned on the dishwasher, and all of a



1 sudden the floor got flooded. And that's because
2 the disposal was held up by tape, the same
3 plumber's tape that we ended up finding out later
4 was the same tape that was on the leak in the front
5 yard.

6 Q And all these were within the first week of buying
7 the house?

8 A The first few days.

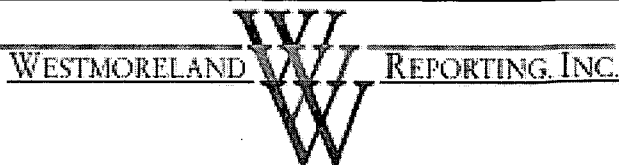
9 Q Okay.

10 A Let's see. What else?

11 I couldn't get any of the windows opened. So
12 I kept calling Mr. Evans and saying: Can you
13 please -- it's not safe. And I had left him a
14 message and said the appraiser or something
15 requires that at least one window be able to be
16 opened, and I couldn't find any opened. So I said
17 at least tell me what window got opened.

18 When we started, you know, cleaning off the
19 deck, we found -- because there were so many
20 leaves, we found that the deck was, in fact,
21 rotten. One of the movers stepped through a hole.
22 The um, I have to, you know --

23 Q So a lot of those issues that you've just listed,
24 and I've taken a shorthand list of them, are kind
25 of the things that you had put in your January



1 emails; correct? That the air conditioning --

2 A Right.

3 Q You got the roof, got leaks.

4 A Right. Also Paul said -- the list --

5 Q The windows, the deck?

6 A Right. The list I gave to Jonathan. The list I
7 sent over to -- I talked to Summit Funding about.

8 Q Yeah, the things that you complained when you filed
9 the complaint on the appraisal?

10 A No, no. This is before. This is during the
11 process. You'll see an email where I called
12 Mr. Blue and I wasn't supposed to. And then I
13 called over to Summit Funding, and they wondered if
14 he had appraised the wrong house.

15 MR. RACINE: Objection.

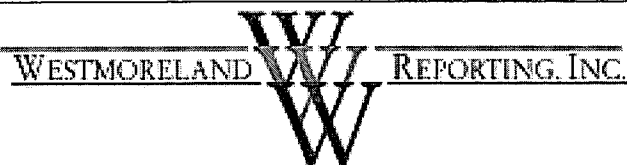
16 THE WITNESS: Pardon?

17 MR. RACINE: Objection.

18 MR. OGBURN: You can keep answering. He's
19 doing that for the record.

20 THE WITNESS: Okay.

21 And so that's when -- you have the email
22 where Summit -- so we're going to make sure
23 Jonathan has a copy of the disclosure form and
24 to go over all this with the appraiser when he
25 goes back out to make sure everything's okay.



1 Q Okay. But all these are -- my question was --

2 A I thought that was all fixed.

3 Q But it was stuff you had identified ahead of time?

4 A I questioned, and they said everything was good.

5 Q After closing, did you demand to meet with Allen
6 Tate?

7 A At some point, yes.

8 Q Okay. Do you remember in June demanding a meeting?

9 A Yes.

10 Q Okay.

11 A And also you asked me about the air conditioning
12 guy came out. And he called Robert Evans from the
13 property. And that's when I found out that
14 Robert -- that Evans knew nothing about any of
15 this.

16 MR. OGBURN: So I'm going to label this as
17 Exhibit 21.

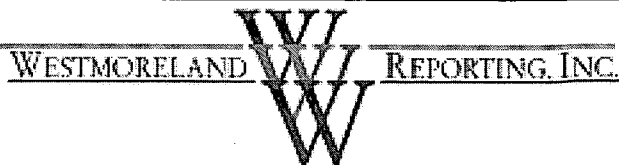
18 (Whereupon, Exhibit 21 was marked for
19 identification and is attached to the
20 transcript.)

21 Q Do you recognize this email?

22 A I really don't. But it appears to be correct.

23 Q Do you have any doubt that this is a copy of an
24 email you sent to Mr. Garvey on June 27th?

25 A No. Because we were setting up a meeting with



1 Ms. Cohens.

2 Q It says, "Emails and texts can be misunderstood, so
3 I'm coming to the meeting in good faith and
4 believing we can work this out."

5 A Yes.

6 Q So who were you -- who did you understand you were
7 going to meet with at the meeting?

8 A Jonathan and Ms. Cohens.

9 Q Ms. Coesens?

10 A Was it Coesens? Whoever the -- Colleen?

11 Q Colleen Coesens, who's a Defendant in the lawsuit;
12 correct?

13 A Yes. She was the right girl.

14 Q What did you want to talk about at the meeting?

15 A How many things were wrong. And also that I had
16 not gotten the home warranty because I thought,
17 well, maybe some of these things -- Jonathan
18 explained to me it was real important to get the
19 home warranty the day of the closing because then
20 things got covered immediately. Otherwise, I think
21 it was like a 30-day wait.

22 And so I thought, well, since they didn't find
23 anything in the home inspection, they didn't find
24 anything in the termite inspection, and the
25 appraiser didn't find anything, then it was just



1 one of those -- everything had just happened, you
2 know.

3 Q So did the contract between you and
4 Ms. Long-Robinson provide for a home warranty?

5 A We've discussed that.

6 Q Well, I'm sorry if I'm asking it again.

7 A Yeah. The original contract, it did.

8 Q The original offer did.

9 A Right.

10 Q How about the one that you signed?

11 A Not the one, no. I was going to pay for that if
12 Jonathan did not.

13 Q Okay. So, in the Exhibit 11 contract --

14 A Right.

15 Q -- if you look at Section --

16 A This is not the first contract. This contract
17 doesn't have that.

18 Q Exhibit 11 is the one that we looked at that had
19 your electronic signature.

20 A Right.

21 Q And on Section 14 --

22 A Right.

23 Q So the contract does not contemplate a home
24 warranty; right?

25 A That's correct.



1 Q Okay.

2 A The one that actually got processed, yes.

3 Q Okay. So what was your understanding of who was
4 going to pay for a home warranty?

5 A Jonathan said he was going to pay for it, and I
6 said, "If you don't, I will."

7 Q Okay.

8 A Because he explained to me the importance of it,
9 and I agreed with him.

10 MR. OGBURN: I'm going to mark this as
11 Exhibit 22.

12 (Whereupon, Exhibit 22 was marked for
13 identification and is attached to the
14 transcript.)

15 Q Do you recognize Exhibit 22?

16 A I do.

17 Q Is that your signature on this document?

18 A It is.

19 Q Did y'all meet on or around July 1st of 2015?

20 A I think the meeting was actually before that.

21 Q Okay.

22 A Right before --

23 Q So did you --

24 A Sometime around -- I think it's probably the Monday
25 after June 27th.



1 Q Okay. Did you sign this Exhibit 22 at the meeting,
2 or later?

3 A No, that was later.

4 Q Okay. Tell me about the meeting, then. What
5 happened during the meeting?

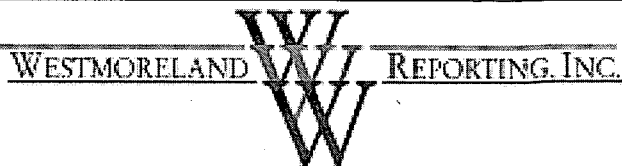
6 A We went to the meeting, and I explained everything
7 that was going on and that, you know, everything
8 that I had concerns about.

9 I did not understand why these things were not
10 found on all the inspections. Ms. Cohens said that
11 she would get me a copy of the CL-100. There had
12 to be one.

13 Jonathan did not say a word. Robert Ouzts did
14 not say a word. And I know now that they both knew
15 there was not one.

16 And she went over everything. And she said,
17 "I just never heard anything like this." And I
18 said well, I don't know. I'm concerned that with
19 the things going on, I'll have to wait 30 days to
20 see if they'll -- you know, to get the air
21 conditioner fixed, to get the stove fixed based on
22 how Jonathan explained to me that the home warranty
23 would work.

24 Q And then so did y'all talk about somebody buying a
25 home warranty at that meeting?



1 A I believe so.

2 Q Did Allen Tate offer to pay for a home warranty?

3 A Yes.

4 Q Okay. And did they pay you for a home warranty?

5 A Yes.

6 Q And did they ask you to sign Exhibit 22 in exchange
7 for that payment?

8 A Yes.

9 Q Did you read Exhibit 22 before you signed it?

10 A I did.

11 Q Did you buy a home warranty with the money you
12 received?

13 A I did. I did.

14 MR. OGBURN: I'm going to mark this as
15 Exhibit 23.

16 (Whereupon, Exhibit 23 was marked for
17 identification and is attached to the
18 transcript.)

19 Q Do you recognize that document?

20 A Choice Home Warranty, yes.

21 Q Is that an email you sent to Mr. Garvey, enclosing
22 a copy of the home warranty?

23 A I don't recall.

24 Q Do you have any reason that that's not an accurate
25 copy of an email you sent to Mr. Garvey?



1 A Probably not. I don't know. I can't answer what I
2 don't remember.

3 Q Okay. Do you have any reason to think this isn't
4 accurate?

5 Let me take it back.

6 A I guess the reason I'm questioning it is because I
7 didn't sign an agreement with them until the 1st of
8 July. And this has a date on it, because I had
9 already called Home -- Choice Home Warranty to find
10 out the price, and they told me if I go ahead and
11 pay 38.75 and then I had to pay the balance, which
12 was what this was for.

13 So the dates were just different. That's why
14 I really don't recall.

15 Q Okay. Do you have any reason to think this isn't a
16 copy of the home warranty you bought?

17 A No, because it is Choice Home Warranty. I've used
18 it many times.

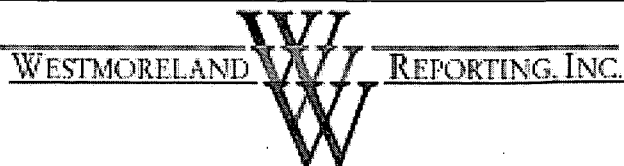
19 Are you going to ask me more questions about
20 it?

21 Q Not right now.

22 A Okay.

23 Q What's your understanding of the effect of Exhibit
24 22? The release.

25 A That they were going to honor Jonathan's promise to



1 pay for the warranty.

2 Q Okay. And they paid you money that you used to buy
3 a warranty; correct?

4 A Correct.

5 Q And in exchange, you were doing what?

6 A Sign away my last child and everything else.

7 Q Giving up all rights and claims against them?

8 A Yes.

9 Q Why do you believe that this isn't effective?

10 A Because, number one, I wasn't the seller; I was the
11 buyer. So that document itself is wrong.

12 Then also at that meeting, they were fully
13 aware -- at that meeting, I believed there to be a
14 termite inspection, which she was going to go get
15 me. I believed there to be a home inspection of
16 which Connie Cohens, she left the meeting, she
17 said, "I will go get you those. You had to have
18 had them. You couldn't have closed without them."
19 She said, "This is unfortunate."

20 So when I signed it, I didn't even have my
21 glasses on. I came in. The guy was out in the car
22 waiting to go purchase the air conditioning unit
23 because it was 105 degrees in the house. And I
24 walked in. She handed me the check. She said, "I
25 need you to sign this." Did I read it? No.



1 And it never occurred to me that at that point
2 that there was no termite inspection, that there
3 was no home inspection, and that there was a
4 fraudulent appraisal.

5 Q But you had an agreement where if they bought you a
6 home warranty, you would sign a release?

7 A Right.

8 And when I discovered it was based on fraud --

9 Q What's the fraud? They bought you a home warranty.
10 You signed the release.

11 A They did.

12 Q Where's the fraud?

13 A I think we'll probably get there.

14 Q No. I'm asking you. Where's the fraud?

15 A What's the fraud? The fraud is -- the first place
16 was they did it under false pretense.

17 Q What false pretenses? They paid you the money.

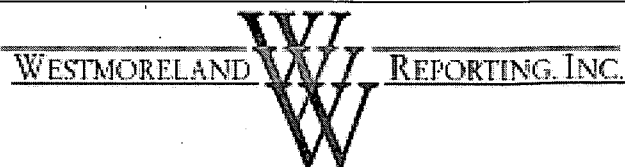
18 A They paid me the money.

19 Q You signed a release.

20 A I did.

21 Q What's the false pretenses?

22 A Because when we sat there, we discussed the termite
23 report, the home inspection report, and that this
24 was simply an unfortunate situation that happened.
25 And they were -- basically their apologies that



1 these things did not show up on the report.

2 Q So the HUD doesn't show a termite report?

3 A Yes, it does.

4 Q I'm sorry. We'll go back.

5 A No. Remember, the page is missing.

6 Q You think the HUD would be showing on GFE Number 6?

7 A Yes. And it's also about 10 different pages in the

8 closing documents.

9 Q You had not paid for a termite inspection. You

10 never paid for one.

11 A No.

12 Q Never paid for a home inspection.

13 A No.

14 Q And yet at this point you think there was fraud

15 about those with regard to this release?

16 A Yes.

17 Q Did you file a claim with the home warranty?

18 A Yes.

19 Q Were any of the issues of the house fixed under the

20 home warranty?

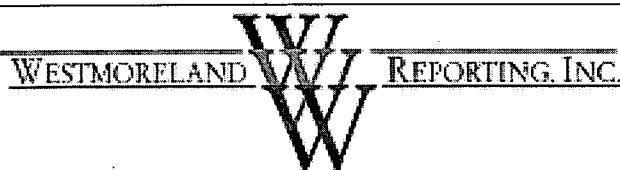
21 A Not at first, no.

22 Q How many of the issues have been fixed?

23 A None of the ones that were on the list because they

24 were pre-existing. And, therefore, when they came

25 out to fix the oven, when they came out to fix the



1 dispose-all, those were items which they would not
2 pay for because they were pre-existing. And they
3 said those should have been known. They would not
4 pay for the air conditioning unit.

5 Q Let me shift gears.

6 We've already talked about you've never spoken
7 with Connie Delaney; right?

8 A No, I have spoken to Connie Delaney.

9 Q Okay. When did you speak to her?

10 A I don't recall. She was the original listing
11 agent.

12 Q Did you talk to her in your process of buying the
13 house?

14 A Yes, but I don't remember exactly when.

15 It was really confusing when I went to sign
16 the contract because apparently there was some
17 internal communications that if she was going to be
18 the -- because I asked Jonathan because it was some
19 form where both Delaney and Robert Ouzts signed to
20 be co --

21 Q Co-agents?

22 A Co-agents, yeah. And I didn't really understand
23 any of that. And I didn't feel like that was any
24 of my business.

25 And so there was, at some point, conversations



1 with her at that point. But I don't recall what
2 all they were.

3 After that, if -- the communications were with
4 Robert Ouzts who took over as the seller's agent
5 and Jonathan.

6 Q Did you ever have any emails with Ms. Delaney?

7 A I don't recall.

8 Q Did you ever talk directly to Mr. Ouzts?

9 A Yes.

10 Q What conversations did you have with Mr. Ouzts?

11 A I don't recall all of them. I know they're
12 conversations about the issues of the house, like
13 if I couldn't get Jonathan, getting in the house
14 when I wanted to get back in, he didn't say a word
15 at this meeting, not one word.

16 Q By "this," meaning -- you mean the meeting --

17 A With this.

18 Q -- where you negotiated the release and got the --

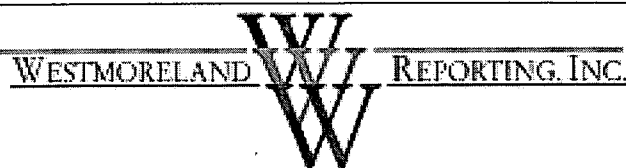
19 A Yeah.

20 Q -- got the payment for the warranty?

21 A He didn't say one word when she said, "Well, I'm
22 going to go get you the copy of the CL-100."

23 Q I'm going back to what other conversations you did
24 have with him.

25 A The conversations I had with him would have



1 probably been when I couldn't get Jonathan about
2 the -- because some of the emails in the docu --
3 e-doc thing would come in from him.

4 Q Okay.

5 A So I'm sure at some point we had conversations.

6 Q So he asked you to sign things?

7 A Yes. Yes.

8 Q In your complaint, you have a claim for conspiracy.
9 How do you believe that Ms. Delaney and Mr. Ouzts
10 were part of a conspiracy to harm you?

11 A Well, on July the 1st or June when I had that
12 meeting, at that point all of them were fully
13 aware.

14 And if you go back and look at your closing
15 package, they signed numerous documents saying the
16 closing package was accurate. And that if it was
17 not accurate, within 48 hours this included the
18 attorney, and you got documents relating to papers
19 that the realtors signed, as well, were to report
20 it.

21 They were aware at that point that there was
22 not a CL-100. They were aware there was no home
23 inspection. They were aware -- Mr. Ouzts is the
24 one who had turned the water off and on and put it
25 in his name. Turned it off.



1 No, they were fully aware that there could not
2 have been an accurate appraisal. They were fully
3 aware that even the pictures in the appraisal were
4 not pictures that should have been in there.

5 Q But they were representing the seller; right? They
6 were representing Ms. Long-Robinson as part of the
7 transaction?

8 A Yes.

9 But they represented Allen Tate. And you
10 asked me about a conspiracy.

11 Q So how did "they" know? How did the two of them
12 know?

13 A They were the listing agents. They would have
14 known what the property condition was.

15 Q But how would they have known what was in the
16 appraisal?

17 A Because they got a copy of the appraisal.

18 Q How would they have known it was inaccurate?

19 A Because I sent all of them messages that it was.

20 Q How do you know that they knew? You keep saying it
21 like definitively. Not they should have known.
22 You said "they knew." How do you know that?

23 A There's a disclosure form which they, as the
24 seller's agent, got from the seller.

25 Q Yes.



1 A Right?

2 Q Ah-huh.

3 A Okay. Those were deficiencies which she said, hey,
4 this looks like an issue.

5 Q Yes.

6 A All right. Okay.

7 Q The seller identified?

8 A The seller identified those.

9 Q 13 problems with the house?

10 A Right.

11 So they, as their responsibility, as they're
12 her agent, they would know and should be able to
13 relate what was wrong with the property.

14 The other thing is, is -- where's my note
15 here?

16 Q Hold on. Let the record reflect she's reading off
17 notes she has brought. What are those?

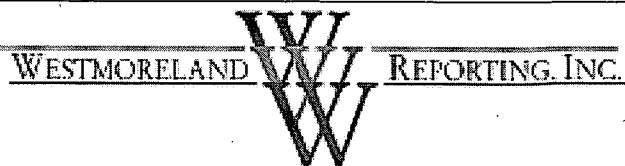
18 A You got this. This is the list of the witnesses.

19 Q May I look at that, please?

20 A (Document tendered.)

21 Q Is this part of -- I'm not saying I didn't get it.
22 I just don't recognize it.

23 A Yeah, you asked me for a list of witnesses. And
24 their names are on the witness list. I don't know.
25 I don't think all the information is.



1 Q So are you talking about in Exhibit 13 where I
2 asked you to list all the witnesses? Probably be
3 Question 1?

4 A Yes. Michael Kelly. And other realtors.

5 Q Okay. So that's it.

6 So this document you've just handed me is
7 what?

8 A That's notes.

9 Let me see what it is.

10 MR. RACINE: Let's just mark it as an exhibit.

11 THE WITNESS: This should be in your 600
12 pages.

13 MR. OGBURN: Okay. Do you mind if we copy it
14 and mark it as an exhibit?

15 THE WITNESS: No, not at all.

16 MS. DRISCOLL: I'll find out.

17 MR. RACINE: Is that Exhibit 24?

18 THE REPORTER: That would be 24.

19 (Recess held.)

20 (Whereupon, Exhibit 24 was marked for
21 identification and is attached to the
22 transcript.)

23 THE WITNESS: Do you want me to go on now?

24 Q I'm sorry. You started to read from this document.

25 A Okay. I apologize. Yeah. With real estate, as



1 I'm sure all of you know, you have meetings about
2 your properties. You have meetings about the
3 issues.

4 One of the things I'm asking you for, of
5 course, is the copies of contracts pro forma. The
6 reason I was contacted after I moved in by Michael
7 Kelly and by other realtors with Allen Tate is
8 because this property had been discussed in sales
9 meetings and the issues and the difficulty of
10 selling this property because of all the issues.

11 I do not believe that they -- it would have
12 been -- it would not have been prudent for them, as
13 a listing agent, to not have fully discussed with
14 the seller each reason for the yes answers. And so
15 yes, I believe they knew.

16 So are we putting this as an exhibit?

17 MR. OGBURN: Yes.

18 MS. DRISCOLL: Exhibit 24.

19 THE WITNESS: What number is it?

20 MS. DRISCOLL: 24.

21 THE WITNESS: I will probably have to go
22 through these exhibits with you because I'm
23 all wrong.

24 Q So I'm looking at the fourth cause of action in
25 your complaint, and I'm more than happy to direct



1 you to it, but you said that Mr. Ouzts represented
2 to you that the loan from Summit had to include a
3 CL-100 and a home inspection report.

4 A Yes.

5 Q Did you have conversations with Mr. Ouzts about
6 that?

7 A I must have.

8 Q Would you have had conversations with that prior to
9 buying the house?

10 A I don't recall.

11 My answer probably best I would recollect
12 would be yes. If I couldn't get through to
13 Jonathan because all of them -- he was the listing
14 agent. Then you've got the -- yeah. You know, she
15 was the, Delaney was the listing agent. He became
16 the selling agent. And these were requirements of
17 the loan commitment.

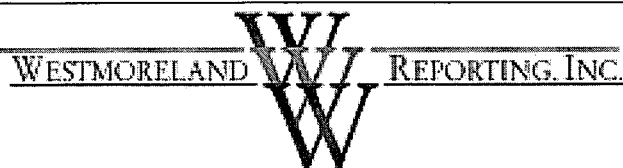
18 MS. DRISCOLL: Objection to form.

19 Q It seems a little weird to me that the selling
20 agent be talking to you about your loan to buy.
21 Were you having conversations with him about the
22 financing you were getting from Summit?

23 A I don't recall.

24 Q How many conversations did you have with him?

25 A I have no recollection. I don't know.



1 Q Did you have any --

2 A They all worked for Allen Tate.

3 Q Do you recall any conversations with Mr. Ouzts
4 prior to buying the house talking about the
5 requirements of your loan?

6 A Best I can recall, I did. I don't know what the
7 specific comments would have been.

8 Q You might have had a conversation with him about
9 the loan, but you do not remember what y'all talked
10 about?

11 A If it was about the loan, it would have most likely
12 have been about the requirements that we had to get
13 before we could close.

14 Q And this is a conversation with the agent
15 representing the seller of the house?

16 A As an agent for Allen Tate.

17 Q I understand that.

18 A Yes.

19 Q But he is representing the seller of the house in
20 this transaction.

21 A Right.

22 Q And he's talking to you about what you are going to
23 have to do to get a loan from your lender?

24 A I don't recall the specifics.

25 Q So you don't recall anything about this



1 conversation? You're speculating.

2 A I do not recollect what the conversation would have
3 been.

4 Q Okay. Did Mr. Ouzts ever send you an email?

5 A Yes.

6 Q Let me ask -- let me finish my question.

7 A Okay.

8 Q Did Mr. Ouzts ever send you an email that outlined
9 the requirements you'd have to satisfy in order to
10 get a loan on the property?

11 A I don't recall.

12 Q So you don't remember ever getting one?

13 A I said I don't recall. I'm old.

14 I take that back. I do recall getting emails
15 from him, but I don't remember when in the process
16 it was.

17 Q We talked about you got emails from him that had
18 documents that you needed to sign?

19 A Yes.

20 Q But you don't remember getting an email from him
21 discussing the requirements you had to satisfy in
22 order to get a loan from your lender?

23 A I don't recall.

24 Q Okay. I'm going to look at Paragraph 112 of your
25 complaint. This is looking back at Exhibit 8,



1 Paragraph 112 on Page 25.

2 A Okay.

3 Q Do you see that?

4 A Which one? Which item?

5 Q Paragraph 112.

6 A Okay.

7 Q Start with A.

8 A Ah-huh.

9 Q Your allegation is that Mr. Garvey made these
10 representations to you. One is that he had
11 obtained a CL-100.

12 A Yes.

13 Q When did he make that representation?

14 A After the loan had been approved and that he would
15 get the reports.

16 Q Okay. When did he make the representation to you
17 that he had engaged Evans?

18 A That was through the entire process.

19 Q And I'm looking at B, I'm sorry.

20 Okay. When did he represent to you that the
21 CL-100 and the home inspection report showed the
22 property was in good condition?

