

STATE OF SOUTH CAROLINA

IN THE CIRCUIT COURT

COUNTY OF BALTIMORE.

03-C-04-0102270C

STEVEN COLLIN & ANN COLLIN,
PLAINTIFFS,

V.

LINDA ANN SENEZ,
DEFENDANT.

LINDA ANN SENEZ,
COUNTER PLAINTIFF,
V.

STEVEN COLLIN & ANN COLLIN &
NATIONAL CITY MORTGAGE
COMPANY,
CO-DEFENDANTS,

ORIGINAL

DEPOSITION OF

ARTHUR L. MYERS

OCTOBER 25TH, 2006

FROM 1:30 P.M.

TAKEN BY PEPPER M. MCCARTHY, NOTARY PUBLIC AND
PROFESSIONAL REPORTER, AT THOMPSON AND HENRY LAW
FIR, 1314 PROFESSIONAL DIVE, MYRTLE BEACH, SOUTH
CAROLINA.

A P P E A R A N C E S

FOR THE PLAINTIFFS: FROM: ATTORNEY AT LAW
J. NEIL LANZI, ESQ.
MERCANTILE BUILDING
SUITE 617
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

FOR THE DEFENDANT: FROM: ROYSTON, MUELLER,
MCLEAN & REID
102 WEST PENNSYLVANIA AVE.
SUITE 600
TOWSON, MARYLAND 21204

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STIPULATIONS

IT WAS STIPULATED BY AND BETWEEN COUNSELS
FOR THE PARTIES THAT THIS DEPOSITION IS
TAKEN PURSUANT TO NOTICE AND THAT ALL
QUESTIONS AS TO NOTICE ARE WAIVED; THAT
ALL OBJECTIONS, EXCEPT AS TO FORM OF THE
QUESTION ARE RESERVED UNTIL THE TIME OF
TRIAL; THAT THE DEPOSITION IS TAKEN
PURSUANT TO THE RULES OF CIVIL PROCEDURE
FOR THE PURPOSES ALLOW THEREIN; AND THAT

1 THE DEPONENT WAS EXPLAINED HIS RIGHT TO
2 READ AND SIGN THE DEPOSITION AND WAIVES
3 THAT RIGHT.

4
5 THIS IS AN OFFICIAL TRANSCRIPT GOVERNED BY 25A S.C.
6 CODE ANN. REGS 67-615D (SUPP. 2000). THE
7 UNAUTHORIZED COPYING OF THIS DOCUMENT IS DEEMED TO
8 BE CONVERSION OF AN ASSET BELONGING TO THE COURT
9 REPORTER.

10 *****

11 ARTHUR L. MYERS, HAVING BEEN DULY SWORN, TESTIFIED
12 AS FOLLOWS:

13 DIRECT EXAMINATION BY MR. CARNEY:

14 Q MR. MYERS, MY NAME IS BRADFORD CARNEY AND I
15 REPRESENT THE DEFENDANT, LINDA ANN SENEZ, IN AN
16 ACTION NOW PENDING BEFORE THE CIRCUIT COURT IN
17 BALTIMORE COUNTY, TITLED AS ANN COLLINS AND
18 STEVE COLLINS, PLAINTIFFS, VERSUS LINDA ANN
19 SENEZ, DEFENDANT. THEN THERE'S CROSS CLAIMS
20 AND THERE'S VARIOUS OTHER DEFENDANTS INVOLVED
21 IN THE LITIGATION. I THINK I SPEAK FOR ALL OF
22 US. I JUST WANT TO THANK YOU FOR VOLUNTARILY
23 JOINING US TODAY. I KNOW IT'S SOME INCONVEN-
24 IENCE FOR YOU. AND YOU CERTAINLY AREN'T BEING
25 COMPENSATED FOR YOUR TIME, OBVIOUSLY, AND AGAIN