23 A When he said nothing came back on them.

24 Q Okay. When was that? Before you bought the house?

25 A Yes.



1 Q How long before you bought the house?

2 A Well, the inspections and smart report and
3 inspections, they got ordered after the loan was
4 approved and Gillen got it. So that would have
5 been probably -- we postponed closing several
6 times.

7 I think the first closing was going to be
8 scheduled for the end of -- probably the end of
9 March or the first of April where we had to
10 postpone it because it was so close to the tax
11 time. They made me get my tax return done before
12 they would close the loan.

13 Q So do you believe he made those representations
14 before the end of March?

15 A That he was going to obtain them?

16 Q No. That they were -- that the property was in
17 good condition?

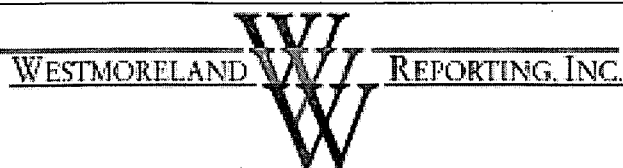
18 A You're talking about Evans?

19 Q No. 112C?

20 A Okay.

21 Q You say Garvey made the following representation:
22 That both the CL-100 and the home inspection report
23 showed the property was in good condition.

24 A I don't recollect exactly when he said that. It
25 would have been whenever they got ordered, which



1 would not have been until the loan was getting
2 ready to close. Those aren't usually ordered until
3 that point.

4 Q You don't usually order them until you got the
5 financing?

6 A Before you know it's going to close. You don't
7 want to spend the money to do that. At least I
8 thought so.

9 Q Did you ever ask for copies of the report?

10 A Absolutely.

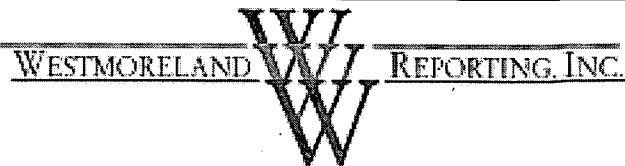
11 Q Did you ask for copies of the report prior to
12 closing?

13 A Yes.

14 Q Why did you close if you had not seen copies of the
15 report?

16 A Because he said that -- Jonathan continued to say
17 that it had to be clear or it would not have
18 closed, that nothing -- pretty much the exact quote
19 from him was it had to be -- if it was within
20 certain parameters, it did not have to show as a
21 defect.

22 And I remember telling him -- I think there's
23 even one email that says this, that says well, a
24 lot's changed, then, since I remember being in real
25 estate.



1 And there's an email that you have, as well,
2 that's from Summit Funding and also one from
3 Colleen Cohens. But I think that was after the
4 fact, which she said a Fannie Mae loan, which is
5 considered --

6 Q Well, you kind of wandered from my original
7 question.

8 A Okay. Tell me your question.

9 Q Okay. I'm just going to move on.

10 In your experience, when you were closing
11 loans for Mr. Arnold, did the purchasers have
12 copies of the reports at closing?

13 A Most of the time. Especially if -- if there was a
14 defect, they, yeah, absolutely had to sign off on
15 it.

16 Q Did you ever speak to anyone at Allen Tate other
17 than Mr. Garvey, Mr. Ouzts prior to your buying the
18 property?

19 A Connie Delaney.

20 Q Anybody else other than those three?

21 A I don't recall.

22 Q I'll ask you some questions about what you want out
23 of this lawsuit.

24 Now, we talked about your buying the property
25 as-is. Did you believe that in buying the property



1 as-is, there would be things you would need to fix?
2 A The property as-is was contingent upon the lender's
3 approval.

4 Let me finish.

5 A Fannie Mae loan is a very specific loan, and
6 it's the only one I qualified for. It's very
7 specific and is considered a move-in process, which
8 means the person -- you've got disclosures, I'm
9 sure, about my financials. I had very limited
10 income. I had very limited money to fix anything.

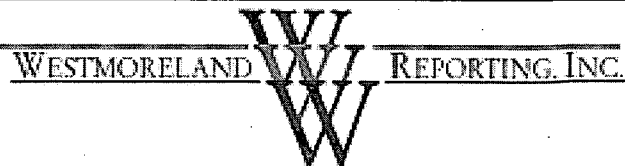
11 So it has to be where it's move-in ready, for
12 the person purchasing this under a Fannie Mae
13 government insured loan cannot -- does not have the
14 ability to take on financial risk of fixing a
15 house.

16 I believed all those conditions had to be met.
17 In the closing package, which I received a copy of
18 the pages, it stated specifically to the loan
19 processor for Summit Funding: Do not process this
20 loan without the termite inspection.

21 MS. DRISCOLL: I'm going to object to this
22 line of testimony.

23 Q And you're getting off my question. Let me ask you
24 the question again.

25 A You're asking me about the house, in my mind, okay,



1 was you said what was it? As-is?

2 Q My question was: You're buying an as-is house.
3 Did you think that there were things that you were
4 ultimately going to have to pay to fix?

5 A No.

6 Q No. You thought when you bought -- when you walked
7 in there, that you would not have to pay to fix
8 anything?

9 A Correct.

10 And I won't go into why because you already
11 know why.

12 I was walking into that house, I already had
13 contractors ready to come over to fix the girls'
14 bedrooms, to paint the house, to do the -- you
15 know, to do the upgrades that I wanted to do to
16 make the house ours.

17 Q Ah-huh.

18 A Not fix things.

19 Q So you believed any money that had to be paid would
20 be to improve the house?

21 A Exactly.

22 Q Have you performed any work, any repair work to
23 date, that you believe the Defendants in this
24 lawsuit should pay for?

25 A Yes.



1 Q Okay. What is that?

2 A Everything that should have been reported that I
3 found in there.

4 Q Let me turn back to the interrogatories and the
5 list of damages. A through DD, I think.

6 A Which number?

7 MR. OGBURN: It's Interrogatory Number 4 on
8 the -- y'all see which ones?

9 MR. RACINE: Page 12 of Exhibit 13.

10 Q Exhibit 13. Sorry. It's at the bottom.

11 A I think I have them out of order. I don't have a
12 13.

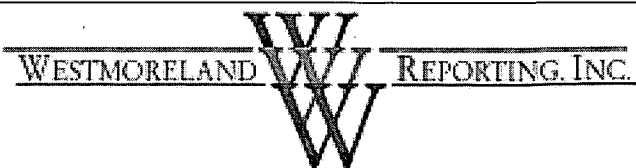
13 I have a short memory. Is there a Table 1?
14 I'm sorry.

15 Q There's Exhibit 13. Page 12. Any of these items
16 in A through DD, have any of them been fixed
17 already?

18 A Can I just kind of go over them and talk out loud?

19 Q Yes, that's fine.

20 A The roof has been partially replaced. We had a
21 little hail storm last year, and State Farm was
22 shocked that the condition it was in because she
23 says they didn't -- but they did -- said that
24 partially replaced. They would not replace all of
25 it because they said they had replaced it earlier.



1 So the holes were there.

2 Replaced the doors and all the rotten seals,
3 yes.

4 Rotten deck, yes.

5 Q So you hired somebody to fix that? Number B,
6 replacement of the doors and rotten seals?

7 A Yes. I've gotten partial of them replaced.

8 Q Okay. Do you know who fixed that?

9 A Yeah. Taylor, the doors.

10 Well, the rotten seals had not been totally
11 replaced. They're still -- the wood underneath
12 that has not been replaced. The window started
13 falling out. So that was a Taylor Home
14 Improvements. That's how I met Mr. Rigland.

15 Q Okay. So have you given us the invoice showing
16 what you paid?

17 A As much as I can. I'm having to go back and get
18 all that because it was done in parts where I paid
19 him the labor, where I paid -- I ordered the doors
20 and windows myself like from Home Depot and tried
21 to get good prices on them.

22 So it was a process. Everything wasn't done
23 at one time. Like the back door had to get -- when
24 it fell in.

25 Q Okay. How about the deck? Have you paid to fix



1 that?

2 A It's partially fixed. I did -- it doesn't have the
3 sealer on it to protect the wood, but it's been
4 done.

5 Q And who fixed that?

6 A The Taylor, same people.

7 Q Okay. Keep going. What other things have been
8 fixed?

9 A Adding the rails to the deck.

10 Q Who did that?

11 A Same gentleman. I have forgotten, let's see. Same
12 person did some of that work.

13 Q Which work are you talking about?

14 A E.

15 Q Okay.

16 A And then also the gentleman who fixed the leak, he
17 worked for Eddie Simmons, who lives across the
18 street. They came over and helped with some of
19 this.

20 So sometimes it was they came over and also
21 did that. He has several different companies.

22 Q Are you still talking about E?

23 A Yes.

24 And, well, also the windows and things like
25 that, too.



1 The roof was replaced by -- I forgot the name
2 of the company. You got it in your notes.

3 Q You said State Farm paid for that?

4 A They paid for part of it.

5 Q Okay. Did you pay for part of it?

6 A Yes.

7 Q Do you know who did the roof?

8 A It's on my list of witnesses.

9 Q Well, you can look on Exhibit 1, then. Your list
10 of witnesses is -- I'm sorry. Not Exhibit 1.

11 A I sent you all the invoices on those in the bids
12 and everything.

13 Q I'm sorry. It's Exhibit 13. Question 1. Because
14 you got all your witnesses.

15 A I remember going through it. Oh. Mario Vargas.

16 Q So he did the roof?

17 A Ah-huh.

18 Q Okay. We're down now I think to F? Page 12?

19 A Replace downstairs.

20 The first unit that Jonathan called Evans and
21 said, "do something cheap," that was -- where was
22 my list of witnesses again? That's one of the
23 people you subpoenaed. Robert. Can't find him.
24 Talked to Robert. I believe that was.

25 Q But that has been fixed?



1 A That one has.

2 Q Have you given us the invoice for that?

3 A It's in there. I did.

4 Q How about hot water heater?

5 A Hot water heater was the Rock Hill -- York County
6 Gas Company.

7 Q So that has been fixed?

8 A Yeah.

9 That had to be fixed because they said if I
10 didn't fix it when they turned on the gas that I'd
11 have 40 gallons of water in my house.

12 Q And have you given us --

13 A Yes.

14 Q -- the invoice showing us where that's been paid?

15 A You should have that.

16 And also I had to put a down payment and I
17 made payments on it. And it's paid off.

18 Q H, garbage disposal. Has that been fixed?

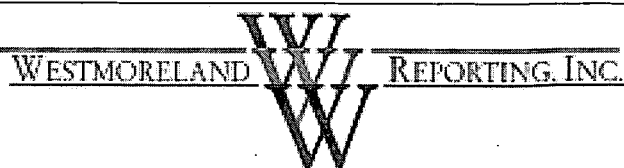
19 A Yes.

20 That was the same gentleman. That was Bill
21 Frederick. He's the one that had the Taylor
22 Company.

23 Q Okay. So that's Taylor?

24 A Ah-huh.

25 Q Okay. Upstairs, I, repair water damage in upstairs



1 bedrooms. Has that been fixed?

2 A Yes, Mr. Frederick did some of that.

3 And I don't have the name of the school
4 teacher that came over and painted and sanded some
5 things for us. So I'll have to get that for you.

6 Q And that's Bill Frederick did some of it?

7 A Yes.

8 Q How about the oven?

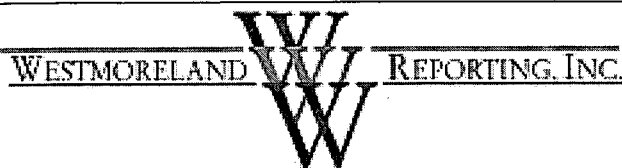
9 A The oven has not been fixed. I did use Choice Home
10 Warranty with that. I had them come out. And they
11 said that the heating unit, it was so old that they
12 gave me \$50 to replace one part to maybe make it
13 heat more. That was the oven.

14 The range has not been fixed. That's the one
15 that was rigged with putting fake burners on the
16 right-hand side. And it's not working at all now.

17 Q How about electrical work? Medell?

18 A You've got the bids on that. We had some work
19 done.

20 That's going to be a massive undertaking.
21 It's probably going to have to be, according to --
22 you've got a gentleman's name here. I know he's on
23 list of witnesses. Ryan? Do you see his name on
24 here? I know it's here. Brian Grissom. It's on
25 Page 5.



1 Q Brian Grissom did the electrical?

2 A He will do the electrical. I had just different
3 people come out through Choice Home Warranty.

4 Most of the time Choice Home Warranty would
5 not fix it because it would -- where someone had
6 come in and rewired things.

7 Q Is that electrical work been done, or needs to be
8 done?

9 A No. It's only a few things have been done. It
10 needs to be done.

11 Q Rotten wood on deck, M. Has that been fixed?

12 A That's been fixed.

13 Q Is that Taylor?

14 A Yes. He did some of that. And then also a
15 gentleman. Tom Adcock on Page 7.

16 Because Mr. Taylor or Bill Frederick got
17 another job one time and he had to go do, so Tom
18 Adcock. He was recommended by Ace Hardware. He
19 came out and did some of it.

20 Q How about N, the toilets?

21 A Yes. They've been fixed.

22 I don't remember who fixed those. I think
23 actually Choice Home Warranty came out. I had to
24 pay them \$45, and I think they fixed one of them,
25 which saved me about \$100.



1 I don't remember who fixed the other one.

2 Q O, rotten wood. Has that been fixed?

3 A What is that?

4 Q O. I'm on Page 13.

5 A Partially.

6 Q Who fixed it?

7 A That guy with the weird name did some of it, and
8 Mr. Frederick did some of it. That's where we
9 found the termites, when we pulled that out.

10 Q I need something more descriptive than "the guy
11 with the weird name."

12 A Mario Vargas?

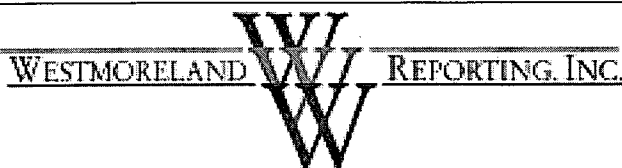
13 And then Mr. Frederick, when he pulled up the
14 floors at the front door, that's when that was, I
15 think the one you're referring to, was replaced.

16 Q P. The other area is termite infestation. Has
17 that been fixed?

18 A According to the chart what I had done, I noticed
19 when I was looking the other day, he mentioned that
20 there's still termite -- active termites that's
21 going to need to be handled.

22 As far as the pulling up of the wood where the
23 carpet was and the black mold and all that, part of
24 it's been fixed, part of it has not.

25 Q Who fixed that?



1 A Let's see. Who did some of that?

2 I can't remember if Mr. Wrigley did some of
3 that when he came out with the termite report.

4 Mr. Frederick did some of it.

5 And Eddie Simmons had some of his people come
6 over and help me do that.

7 Q T is gas logs. Have they been fixed?

8 A I got the gas company to replace those.

9 Q Did you have to pay to --

10 A I did. Those were payments.

11 Q Okay. Siding? U?

12 A You skipped some of that. Did you mean to?

13 Q Oh, I thought when you talked about the carpet --

14 A Yeah, the wood strips and the carpet.

15 Q -- I thought that covered Q, R and S.

16 A Yeah, I had different people pull up some of the
17 stuff and bleach out the black mold.

18 Q Is it other than Frederick and Simmons?

19 A Yeah. I have to get you the name of the others.

20 Mr. -- uhm -- Brian had me call a couple people.

21 Mr. Adcock dealt with some things.

22 I have to go back and identify who did what.

23 Q Okay. Anybody else with the carpeting?

24 A I don't think so because we just pulled that up.

25 Q Go to U, siding. Has that been fixed?



1 A No.

2 Q V, the wood around the large window?

3 A No.

4 That's about -- the window's actually about to
5 fall out. I have to call somebody.

6 Q W, the light fixtures?

7 A No.

8 I had purchased the light fixtures, most of
9 them. But I had not -- the wiring is not fixed.

10 Q X is ceiling fans?

11 A I've purchased the ceiling fans, but they're not
12 up.

13 Q Smoke detectors?

14 A I bought some battery-operated ones. That was one
15 of the first things that the inspector, when he
16 came over, Brian, said that would have kept the
17 house from getting the loan.

18 The fire department came out because we
19 thought we smelled smoke one day. And they
20 couldn't believe that -- anyway, we don't have to
21 go there.

22 Let's just go.

23 Environmental report is the biggest issue
24 still outstanding.

25 Q You sent us that.



1 Electrical outlets. Is that just part of the
2 general electrical stuff?

3 A Yes.

4 Q V, windows still shut with putty. Isn't that still
5 the same as E? Or is that different?

6 A They have been partially replaced. The windows are
7 in. But the rotten wood underneath it is still --

8 Q Is that Taylor fixed that?

9 A He fixed part of it, and then Rigland is going to
10 help with that because it's got termites. Or did
11 have termites. And we've got to fix the termites
12 --

13 Q I'm sorry. Who is going to help with that?

14 A Joe Rigland.

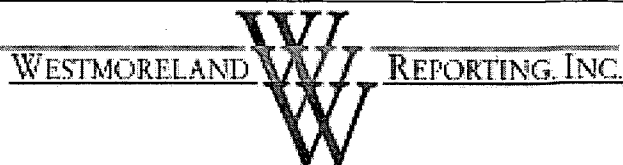
15 And then also Mr. Grissom is going to be
16 handling the water issues for me from this point on
17 because of all the permits that are going to have
18 to be needed.

19 And he's the one who yesterday went through
20 and gave me actually prices on what he thought
21 would fix this house.

22 Q So you've gotten estimates on what it's going to
23 take to fix? That was yesterday?

24 A Yeah.

25 I kind of asked him because he had come out --



1 he wouldn't do an official appraisal back in March
2 of 2016. But, yeah, he's come up with some
3 numbers.

4 And what he told me was -- and this can be for
5 the record. He said, well, what usually should
6 have happened with this house -- you're asking
7 about it in the beginning -- because of the
8 condition of the house, he said under ordinary
9 circumstances, this house would have gone into
10 foreclosure.

11 MS. DRISCOLL: I'm going to again object to
12 this line of testimony.

13 THE WITNESS: Okay. I was just saying.

14 MS. DRISCOLL: You can continue over my
15 objection. It's for the record.

16 Q She's objecting for the record. You can continue.

17 A I was going to say I did not know what he was going
18 to say. He just said as far as -- when he came out
19 to the house, he immediately said this house would
20 not have passed inspection. He is one of my
21 witnesses. And he said the house would probably
22 have gone into where it would have been sold at
23 auction. Somebody would have bought it that could
24 fix it up and sell because the cost of fixing --
25 when he first came out to the house, I've had three



1 contractors that just said you ought to tear down
2 the house and start over.

3 Q Who is that?

4 A Mr. Grissom.

5 Q Mr. Grissom's the one who came out yesterday?

6 A No, he's the one I talked to yesterday. He's the
7 one who came out in March of 2016 that one of the
8 realtors from Tate was so concerned for us because
9 they had discussed this property. And he was very
10 concerned for my family.

11 And the main thing Mr. Grissom and I had
12 talked about yesterday was the unknowns about the
13 environmental.

14 Q Okay. So Mr. Grissom preparing an estimate of the
15 cost to complete what's left?

16 A As best he could yesterday, he came up with some
17 numbers.

18 Q And then had you given us everything on -- showing
19 what you've already paid to do repairs?

20 A I'm still working on that because I've got to order
21 them. I've got to order my bank statements. They
22 haven't gotten all those yet to me as far as I can
23 deduct all of that.

24 You know, a lot of it, I borrowed money, some
25 people paid things for me. I've got to pay them



1 back. So I'm doing the best I can to get it to
2 you.

3 Like on the Choice Home Warranty, they have
4 not been cooperative on my part of having to pay
5 for some of those things.

6 Q Do you know, as you sit here, what dollar amount
7 you're seeking to recover from the Defendants?

8 A I just want the house fixed and safe.

9 As far as going back to -- and I don't know if
10 this addresses this here or if you address that
11 later, I know you disagree, Summit disagrees, the
12 loan's got to be paid off. It's got to be bought
13 back some of it. It's not a valid loan. So all of
14 that has to come into play.

15 Q Why does somebody need to buy back the loan?

16 A Because the loan is actually a government loan
17 that's owned by the U.S. Government. It did not
18 comply. It's called a conforming loan. It's where
19 they take loans, such as mine, and the United
20 States Government kind of underwrites those. They
21 put them into a package of securities. And those
22 are sold.

23 And so therefore if -- when I talked to Lake
24 View, when they purchased from Summit Servicing,
25 the package -- I have also talked to -- this is



1 recent -- I did call and talk to Steve Reynolds and
2 asked him if I was being told the truth about the
3 loan. And he said in his 20 years, he said,
4 "Karen, this has never happened." And I said, "What
5 if it did?" He said, "Then the loan's not valid."

6 Q So you believe somebody should pay back the loan
7 because the loan should never have been made?

8 MS. DRISCOLL: I'm going to lodge another
9 objection for the record.

10 THE WITNESS: I think they're going to --
11 she'll have to get that from -- according to
12 the OIG and HUD, yes.

13 MR. RACINE: Objection.

14 Q I'm asking what you believe at this point. I'm not
15 asking what a regulatory group would say. What you
16 believe.

17 A That's what I believe.

18 I don't think -- I mean, it doesn't matter to
19 me. If we can settle for the cost of getting
20 everything fixed and they can figure out -- because
21 I'm not making payments.

22 Q You're not making payments on the mortgage?

23 A Nope.

24 Q So you believe at the end of the day, the house
25 should be fixed and the mortgage should be paid?



1 A I can't answer that, the mortgage. I was assuming
2 what was told would happen.

3 Q I was asking what you were asking for in the
4 lawsuit.

5 A I'm asking for the house to get fixed in the
6 condition that would have been required or I would
7 have had to have walked away, which I would have
8 done. I want the house safe for my family.

9 Q Okay. So if the loan would have been valid --
10 MS. DRISCOLL: Objection to form.

11 Q If Summit had been able to make the loan with the
12 house in the current condition when you bought it
13 and you closed on it, then you would agree that
14 you're not entitled to anything?

15 A I'm not following, okay. If Summit had closed the
16 loan meeting the conditions of the underwriter.

17- Q Okay.

18 A Okay. Which included the sale --

19 Q No. Meeting the conditions of the underwriter.
20 And we can debate what the conditions are.

21 A Okay. Which would include everything. If those
22 conditions had been met, then would I have bought
23 the house?

24 Q Ah-huh.

25 A I don't know how to answer that because in order to



1 do that, somebody would have had to have fixed it.

2 Q If the loan met the conditions that were required
3 of the loan to be made, --

4 A Right.

5 Q -- and you were allowed to buy the house, --

6 A Right.

7 Q -- do you have a lawsuit against anybody?

8 A I don't think I'm --

9 Q Would you have bought the house?

10 A If I bought the house and there were no issues and
11 it was closed according to --

12 Q The conditions set on the loan?

13 A The CL-100, all those different things.

14 MS. DRISCOLL: Objection.

15 THE WITNESS: Yes.

16 Q But whatever the conditions are. If you bought --

17 A If I could have afforded it based on the condition
18 of the house.

19 Q Okay. If you went to closing, --

20 A Right.

21 Q -- and at closing the loan was closed according to
22 the conditions on the loan, whatever they may have
23 been?

24 A So when you're saying conditions of the loan, are
25 you referring to what the underwriter required?



1 Q Yes.

2 A So the underwriter required a CL-100.

3 MS. DRISCOLL: Objection.

4 Q There's a dispute in this lawsuit what the
5 underwriter required, okay.

6 A There won't be by the time we finish, but go ahead.

7 Q Well, then there won't be.

8 But if the loan had closed based on the
9 condition the underwriter required, would you have
10 bought the house?

11 A The only way I know how to answer that is not the
12 answer you're looking for, and that's because if
13 the conditions of the -- if I had gone to closing
14 and the conditions of the loan had been met, which
15 -- and therefore it would have satisfied all of
16 these things -- were accurate, then I would have
17 bought the house.

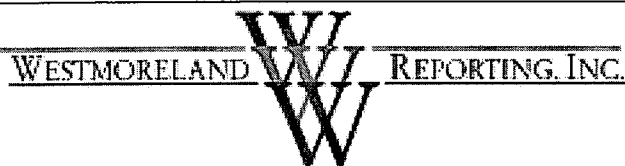
18 But I would not have bought the house if the
19 conditions of the loan, which included the CL-100,
20 which you don't want to talk about.

21 Q Which you believe included the CL-100.

22 A Right.

23 Because I thought my \$10,000 would have made
24 the improvements I sought.

25 Q Are you seeking damages for any personal injury?



1 A No.

2 Q So no medical conditions, nothing like that?

3 A I don't know the condition yet concerning my
4 daughter. I mean, my granddaughter, which they
5 believe is a condition of the allergens that they
6 have found in the home. But I'm not seeking
7 anything on that. I just want it fixed so that we
8 can stay there.

9 Q Okay. So we sent you -- you allege personal injury
10 in the complaint, that you've had physical problems
11 as a result. You're not seeking any damages for
12 that?

13 A I had some asthma that came back. And once I
14 pulled up the carpet and we bleached out the black
15 mold, then that has -- I haven't had that again.

16 Q So you're not asking for any damages on that?

17 A No.

18 Q On personal injury?

19 A No.

20 Q I want to be sure because we've got to get into
21 your medical history.

22 A Right.

23 Q If you're -- so I'm not going to ask those
24 questions because you're not asking for any damages
25 on personal injuries?



1 A No.

2 Q Okay.

3 A And my homeowners policy took care of the guy who
4 stepped through the rotten wood.

5 MR. OGBURN: Let's mark this as Exhibit 25.

6 (Whereupon, Exhibit 25 was marked for
7 identification and is attached to the
8 transcript.)

9 THE WITNESS: And I am re-filing, in case you
10 want to know about, the attorney will have all
11 the documents now.

12 Q You are re-filing against Mr. Gillen?

13 A Yes, sir.

14 Q Do you recognize Exhibit 25?

15 A You handed me this. Is this Exhibit 25?

16 Q Yeah, that's Exhibit 25.

17 Let me take this one back, I'm sorry. I want
18 to make sure we keep all the originals together.

19 Do you recognize that email?

20 A Ah-huh.

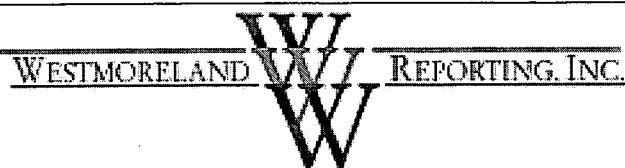
21 Q Is that an email you sent to Mr. Garvey?

22 A Ah-huh.

23 THE REPORTER: Is that yes?

24 MS. DRISCOLL: Is that yes?

25 THE REPORTER: You said ah-huh.



1 THE WITNESS: You can't hear my brain
2 rattling, I'm sorry. All right. Let me see.
3 Do you know anyone who has a --

4 Q Let me go back to the question.

5 Is this an email you sent Mr. Garvey?

6 A To the best of my recollection.

7 I was trying to read what my misspelled words
8 were. Yes, that would be correct. Probably at
9 that moment.

10 Q Second line of that email says -- does it say
11 "great house if it doesn't kill me first. Money
12 pit"?

13 A Yes, sir.

14 And I compared it to that movie.

15 THE REPORTER: I'm sorry?

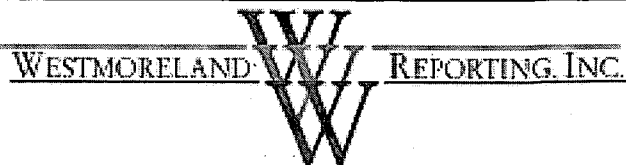
16 THE WITNESS: I said I compared it to the
17 movie, "The Money Pit."

18 MR. OGBURN: Okay. If we can go off the
19 record for a little bit.

20 I tell you what. Do you want to go ahead
21 and ask questions while I kind of sort back
22 through?

23 MS. DRISCOLL: Sure, I can.

24 MR. OGBURN: Ms. Baber, in the interest of
25 time, I'm going to go ahead and allow the



1 other attorneys to start their questions while
2 I see if I've got anything else.

3 THE WITNESS: Okay.

4 MR. OGBURN: And then I'll come back and ask
5 what I think I've got.

6 Do you mind if I go ahead and sort
7 through to make sure I have got all these in
8 order?

9 MS. DRISCOLL: I was going to do that, anyway.

10 THE WITNESS: I will have to do that if you
11 don't mind. I know mine aren't in order, and
12 I have to write my numbers on them. Might
13 want to get a copy of the final appraisal,
14 too. I'm sure you probably have it. That one
15 clearly identifies when the pictures were
16 made.

17 MS. DRISCOLL: Are we on the record or off
18 right now?

19 MR. RACINE: I think we ought to stay on the
20 record.

21 MR. OGBURN: Let's just stay on.

22 MS. DRISCOLL: I just want to confirm.

23 * * * * *

24 EXAMINATION BY MS. DRISCOLL:

25 Q For the record, I am Susan Driscoll, counsel to



1 Summit Funding in this matter.

2 Ms. Baber, I want to go over some of what you
3 went over with Mr. Ogburn just to make sure I'm
4 clear.

5 As of the date of closing, which was, I
6 believe, May 29th, 2015; is that right?

7 A Ah-huh, yes, Ma'am.

8 Q You had not paid for a home inspection at that
9 time; is that right?

10 A That's correct.

11 Q You had not paid for a termite inspection as of the
12 date of closing; is that right?

13 A Correct.

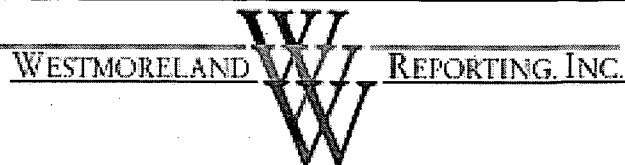
14 Q So when you signed all of the documents at closing,
15 you had paid no money towards either a home
16 inspection or a termite inspection?

17 A No.

18 It was shown on the closing statement as paid
19 out of pocket.

20 Q Ms. Baber, I'm going to ask you to answer the
21 question I have asked.

22 As of the date of closing, which was May 29th,
23 2015, the date you signed the HUD, you had not paid
24 any money towards a home inspection or a termite
25 inspection; is that correct?



1 A Yes.

2 Q You also spoke with Mr. Ogburn about a gentleman
3 named Mr. Ouzts. Do you remember that?

4 A Yes.

5 Q Mr. Ouzts is not employed by Summit Funding, is he?

6 A No.

7 Q What was the date you had the alleged conversation
8 with Steve Reynolds about this loan?

9 A Which time?

10 Q After closing.

11 A I've talked to Mr. Reynolds several times after
12 closing.

13 Q You testified earlier that you had a conversation
14 with Steve Reynolds in which he told you that this
15 loan should not have closed. Do you remember that
16 testimony?

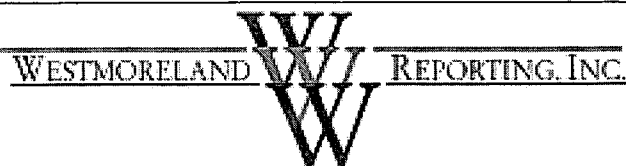
17 A He didn't say -- I may have said that wrong. I
18 asked him if a loan was closed without the CL-100
19 and the home inspections, what would happen.

20 Q Did you reference your loan specifically?

21 A Yes.

22 Q And what was his response?

23 A He said, "In the 20 years I've been doing that,
24 that could not happen." And I said, "Well, what if
25 it did?" He said, "Then someone would have to pay



1 back the loan. It's not a valid loan."

2 Q What was the date of that conversation?

3 A I don't recall.

4 Q So you recall the conversation, but you don't
5 remember when it was?

6 A I don't.

7 He was in the car, and he told me he was no
8 longer working for Summit.

9 Q Was it during springtime?

10 A I don't recall.

11 Q Summertime?

12 A I don't recall.

13 Q Wintertime?

14 A I don't recall.

15 Q What year was it?

16 A Probably 2018.

17 I did talk to Summit Funding.

18 Q Ms. Baber, please wait until I ask you a question.

19 A It was on that same subject, that's why. Because I
20 called him, and he was not working there and I
21 talked to them, the Charlotte office.

22 Q I'm going to show you a document that is four
23 pages. And at the top of it, it says
24 HUD VA Addendum To Uniform Residential Loan
25 Application.



1 THE REPORTER: Do you want me to mark that?

2 THE WITNESS: Is that an exhibit, or what is
3 this?

4 MS. DRISCOLL: If I could get it marked as the
5 next exhibit in sequence.

6 THE REPORTER: 26.

7 (Whereupon, Exhibit 26 was marked for
8 identification and is attached to the
9 transcript.)

10 Q These are the documents for your copy.

11 Ms. Baber, if you could flip through that,
12 please, and let me know if that is your --

13 A Which one? This one.

14 Q Exhibit 26.

15 Is that your signature on Page 2 of that
16 document?

17 A Yes.

18 Q Is that your signature on Page 4 of that document?

19 A Yes.

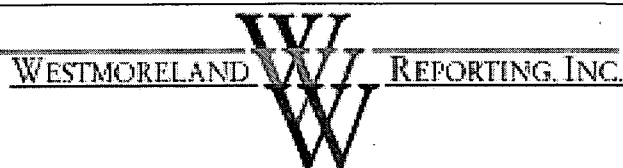
20 Q If you would look at Page 3, please.

21 A Okay.

22 Q Do you see up at the top where it says, "Direct
23 Endorsement Approval For HUD FHA Insured Mortgage?"

24 A Yes.

25 Q Do you see about halfway down the page there's an



1 X in the box marked "approved"? Do you see that?

2 A I do.

3 Q What's the date there?

4 A 4/30/2015.

5 Q Do you see the language beside "approved" that
6 says, "approved subject to the additional
7 conditions stated below, if any"?

8 A Yes.

9 Q Do you see those boxes below the words "additional
10 conditions" in that same section?

11 A Yes, yes.

12 Q Are any of those boxes checked?

13 A (Coughed.)

14 Q So what is your understanding of that?

15 A The attorney really didn't go over that.

16 The additional conditions, to my mind, was if
17 there were any other conditions which had not been
18 addressed in the CL-100, the --

19 Q Ms. Baber, I'm going to ask you my question again.
20 According to this document, it says, "approved
21 subject to the additional conditions stated below,
22 if any." There are no additional conditions checked
23 below, are there?

24 A No.

25 Q There is no mention of a CL-100 in that section, is



1 there?

2 A No.

3 Q There is no mention of a home inspection in that
4 section, is there?

5 A No.

6 Q I'm going to hand you a document titled Important
7 Notice to Home Buyers. If we could get it marked
8 as Exhibit 27.

9 (Whereupon, Exhibit 27 was marked for
10 identification and is attached to the
11 transcript.)

12 Q Do you see the highlighted language there on
13 condition of property?

14 A I do.

15 Q Do you see the second page? Is that your
16 signature?

17 A Yes.

18 Q Could you read the highlighted language, please?

19 A "The property you are buying is not
20 HUD/FHA approved and FHA/HUD does not warrant the
21 condition of the value of the property.

22 "You should inspect the property yourself by
23 carefully hiring professional inspector service to
24 inspect the property for you."

25 Q What is your understanding of that language?



1 A Um, quite honestly, that the attorney didn't have
2 me read it. He just said sign it.

3 Q But you did sign the document?

4 A I did.

5 And this also is not just a HUD/FHA loan. It
6 is a specialized type of loan. So that would not
7 be accurate.

8 Q But you signed this document?

9 A Yes.

10 Q I'm going to hand you a document entitled
11 FHA Amendatory Statement And Real Estate
12 Certification.

13 (Whereupon, Exhibit 28 was marked for
14 identification and is attached to the
15 transcript.)

16 Q Is that your signature on that first page?

17 A It is.

18 Q Is that your signature on the second page?

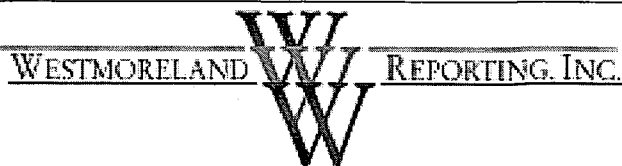
19 A It is.

20 Q Do you see the highlighted language on the first
21 page?

22 A I do.

23 Q Could you read that, please?

24 A "The purchaser should satisfy himself or herself
25 that the pricing conditions of the property are



1 acceptable."

2 Q What's your understanding of that language?

3 A That the conditions were acceptable based on a
4 CL-100.

5 You want me to answer it. Don't stop me,
6 okay?

7 Q I'm waiting on you.

8 A All right.

9 My understanding was that Jonathan was
10 bringing to closing a copy of the CL-100, the home
11 inspection, and we already had the appraisal, all
12 of which were accurate and had met the closing
13 instructions of the -- in the underwriter package.

14 Q That's not what that sentence says, is it?

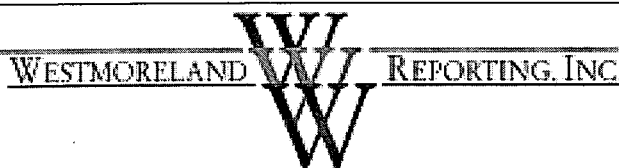
15 A The purchaser should satisfy himself that the
16 pricing conditions of the property are acceptable.

17 They were acceptable to me because of the
18 documents I believed I had which showed the
19 property was clear of defects.

20 Q But at the time you signed this, you didn't have a
21 copy of the inspection or the termite report; is
22 that right?

23 A No.

24 I was told by Summit and I was told by the
25 realtors that it was clear. And I was told that I



1 had a valid appraisal, which I did not.

2 Q If you could look at the second page of that
3 document, please. This is Exhibit 28.

4 A The one we just had?

5 Q Yes, Ma'am.

6 Do you see the language that appears up there?

7 A Ah-huh.

8 Q Could you read that, please?

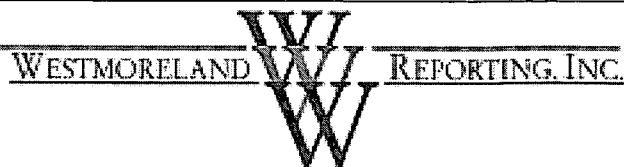
9 A "The borrower, seller and the selling real estate
10 agent or borrower's agent involved in the sales
11 transaction certify that the terms and conditions
12 of the sales contract are true and to the best of
13 their knowledge and belief and that any of the
14 other agreement entered into by any other parties
15 in connection to the real estate transaction as a
16 part of this attached -- or attached to the sales
17 agreement."

18 Q What is your understanding of that language?

19 A That they were being honest, and they were not.

20 Q So you understood -- your understanding of that
21 language is that they were not being honest?

22 A My understanding of that language is that they had
23 met all the terms and conditions of the
24 requirements for me to get this loan. And I now
25 know that they knew that they were not.



1 Q I'm going to show you a document entitled Mortgage
2 Statement On Inspection Of Subject Property. If we
3 could get that marked as Exhibit 29.

4 A I think we already did this.

5 Q Is that already an exhibit?

6 MR. RACINE: It is not.

7 (Whereupon, Exhibit 29 was marked for
8 identification and is attached to the
9 transcript.)

10 Q Is that your signature?

11 A Yes, it is.

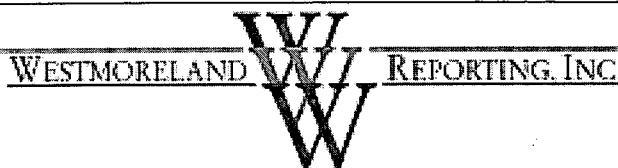
12 Q Do you see the language appearing there?

13 A Ah-huh.

14 Q Can you read that, please?

15 A "We/I have physically inspected the subject
16 property and the subject property is in acceptable
17 condition. My/our inspection included, but is not
18 limited to all appliances, roof, plumbing system,
19 heating and air conditioning system and electrical
20 system. This statement is required solely for the
21 purpose of obtaining FHA mortgage insurance and
22 shall in no way operate as a waiver of individual
23 rights between the buyer and the seller."

24 Q So you certified that you had physically inspected
25 the property; is that right?



1 A You -- in connection with this particular document
2 is that I had you, my agent, representing me, are
3 the ones who represented for me where I could
4 certify this was done.

5 I don't believe I had anyone who goes up on
6 the roof inspects their own roof. So when it says
7 you according to HUD and according to
8 documentations, "you" refers to did I inspect
9 these? Yes. Which I had them inspected by my
10 representative agent and by those who were charged
11 with making sure the loan conditions were met.

12 Q That's not what this says, though, is it? It says,
13 "I have physically inspected the subject property;"
14 is that right?

15 A Ah-huh, yes.

16 Q And you were the one that signed this; right?

17 A I did.

18 Q Thank you.

19 I'm going to show you a document entitled
20 Addendum to HUD Settlement Statement. If we could
21 get that marked as Exhibit 30, please.

22 (Whereupon, Exhibit 30 was marked for
23 identification and is attached to the
24 transcript.)

25 Q Is that your signature?



1 A Yes.

2 Q Can you read that language, please?

3 A "I have carefully reviewed the HUD-1 Settlement
4 Statement and to the best of my knowledge and
5 belief, it is a true and accurate statement of all
6 receipts and disbursements made on my account by me
7 in this transaction. I further certify that I have
8 received a copy of the HUD-1 Settlement Statement."

9 Q What do you understand that to mean?

10 A The settlement statement, which we have and we are
11 missing a page, and all documents attached to that
12 HUD-1 Settlement Statement, which were the
13 addendums stating that all the documents that had
14 to be required were done; and so, therefore, I
15 believe that to be accurate.

16 Also, at the bottom when Mr. Gillen signed, he
17 said it was true and accurate, at which time he
18 knew it was not.

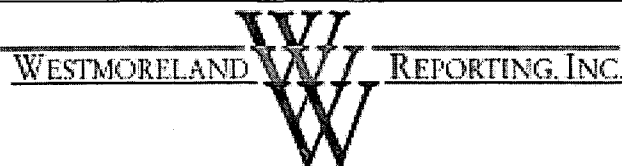
19 Q But is it your understanding when you signed this,
20 it says you had carefully reviewed the HUD-1
21 settlement statement; is that right?

22 A Yes.

23 Q And you had carefully reviewed it?

24 A Yes.

25 Q And at the time you reviewed the HUD statement, you



1 thought it was a true and accurate statement of all
2 receipts and disbursements made?

3 A Yes.

4 And it did address the papers that you're
5 missing.

6 Q Again, all I'm asking you is about this statement.

7 A You asked about this statement.

8 Q And at the time you signed this statement, --

9 A The HUD settlement.

10 But I'm saying --

11 Q Ms. Baber, please let me finish my question.

12 A Okay.

13 Q The HUD settlement statement that you reviewed, but
14 you believed it was true and correct; is that
15 right?

16 A I would need -- in order to make that statement, I
17 would have to see the documents that you're
18 referring to to make sure all documents are
19 included in the HUD Settlement Statement.

20 Q If all documents are included in the HUD Settlement
21 Statement, do you agree that you signed this
22 acknowledging that it was correct?

23 A Yes.

24 And I had not seen that statement today. Yes.

25 Q Ms. Baber, please answer the question.



1 A Yes. Yes.

2 Q Thank you.

3 I'm going to show you another document
4 entitled Addendum To HUD Settlement Statement. If
5 you could review that, please, and we could get
6 that marked as 31.

7 (Whereupon, Exhibit 31 was marked for
8 identification and is attached to the
9 transcript.)

10 THE WITNESS: The addendum is --

11 THE REPORTER: Hold on. Hold on. Sorry.

12 THE WITNESS: The addendum is --

13 MS. DRISCOLL: Ms. Baber, let her mark the
14 exhibit. Please.

15 THE WITNESS: Oh, I'm sorry.

16 Q Do you recognize that document?

17 A To the best of my recollection, it appears to be
18 one that was in the settlement statement.

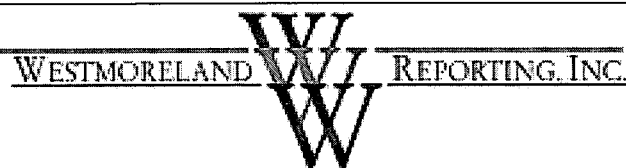
19 Q Is that your signature?

20 A Yes, it is.

21 Q You don't dispute signing this?

22 A No.

23 Q I'm going to give you a document entitled, Summary:
24 Re Michael Gillen. If we could get that marked as
25 32, please.



1 (Whereupon, Exhibit 32 was marked for
2 identification and is attached to the
3 transcript.)

4 Q Do you recognize that document?

5 A Yes.

6 Q Is that a document you drafted?

7 A To do the best of my recollection, it probably is.
8 I drafted so many.

9 Q Is that your signature?

10 A Yes.

11 Q Do you see the highlighted language on that second
12 page?

13 A Yes.

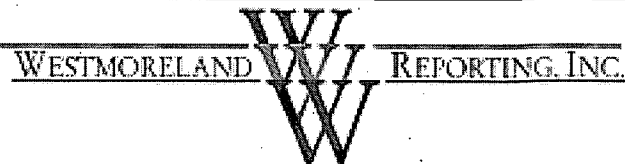
14 Q Could you read that, please?

15 A "Processor, FHA --

16 THE REPORTER: I'm sorry. He coughed and I
17 missed what you said.

18 THE WITNESS: "Processor FHA termite clearance
19 may be required if the HUD-1 indicates payment
20 for a termite report of buyer's or seller
21 side, or as POC then loan manager must obtain
22 termite report with all Section 1 items
23 cleared in addition to all Section 2 items
24 that can lead to Section 1."

25 Q When you wrote that, it was your understanding that



1 if the HUD indicated payment for a termite report,
2 the termite report had to be obtained; is that
3 right?

4 A Yes, and it did.

5 Q I'm going to hand you a document entitled, Note.
6 If we could get that marked as Exhibit 33, please.

7 (Whereupon, Exhibit 33 was marked for
8 identification and is attached to the
9 transcript.)

10 Q Do you recognize this document?

11 A To the best of my recollection, I'm sure it would
12 be accurate.

13 Q Is that your signature on the second page?

14 A Yes.

15 Q This is a promissory note between Summit Funder as
16 the lender -- Summit Funding as the lender and you
17 as the borrower; is that right?

18 A Yes.

19 Q In the amount of \$142,023; is that right?

20 A Yes.

21 Q This indicates that Summit funded the loan to you;
22 is that right?

23 A Yes.

24 Q You received \$142,023 from Summit Funding; is that
25 right?



1 A I didn't.

2 Q Let me rephrase that.

3 You borrowed \$142,023 from Summit Funding?

4 A Yes.

5 Q That money was used to purchase the house that is
6 the subject of this action; is that right?

7 A Yes.

8 Q If you could take a second, read through here and
9 point out to me any language in this note that
10 requires Summit Funding to obtain either a home
11 inspection or a termite inspection on your behalf.

12 A It would not be in the notes. In your other
13 qualified documents.

14 Q But there's nothing in this note that is marked as
15 33?

16 A There wouldn't be, based on my experience.

17 Q Ms. Baber, I'm asking you specifically, is there
18 language in this note requiring either of those
19 inspections?

20 A No.

21 Q Thank you.

22 I'm going to hand you a document entitled,
23 Mortgage. If you would take a second and look at
24 that, please.

25 MR. RACINE: 34?



1 MS. DRISCOLL: Yes, if we could get that
2 marked as 34, please?

3 (Whereupon, Exhibit 34 was marked for
4 identification and is attached to the
5 transcript.)

6 THE WITNESS: Yes.

7 Q Do you recognize that document?

8 A I do.

9 Q That is the mortgage between you and Summit
10 Funding; is that correct?

11 A Yes.

12 Q Granting Summit Funding a lien against the property
13 that is the subject of this action; is that
14 correct?

15 A Yes.

16 Q If you would, please take a moment, look through
17 there and let me know if there is any requirement
18 on the part of Summit Funding contained in this
19 document that it is to obtain either a termite
20 inspection or a home inspection on your behalf.

21 A No. That's not required in the mortgage.

22 Q Thank you.

23 I'm going to show you Exhibit 8, which is a
24 copy of the complaint in this action, and ask you a
25 few questions about the tenth cause of action.



1 Am I correct that the tenth cause of action is
2 against Summit Funding?

3 A Yes.

4 Q And that tenth cause of action, am I correct, is
5 for breach of contract and declaratory relief?

6 A It appears to be that's what I put that down. I
7 did this very quickly at the last minute.

8 Q Your claim is that there was a breach of contract
9 by Summit; is that right?

10 A Yes.

11 Q What contract did Summit breach?

12 A Summit Funding agreed to make me a loan based on
13 everybody -- on both sides meeting the conditions
14 of the requirements. They failed to do so.

15 Q What is the specific agreement that you believe
16 Summit Funding breached?

17 A The type of loan which they qualified me for had
18 certain requirements to protect me and to protect
19 them. These were not met and, therefore, the
20 contract was not made.

21 Q So you don't think there was a contract?

22 A I don't now.

23 Q What did Summit breach if there wasn't a contract?

24 A Because if you will go back to your documents and
25 everything they had to sign, this was a Fannie Mae



1 loan that required these documents.

2 Q Ms. Baber, I'm asking you: Is there an agreement
3 between you and Summit?

4 A Yes.

5 Q That was signed by both parties?

6 A Yes.

7 Q What is that agreement?

8 A That agreement is part of the closing package.

9 Q Please identify that document. By name.

10 A The closing documents everybody had to sign. I
11 don't have -- you got them. The 230 pages.

12 Q You would allege the documents that Summit was not
13 a party to are the agreement that they breached?

14 A They were Summit's loan closing documents.

15 Q Which ones were breached?

16 A The one which said that the loan processor could
17 not fund it.

18 There are pages in there which says the type
19 of loan it was and that this is required.

20 Q Have you produced copies of those documents?

21 A Yes, Ma'am, I have.

22 Q Those would be in the documents that you submitted
23 to us?

24 A Yes, Ma'am.

25 Q In response to Mr. Ogburn's discovery?



1 A Yes.

2 Q So if there is an agreement, it's contained in
3 there?

4 A If you go through all the loan closing packages,
5 yes, Ma'am, it is. In many places.

6 And also confirmed numerous times by Summit
7 Funding after the fact. Summit Funding --

8 Q In emails?

9 A Ah-huh.

10 Q Please answer with a yes or no.

11 A Yes.

12 Q Summit Funding confirmed that to you by email?

13 A Yes. You've got copies of them.

14 Q If you could look on Exhibit 8 at Page 11,
15 Paragraph 45. That's Exhibit 8 right here.

16 A On what page?

17 Q Page 11, Paragraph 45..

18 A 45?

19 Q Page 11, Paragraph 45.

20 A Page 11. Okay.

21 Q Do you see that language in Paragraph 45?

22 A Yes.

23 Q Could you read that, please?

24 A "On May 27 Mattison wrote hi, Karen, left you voice
25 mail --



1 Q I'm sorry. Please read Paragraph 45.

2 A "On May 19th, 2015, Reynolds wrote to Baber, I'll
3 call you in the morning to go over everything. I'm
4 trying to get you wrapped up by this week to close
5 next. I left Jonathan a message about the termite
6 report and inspection."

7 Q So, according to that paragraph, there was an email
8 from Steve Reynolds to you on May 19th; is that
9 right?

10 A Yes.

11 Q I'm going to show you a copy of an email, if I
12 could get that marked as the next exhibit, which I
13 think is 35.

14 (Whereupon, Exhibit 35 was marked for
15 identification and is attached to the
16 transcript.)

17 A There should be another email with this.

18 Q Well, I'm going to ask you about this email.

19 A Okay.

20 Q What's the date of that email from Steve Reynolds?

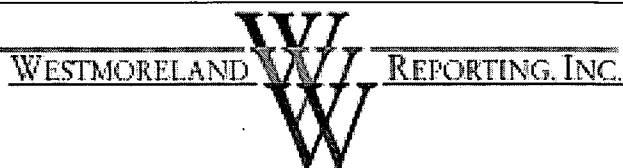
21 A May 19th.

22 Q Is it 2015?

23 A Yes.

24 Q What does that email say?

25 A "I will call you in the morning to go over



1 everything. I'm having to get you wrapped up this
2 week to close next. Have a great night."

3 Q Where is the language "I have left Jonathan a
4 message about the termite report and inspection"?

5 A It would be on a different email. I probably
6 combined the two.

7 Q Well, according to this, that email was on
8 May 19th. And I'm showing you a May 19th email.
9 This is the only May 19th email that there is.

10 A Okay. Well, then there would be another one where
11 I, for some reason, printed out and I would have
12 added the two side by side.

13 Q So you would have added language to this email?

14 A I would have taken the other email and put them
15 together.

16 Q So there's not a May 19th email where Steve
17 Reynolds says he left Jonathan Garvey a message
18 about the termite report and inspection?

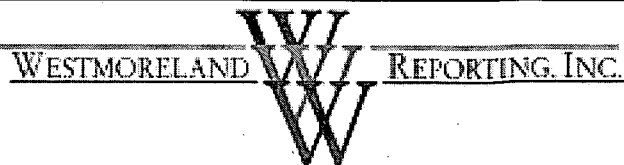
19 A No. There would be.

20 Q Where is it?

21 A I would have to go look for it. In fact, there's
22 several.

23 Q I'm just specifically asking about this one.

24 A Yeah, like I said, when I had these and I combined
25 everything, like the one at the bottom, that one



1 actually goes over to another page. Some of that's
2 missing. See on the bottom? "Please sign
3 and return. I am trying to clear all the conditions
4 of your file."

5 Q And then up at the top on the second page it says
6 "thanks"?

7 A Yeah.

8 So a lot of those, when I was doing the
9 complaints and everything, I combined everything
10 together simply just for expediency.

11 Q But this email that I'm looking at is Baber Exhibit
12 35 doesn't have the language about a termite report
13 and inspection.

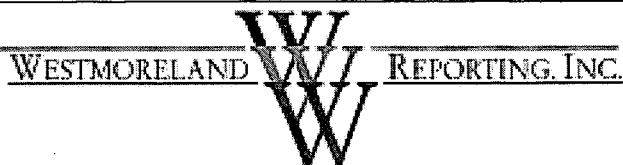
14 A Okay. Well, there are plenty of emails I can
15 provide for you.

16 Q I'm just asking: This email that I have in my
17 hands as Exhibit 35 does not have that language on
18 it?

19 A No, it does not.

20 To the best of my recollection, it would have
21 been when we worked with the same date. And I
22 believe on the interrogatories and stuff you're
23 going to be getting, it will have all that
24 together. You should have those next week.

25 Q You don't dispute that Summit funded this loan, do



1 you?

2 A No.

3 Q And provided the money to you to purchase the
4 house?

5 A Yes.

6 MS. DRISCOLL: I don't think I have anything
7 further. I just want to make sure I got that
8 marked as an exhibit. I did, good.

9 I don't have anything further, Ms. Baber.
10 Thank you.

11 MR. OGBURN: Do you mind if we take a break?

12 MR. RACINE: Yeah, that's fine.

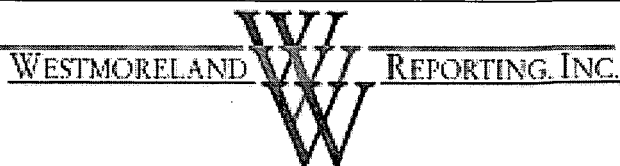
13 (Recess held.)

14 * * * * *

15 EXAMINATION BY MR. RACINE:

16 Q Ms. Baber, my name is Russ Racine. I'm the
17 attorney representing Brian Blue and Appraisal
18 Innovations. I'm going to ask you some questions,
19 and then these other attorneys may need to do some
20 followup.

21 One thing I'm going to ask you to do for me is
22 try not to talk over me. I sometimes am
23 long-winded. So if I'm asking you a long question,
24 wait for me to finish before you answer. And I'll
25 try to wait for you to finish before I ask my



1 question.

2 A Okay. I'm bad about it. I apologize.

3 Q Okay. That's fine.

4 I want to go back to something Ms. Driscoll
5 asked you about. If you could look at Exhibit 8
6 again. This is the complaint you filed.
7 Specifically, again, on Page 11, Paragraph 45?

8 A Okay.

9 Q Now, that paragraph puts a quote down there
10 attributed to what a Mr. Reynolds says; is that
11 correct?

12 A Ah-huh..

13 Q And we looked at an email, Exhibit 35, that that
14 paragraph in the complaint references; correct?

15 A Right.

16 Q And the language you represent in Paragraph 45 is
17 different from the language on Exhibit 35; isn't
18 it?

19 A I'd have to go back and look at that. I probably
20 combined the emails putting this together.

21 Q Okay. Well, you would agree with me that what you
22 allege in Paragraph 45 of the complaint is false;
23 correct?

24 A No.

25 Q Okay. Will you look at Paragraph 45?



1 A Okay.

2 Q And I'll read you -- you have, "On May 19th, 2015,
3 Reynolds wrote to Baber" and you have a quotation
4 mark.

5 A Okay.

6 Q And you say, "I will call you in the morning to go
7 over everything. I am trying to get you wrapped by
8 this week to close next. I have left Jonathan
9 (Garvey) a message about the termite report and
10 inspection." End quote?

11 A Okay.

12 Q All right. And if you look at Exhibit 35, which is
13 the May 19th email.

14 A Right.

15 Q It says, "Karen, I will call you in the morning to
16 go over everything. I am trying to get you wrapped
17 up this week to close next. Have a great night."

18 A Okay.

19 Q Do you see that?

20 A Yes.

21 Q That's different from what you allege in Paragraph
22 45 in your complaint; isn't it?

23 A Yes.

24 Q So would you agree that Paragraph 45 is a lie?

25 A I can't totally say that because I got a lot of



1 emails from him. And I will sometimes put things
2 together. I could have gotten another email from
3 him later that day because that is something like
4 he said because I was really stressing.

5 I would not have put Garvey in parentheses,
6 for one thing. I don't even have that little
7 whatever he's got there on my computer, I don't
8 think. So that's where I would have combined some.

9 So was it a lie? I put it all together in one
10 email? It's not probably an accurate
11 representation of a single email. It's a
12 representation, I would imagine, of two emails.

13 Q That's not what it says, though, does it? It
14 doesn't say Paragraph 45, this is a representation
15 of a compiled email?

16 A No, it does not.

17 Q In fact, you use quotation marks; don't you?

18 A Right.

19 Q And quotation marks indicate exact language said by
20 somebody; don't they?

21 A Yes.

22 Q And this language that you put in quotation is not
23 the exact language said by Mr. Reynolds; is it?

24 A Not in a single email. It could have been.

25 Q So it's an inaccurate quote; isn't it?



1 A I don't necessarily agree with that. It could have
2 been two. So I don't know.

3 Q Will you flip to the last page of this complaint?

4 A Okay.

5 Q And at the very last page, it says, "State of South
6 Carolina, County of York, verification." Do you see
7 where it says that?

8 A The last page?

9 Q The very last page.

10 A Okay.

11 Q All right. And it says, "Karen K. Baber, being
12 duly sworn, says that she is the Plaintiff herein
13 and has read the foregoing verified complaint and
14 knows the contents thereof, that the same is true
15 of her own knowledge except as to matters therein
16 stated to be alleged on information and belief and
17 to those matters she believes them to be true."

18 Do you see that language?

19 A Yes, sir.

20 Q And then that's your signature below it, isn't it?

21 A Yes, sir.

22 Q And then that's a notary block below your
23 signature?

24 A Yes, sir.

25 Q So you signed and executed this verification in



1 front of a notary?

2 A Yes, sir.

3 Q And yet Paragraph 45 is a misrepresentation of
4 Mr. Reynolds' quote; isn't it?

5 A In a single quote, yes.

6 Q So you swore that this complaint was true even
7 though you knew that Paragraph 45 was false?

8 A That is not true.

9 Q How is your quote purporting to be the exact
10 language when it is not the exact language not
11 false?

12 A I believe that, to the best of my recollection, it
13 would have been two emails that I put together.

14 Q So you believe that if you put two emails together,
15 the result is a true email?

16 A In my processing of this, I would believe that I
17 was speaking the truth.

18 Q Do you feel the same way about representations made
19 by various parties?

20 That's a terrible question. Let me ask it
21 this way.

22 Do you believe that if someone tells you
23 something at different times, you can combine those
24 to be an accurate statement of what they tell you?

25 A I believe it would be.



1 In my recollection, I think it would have to
2 be contingent upon what the situation was.

3 Because, like, if you look down at Number 48,
4 where it says Jonathan Garvey, back here Jonathan
5 Garvey's reports, I don't even have that little --
6 I would have had to have copied that from onto a
7 disc or something I received.

8 Q So Paragraph 48 is not accurate, either?

9 A No. I'm saying it is accurate. But I'm saying I
10 could have copied that and put it onto my document
11 rather than typing it.

12 Q Okay. You mean you could have copied it from an
13 email and put it onto your document instead of
14 retyping it?

15 A Right, right.

16 And the only reason I'm saying that is because
17 there were so many documents. And I had so many
18 things going on with the back and forth with the
19 LLR.

20 Q All right.

21 As I said, I represent Brian Blue. What is
22 your understanding of who Mr. Blue is?

23 A Mr. Blue's an appraiser that Summit Funding got to
24 do the appraisal of the property. The initial
25 appraisal. And then he would go back and



1 re-certify it with all utilities on.

2 Q Do you have a contract with Mr. Blue?

3 A No.

4 Q Do you have any signed documentation between
5 yourself and Mr. Blue?

6 A No.

7 Q Did you have any prior relationship to Mr. Blue
8 before --

9 A No.

10 Q -- this?

11 All right. Did you know Mr. Blue in any
12 respect?

13 A No.

14 Q Again, please let me finish my question.

15 A I'm sorry.

16 Q During this process, pre-closing, did you speak to
17 Mr. Blue at all?

18 A Yes.

19 Q When?

20 A After he did the first appraisal, I called him
21 because this didn't make sense to me on some of the
22 things he put down.

23 And also I knew that he didn't take the
24 pictures. They was wanting pictures from the
25 house. And I called him. And he said to me



1 that -- he didn't really say he couldn't talk to
2 me, I don't remember his exact words, but basically
3 he said all he did was walk through the house to
4 make sure that people could get their money back if
5 I was to default. And he really could not speak
6 with me. And then that's when I called Summit
7 Funding.

8 Q You didn't hire Mr. Blue to do an appraisal?

9 A No, I did not. I paid him. But I didn't hire him.

10 Q When you say you paid him, how did you pay him?

11 A Out of the \$500 initial deposits where that money
12 came from.

13 Q Did you hand that \$500 to Mr. Blue?

14 A No.

15 Q Who did you hand that money to?

16 A Allen Tate.

17 Q All right.

18 And do you know what Allen Tate did with that
19 \$500?

20 A I imagine they put it into escrow.

21 Q Okay. Do you know where the money -- well, what
22 monies did you pay to Mr. Blue?

23 A The monies that were indicated on the -- I was told
24 that's where that money went was to -- was 400 and
25 some dollars and then another amount, as well, for



1 the second time he went.

2 Q All right. Did you personally pay that money to
3 Mr. Blue?

4 A No. That was paid by my agent on my behalf.

5 Q Your real estate agent?

6 A Yes.

7 Q All right. And you did not contract with Mr. Blue
8 to go out and perform an appraisal on your house?

9 A I'm not allowed to do that.

10 Q You testified earlier that you worked for a real
11 estate attorney; correct?

12 A Yes.

13 Q And you did that for several years?

14 A Yes.

15 Q Do you know what the difference between an
16 appraisal and an inspection is?

17 A Yes.

18 Q Okay. What is your understanding of what a home
19 inspection is?

20 A Home inspection is when they actually send out an
21 inspector to go into more detail of what any type
22 of issues. It could be -- I mean, I don't have a
23 list of what they go through, but they go
24 through -- they would pay more attention to each
25 detail of what the defects might be in the house,



1 for example, on the LLR, where an appraiser would
2 go in and simply mark yes that he noted a defect,
3 it would be up to the appraisal -- the inspector to
4 go in and determine what exactly the extent of that
5 defect would be.

6 Q And what is your understanding of what an appraiser
7 is supposed to do?

8 A An appraiser is supposed to go out and accurately
9 appraise the property based on the value of the
10 condition of the property and make all notations
11 that would affect adversely the value of the
12 property.

13 Q Are you a trained home appraiser?

14 A No.

15 Q Are you a trained home inspector?

16 A No.

17 Q Have you ever worked as a home appraiser?

18 A No.

19 Q Have you ever received any training in home
20 appraising?

21 A No.

22 I have taught compliance in the real estate
23 field.

24 Q But that has nothing to do with home appraisals;
25 does it?



1 A Kind of covered everything, but no.

2 Q Then are you aware of the requirements that a home
3 appraiser is required to follow when appraising a
4 home?

5 A Yes.

6 Q How are you aware of those requirements?

7 A I read what they're supposed to do.

8 Q All right.

9 Have you received any training on that?

10 A No.

11 Q Taken any classes on that?

12 A No.

13 Q Attended any schools regarding that?

14 A No.

15 Q So your understanding of what a home appraiser is
16 supposed to do is based on just your personal
17 reading?

18 A He is supposed to --

19 Q That's not my question.

20 A I don't know what you mean by reading. I mean, my
21 understanding --

22 Q Your own personal research. That's how you think
23 you know what an appraiser's supposed to do.

24 A Not reading. Just experience.

25 Q But you took no classes?



1 A No.

2 Q You've had no training?

3 A No.

4 Q Nobody's taught you what an appraiser is actually
5 supposed to do?

6 A Taught? No. 20 years observation, yes.

7 Q And where did you get your 20 years -- when you
8 were doing your observation for 20 years, how were
9 you observing home appraisers?

10 A I had a real estate license. I had a broker's
11 license. I taught compliance for a mortgage
12 company. And knew the checklists that they had to
13 go by and what was required.

14 Q Okay. So you know that a home appraiser is not a
15 home inspector?

16 A Yes.

17 Q And you know that the requirements for a home
18 appraiser are not the same as the requirements for
19 a home inspector?

20 A I don't "know."

21 Q But that's your understanding; isn't it?

22 A Yes.

23 Q And would you agree that you would not hire a home
24 appraiser who is not also a home inspector to do a
25 home inspection?



1 Let me ask it a different way.

2 If you want to hire someone to do a home
3 inspection, would you hire a home appraiser or a
4 home inspector?

5 A It would depend on the purpose I was going for. If
6 I was going to buy a house, I would have both. If
7 I was going to just --

8 Q That's not my question.

9 A Okay.

10 Q If you were going to hire someone to do a home
11 inspection, would you hire a home inspector or
12 would you hire a home appraiser?

13 A If I just want to have my house inspected?

14 I'm not following you. You're talking about
15 for the purpose of a loan?

16 Q For anything.

17 A For anything?

18 Q You testified in this case that you were upset
19 because no home inspection was done.

20 A Yes.

21 Q All right.

22 Had you -- since you expected that a home
23 inspection was done, would you expect that to be
24 done by a home inspector or a home appraiser?

25 A Home inspector.



1 Q All right.

2 So it's not surprising that Mr. Blue, who is a
3 home appraiser, did not do a home inspection?

4 A Not in the terms I believe you're asking.

5 Q Okay.

6 A My definition of him doing an inspection as an
7 appraiser would be that he inspected visually each
8 of the items of which he was required to inspect.

9 Q All right. And in this sense, by the word
10 "inspect," you mean, observe, look at, evaluate?

11 A Yes.

12 Q Because you would agree that a home inspection is
13 different from a home appraisal?

14 A Yes.

15 Q All right. And in order to do either a home
16 appraisal or a home inspection, a person would have
17 to go and look and observe and evaluate, et cetera?

18 A Yes.

19 Q All right. And so as a home appraiser, you would
20 not expect Mr. Blue to conduct a home inspection?

21 A No.

22 Q And the same way. You would not expect a home
23 inspector to conduct a home appraisal?

24 A Correct.

25 Q All right.



1 I believe Exhibit 16 -- let me ask it this
2 way, if you would take a look at Exhibit 16.

3 A Is that the long one?

4 Q Yes.

5 A I got it.

6 Q And I believe you testified before that Exhibit 16
7 is the first appraisal?

8 A I believe so.

9 Q When did you first see this appraisal?

10 A I don't remember the exact date. I just got it
11 from Summit Funding and they said here's your
12 appraisal. And then I got it copied from Jonathan,
13 as well.

14 Q Okay. Did you receive that before or after
15 closing?

16 A I received it within just a matter of a day or two
17 after he did it.

18 Q Okay. So that would be before closing?

19 A Oh, yeah. That would have been done -- I would
20 have gotten that in, what? February? March?

21 Q And did you review it at the time?

22 A Yes.

23 Q All right. If you would flip to the third page of
24 the appraisal. At the very, very bottom of the
25 page, under reconciliation, do you see where I'm



1 referencing?

2 On the left-hand side written in vertical
3 text, it says reconciliation and a black box at the
4 very bottom left on Page 3? It actually says Page
5 2 of 6.

6 A Yes.

7 Q And I'm going to read the language. It says, "this
8 appraisal is made." And then there's three boxes.
9 And then the third box is checked. And that third
10 box says, "subject to the following required
11 inspection based on the extraordinary assumption
12 that the condition or deficiency does not require
13 alteration or repair."

14 Do you see that?

15 A Yes.

16 Q And then it says, "subject to utilities being
17 turned on."

18 A Yes.

19 Q Do you see that?

20 A Yes.

21 Q Did you review that language when you first got
22 this inspection report?

23 A Yes.

24 Q All right. And what did that language mean to you?

25 A That language is the reason that I called him and



1 called Summit because I was concerned.

2 And they explained to me that particular
3 sentence, that they would, after everything, they
4 thought he had gone to the wrong house --

5 MR. RACINE: Object to that as not responsive.

6 THE WITNESS: To wait to see what happened
7 when the utilities were turned on.

8 Q So you understood that this first appraisal was
9 done when the utilities were not on?

10 A Yes.

11 Q All right.

12 And if you would flip to the next page, it
13 says it's Page 3 of 6. And about the fourth
14 paragraph of text where the black box indicates
15 "additional comments," do you see that? Do you see
16 where it says, "notes?" I'm going to read that to
17 you.

18 A Okay. Okay.

19 Q It's actually the fourth one. It says, "Notes.
20 This report is done subject to utilities being
21 turned on and confirmation that the subject will
22 meet the following upon utilities being turned on."

23

24 Do you see that?

25 A Yes.



1 Q And then it lists a bunch of things; right?

2 A Yes.

3 Q Would you agree with me that that means that this
4 report is contingent on the utilities being turned
5 on and a recheck, if you will, of these various
6 items?

7 A Yes.

8 Q And did you rely on this appraisal when you
9 purchased the property?

10 A Yes.

11 Q How so?

12 A Because I was told that he did not find any defects
13 even after he had gone back -- are you talking
14 about this appraisal or the final one?

15 Q I'm talking about this one right now.

16 A This one?

17 It was just part of the process.

18 I don't really -- we were just in the process
19 of looking at it. If he had -- did I proceed based
20 on what he had? Yes. I talked to Summit Funding.
21 I've talked to Jonathan. I wanted to see what
22 everything else said because this didn't make sense
23 to me. But I was trying to go back by, you know,
24 things -- so much had changed in real estate, what
25 was accurate or not.



1 Q And this didn't make sense to you because you knew
2 of various problems the house had?

3 A What it appeared to me to be.

4 And that's why you've got, I believe, an email
5 from -- I don't know if it was somebody at Summit
6 or from -- yeah, let's see what he says when he
7 goes back.

8 Q All right. Let me ask it this way.

9 I believe you testified earlier that prior to
10 seeing this appraisal report, you were aware of
11 potential issues with the house?

12 A I thought there might be.

13 Q Okay. And you listed out several things. Holes in
14 the roof. Issue with the deck. You knew about all
15 that before you saw this appraisal report.

16 A Yes.

17 Q And you understood that this appraisal report was
18 not a home inspection report?

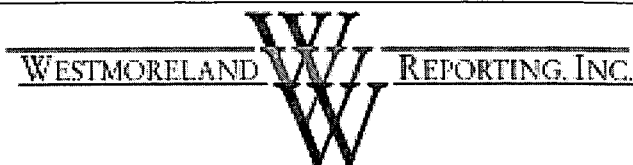
19 A Yes.

20 Q And did you understand that this appraisal report
21 was done at the request of Summit Funding?

22 A Yes.

23 Q All right.

24 Why do you believe Summit Funding requested
25 that Mr. Blue complete this appraisal report?



1 A To make sure that the property that they were going
2 to be loaning on had the value that was needed to
3 meet the requirements for my particular situation.

4 Q Okay. And would you agree that that is so if you
5 defaulted on the loan, Summit could resell the
6 property and get its money back?

7 A Yes.

8 Q And you have no training, no formal training, in
9 the method by which a home appraiser appraises
10 property; do you?

11 A Except to go by what they're required to report.

12 Q Okay. But you had no training --

13 A No.

14 Q And so you don't know what criteria or how
15 Mr. Blue -- let me back up.

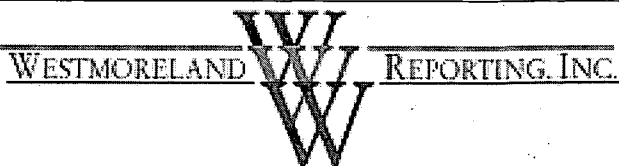
16 You don't know what criteria Mr. Blue used to
17 appraise this property; do you?

18 A Except to tell the truth.

19 Q And you don't know what requirements Mr. Blue
20 followed to generate this appraisal; do you?

21 A I have no idea because it's not truthful. I don't
22 know what he used.

23 Q So you don't know what -- you don't know how
24 Mr. Blue arrived at his appraisal value of this
25 property; do you?



1 A No.

2 Well, yes and no. If you go back through, he
3 compared properties, he compared values. He
4 compared the development.

5 Q Okay. Do you have any reason to believe that that
6 is an improper method to establish the value of the
7 home?

8 A Re-ask your question.

9 Q You said Mr. Blue arrived at his appraisal value by
10 looking at other comparables.

11 A Yes.

12 Q Do you have any reason to believe that that is an
13 improper way to come up with an appraisal value?

14 A I think an appraisal value is a combination of
15 everything which he is required to do.

16 Q So would you agree with me if Mr. Blue did
17 everything he was required to do in generating his
18 appraised value, that that would be a proper value?

19 A Yes.

20 Q I apologize for not having enough copies of this,
21 but I'm going to hand you what I'm going to ask to
22 be marked as Exhibit 36.

23 (Whereupon, Exhibit 36 was marked for
24 identification and is attached to the
25 transcript.)



1 Q Would you please take a minute and look at what's
2 been marked as Exhibit 36. Do you recognize that
3 document?

4 A I do.

5 Q What is that document?

6 A I think it's the part of the update.

7 Q By update, you mean the update to Mr. Blue's
8 appraisal?

9 A Yes.

10 Q When did you first receive this document?

11 A I don't recall.

12 Q But it was prior to closing?

13 A Yes.

14 Q If you would flip to the second page?

15 A Okay.

16 Q And at the bottom it says Page 1 of 1?

17 A Yes.

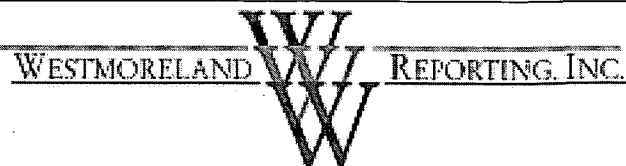
18 Q Do you see that?

19 If you would look up at sort of the top fourth
20 of the page, there's a black box and it says
21 Summary Appraisal Update Report?

22 A Yes.

23 Q Do you see that?

24 The language under that says, "intended use."
25 I'll Read that.



1 "Now the intended use of this appraisal update
2 is for the lender/client to evaluate the property
3 that is the subject of this report to determine if
4 the property has declined in value since the date
5 of the original appraisal for a mortgage finance
6 transaction."

7 Do you see that?

8 A Yes.

9 Q The intended use described there says nothing about
10 a potential buyer; does it?

11 A No.

12 Q And you would agree that the lender/client in this
13 case was Summit Funding?

14 A Yes.

15 Q All right.

16 Next it says "intended user." Do you see
17 that?

18 A Yes.

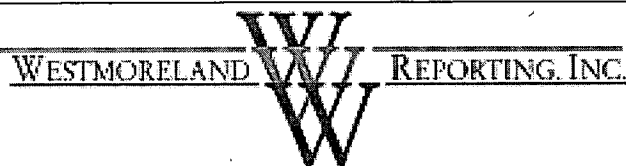
19 Q And the language there says, "the intended user of
20 this appraisal update is the lender/client."

21 A Yes.

22 Q And, again, the lender/client is Summit Funding;
23 correct?

24 A Yes.

25 Q If you would look down below that to the next dark



1 black box where it says certification of
2 completion. Do you see that?

3 A Yes.

4 Q All right. And then there's some language and it
5 says, "Have the improvements been completed in
6 accordance with the requirements and conditions
7 stated in the original appraisal report?" And the
8 box "yes" is checked; do you see that?

9 A Yes.

10 Q And then if you skip on down, it says, "The
11 utilities and HVAC were on and functioning at the
12 time of the inspection. The subject is complete."
13 Do you see that?

14 A Yes.

15 Q And so you would agree with me that indicates that
16 Mr. Blue believed that the utilities and HVAC were
17 on and functioning at the time of this inspection;
18 correct?

19 A You also skipped the sentence before that.

20 Q Okay. But would you agree that the statement "The
21 utilities and HVAC were on and functioning at the
22 time of the inspection" written on this paper
23 indicates that Mr. Blue believed that the utilities
24 and HVAC were on and functioning when he did this
25 inspection?



1 A That's what he says.

2 Q Okay. And if you'd look down below that, under
3 signatures, it says date of signature and report,
4 March 12th, 2015; do you see that?

5 A Yes.

6 Q Do you have any reason to believe that this was not
7 completed on March 12th, 2015?

8 A Yes.

9 Q And what is that?

10 A Because the utilities, the water was not on.

11 Q How do you know that the water was not on?

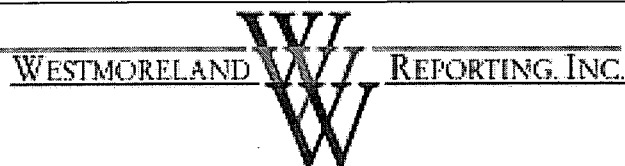
12 A Because Mr. Ouzts contacted the water and the
13 electrical department, utilities department on
14 March the 10th and ordered the utilities to be
15 turned on.

16 He made an appointment for Jonathan --
17 Jonathan was supposed to be there -- for the water
18 tech to meet the gentleman to fix the water leak on
19 the morning of March the 11th when they turned
20 everything on.

21 The utilities department turned everything on
22 on March the 11th. And that afternoon the water
23 was turned back off because the leak was not fixed.

24 Q How do you know that?

25 A Because I have the reports from the water



1 department.

2 Q Okay. And so you're relying on reports from the
3 water department to establish that the water was
4 off as of March 12th?

5 A As of March the 11th.

6 Q All right. And you're relying on that to show that
7 the water was off on March 12th?

8 A Yes.

9 Q Do you have any other evidence besides the water
10 reports that we just discussed that indicates the
11 water was off on March 12th?

12 A It wasn't turned back on until June the 3rd.

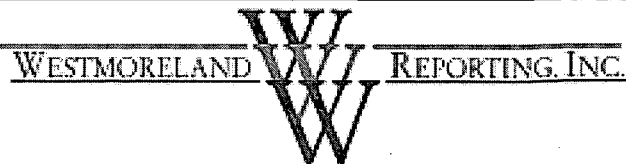
13 Q And how do you know that?

14 A From the water reports and the inspectors at the
15 water department.

16 Q You had mentioned earlier in your testimony that
17 the same water tech came back out twice. Do you
18 know the name of that water tech?

19 A It's on the reports I got from the water
20 department. I don't have it with me. You should
21 have it in the reports in all the documents.

22 It actually has the date and time on the 11th
23 that it was turned off. They ran the report
24 overnight. And then when they ran the reports for
25 me on March the 12th, it shows that at 7:30 a.m.



1 that the order to cut the water off had been
2 completed and the case was closed.

3 Q At some point, did you believe that Robert Ouzts
4 turned on the water in his own name?

5 A Yes.

6 Q All right. What is your understanding of when he
7 did that?

8 A I actually have the dates. I don't have them with
9 me. But they're in --

10 Q Was it in March of 2015?

11 A Let's see. She turned them off -- he actually put
12 it in his name prior to that. I don't remember the
13 date. I think of when he put them in his name.
14 She took it out of her name in January. He put it
15 into his name. And then he took it out of his name
16 in April. I don't have the exact dates with me.
17 They should be in some of the documents you're
18 going to be getting.

19 Q We don't have the documents yet?

20 A They're in the stack of 600 pages. But when I do
21 the interrogatories, they're in there.

22 Q I want you to turn back to Exhibit 27 for me,
23 please.

24 A Which one's Exhibit 27?

25 Q It's one of the documents Ms. Driscoll passed to



1 you. All right. If you would look at Exhibit 27,
2 please.

3 A Okay.

4 Q I can't remember if you answered this question, but
5 did you receive this document?

6 A I don't recall this document. I must have at the
7 closing because that's when I signed it.

8 Q You did sign it on Page 2; correct?

9 A Yeah. At closing they just hand you documents and
10 you're just signing them.

11 Q If you would, on the very first page up under the
12 heading Condition of Property, do you see where I'm
13 looking?

14 A Yes.

15 Q Would you read the second sentence under that
16 heading?

17 A Where it says the property?

18 Q Yeah. The sentence "after that," please.

19 A "After that, an appraisal will be performed to
20 estimate the value of the property. This appraisal
21 does not guarantee that the house is free of
22 defects. You should inspect the property yourself
23 fully or hire a professional inspection service to
24 inspect the property for you."

25 Q And you would agree that this statement says the



1 appraisal does not guarantee that the house is free
2 of defects?

3 A Correct.

4 Q And it also instructs you that you ought to hire a
5 professional inspection service to inspect the
6 property for you?

7 A Yes.

8 Q And no inspection was ever done of this property;
9 correct?

10 A No.

11 Q And if you'd look on Exhibit 28. And, again, you
12 signed this document; correct?

13 A Yes.

14 Q And in the middle of that paragraph, after the
15 \$145,000 price, would you read the sentence that
16 starts with "the purchaser"?

17 A "The purchaser has the privilege and option of
18 proceeding with the consummation of the contract
19 without regard to the amount of the appraised
20 valuation. The appraised valuation is arrived at
21 to determine the maximum mortgage for the
22 Department of Housing and Urban Development to
23 ensure HUD does not warrant the value of the
24 condition of the property. The purchaser shall
25 satisfy himself or herself that the price and



1 condition of the property are acceptable."

2 Q And you would agree that that essentially says the
3 appraisal is only for the purposes of HUD?

4 A Yes.

5 Q And you would agree that the appraisal is not for
6 purposes of identifying defects; it is for the
7 purpose of establishing a value of the property?

8 A No.

9 Q Okay. What's wrong with that statement?

10 A Because if the representations on the appraisal
11 aren't accurate, then it's not a correct
12 representation to HUD on the value of the property
13 for the purposes of making the loan.

14 Q All right.

15 If the representations on the appraisal are
16 correct, you would agree that it is a correct value
17 on the property?

18 A Yes.

19 Q And would you also agree that a trained home
20 appraiser would be -- have superior knowledge to
21 one who was not trained in appraising property to
22 determine what would affect the value of the
23 property and what would not affect the value of the
24 property?

25 A Yes.



1 Q And you would agree that Mr. Blue has that training
2 and you do not?

3 A I would have thought so until he falsified the
4 appraisal.

5 Q All right.

6 But you would agree that since Mr. Blue is a
7 certified home appraiser, he has superior knowledge
8 in how to appraise a property than you do?

9 A He does. And therefore he has a high standard to
10 meet.

11 Q Is Robert Evans a licensed home inspector?

12 A No. Brian is.

13 MR. OGBURN: I'm sorry?

14 THE WITNESS: Brian.

15 MR. OGBURN: Brian who?

16 THE WITNESS: His name is on there on the
17 witness list.

18 MR. OGBURN: Grissom?

19 THE WITNESS: Yes.

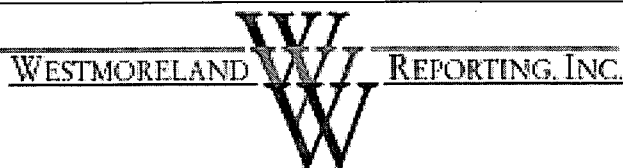
20 Q Did Brian Grissom do an inspection of the property?

21 A He did in March of 2016.

22 Q After you closed?

23 A Yes.

24 Q You have asserted in your complaint cause of action
25 against Brian Blue and Appraisal Innovations based



1 on conspiracy; is that correct? Yes?

2 A Yes.

3 Q What conspiracy do you allege that Mr. Blue and
4 Appraisal Innovations engaged in?

5 A Mr. Blue had numerous errors in his appraisal.
6 There's certain standards in the FHA Handbook,
7 which is referenced in here that you had me -- that
8 we did read as to things that are required.

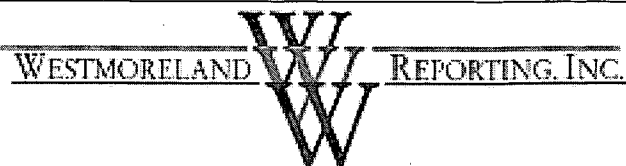
9 For example, in the FHA Handbook, it states
10 any property which has direct contact to the ground
11 must have a CL-100. That's just one of the
12 examples. Different defects.

13 In the FHA Handbook, there's references to
14 rails in some of the supplements.

15 Mr. Garvey and the other realtors knew that
16 the items which I questioned were not correctly
17 represented by Mr. Blue. So in a conspiracy, what
18 I'm saying to you is: These pictures were not made
19 the day when he went out there either time. He --
20 this is not on a slab. I mean, this is on a slab.
21 It's not a crawl space, which he says he went under
22 and looked at.

23 Q Let's do it this way. You allege that there's a
24 bunch of errors with his appraisal; correct?

25 A Yes.



1 Q Okay. Aside from errors in the appraisal, what did
2 Mr. Blue do to engage in a conspiracy?

3 A To me, a conspiracy would be when you talk to other
4 people who have knowledge and who had a
5 responsibility to make sure things were accurate
6 and legally testified to. And supposedly
7 Mr. Garvey was with him at these appraisals and,
8 therefore, he knew.

9 The other realtors knew that there were errors
10 in this appraisal.

11 Q What was the purpose? What do you believe was the
12 purpose of this conspiracy?

13 A I have no idea.

14 Q So you don't know why all these parties would have
15 conspired?

16 A No.

17 I will say to you what was told to me by
18 Ms. Heckland in Congressman Norman's office.

19 MR. RACINE: Objection.

20 Q You don't have any evidence that Mr. Blue actually
21 got together with any of these other Defendants and
22 said, "We're going to conspire against Ms. Baber,"
23 do you?

24 A I don't think the terms were used.

25 Q All right.



1 A But I do believe that happened.

2 Q What do you believe Mr. Blue agreed to do with the
3 rest of these Defendants that constitutes a
4 conspiracy?

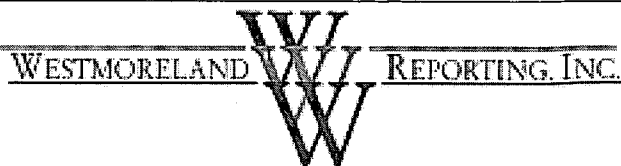
5 A He -- I believe that the evidence shows that he did
6 not go over each item as he was requested to do by
7 Summit that were contained in the LLR.

8 I believe that he did not -- the utilities,
9 the water was not on. That was specifically told
10 to me by Jonathan and by Robert Ouzts that it was.

11 I specifically asked the questions about the
12 roof to Garvey and to Summit.

13 I specifically asked -- for example, the
14 pictures, you know. When were the pictures made?
15 I got questions like, well, it doesn't matter. He
16 didn't find anything.

17 Yet the information I have now is that the
18 condition of this house was known by Garvey. And
19 he did not relay that to the appraiser. And if the
20 appraiser -- he has a great reputation. I've
21 checked him out. Why he did what he did, I mean,
22 it's like, you know, I can't answer that. You'll
23 have to ask him that. Why did he intentionally
24 think it was okay to falsify an appraisal? That's
25 a question you'll have to ask him. We'll ask him



1 in court.

2 Q You contend -- it's your allegation that Mr. Blue
3 intentionally falsified his appraisal report?

4 A Yes.

5 Q Okay. And your fault with Mr. Blue is essentially
6 that he did a bad appraisal?

7 A Yes. And he even was made aware of it before he
8 did the second one.

9 Q So you fault him for doing a bad appraisal. And
10 you fault him for doing a second bad appraisal.

11 A Ah-huh.

12 Q And you fault him for not listing all the defects
13 with the property; correct?

14 A I fault him for certifying an appraiser --
15 appraisal which could not be certified. The water
16 was not on. And the items which were addressed --
17 and it can be found in the Handbook such as the
18 rails were not. And if he had correctly appraised
19 the property, it would not have appraised. They
20 wouldn't have made the loan.

21 Q Okay. What do you believe was Mr. Blue's
22 motivation for doing it?

23 A I have no idea. You'll have to ask him.

24 Q So you don't know his purpose for engaging in this
25 alleged conspiracy?



1 A I don't know. I don't know what Jonathan's was. I
2 don't know what anybody's was. I'd love to know.

3 Q Do you believe that --

4 A Let me finish.

5 Q Okay.

6 A I was already looking -- Jonathan and I had already
7 made another list, okay, of houses to look at.
8 Because I believed that when he went back out
9 there, that he was going to change the appraisal.
10 And once we started getting the inspections, that
11 it was not going to appraise.

12 And I did not have the money -- if I was
13 wrong, you know. If I was right, then I was told
14 by Jonathan and an email from Summit that you
15 have -- which says don't be disappointed. I talked
16 to Steve Reynolds about doing a --

17 MS. DRISCOLL: Objection.

18 THE WITNESS: You're asking me why.

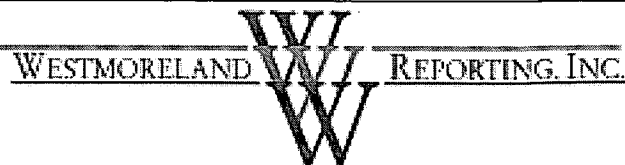
19 Q This is not responsive.

20 A Okay.

21 Q Let's do it this way.

22 Do you believe that Mr. Blue -- or let me back
23 up.

24 Do you believe Summit Funding paid Mr. Blue to
25 do the appraisal?



1 A I paid him.

2 Q Okay. You believe you paid Mr. Blue to do the
3 appraisal; correct?

4 A Yes, sir. Yeah. It came out of my money.

5 Q Do you believe that Mr. Blue's right to that
6 payment depended on what his valuation of the
7 property was?

8 A No. He was supposed to do an accurate appraisal,
9 make sure I was getting the value and Summit was,
10 as well.

11 Q So you would agree that Mr. Blue was going to be
12 paid no matter what his appraisal found?

13 A Yes.

14 Q So there was no incentive for Mr. Blue to either
15 make the appraisal worse or make the appraisal
16 better, he was getting paid the same no matter
17 what?

18 A Yes.

19 Q So there was no incentive for Mr. Blue to conspire
20 with anybody else to give a false appraisal report?

21 A I can't answer that. I'm not Mr. Blue.

22 Q Well, you would agree that he was being paid the
23 same amount no matter what his appraisal was?

24 A To my knowledge.

25 Q All right.



1 Do you have any -- do you have copies of any
2 emails, letters, or anything else between Mr. Blue
3 and any other Defendant that talks about defrauding
4 you?

5 A Not using the word defraud, no.

6 Q Do you have any document, correspondence, letters,
7 emails, anything that Mr. Blue or any of the other
8 Defendants sent to each other that says something
9 like "we need to trick Ms. Baber into purchasing
10 this property"?

11 A No.

12 Q All right.

13 And do you think that Mr. Blue intentionally
14 set out to hurt you?

15 A I don't know -- no, I don't know what his
16 intentions were.

17 Q So you don't think that he sat down and said, "how
18 can I injure Ms. Baber"?

19 A I don't think he thought about it at all.

20 Q He just did a bad appraisal, according to you?

21 A He didn't do his job.

22 Q Okay. Just bear with me just a moment.

23 A Jonathan could probably answer that better than me.

24 MR. RACINE: I'm done for now. I'll let these
25 guys go. If I think of something, I'll re-visit.



1 Just for interest of time.

2 * * * * *

3 FURTHER EXAMINATION BY MR. OGBURN:

4 Q Ms. Baber, I do have a few more questions I wanted
5 to ask you. And I wanted to start with something
6 you said.

7 Are you anticipating giving us additional
8 documents in this lawsuit?

9 A No. It's like I told you. As I find other things,
10 because I've had boxes and boxes to go through. If
11 I find things, I'm going to provide those.

12 Q Okay. And we talked about receipts and proof of
13 work that had been done and stuff?

14 A And I'm still trying to find all those, whether or
15 not I can. I mean, I know how much I've spent.

16 Q And you're getting us copies of checks?

17 A I doubt -- a lot of things I paid in cash.

18 Q Did you get invoices or receipts?

19 A I can get those.

20 You have to remember, I didn't know what I was
21 up against. So that when I went into this house
22 and everybody was telling me I was wrong, my thing
23 was -- is to get my house fixed.

24 My mother died. I was able to get \$20,000 in
25 advance off the estate, which immediately I put



1 into a home account to pay for things. I took out
2 \$8,000 out of my thrift account to make -- start
3 making the house safe. I borrowed \$10,000 from
4 friends. I got \$20,000 from my mother's IRA.

5 Q Who were those friends you borrowed the money from?

6 A Friends that I work with.

7 Q What are their names?

8 A Bruce Larsen. Howard Murphy. John Green. John
9 Griffa.

10 Q Did you borrow the same amount from each of them?

11 A No, it was just -- if there was a situation like
12 when the back door fell in, I needed to pay
13 somebody to fix that. You know. Somebody said,
14 here, let me send you some money. They were aware
15 that I was extremely concerned for the safety of
16 the family. This is just not what we were -- we
17 had to stop the improvements.

18 Q Okay. Did you pay them back for the money you
19 borrowed?

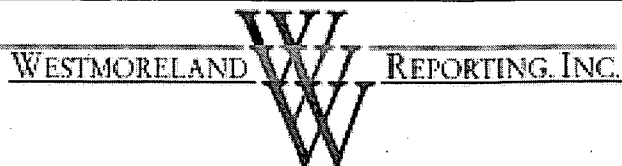
20 A I have not.

21 Q You have not. So you still owe it?

22 A Yes.

23 Q Do you have any correspondence with them about what
24 you owe them?

25 A No.



1 I could get it. I mean, they're --

2 Q Do you have any evidence that you borrowed the
3 money?

4 A Oh, yeah. They would definitely say I have.

5 Q Okay. But do you have any emails about borrowing
6 money?

7 A No.

8 One guy's in Iraq. He just sent me a thousand
9 dollars yesterday.

10 They knew the situation of the house and were
11 willing to help because of conversations that we
12 had.

13 When I answer this, you can say that's not
14 what you're answering, but you can stop me.

15 I have numerous communications with a lot of
16 different people. And they were some of the ones
17 who also the people that loaned me money talked to
18 and they knew how bad the situation was.

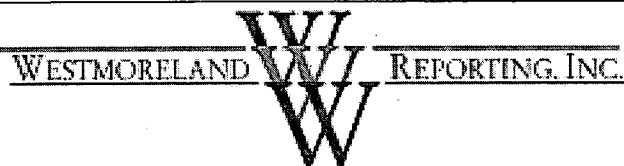
19 Q When you borrow money from somebody, do you put it
20 in your checking account?

21 A I opened up a special account called my home
22 expense account. And I put most of it in there.

23 Q Okay. What bank is that with?

24 A PNC. That account's closed.

25 Q Okay. And when did you open that?



1 A Probably sometime in 2016.

2 Until that time, I was just, you know -- until
3 2016, I did not know that there was no home
4 inspection and that there was no termite report.

5 Q I'm asking about the bank account.

6 A That's when I started opening -- because I thought,
7 okay, this is going to be more expensive than I
8 thought, all these things.

9 I was going after the termite guy. I was
10 trying to find who did this termite inspection
11 because he didn't do his job. That's who I was
12 going after.

13 Q When did you close the home expense account?

14 A It's still open. I mean, it's only got like \$14 in
15 it.

16 Q I thought you told me it had been closed?

17 A Well, it's been closed as far as like this is
18 concerned. I keep a few things in there.

19 Q Okay. And did you pay expenses related to your
20 repair of the house out of that account?

21 A Yes. And also my other accounts, as well.

22 Q Your complaint asks for attorneys' fees.

23 A There aren't any attorneys' fees.

24 Q Okay. We've talked about this missing page for the
25 HUD. The GFE Number 6. Do you have a copy of



1 that?

2 A Ah-huh. You got it in your copy of the appraisal
3 that you have. I mean, of the closing.

4 Q Here?

5 A No. It's in the 200 and some pages that I got from
6 the -- when Summit sent the copy of the complete
7 closing package of the LLR. Not to the LLR, but
8 the banking and finance, and I forwarded that to
9 you. That's one of the ones you couldn't open.

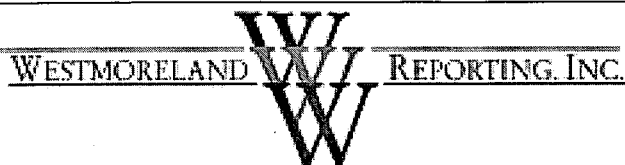
10 Q Can you pull that page out and send it to us?

11 A There's about six of them. There's one right
12 behind the ones that you have.

13 Q Because I'll be honest. I'm not sure I know what
14 documents you have that came from where.

15 A Okay. Well, this one came from banking and finance
16 because they had been trying to get Summit Funding
17 to send them the -- I couldn't get them to send it
18 to me. And so I did a Freedom of Information
19 request. And they sent it. So that one came
20 directly from Summit.

21 And it has a note on there that you should be
22 able to tell how it is. I forwarded it to you.
23 This was in December. The one that came to you in
24 December. And I actually had it compressed so that
25 you could open it. It was in December of 2018.



1 And there was a note on there that the
2 CL-100 -- I got real excited. There was a note
3 that they had sent the closing documents, the
4 CL-100, and the home inspection. And I notified
5 the State.

6 Q The question was: Can you send me -- I want the
7 one page missing --

8 A I don't know how to do that. I don't know how to
9 pull one page out.

10 Q Can you print it out and mail it to me?

11 A I'll just resend you the document.

12 Q I don't want 400 pages. I want to know what the
13 one page is that you say is the missing page from
14 the HUD. Otherwise, what we have to do is we have
15 to do this again. I have to sit here with a pile
16 of paper and go: Is this it? Is this it? Is this
17 it?

18 A Okay. I'll see if I can find it.

19 MS. DRISCOLL: Do we want to take a break for
20 a second?

21 MR. OGBURN: We can take a break and give you
22 time to look for it if you think you got it.
23 On your phone?

24 THE WITNESS: I got it on there, the
25 documents, because I sent it again to someone.



1 I just sent it to the OIG.

2 MR. RACINE: Let's take a break. Go off the
3 record.

4 (Recess held.)

5 THE WITNESS: What am I looking for?

6 Q You're looking for the missing page of the HUD.

7 A There's so many pages here, I forget what I'm
8 looking for. I don't know what page this is.

9 Here's the page, just so you know, that
10 requires the home inspection and the CL-100.

11 Q I'm looking for the missing page of the HUD report.

12 A All right. I haven't gotten to the HUD yet.
13 There's also the final doc cover, which requires
14 those items. I'm on page 117 now. I only got 130
15 more to go.

16 I think I just accepted it separately because
17 I find it interesting that never included that.
18 Let me see what page this is.

19 And I'm looking for the page of the HUD that
20 has --

21 MS. DRISCOLL: The page that you said is
22 missing from the HUD.

23 THE WITNESS: Okay. I don't think this page
24 is part of the HUD, the one I just found.

25 Oh, shoot. I got the closing package, but



1 the HUD's not on there at all.

2 Q So you don't have what you believe is the missing
3 page?

4 A I don't have the HUD at all in here. It should be
5 in the closing package. I'm going back through it
6 again. I'm sure it's here. It's the form that
7 what was it? Was CF something, right?

8 Q Huh?

9 A The number of the form.

10 Q The line you kept referring to is GFE Number 6, I
11 believe.

12 A Okay.

13 Q And that you said you believe was the missing page
14 from the HUD.

15 A Yeah.

16 I don't think the HUD's on this email. I
17 thought it was.

18 Q Well, if you find that missing page after this, are
19 you willing to separate it and send it to us?

20 A Yeah, I'll try to. I'll send somebody something.

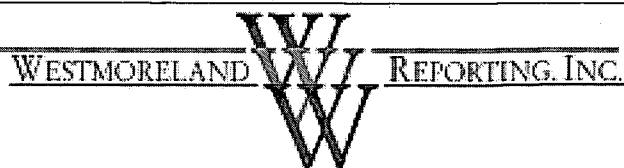
21 Q Who are you sending somebody something?

22 A Somebody that proofs my stuff for me.

23 Q Who's that?

24 A A friend.

25 Q Who's your friend that proofs your stuff for you?



1 A I have three of them.

2 Q Which one are you sending that to?

3 A Somebody I used to work with in Dick's office.

4 Q What's their name?

5 A One of them is Paul Garrett.

6 Q Is Paul a lawyer?

7 A I don't think so. He works with John Ashcroft.

8 But he's not a lawyer.

9 Q Who's John Ashcroft?

10 A Former Attorney General. They're the ones who got

11 the package from Tommy Pope and from somebody else

12 to refer it to Lindsey Graham to refer it to the

13 OIG.

14 Q So are these people helping you with this lawsuit?

15 A They're proofing stuff.

16 Q Okay. So give me the names of the people who are

17 helping you proof stuff.

18 A Paul Garrett.

19 Q Okay. Is he in Rock Hill?

20 A No. He's in Washington, D.C.

21 Q Okay.

22 A Bruce Larsen.

23 Q Okay. Who's Bruce Larsen with?

24 A United States Government. He's in Iraq.

25 John Green.



1 Q Who's John Green with?

2 A He is a minister. Used to do investigations with
3 the -- I forgot who he worked for. He was an
4 inspector of some government agency.

5 Q Where does Mr. Green live?

6 A He's in Asheville, North Carolina.

7 Dick's reviewed a lot of things for me to
8 proof them.

9 Let's see. I've asked different people in
10 town who are paralegals about questions. They
11 couldn't do anything as far as representing me
12 because they have conflicts of interest.

13 Q I'm asking for people who have reviewed stuff that
14 you've written.

15 A I don't think Howard Murphy has. He may have
16 looked at some of it.

17 Q Who's Howard Murphy?

18 A He's a friend of mine who lives in Anderson, South
19 Carolina. He works for the college there. And he
20 is a colonel in the government.

21 Let's see. Steve Hard.

22 Q How do you spell that last name?

23 A H-A-R-D.

24 He's out in Nevada. He's just a long-time
25 friend.



1 They would just read over this and say this
2 doesn't make sense or that doesn't make sense.

3 Because the documents we used to go by are yours.

4 Q But I think we asked you in interrogatory asking
5 for any communications with anybody about this
6 matter. I don't have emails with any of these
7 people.

8 A I don't really have emails with them. I would send
9 them something and ask: Does this make sense?

10 Q How do you send it to them?

11 A I send it to them email.

12 Q Okay. So you've got emails?

13 A Yeah.

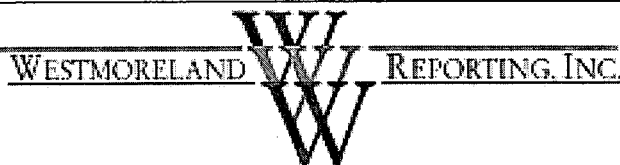
14 They're just friends that are just
15 proofreading something, that's all. They're not
16 participating in anything but proofreading.

17 Q I don't have copies of those emails, though. And
18 that's one of the documents we requested for in the
19 request for production.

20 A I'll just resend you what you've got, then.
21 Because they got what you got.

22 Q I want the emails between you and those people.
23 Not the content. Not whatever was attached to it.
24 The emails between you and those people.

25 A Okay. All it's going to say is: Would you proof



1 this?

2 Q Okay. I'd like all those, please. Because those
3 are responsive to our requests for production.

4 MS. DRISCOLL: I think it needs to be clear
5 that you want the emails, not just that she sent,
6 but that those people sent her in response.

7 MR. OGBURN: That's correct.

8 MR. RACINE: All correspondence.

9 MR. OGBURN: Any back and forth.

10 MS. DRISCOLL: Including any changes they may
11 or may not have made to any attachments.

12 THE WITNESS: See, I don't think I have that
13 because when they send it back to me, I put
14 just it on my Word document. If they said,
15 "Hey, you might want to change the wording on
16 this," then I will just put them in there. I
17 wouldn't have necessarily -- they didn't do
18 it.

19 Q I understand. But if they communicate back with
20 you with changes or suggestions, then we want
21 copies of --

22 A I'm just saying to you I'm not sure I have all
23 that, okay.

24 Q I want everything you got.

25 A Okay.



1 Q Other than Steve Hard, Paul Garrett, Bruce Larsen,
2 John Green, Richard Arnold, and Howard Murphy, are
3 there any other people that have given you advice?

4 A They're not giving me advice. They were just
5 proofing documents.

6 Q Reviewing your documents having to do with this
7 lawsuit and making suggestions.

8 A I have no idea. I really don't. I'm not being
9 ugly. I really -- just this has been five years.

10 Q We're going back to who did you just send an email
11 to?

12 A I didn't. I'm looking up.

13 Q You were going to send an email to somebody?

14 A Yeah, I was going to send an email to John Green to
15 see if he by any chance had a copy of the closing
16 statement. I don't think he does.

17 Q Why would he have a copy?

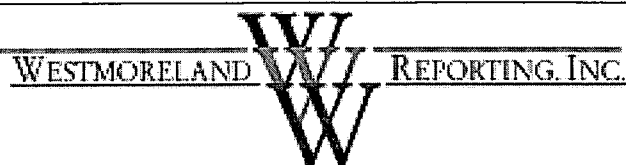
18 A Because I was preparing for stuff. I went through,
19 I send him copies and say, "look at this."

20 Q So he would have documents you sent him?

21 A Yeah.

22 Q Does John have any -- other than what John's
23 received from you, does John have any ties to this
24 transaction at all?

25 A No. None of these people do. Okay. Just to look



1 at the documents I've done and to say, you know,
2 "Does this make sense?"

3 Q Okay. So I want to go back to what started all of
4 this. Will you send us a copy of the missing page
5 from the HUD?

6 A See, I know it's right here because we looked it
7 up.

8 Q Okay.

9 A I knew you were going to ask for that. I thought
10 you would be asking today, in fact.

11 Q Can you do that by the end of next week?

12 A Yeah. I can get it this weekend because it's also
13 going to be in the documents requests that I'm
14 sending to her.

15 Q Well, why don't we say that you'll do it by Friday,
16 February 22nd. Or you will respond to us that you
17 could not find it.

18 A I can find it because I can get it from Summit or
19 get it from -- a lot of these documents and
20 everything, everything I got in, like this
21 particular document we're looking for, that came
22 from the South Carolina Banking and Finance, so if
23 I have to, I can contact them and have them resend
24 it.

25 Q Okay. Who helped you draft the complaint?



1 A I drafted it going by your model.

2 Q The complaint?

3 A Oh, the complaint? I took some old complaints that
4 I had from -- I still had from Dick's files, old
5 files, and I put it together. Because it had to be
6 done very quickly. I probably got all those people
7 that you mentioned there to see if they thought of
8 anything that over the last several years because
9 they've helped loan me money to fix things.

10 I've had communications with asking what I
11 should include with Congressman Norman's office
12 with Ms. Heckland. They've had their Chief of
13 Staff call me to make sure that I had everything
14 included. I've sent stuff to -- which you have --
15 I noted copies of to HUD.

16 Q I will say I don't have copies of any of the emails
17 transmitting any of these documents.

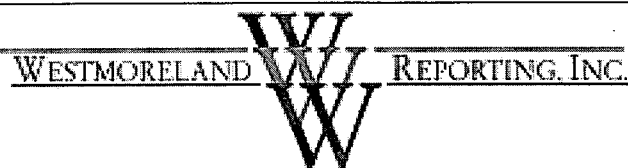
18 A See, some of them were done online, and I just
19 submitted them.

20 Q If you've exchanged emails with Congressman
21 Norman's office?

22 A Not emails. Just communications.

23 Q So how?

24 A They won't take an email. I've had a meeting with
25 her. I had a meeting -- about an hour and a half



1 meeting with Ms. Heckland in 2017.

2 I met with Tommy Pope. I have an email from
3 his office in Columbia, which you have in your
4 files.

5 Q I've got that email?

6 A You do. It's from Doris Taylor to me saying that
7 he referred it to Lindsey Graham, referred it up to
8 the OIG.

9 Q I don't remember seeing that, but that doesn't mean
10 that it's not in there.

11 A Okay. And all of these people have copies of, you
12 know, the closing statement and that kind of thing.

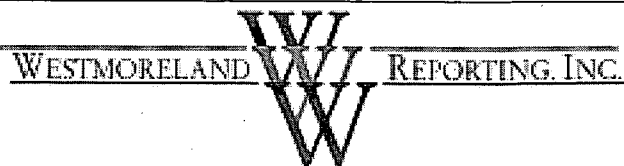
13 Q Okay. Did I hear you say that you've borrowed
14 money from Steve Hard, Paul Garrett, Bruce Larsen,
15 John Green?

16 A No, I have not borrowed money from all them.

17 Q I thought you said the people that were looking at
18 your documents are people you borrowed money from.

19 A Well, Bruce loans me money. But it doesn't
20 necessarily have to do with this. You know, the
21 back surgery and everything and being out of work
22 for three months, I have some wonderful friends
23 that help me with that.

24 Q Ms. Baber, we talked several times. And I believe
25 Mr. Racine asked you questions, as well, about the



1 documents you sent us where you put emails
2 together.

3 A Yeah.

4 Q And I think you said at one point it may not be an
5 accurate representation of a single email, but it
6 may be multiple emails.

7 A Yes.

8 Q So if I'm reading through -- so you're saying on
9 one page, if you've got several emails, those
10 emails may not flow in time; is that correct?

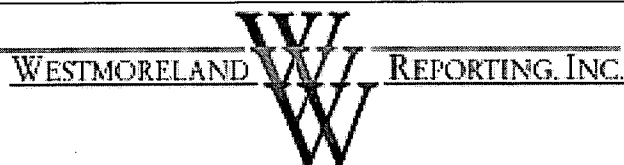
11 A Now, I did it to the best I could remember. It's
12 just like the ones that -- that you just got, you
13 know with the interrogatories, questions I'm asking
14 you. Those are -- some of those emails, there may
15 be four or five or six emails which will say the
16 dates, like this is from March the 7th through
17 March the 12th, and here's the stream of emails
18 from those dates.

19 Q That you've combined into one place?

20 A Yes.

21 Q How -- if we're reviewing the documents you
22 produced to us, how do we know what emails go
23 where?

24 A Well, I've got the dates. I don't put like
25 something from 2018 with 2016. It has a specific



1 dates on those emails. And most of those I got off
2 of the information from the four, 500 pages I got
3 from the LLR. Because, see, I sent a lot of stuff
4 into them before my computer crashed. And then
5 when it did that, I had to try to cut and paste
6 what I had sent to them.

7 MR. OGBURN: I don't think I've got anymore
8 questions. But I do reserve the right to
9 reconvene the deposition to the extent we get
10 stuff -- additional materials from you
11 relating to damages on the house, relating to
12 communications with other people, anything
13 like that.

14 MS. DRISCOLL: Or any alleged missing pages of
15 any exhibits.

16 MR. OGBURN: Yeah.

17 THE WITNESS: Hold a second. I'm going to try
18 to get, see if I could get somebody to send me
19 that because that was one of the things that I
20 talked about. I know with Dick -- and I don't
21 think he can get to it real quick, but I'll
22 ask him, the closing on --

23 MR. OGBURN: Do you want to step outside and
24 make a call?

25 THE WITNESS: No, because they probably



1 wouldn't answer the call.

2 MR. OGBURN: So who are you sending an email
3 to now?

4 THE WITNESS: I'm sending it to Dick's wife
5 because she's got some of his files handy.

6 MR. OGBURN: What's her name?

7 THE WITNESS: Glenda Arnold. She's a realtor
8 in Columbia, South Carolina.

9 MR. OGBURN: Do y'all have any questions?

10 MS. DRISCOLL: You can go ahead.

11 MR. RACINE: I do, just briefly.

12 * * * * *

13 FURTHER EXAMINATION BY MR. RACINE:

14 Q Have you ever worked for the Federal Housing
15 Authority?

16 A No.

17 Q Have you ever had any training from the FHA?

18 A I know we were doing compliance reviews with the
19 State and everything. We would go to different
20 classes. But a lot's changed since I did that.

21 Q Do you know what the minimum standards for property
22 are for the Federal Housing Authority?

23 A Not for all the programs. I do for Fannie Mae and
24 Freddie Mac. I know what the standards are.

25 Q How do you know what the standards are?



1 A Well, there's a booklet that's got it. And also
2 it's on all the forms that are in your packages
3 that you got in the closing statement.

4 If you call -- call actually the Summit
5 Funding office here in Cornelius, North Carolina,
6 they will tell you what they are.

7 MS. DRISCOLL: Objection.

8 Q So your knowledge of what minimum standards for
9 property under the FHA are based on documents that
10 you've reviewed?

11 A Yes.

12 And it's been gone over with me.

13 Q By who?

14 A Congressman Norman's office.

15 Q Who at Congressman Norman's office?

16 A Ms. Heckland. We talked about the different
17 documents.

18 Q Is she affiliated with the FHA?

19 A No.

20 Norman's one of the largest real estate
21 companies here, and she's kind of her top person.
22 When she and I met and I told her what documents I
23 didn't have and did have, comments that she made.

24 Even Mr. Jeff Kott at Banking and Finance,
25 once he found out that they had not handled this



1 correctly --

2 MS. DRISCOLL: Objection.

3 MR. RACINE: Objection.

4 THE WITNESS: He basically said to me, "We
5 really screwed up this one."

6 MS. DRISCOLL: Objection.

7 MR. RACINE: Objection.

8 THE WITNESS: Well, you're asking me a
9 question.

10 MR. RACINE: You're not answering my question,
11 but that's okay.

12 THE WITNESS: I'm just giving you the answer.
13 What's your answer? What's your question?

14 Q Here's my question: Do you know whether intact
15 vital sites is required for an FHA property?

16 A No.

17 Q Do you know whether a certain number of bathrooms
18 are required per bedroom for an FHA property?

19 A No.

20 Q Do you know whether a working dishwasher is
21 necessary for FHA property?

22 A I know that according to the appraisal that's being
23 done for the FHA loan, it states that it has to be
24 on and working.

25 Q That's not my question. My question is: Do you



1 know whether a house is required to have a
2 dishwasher?

3 A Oh, no. I don't know.

4 Q So there are -- you would agree with me that there
5 are certain things about houses that you don't know
6 whether that would cause them to not qualify under
7 the FHA rules?

8 A I do not know all the rules. I do know what is
9 required of specific type loans. I know what the
10 requirements are of this specific type loan.

11 Q And you know that because you've read
12 FHA publications?

13 A Because it was told to me by Allen Tate's real
14 estate. It was told to me by Mr. Gillen's office.
15 It was told to me by Summit Funding.

16 MS. DRISCOLL: Objection.

17 Q Okay. So let me ask it this way --

18 A And it's in the closing package.

19 Q When Mr. Blue did his appraisal, he found that the
20 property met the minimum requirements for the
21 FHA loan. You'd agree with that; right?

22 A That's what he said, but it did not.

23 Q And in making that decision, presumably he looked
24 at the property and made a judgment call whether
25 that property met the minimum requirements;



1 correct?

2 A I don't know what he did because he didn't mark
3 things correctly. So I don't know how he came
4 about his decision.

5 Q Okay. When you went through the property, you
6 noticed various issues?

7 A Yes.

8 Q The deck being one; correct?

9 A Ah-huh.

10 Q And that was just based on a you looked at it and
11 saw it, it was right there; right?

12 A Yes.

13 Q You didn't have to do any analytical testing or
14 anything like that?

15 A No.

16 Q You would agree with me that if Mr. Blue was there
17 and looked at the deck, he would see the same site
18 that you saw; correct?

19 A I would think so. But I don't think he was there
20 when I was there.

21 Q Okay. Maybe I asked that badly.

22 A The pictures he took when he was there supposedly
23 were not the pictures -- could not have been taken
24 on that day. So I don't know what he saw.

25 Q Regardless of the day he went, the issues you saw



1 when you first went to the property were still
2 there when you moved in; correct?

3 A Yes.

4 And some of those he should have marked on the
5 FHA qualification.

6 Q That's not my question.

7 A Okay.

8 Q My question is: You saw certain issues with the
9 property when you went for your first visit;
10 correct?

11 A Yes.

12 Q And those same issues were present when you went
13 back after you closed and moved in; correct?

14 A Yes.

15 Q So presumably, unless they were repaired and then
16 messed up again when Mr. Blue went, he saw those
17 same things; correct?

18 A He should have..

19 Q All right.

20 How do you know that those issues would
21 leave -- would prevent that property from
22 qualifying under the FHA?

23 A Are you ready? Okay. All right. The house
24 required -- the appraisal says -- states that it
25 was -- had a crawl space and he went under it; all



1 right?

2 Q How do you know that a house is required to have a
3 crawl space under the FHA?

4 A I didn't say it was required. It says that if it
5 has one, you're required to go under there and
6 look; okay?

7 Q Okay.

8 A It had.

9 Q Does your house have a crawl space?

10 A No.

11 Q So Mr. Blue would not be required to go under there
12 and look, would he?

13 A No. But he marked that it had a crawl space.
14 Okay?

15 Q Okay. Does that matter?

16 A Yes.

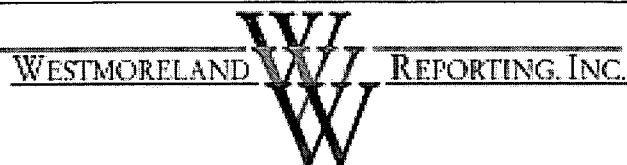
17 Q How so?

18 A Because there's a code, and you've got it. I sent
19 it to you, and I'm sure you have it. That if a
20 property, an FHA property, has any part of the
21 property that is directly in contact with the
22 ground, it's required to have a CL-100.

23 MS. DRISCOLL: Objection.

24 Q Okay. So that's what you believe; right?

25 A That's what I know. It's in the booklet. Look in



1 the FHA Handbook.

2 Q Okay.

3 A So what I'm saying to you is: He marked issues
4 that were -- all right. Example. He put that he
5 went up in the attic via a stairway where you pull
6 down the stairs and viewed the roof and saw no
7 damage. Okay?

8 Q Okay.

9 A I don't have stairs to get up into the attic.

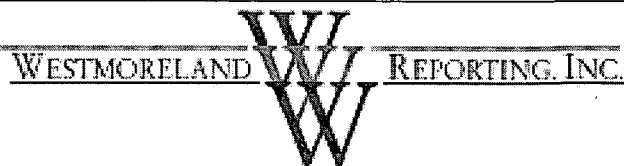
10 Q Let me ask it this way. Because I understand what
11 you're saying. I'm not making my question clear.
12 Let me try to clear it up a little bit.

13 Assuming that all the issues of your house
14 were listed on an appraisal report, how do you know
15 that that still would not have qualified for the
16 FHA loan?

17 A Because it could not qualify for FHA loan if it was
18 not accurate.

19 Q Okay. But let's assume it was accurate. Let's
20 say -- assume that every issue with your house was
21 listed on the appraisal report. How do you know
22 that those issues would be sufficient to prevent
23 that property from being acceptable under
24 FHA rules?

25 A Because it would have created a defective. And



1 under the FHA rules, if there's a defectiveness of
2 rot or certain percentages of rot or, for example,
3 the rails, FHA Handbook tells you the height that
4 the rails and the length -- there has to be rails
5 in order to meet the safety requirements. If those
6 aren't there, that has to be fixed. And Jonathan
7 told me that. He told me he'd put up the rails for
8 me.

9 MR. OGBURN: Objection.

10 THE WITNESS: And the other thing is it had to
11 have utilities on, sir. You and I have talked
12 about that before. There were no utilities
13 on.

14 Q Well, we discussed that.

15 A And Summit became aware of that on the first week
16 of June.

17 MS. DRISCOLL: Objection.

18 MR. RACINE: Objection. Nonresponsive.

19 Q But you've had no training from FHA; correct?

20 A No.

21 Q You're not a home appraiser?

22 A No.

23 The only thing I've done with FHA and the
24 appraisal is not being able to close a loan when we
25 were supposed to close them because these things



1 weren't done.

2 MS. DRISCOLL: Objection.

3 THE WITNESS: You asked me what I knew.

4 That's what I know.

5 MR. RACINE: Okay. That's all I have.

6 MS. DRISCOLL: I just have a couple followup
7 questions.

8 * * * * *

9 FURTHER EXAMINATION BY MS. DRISCOLL:

10 Q Ms. Baber, what was your email in 2015?

11 A Pardon?

12 Q What was your email address in 2015?

13 A Yahoo.com.

14 Q What was the -- it was more than Yahoo.com. What
15 was your email address?

16 A I don't remember if it was Baber.karen or
17 Karen.baber.

18 Q If it's Baber -- if I have an email from you that
19 says Baber.karen@yahoo.com, is that your correct
20 email address?

21 A It should be at that time.

22 Q Do you have access to that email at this time?

23 A I do not.

24 Q You do not have the ability to produce to me emails
25 in their original format from that email?



1 A No.

2 Q What is your email now?

3 A Kokb1951@gmail.com.

4 Q Do you have the ability to produce emails to me in

5 the original format from that email address?

6 A If you mean by original what I may have transferred

7 over there, I probably have most of those.

8 Q What I mean by original format is as an email and

9 not a PDF. Do you have the ability to provide to

10 me an electronic copy of the email as an email

11 message and not a PDF?

12 A I'm still not following. Of an email?

13 Q Yes.

14 A I don't know. I don't know. I don't know what

15 you're referring to.

16 Q If I asked you --

17 A If I was going to send you something from my email,

18 I would go through and copy it and send it to you.

19 Q So you would not just forward me the original

20 email?

21 How would you send me the email?

22 A Like I have been.

23 Q As a PDF?

24 A I haven't sent you a PDF of emails.

25 Q I have multiple emails from you with



1 PDF attachments. Is that what you're talking
2 about?

3 A I may have done it both ways, I don't know.

4 Q Do you have the ability to send me an email as a
5 PST file?

6 A I don't know what that is.

7 Q That is the original format of the email. So it
8 would come up on my screen as an email rather than
9 a PDF file.

10 A I don't know. I don't know. I send emails. I
11 don't use things very often.

12 You know. If I'm doing a document like this,
13 I'll try to put it -- I don't even have Word on my
14 computer. I have to put it on Google Docs and
15 resend it and save it on the drive and send it.

16 Q So you don't have any of the original emails from
17 the email address Baber.karen@yahoo.com?

18 A No.

19 Q You don't have any way to access those?

20 A No. I've tried.

21 Q When did you start using the klkb1951@gmail.com
22 address?

23 A Probably around -- maybe -- I don't recall. 2016
24 maybe.

25 Q It was not in 2015?



1 A I don't know. I do not remember when I set that
2 up.

3 Q Did you use klkb1951@gmail.com during the period of
4 time from January 2015 through July of 2015?

5 A I don't recall.

6 Q When did you stop using Baber.karen@yahoo.com?

7 A I don't recall.

8 Q Was it in 2015?

9 A I don't recall.

10 Q Would you have any emails related to the closing of
11 this loan?

12 And when I say "this loan," I mean the loan
13 that's the subject of this action, that would have
14 come from the klkb1951@gmail.com?

15 A I do have, but I don't know when -- that would have
16 been probably after the loan was closed. I think I
17 was changing over emails during that time because I
18 had -- I was able to go back and get some of them.

19 You should have one email, for example, that
20 has Colleen Cowens and that I sent to the state
21 that is like a whole bunch of emails on top of each
22 other, and that's when I tried to change everything
23 over and I wasn't successful.

24 Q Ms. Baber, all I'm asking you about right now are
25 your email addresses.



1 Why did you stop using Baber.karen@yahoo.com?

2 A There was just -- it got hacked. And there was
3 just a lot of emails on there. I'd been using it
4 for a long, long time. And I needed to get a new
5 email address.

6 Q When did it get hacked?

7 A I don't remember.

8 Q Was it before or after the closing of this loan?

9 A I don't recall.

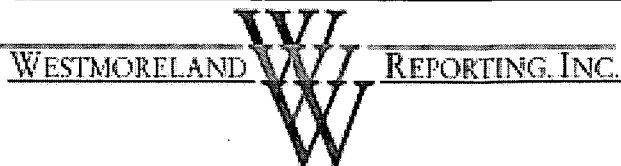
10 Q So there's a possibility someone could have hacked
11 into your email prior to this loan closing?

12 A I don't know. I just know that I was getting a
13 whole lot of things on there, a whole lot of junk
14 mail, a lot of things that were coming to me. And
15 with the job I do, I went to two emails. One was
16 the klkb. And then I had my government email. But
17 I didn't do any of this business on the government
18 email.

19 And I also had an email that was -- I still
20 had availability for, it was called
21 JBEZ12@juno.com. I no longer have that one. There
22 were some things done on that one.

23 Q Some things done on that related to this loan
24 closing?

25 A Possibly. There was people that, you know, I would



1 send pictures to or different things about the
2 house. But that one I hadn't.

3 Q Has that been produced?

4 A I don't have those.

5 Q Why not?

6 A They were just friends that I sent pictures to
7 about the house to show it to them. I don't even
8 have the password for that anymore. I think Juno's
9 been closed, actually.

10 MS. DRISCOLL: I don't have anything further.
11 But, like Mr. Ogburn, I'm going to reserve the
12 right to reconvene this deposition.

13 MR. RACINE: As will I.

14 MR. OGBURN: I'm good.

15 THE WITNESS: Right now you want from me --

16 MR. OGBURN: Stay on the record, then.

17 MS. DRISCOLL: I think we want to stay on the
18 record because, Ms. Baber, I think all of us
19 want a copy of whatever recording you're
20 making of this deposition.

21 MR. OGBURN: Yes.

22 MS. DRISCOLL: So that we can make sure that
23 we all have the same information.

24 THE WITNESS: Okay. I think I know how to do
25 that. But if I have to -- I'm not sure how to



1 do it, but I'll figure it out. Do you know
2 how to do it?

3 MR. OGBURN: I don't know.

4 And you've had that recording running
5 throughout the entire day; right? Whether we
6 were on break or not?

7 THE WITNESS: No. I cut it off then.

8 MR. OGBURN: You cut it off when we were on
9 break?

10 THE WITNESS: I did.

11 MR. OGBURN: I think we would like a copy of
12 it, then.

13 MR. RACINE: Yep.

14 THE WITNESS: Let me see if I can do that.

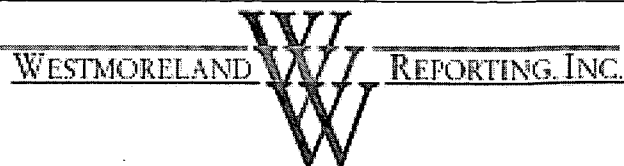
15 MR. OGBURN: But let's go through the
16 documents. You're going to provide us a copy
17 of the recording from today.

18 THE WITNESS: Okay.

19 MR. OGBURN: Provide us a copy of the missing
20 page from the HUD, that you'll provide by
21 Friday.

22 You're going to provide any other records
23 relating to repairs made?

24 THE WITNESS: I'm in the process of trying to
25 do that. I don't know if I can get all that



1 together. It's been over such a long period
2 of time.

3 MR. OGBURN: Are there any other documents
4 that we talked about?

5 MS. DRISCOLL: Communications with folks.

6 MR. RACINE: Parties.

7 MR. OGBURN: Communications with the
8 individuals who reviewed things for you.

9 MS. DRISCOLL: I think we can say all third
10 parties relating to this case.

11 THE WITNESS: That could be numerous. I don't
12 even --

13 MR. OGBURN: That's fine. We've asked for
14 them.

15 THE WITNESS: I have no idea who I didn't
16 tell. My daughter.

17 MR. OGBURN: Well, that's what we've asked
18 for. Anything else?

19 MS. DRISCOLL: That's all.

20 MR. OGBURN: I think we can go off the record.

21 THE WITNESS: The people I've talked to,
22 there's nothing in writing, do you want those?
23 Those names?

24 MS. DRISCOLL: The people you identified.

25 THE WITNESS: I asked if they wanted me to



1 give a list of the people that I have spoken
2 with. I imagine that would be like you're
3 talking about Representative Pope?

4 MR. OGBURN: Anybody.

5 THE WITNESS: Congressman Norman's office.

6 MR. OGBURN: Friend, elected official, police,
7 anybody.

8 THE WITNESS: Okay. Most of that you have.
9 But some of them, of course they didn't want
10 to go on the record or do anything because of
11 the political climate.

12 MR. OGBURN: I understand. But we want to
13 know whether you talked to them.

14 THE WITNESS: Okay. That's not a problem.
15 Just need to promise them you won't leak
16 anything. They don't want this to be a
17 scandal. This is the worst case they've ever
18 seen in South Carolina, so --

19 MR. RACINE: Object to that representation.
20 If they're involved in the case, they're
21 subject to subpoenas.

22 THE WITNESS: They're not involved with the
23 case. They're just saying, when I talk to
24 them --

25 MS. DRISCOLL: If you spoke with them, they



1 are involved in the case. And they are
2 subject to subpoena. They were a witness in
3 this case.

4 THE WITNESS: Okay. That's fine with me. I'd
5 love it. That would be great with me. I'd
6 love for -- get his office and all these
7 people would have to say we can't take this.
8 This is a mess.

9 (WHEREUPON, the taking of the foregoing
10 Deposition was concluded at 3:32 p.m.)

11 * * * * *

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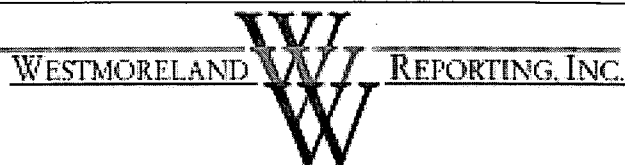
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STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

C E R T I F I C A T E

I, Kathy A. Cortopassi, RPR, RMR, CRR, CCP, CBC and Notary Public, do hereby certify that KAREN KIRBY BABER was duly sworn by me prior to the taking of the Deposition; that said Deposition was taken and transcribed by me; and that the foregoing 280 pages are a true and accurate transcription of the testimony of the said Plaintiff.

I further certify that review and signing of the transcript by the witness was not discussed and deemed reserved.

I further certify that the persons were present as stated.

I further certify that I am not related to, of counsel for nor in the employment of any of the parties to this action.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 27th day of February, 2019.

Kathy A. Cortopassi
Kathy A Cortopassi
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
January 3, 2028



ERRATA SHEET FOR THE TRANSCRIPT OF:

Case: Baber vs. Summit Funding, Inc., et al.
Case Number: 2018-CP-46-01592
Deponent: Karen K. Baber
Date: 02/15/2019
Reporter: Kathy A. Cortopassi

I, the undersigned, do hereby certify that I have read the transcript of my testimony, and that

[] There are no changes noted.

[] The following changes are noted:

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Deponent's Signature

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
2018-CP-46-01592

COUNTY OF YORK

KAREN K. BABER,

Plaintiff,

vs.

SUMMIT FUNDING, INC., APPRAISAL
INNOVATIONS, LLC, BRIAN L. BLUE, THE
GILLEN LAW FIRM, P.A., MICHAEL F.
GILLEN, ALLEN TATE CO., INC., COLLEEN
COESENS, JONATHAN GARVEY, ROBERT
OUZTS, CONNIE DELANEY, and GLORIA
LONG-ROBINSON,

Defendants.

**MOTION FOR SUMMARY
JUDGMENT**

NOW COME Defendants Allen Tate Co., Inc. ("Allen Tate"), Colleen Coesens ("Coesens"), Jonathan Garvey ("Garvey"), Robert Ouzts ("Ouzts") and Connie Delaney ("Delaney") (collectively, the "Tate Defendants") and move the Court pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for summary judgment against Plaintiffs on all claims against the Tate Defendants, pursuant to Rule 56, SCRPC. The Tate Defendants are entitled to summary judgment because, among other things, Baber executed a valid release of all claims against the Tate Defendants and Baber's deposition testimony does not support her claims against the Tate Defendants. In support of this Motion, the Tate Defendants rely on the pleadings on file, Baber's deposition transcript attached hereto as Exhibit A, Exhibits 4, 5, 6, 7, 9, 11, 14, 16, 17, 19, 20, 22, and 23 from Baber's Deposition that are collectively attached hereto as Exhibit B,¹ the Tate Defendants' Requests for Admission, to which Baber failed to timely respond, a copy of which is attached hereto as Exhibit C., and the Affidavit of Thomas L. Ogburn III attached hereto as Exhibit D.

¹ The Tate Defendants have redacted account numbers and insurance policy numbers from the exhibits.

In the event the Court does not render judgment for all the relief requested, pursuant to Rule 56(d) of the Rules of Civil Procedure, the Tate Defendants further move the Court to examine the pleadings and the evidence before it and ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted and thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just.

WHEREFORE, the Tate Defendants move the Court as follows:

1. That it grant the Tate Defendants' motion for summary judgment and dismiss all of Baber's claims against the Tate Defendants with prejudice; and
2. For such other and further relief as may be just and proper.

This the 5th day of March, 2019.

POYNER SPRUILL LLP

s/ Thomas L. Ogburn III

Thomas L. Ogburn III

S.C. State Bar No. 11761

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Charlotte, North Carolina 28202

Telephone: 704-342-5250

Facsimile: 704-342-5264

E-Mail: togburn@poynerspruill.com

ATTORNEYS FOR DEFENDANTS ALLEN

TATE CO., INC., COLLEEN COESENS,

JONATHAN GARVEY, ROBERT OUZTS, AND

CONNIE DELANEY

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
2018-CP-46-01592

KAREN K. BABER,

Plaintiff,

vs.

SUMMIT FUNDING, INC., APPRAISAL
INNOVATIONS, LLC, BRIAN L. BLUE,
THE GILLEN LAW FIRM, P.A.,
MICHAEL F. GILLEN, ALLEN TATE CO., INC.,
COLLEEN COESENS, JONATHAN GARVEY,
ROBERT OUZTS, CONNIE DELANEY, and
GLORIA LONG-ROBINSON,

Defendants.

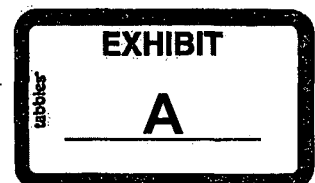
DEPOSITION

OF

KAREN KIRBY BABER

Taken By Defendant
Rock Hill, South Carolina
February 15, 2019

Reported by:
KATHY A. CORTOPASSI, RMR, CRR, CCP, CBC
Registered Merit Reporter
Certified Realtime Reporter



A P P E A R A N C E S

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* * * * *



A P P E A R A N C E S (Continued)

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rracine@cshlaw.com
704-940-3418

Also Present: Jonathan Garvey

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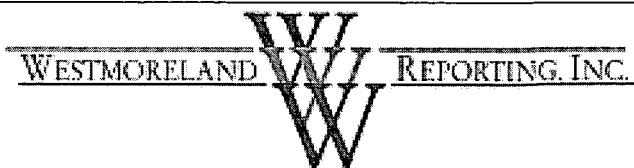


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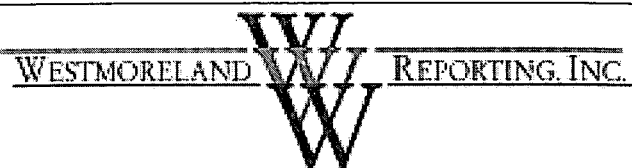
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E X H I B I T S

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1 On February 15, 2019, commencing at 9:00 a.m.,
2 the deposition of KAREN KIRBY BABER was taken pursuant
3 to notice and pursuant to Rules 26 and 30 of the South
4 Carolina Rules of Civil Procedure, on behalf of the
5 Defendants at 331 East Main Street, Suite 200, Rock
6 Hill, South Carolina.

7 * * * * *

8 MR. OGBURN: Go ahead and mark this as
9 Exhibit 1.

10 (Whereupon, Exhibit 1 was marked for
11 identification and is attached to the
12 transcript.)

13 KAREN KIRBY BABER, upon first being duly
14 sworn, testified as follows:

15 EXAMINATION BY MR. OGBURN:

16 Q Ms. Baber, the court reporter will keep the
17 official set, but I'm giving you a copy for your
18 files. If you had a lawyer here, I'd give your
19 lawyer a copy.

20 A Okay.

21 Q Ms. Baber, my name is Tate Ogburn, and I'm here
22 representing what we've called the Tate Defendants,
23 and those are the Allen Tate.

24 Ms. Baber, are you recording this?

25 A Yes, sir.



1 Q Why are you recording this?

2 A Because I'm representing myself and because, quite
3 honestly, a lot of information I've gotten from
4 everybody has not been accurate and I am very sick
5 and I want to make sure that I, you know, properly
6 understand what you say and also what I say. I've
7 been up since 4:00 this morning very sick, going to
8 be leaving here and going to the hospital. It's so
9 that I can kind of make sure I have my thoughts
10 together and make sure what I say, not so much what
11 you say, but what I say is accurate.

12 Q Are you aware that the court reporter is taking
13 down what you say verbatim?

14 A Yes, sir. And I also know that it costs me to get
15 that. So if she can take it down, I don't see why
16 I can't do it.

17 MR. RACINE: Just a second, Ms. Baber. I'm
18 Russ Racine. I represent Mr. Blue. You said
19 you were going to go to the hospital
20 immediately following this deposition?

21 THE WITNESS: I may.

22 MR. RACINE: Do you need to go now?

23 THE WITNESS: No. I've been to the doctor off
24 and on this week. I had notified, I believe,
25 your office of what I told y'all I was worried



1 about, maybe I would have to excuse myself,
2 happened last night. And so I had been very,
3 very sick all night. And so I've had some
4 medication I've been trying to -- I'm very
5 shaky. I didn't take some medication so that
6 I could try not to be out of it.

7 Q Have you had your deposition taken before?

8 A In -- a long time ago, yeah.

9 Q Okay. So you understand how this works, I'm going
10 to ask you a series of questions.

11 A Okay.

12 Q You've been sworn in. You're testifying just like
13 we were in the courthouse and you're testifying in
14 the courtroom for a judge.

15 A Yes, sir.

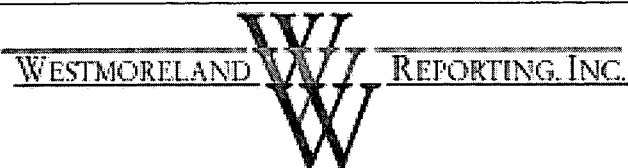
16 Q And you have sworn to tell the truth, the whole
17 truth, and nothing but the truth; correct?

18 A Yes, sir.

19 Q And I want to make sure that you understand the
20 questions I ask. So if you don't understand the
21 question, ask me to ask it again.

22 A Okay.

23 Q Also, the court reporter is taking down exactly
24 what you say, so she cannot transcribe if you shake
25 your head yes or no.



1 A I understand.

2 Q So I ask that you give a verbal yes or no response.

3 A Okay.

4 Q And I will -- I'll try to remind you if I see you

5 shaking your head.

6 A Okay.

7 Q Are you taking any medications today that might

8 influence your ability to understand the question

9 or to answer them?

10 A I have taken something to control pain last night.

11 And nausea, I took that about 2:00 this morning.

12 Most of that has worn off. I am in pain. But I

13 have not taken anything for it because of the

14 reason of this deposition.

15 Q Okay. So does any of that -- would any of that

16 affect your ability to either understand the

17 question I ask or answer them?

18 A I don't believe so. It might take me a minute to

19 think through it more so than, like, just a quick

20 answer off my head, but I should be fine.

21 Q Okay. Then the other thing is: Let me know if you

22 need to take a break; okay?

23 A I will.

24 Q The only thing I ask is if I have asked you a

25 question and you need to take a break, that you



1 answer the question and we take the break after
2 you've answered the question.

3 A Okay.

4 Q If you'll state your full name for the record,
5 please?

6 A Karen Kirby Baber.

7 Q Okay. I'm going to show you what's been marked as
8 Exhibit 1. Tell me if you recognize that.

9 A Yes.

10 Q Is that a copy of a Notice of Deposition I sent
11 you?

12 A Yes.

13 Q And is that in the lawsuit Karen K. Baber v. Summit
14 Funding, Inc., et al?

15 A Yes.

16 Q Is that a lawsuit that you filed in York County?

17 A Yes.

18 Q And you're appearing pursuant to this Notice of
19 Deposition; correct?

20 A Yes.

21 Q Ms. Baber, if you could state your full name for
22 the record.

23 A Karen Kirby Baber.

24 Q Okay. Ms. Baber, you have produced a lot of
25 documents to us as part of this lawsuit; correct?



1 A Yes.

2 Q And a lot of those documents contain email
3 exchanges between either you and the real estate
4 agents or you and Summit or you and Sharon Cook at
5 LLR; correct?

6 A Yes, sir.

7 She has would also have been what you have.
8 And those emails were sent to her from emails and
9 communications with the parties, with the
10 Defendants.

11 Q So in your communications with Sharon Cook, you
12 forwarded her copies of emails that were between
13 the parties as part of the sale of the house;
14 correct?

15 A Yes.

16 Q Did you modify the content of any of the emails
17 that you sent to LLR?

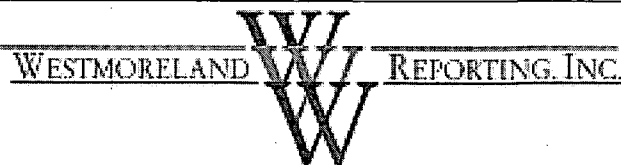
18 A No.

19 I had difficulty copying them because it was
20 from an old email that I didn't have anymore. And
21 so I had to kind of cut and paste. I couldn't do a
22 direct follow-up because I no longer had the email.

23 Q Did you modify the text in any of the emails?

24 A Not that I recall.

25 Q In order for her to write it down accurately, --



1 A Okay.

2 Q -- please allow me to finish asking the question.

3 A Okay.

4 Q And I will try to allow you to finish the answer --

5 A Okay.

6 Q -- before we go.

7 So for the emails that you provided us, did
8 you edit any of the text in those emails?

9 A Not that I recall. Unless you're referring to
10 editing as combining emails where they may have
11 been separated originally.

12 Q Okay. But if there is an email in there from Linda
13 Madison to you, you didn't edit the text of that
14 email?

15 A Not that I recall.

16 Q So are all of the emails that you provided to
17 LLR true and correct copies of emails that were
18 either sent to you or received by you as part of
19 the sale of the house?

20 A To the best of my recollection.

21 Q I'm going to mark this as Exhibit 2.

22 A And the emails could also include communications
23 that were verbal.

24 Q How would an email contain a communication that was
25 verbal?



1 A We were going over the email. And maybe she made a
2 note or I made a note on it. And then put it in
3 the record that way.

4 (Whereupon, Exhibit 2 was marked for
5 identification and is attached to the
6 transcript.)

7 Q Okay. I'm going to show you what's been marked as
8 Exhibit 2.

9 A Okay.

10 Q Do you recognize that email?

11 A To the best of my recollection, it's been a long
12 time ago; but yes, sir.

13 Q Is that an email from Mr. Garvey to you and then
14 your response on June 1st, 2015?

15 A I don't see a response on here.

16 Q Up at the top where it says, "both done"?

17 A I don't know what that's referring to.

18 Q Okay. I'll represent --

19 A I was no longer able to open that email, that
20 referenced the document.

21 Q Down at the bottom of the document, below where it
22 says Jonathan Garvey in an email address, --

23 A Ah-huh.

24 Q -- can you read that language that says, "I have a
25 few things"?



1 A "Left in my file that I need. I'll send them right
2 quick for signatures. J."

3 MR. OGBURN: Okay. Mark this as Exhibit 3.

4 (Whereupon, Exhibit 3 was marked for
5 identification and is attached to the
6 transcript.)

7 MR. OGBURN: They're your copies.

8 THE WITNESS: Okay.

9 Q I'm going to have you look at Exhibit 3.

10 A Ah-huh.

11 Q I want you to compare it to Exhibit 2.

12 A Ah-huh.

13 Q I'll represent to you that Exhibit 3 is a copy of a
14 document we received from you.

15 A Is this 3?

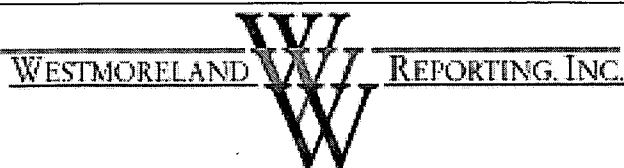
16 Q It is. If you want to work on the ones that are --
17 you can keep these. But why don't you work off the
18 ones that have been labeled because they will be
19 easier to keep them.

20 A Okay.

21 Q So I'll represent Exhibit 3 is a document we
22 received from your files.

23 A Ah-huh.

24 Q Down at the bottom is a notation that says, "Baber
25 0923." We added Bates numbers to the documents.



1 A Ah-huh.

2 Q Because you had a lot of duplicate emails, and we
3 wanted to try to keep everything separate.

4 A Right.

5 Q So does this appear to be a copy of the same email
6 as Exhibit 2?

7 A It would seem to be.

8 Q Okay. I want you to read the text below Jonathan
9 Garvey's email address.

10 A "I will drop off," do you mean about that one?

11 Q Start with "I have."

12 A "I have a few things left in my file that I need.
13 I will send them right quick for signatures. J
14 Will drop off warranty. Called Robert. But he has
15 not returned call. Did you call him?"

16 Q Okay. And how is that different from Exhibit 2
17 that I have shown you?

18 A That would probably been the one that he most
19 likely sent after that when I asked him about that
20 and when I combined them from the old email I had.

21 Do you notice at the top, this is the Yahoo?
22 And some of those I had difficulty -- in fact, you
23 should have one copy in your file where, like, all
24 the emails were on top of each other. So it was
25 difficult to put, you know, put those in order.



1 Q Did you add the language on the email?

2 A Not that I recall.

3 Q Not that you recall.

4 The language that says, "will drop off
5 warranty. Called Robert. But he has not returned
6 call. Did you call him?", did you add that
7 language?

8 A No, sir, not that I recall.

9 Q Can you explain to me why Exhibit 3 and Exhibit 2
10 are different?

11 A Like I said, probably because they were -- when I
12 combined the emails looking from the Yahoo and had
13 to go through and copy everything, probably he
14 responded and I just put them all together.

15 Q Okay. So are your emails accurate representations
16 of all the emails? Or in copying/pasting, did
17 stuff get moved around and added?

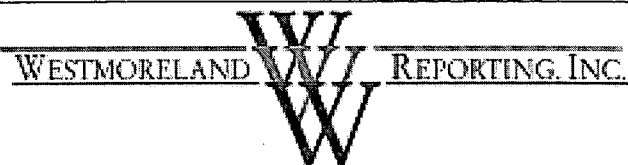
18 A That's possible.

19 Q That's possible?

20 A Not added. But it could have been this email was
21 put onto this one in order to copy it.

22 Q So the emails you gave us may not be accurate
23 representations of the actual email exchange
24 between the parties?

25 A No, that would not be correct.



1 Q It would be? They are accurate?

2 A Yes.

3 Q Okay. Again, why does your email contain
4 additional language than the Exhibit 2 email?

5 A That would have been additional email that Jonathan
6 had sent. If it's not already together and I would
7 have put them together. Because I could no longer
8 get into the Yahoo, so I cut and pasted. And
9 because that was accurate of what was happening at
10 the time.

11 Q Do you have any other names that you go by or have
12 gone by in the past?

13 A I don't believe so.

14 Q No. So no other marital name or?

15 Okay. Ms. Baber, how old are you?

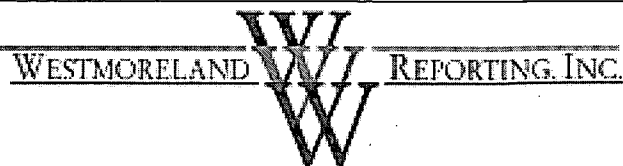
16 THE REPORTER: I'm sorry. There was no
17 answer. You went like that (Indicating.) but you
18 didn't --

19 MR. OGBURN: I'm sorry.

20 THE WITNESS: Oh, I'm sorry. What was the
21 question, any other names?

22 Q Have you ever gone -- have you ever had a married
23 name or a name where you were divorced or anything?
24 It's always been Karen Baber?

25 A Before I got married, it was Karen Kirby. But my



1 granddaughters call me Nana, but that's it.

2 Q And when were you married?

3 A November 19th of 1971, I think.

4 Q And are you still married?

5 A No.

6 Q Did you get divorced?

7 A Yes.

8 Q When did you get divorced?

9 A It was 18 years later, so I don't remember.

10 Q Okay. So in the late '80s?

11 A We were married for about 18 -- 18, 19 years.

12 Q And, Ms. Baber, how old are you?

13 A 67.

14 Q Okay. And where do you currently reside?

15 A 255 Rolling Ridge Road, Rock Hill, South Carolina,

16 29730.

17 Q And how long have you lived there?

18 A Since June the 3rd of 2015.

19 Q Where did you live before that?

20 A On Goodplace Road. I don't remember the number.

21 Q Where was it? What town was that?

22 A Rock Hill.

23 Q How long did you live at Goodplace Road?

24 A Lived there for about a year.

25 Q Okay. How about before that?



1 A Before that I lived in Southern Pines, North
2 Carolina.

3 Q Do you remember the street address?

4 A Not off the top of my head. I lived there for
5 about a year and a half. I lived with my mother
6 from 2006 until we put her in a nursing home in
7 June -- I lived with her in 2006. She went to an
8 assisted living in 2012. And I rented a house at
9 that point.

10 Q Okay. Did you live with your mother in Southern
11 Pines?

12 A Yes. Whispering Pines.

13 Q Is that in?

14 A North Carolina.

15 Q North Carolina?

16 What's the highest level of education you
17 completed?

18 A Associate's Degree.

19 Q And where's that from?

20 A Central Piedmont.

21 Q And when did you obtain that?

22 A Probably been '70, the spring of '71?

23 Q And I know you have one daughter. Do you have any
24 other children?

25 A I have two daughters.



1 Q And one of them is named Crystal?

2 A Ah-huh.

3 Q What's the other's name?

4 A Dawn.

5 Q Okay. Are you currently employed?

6 A Yes.

7 Q Who do you work for?

8 A United States Government.

9 Q Doing what?

10 A I work with the Census Bureau.

11 Q And what's your -- what are your job duties?

12 A I am a field rep.

13 Q And what does a field rep do?

14 A Collect data for the different agencies tied up

15 within the Census Bureau.

16 Q Okay. How long have you worked for the government?

17 A About 12 years.

18 Q Okay. Where'd you work before that?

19 A I took a break when I first moved in with my

20 mother. Before that, I worked for Dick Arnold.

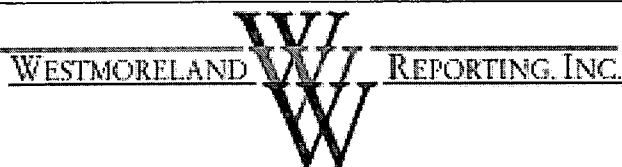
21 And I did do some work for Dick whenever I moved to

22 North Carolina, as well.

23 Q And Mr. Arnold is an attorney in South Carolina;

24 right?

25 A He's retired, yes, sir.



1 And I also did -- I filled in for some
2 attorneys, different ones, in Moore County. Like,
3 if someone went in to have a baby or something like
4 that, they would call and I would just fill in.

5 Q Okay. And what type of work did you do for the
6 attorneys?

7 A Just legal, you know, type documents, research
8 titles, closing packages.

9 And the same thing with Mr. Horn. He also had
10 some government contracts, and we worked on those.

11 Q So, some of your work for the lawyers involved the
12 steps necessary to close loans?

13 A Yes.

14 Q And it involved sale of properties?

15 A Yes.

16 Q And you did that for both Mr. Arnold and then just
17 on an as-needed basis for lawyers in Moore County?

18 A Yes..

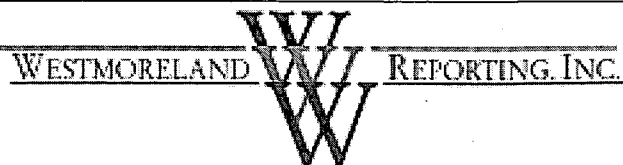
19 And that wasn't always real estate. That was
20 just if they were having a need.

21 Q Do you have any other -- any other jobs in the past
22 that involve residential real estate?

23 A Yes, sir.

24 Q What was that?

25 A In, let's see. In the late '70s or '80s, I



1 obtained a real estate license. I obtained a
2 broker's license. And I worked for a company doing
3 compliance where I traveled and taught compliance
4 throughout the country with real estate and with
5 securities.

6 Q Okay. Who'd you get your -- what state did you get
7 a broker's license in?

8 A South Carolina.

9 Q Okay. Any other sort of professional licensing?

10 A The securities license.

11 Q Okay. And who was that with?

12 A That was issued in South Carolina. I was with
13 Merrill Lynch, with E.F. Hutton.. I think it was
14 Bank of America. And I went to work for the -- I
15 was asked to do some investigative work with the
16 South Carolina Securities Department.

17 Q Who were you working for in doing that?

18 A I worked for the Secretary of State.

19 Q Ms. Baber, have you ever been involved with a court
20 proceeding prior to this one?

21 A Yes, sir.

22 Q Okay. How many do you think you've been involved
23 in?

24 A I had to testify on different accounts with -- as
25 an expert witness with securities and with



1 insurance. I also was an expert witness in
2 undercover operation with the FBI involving
3 securities fraud. So I'd say as far as going to
4 court, I was also subpoenaed to testify in a
5 securities fraud situation up in Virginia, I
6 believe it was. I can't remember exactly.

7 Q And were those cases in which you were a party or
8 you were purely a witness?

9 A I was a witness in some of them. And then some of
10 them were because of the -- one of them, for
11 example, was a case that Mr. Arnold was involved
12 in. And I was an expert witness in that.

13 Q Okay. Did you ever live in Florence County?

14 A I did.

15 Q Do you remember a case you filed against NC&B in
16 Florence County? Or that was filed against you?

17 A No, sir.

18 Q Do you remember filing a case against Chevy Chase
19 Bank?

20 A No, sir.

21 Q Do you remember filing a case against a person
22 named Mr. Wigs?

23 A No, sir.

24 Q Okay. How many lawsuits have you been a party to,
25 not merely a witness but a named party?



1 A I have no idea.

2 Q More than one?

3 A I would have to go back and look and see what
4 you're referencing to because the kind of work I
5 did, there could be numerous ones. I would have to
6 divide those up and see what you were referencing.

7 Q What do you mean "the kind of work I did?"

8 A Well, I worked with the different agencies and
9 would be either a witness or --

10 Q I'm talking about civil lawsuits where you were the
11 Plaintiff. Not criminal. Not investigations. Not
12 things where you're an expert witness.

13 A I'd have to see the documents which you're
14 referring to. I don't recall.

15 Q Do you remember filing a lawsuit in Florence County
16 against Aubrey Richardson?

17 A That one sounds familiar. I think it was about a
18 rental house, possibly? But I don't recall.

19 Q How about do you remember filing one in Florence
20 County against George Leeris?

21 A Yes.

22 Q What was that about?

23 A That was during Hurricane Hugo. And it involved an
24 office that we had through A.L. Williams. And he
25 claimed that I did not -- it had something to do



1 with a check. I don't remember if he brought a
2 lawsuit that I had not paid a check or had stopped
3 payment on a check and shouldn't have. And I won
4 the lawsuit in court.

5 Q And did you file -- do you remember a lawsuit filed
6 against Tire Recyclers?

7 A I remember being a party to some legal work that
8 was done with Tire Recyclers.

9 Q Do you remember filing a lawsuit against them in
10 Florence County?

11 A No, sir.

12 Q Do you remember -- do you ever remember that a
13 lawsuit that Bank Carolina First Bank may have
14 filed against you in Florence County?

15 A No, sir.

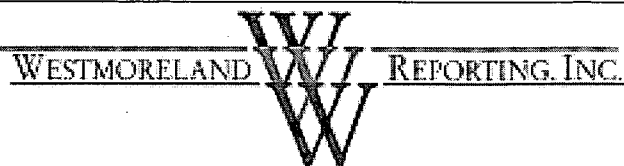
16 Q Do you remember a lawsuit that South Carolina Bank
17 and Trust would have filed against you in
18 Georgetown County?

19 A No, sir.

20 Q Have you ever had a judgment entered against you, a
21 Civil judgment?

22 A I don't recall. Not to my recollection. If you
23 can show me some paperwork, I can certainly go back
24 and look.

25 Q Have you ever been charged with a crime other than



1 a speeding ticket?

2 A No, sir.

3 Q Have you ever filed bankruptcy?

4 A I would have to go back and look. If it was, it
5 was a long time ago. Probably during the divorce.

6 Q Did you ever file bankruptcy when you lived in
7 Florence, South Carolina?

8 A If I did, that would have been during the divorce.

9 Q There's a 1992 bankruptcy where the debtor is Karen
10 K. Baber living at 733 Corbett Place, Florence,
11 South Carolina?

12 A That would have been --

13 Q Would that have been you?

14 A That would have been probably during the divorce
15 proceedings.

16 Q Okay. How many different --

17 A I don't recall all of that.

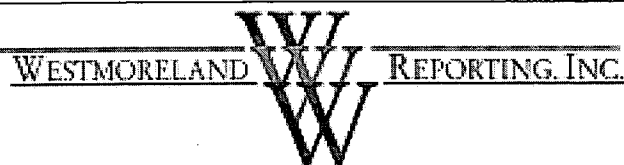
18 Q How many different real properties have you owned?

19 A Let's see. We owned -- my husband and I owned one
20 on Congaree Drive in Florence. And then moved from
21 there on Mosswood. And that's when we got the
22 divorce, during that time.

23 Q Is that -- do you remember any others?

24 A Properties that we owned?

25 Q Yes. Or that you were part owner, whether or not



1 it was with your husband or not.

2 A Corbett Drive.

3 Q Okay.

4 A And a condo in Rose Inlet.

5 Q Okay. Any others?

6 A The one I'm in now.

7 Q So approximately five, at least five?

8 A Was that five?

9 Q Congaree, Mosswood, Corbett Drive, the condo and
10 the Rolling Ridge, that's five.

11 A Okay.

12 Q Any other -- I mean, could it be more than five?

13 A Not that I recall, unless I was -- I know my mom
14 and dad and my brothers had different properties
15 from time to time. And all of us would be possibly
16 on those deeds or something like that, which could
17 also refer back to some of the other things you're
18 talking about.

19 Q Now, as I told you, I represent Allen Tate
20 Companies and the real estate agents in the
21 lawsuit. And I'm going to ask you a lot of
22 questions about the transaction. But I want to
23 start with each of my Defendants. And I want you
24 to tell me what their role was in the transaction,
25 who they represented. We don't need to get into



1 the whole transaction right now.

2 Jonathan Garvey?

3 A He was my agent.

4 Q So, -- and you were the buyer of the property?

5 A Yes.

6 Q Okay.

7 Robert Ouzts?

8 A Robert Ouzts was the listing agent after Connie
9 Delaney became the seller's power of attorney. I
10 remember going in and Jonathan explaining that to
11 me, and that was kind of weird.

12 Q And what did you understand Ms. Delaney's role was?

13 A I believe she was the original listing agent. And
14 then when she moved, Jonathan explained that
15 because it was all in one company, at first they
16 were both going to be the listing agent, and then
17 she became the power of attorney and Robert Ouzts
18 was listed as the listing agent, to my knowledge.

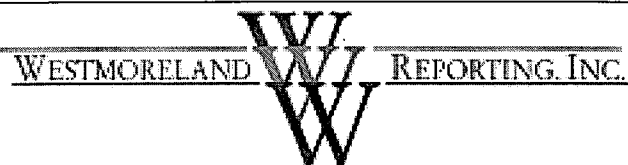
19 And I believe that was all shown on the
20 original contract, which was a paper contract of
21 which I never got a copy.

22 Q Okay. And Colleen Cousins?

23 A Excuse me. I will have to keep drinking.

24 She was the broker.

25 Q Okay. Was she involved in the transaction at all?



1 A Not to my recollection, not that I know until March
2 of 2016.

3 Well, I'll take that back. I had a meeting
4 with her in June of 2015.

5 Q And that was after you had bought the house?

6 A Yes.

7 Q Okay. Do you remember when Mr. Arnold retired from
8 practicing law?

9 A He retired about three years ago, I believe.

10 Q Is Mr. Arnold giving you advice with regard to this
11 case?

12 A He is looking at documents for me. I'm having him
13 proofread things.

14 Q Is he writing things for you?

15 A No, sir.

16 Q Are you represented by an attorney?

17 A No, sir.

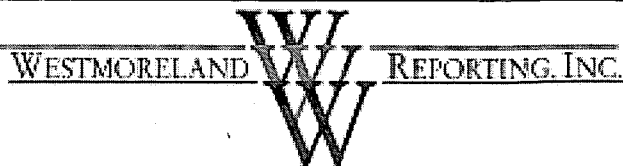
18 Q Okay. As part of our document request, why have
19 you not produced any email exchanges with
20 Mr. Arnold?

21 A Concerning this case?

22 Q Yes.

23 A I really haven't -- I've discussed it over the
24 phone with him.

25 Q But you haven't sent him documents to review?



1 A I don't remember sending him any documents. He and
2 I have discussed quite a bit of things, especially
3 concerning the -- Mr. Gillen.

4 Q So have you emailed Mr. Arnold anything about this
5 case?

6 A I emailed him recently the documents that I
7 received from the court about the dismissals. I
8 have read to him over the phone the different
9 issues. We have discussed the fact that -- I don't
10 recall actually sending him any emails. I could
11 have. But I was -- up until he retired, I was
12 still -- I would go down to South Carolina and do
13 some typing for him and, you know, still help him
14 with some of his work.

15 Q Was he retired at the time you bought the house?

16 A Let's see. That was in 2015? I think he retired
17 in 2016. There again, I'm not sure on that.

18 Q Who is Robert Evans?

19 A Robert Evans is a contractor that Jonathan
20 introduced me to.

21 Q And how do you know him?

22 A Through Jonathan.

23 Q Did Jonathan introduce you to him, or did Robert
24 introduce you to Jonathan?

25 A No, Jonathan introduced me to him.



1 Q And where does Mr. Evans live?

2 A I don't know. I'd have to look at the notes I gave
3 you for the witnesses.

4 Q And do you know what type of contracting work he
5 does?

6 A He just does general contracting.

7 Q Do you know if he specializes in anything?

8 A I don't.

9 I believed when I bought the house, he did.

10 But then I found out afterwards in 2015 that he did
11 not.

12 Q Has he ever visited the house?

13 A No.

14 There again, I thought he had, but he had not.

15 Q How does he relate to this case?

16 A Jonathan had been referred to my daughter, and we
17 were thinking about buying the house over on
18 Goodplace. And it needed a lot of work. And I
19 knew I didn't want to stay there.

20 So Jonathan suggested that Robert come over.

21 And he came over and went through the house and
22 basically said the house was -- that particular
23 house had a lot of structural damage, and he didn't
24 recommend that -- he thought it would be more work
25 and was not worth the price.



1 Q I thought you just said that Mr. Evans hadn't
2 visited the house.

3 A The house I rented.

4 Q Okay. Sorry.

5 A When I first met him.

6 And then I began to look at houses. And
7 Jonathan would recommend some houses. Then I'd ask
8 Robert to go, you know, take a look at them and see
9 what he thought, because I had limited funds on
10 what I could do something with.

11 And I had planned to use Robert to -- whatever
12 house I found, usually you want to make upgrades.
13 And I planned to use him.

14 Q Did you ever tell Robert Evans that you knew he
15 didn't have anything to do with the Rolling Ridge
16 property, but your attorney told you that you had
17 to name him, talk about him in the complaint?

18 A I didn't have an attorney.

19 Q I understand.

20 Did you ever tell Robert Evans that you knew
21 he wasn't involved in the Rolling Ridge, but that
22 your attorney told you you had to name him in the
23 complaint?

24 A He's not named in the complaint.

25 Q Robert Evans' name is not found in the complaint?



1 A Only as a witness.

2 Q That's my question.

3 Did you ever tell Mr. Evans that you knew he
4 wasn't involved in the house, but your attorney
5 told you you had to talk about him in the
6 complaint?

7 A My attorney I don't have.

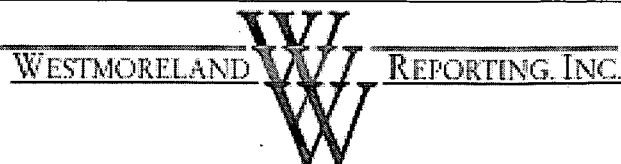
8 Q Okay. So you never said that statement to
9 Mr. Evans?

10 A I told Mr. -- I don't remember what I said to
11 Mr. Evans.

12 I found out when I moved into the house that
13 Mr. Evans had not been to the house, that he was
14 not qualified to do a CL-100, that he was not
15 qualified to do an inspection report, and that I
16 began calling him from the closing where Jonathan
17 was present to come over and open the windows,
18 because all the windows were shut. And I did not
19 believe that was safe. So I began calling him at
20 that point. And he didn't return my calls.

21 It was months later when I finally got in
22 touch with him. Jonathan called him when I moved
23 in the house.

24 And I told Jonathan that the air conditioner,
25 which I was concerned about, was not working.



1 Mr. Evans sent out Mike somebody. And according to
2 Mike, Jonathan said to Mr. Evans, "Can you send
3 somebody over there to fix that thing as cheaply as
4 possible?"

5 Mr. Mike, whatever his name was, came to the
6 house. I asked him specifically. He said, "This
7 thing doesn't work." And I said, "How long have
8 you worked for Robert?" He said, "A long time." I
9 said, "Do you think he inspected this?" He said,
10 "No, he would never have approved this, that this
11 was a working air conditioning unit."

12 Q Let's take it back a step.

13 When did you first meet Mr. Garvey?

14 A I guess it would have been in 2014 because that's
15 when I moved to Rock Hill.

16 Q When did you first begin working with him in
17 looking at houses?

18 A I would imagine that would have been in 2014.

19 Q So, between the time you started working with him
20 and you bought Rolling Ridge, a year?

21 A I don't think it was that long because it's
22 probably six months before I really started
23 looking.

24 Q So you hadn't had a relationship with Mr. Garvey
25 over five years or more looking at houses?



1 A No.

2 Q So it was less than six months?

3 A I didn't live here.

4 Q Okay.

5 MR. OGBURN: Let's mark this up as Exhibit 4.

6 (Whereupon, Exhibit 4 was marked for
7 identification and is attached to the
8 transcript.)

9 Q I'll give you a second to look at this. Tell me
10 when you're ready.

11 A Okay.

12 Q Do you recognize that document?

13 A Not really. But it appears to be my signature.
14 And that's about the time I would have been
15 starting to really look at houses with Jonathan in
16 2015.

17 Q Okay. Does it say it's an exclusive right to buy,
18 buyer agency contract?

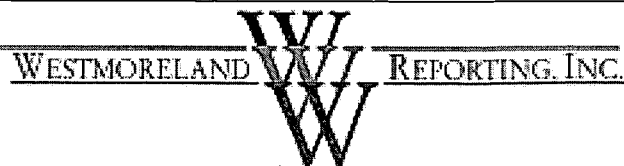
19 A Yes.

20 Q You understand this to be your agreement to engage
21 Mr. Garvey as your real estate agent?

22 A Yes.

23 Q What did you understand his role was as a real
24 estate agent?

25 A He was going to try to help me find a property that



1 would suit me and my family.

2 Q Okay. And then once he found it, once y'all
3 identified a property, what would be his role?

4 A To act as the agent for me as the purchaser.

5 Q I'm going to have you look at Page 2 of this
6 document. Do you see Section Number 12?

7 A Ah-huh.

8 Q Okay. Can I have you read Section 12 for the
9 record, please?

10 A "Buyer acknowledges that Broker is being retained
11 today as a real estate agent and not as an
12 attorney, tax adviser, lender, surveyor, engineer,
13 home inspector or other professional service
14 provider. Buyer agrees to seek professional
15 service concerning the condition of the property,
16 legal, tax and other professional services."

17 Q Was that your understanding when you signed this
18 agreement?

19 A Yes, sir.

20 My understanding is that he would assist me on
21 doing all those things. I legally could not do
22 them.

23 Q How did you -- how long did it take y'all to
24 identify a property once you started working with
25 Mr. Garvey?



1 A Oh, gosh. I think we actually started working
2 before then, because that was about the time that
3 we signed the contract. So I had started working
4 with him in probably 2014 to see if he found a
5 short sale or a foreclosure or would call him about
6 a house and several houses that we were going to go
7 look at got sold quickly.

8 I did not want to stay where I was. And so we
9 became, probably near the end of 2014, began to
10 look at more, became more engaged in looking at
11 properties. He sent me pages of, you know, houses.

12 Q Okay. How many different properties do you think
13 y'all looked at before you settled on this one?

14 A I have no idea.

15 Q More than 10?

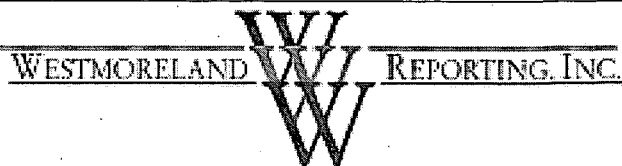
16 A I don't remember whether we actually went to the
17 properties or whether we'd just go by and look at
18 them.

19 I would find properties. I'd ask him to check
20 them out. And then he would call me back on all of
21 them and say, "This one has a contract. I don't
22 think this would work for you."

23 Q So y'all discussed numerous other properties?

24 A Yes.

25 Q Before you found the Rolling Ridge?



1 A Yes.

2 And even after Rolling Ridge, because of the
3 concerns on possible work needing to be done, we
4 continued to look at other properties in case this
5 one did not work out.

6 Q Okay. Who first identified the property at 255
7 Rolling Ridge Road?

8 A He sent me a list, I guess. I didn't even know
9 where Rolling Ridge Road was, so I don't recall.

10 Q So you believe Jonathan may have found it?

11 A That would be my recollection.

12 Q Okay. When did you first visit the property?

13 A It would -- I imagine it would have been in
14 January. Of 2015.

15 Q January '15?

16 A We may have gone in December, I don't recall.

17 Q Okay. What interested you about the Rolling Ridge
18 property?

19 A We knew we had discussed the price range I probably
20 needed to stay in and was looking for something.
21 My two grandchildren lived with me and my daughter,
22 and we were trying to look at something that had
23 space that we could -- with a teenager and a little
24 one could all survive in without killing each
25 other. So, yeah, the space.