1 I JUST WANT TO EXPRESS MY THANKS. WOULD YOU
2 PLEASE STATE YOUR FULL NAME AND CURRENT ADDRESS
3 FOR THE RECORD?

4 A ARTHUR L. MYERS. 802 PLANTATION DRIVE,
5 SURFSIDE BEACH, SOUTH CAROLINA 29575.

6 Q HOW LONG HAVE YOU LIVED AT SURFSIDE BEACH?
7 PLANTATION DRIVE, RATHER, AT SURFSIDE BEACH?

8 A THREE, THREE AND A HALF YEARS.

9 Q AND PRIOR TO MOVING THERE, WHERE DID YOU LIVE?

10 A IN A MOTOR HOME.

11 Q HOW LONG DID YOU LIVE IN A MOTOR HOME?

12 A WELL, FROM '60 TIL THREE YEARS AGO. I'M SORRY,
13 FROM 2000 'TIL THREE YEARS AGO.

14 Q SO FROM 2000 TO 2003.

15 A APPROXIMATELY.

16 Q PRIOR TO LIVING IN THE MOTOR HOME, WHERE DID
17 YOU LIVE?

18 A WORTON ROAD. ASK ME THE ADDRESS AND I DON'T
19 REMEMBER IT. 341 WORTON ROAD.

20 Q 341 WORTON ROAD. W-O-R-T-O-N?

21 A YES.

22 Q THAT'S LOCATED IN BALTIMORE COUNTY, MARYLAND.

23 A BALTIMORE COUNTY, MARYLAND.

24 Q WHEN DID YOU PURCHASE THAT PROPERTY?

25 A IN 2000, I'M SORRY. LET ME GET THIS STRAIGHT.

1 IN 1980.

2 Q 1980.

3 A YEAH.

4 Q DID YOU PURCHASE IT BY YOURSELF OR WITH YOUR
5 SPOUSE?

6 A WITH MY SPOUSE.

7 Q WHAT IS HER NAME?

8 A JOAN E. MYERS.

9 Q DID THE TWO OF YOU TAKE TITLE TO 341 WORTON
10 ROAD AS TENANTS BY THE ENTIRETY?

11 A WE DID.

12 Q HOW LONG DID YOU LIVE THERE FROM 1980 FORWARD?

13 A WE MOVED OUT IN 2000.

14 Q DESCRIBE FOR ME, IF YOU WOULD, THE PROPERTY
15 THAT YOU BOUGHT GENERALLY.

16 A IT WAS A FOOT PRINT OF A HOUSE WITH SOME
17 VERTICAL STUDS, PARTIAL ROOF AND LOTS OF TREES.
18 IT HAD SEWAGE, IT HAD A BOATHOUSE. IT HAD RIP
19 RAP ON THE FRONT AND IT HAD, AS I SAY, IT HAD
20 AN UNFINISHED FOUNDATION IN THE REAR.

21 Q SO WHEN YOU PURCHASED THE PROPERTY, MR. MYERS,
22 WAS IT HABITABLE? WERE YOU ABLE TO MOVE INTO
23 IT AND LIVE THERE RIGHT AWAY?

24 A NO.

25 Q YOU HAD TO MAKE CERTAIN IMPROVEMENTS TO IT,

1 BEFORE YOU COULD ACTUALLY TAKE POSSESSION?

2 A ABSOLUTELY.

3 Q DID YOU HIRE A GENERAL CONTRACTOR TO DO THAT
4 WORK?

5 A I DID.

6 Q DO YOU RECALL THE NAME OF THAT CONTRACTOR?

7 A NO.

8 Q WAS IT A GENERAL CONTRACTOR OR DID YOU ACT AS
9 THE GENERAL CONTRACTOR?

10 A WELL, HE WAS A GENERAL CONTRACTOR BUT HE WASN'T
11 AN ENGINEERING ORIENTED GENERAL CONTRACTOR. HE
12 WAS A HOME BUILDER.

13 Q TELL ME WHAT IMPROVEMENTS YOU MADE TO THE
14 PROPERTY, PRIOR TO TAKING POSSESSION. I KNOW
15 IT'S PROBABLY A LONG LIST BUT TRY TO JUST THINK
16 ABOUT IT FOR A MINUTE.

17 A ERECTED WALLS, ROOFED IT, PUT IN ALL --- THERE
18 WAS NOTHING IN THERE BUT SEWAGE, SO I HAD TO
19 PUT IN THREE BATHROOMS, KITCHEN, PUT IN THE
20 SMOKE PIPES, FINISH THE WALLS, FLOORS,
21 OBVIOUSLY, CARPETED AND PUT APPLIANCES IN THE
22 KITCHEN. NOTHING IN THE BASEMENT TO SPEAK OF
23 EXCEPT WE DID FINISH SOME PARTS OF IT.

24 Q WAS THE PROPERTY IMPROVED BY A GARAGE AS WELL
25 AS THE RESIDENTIAL DWELLING?

1 A YES.

2 Q WAS THE PROPERTY, EXCUSE ME, WAS THE GARAGE
3 TOWARD WHAT I CALL THE REAR OF THE PROPERTY,
4 THE SIDE FARTHEST AWAY FROM THE WATER?

5 A YES.

6 Q DID YOU MAKE ANY IMPROVEMENTS TO THE GARAGE?

7 A THE GARAGE WAS NOT THERE WHEN I MOVED IN.
8 THERE WAS A SMALL SHED, SO WE CONSTRUCTED IT.
9 THE SAME BUILDER CONSTRUCTED THE GARAGE.

10 Q DID YOU REMOVE THE SHED AND CONSTRUCT THE
11 GARAGE.

12 A NO. IT BECAME PART OF IT.

13 Q DID YOU EXPAND THE SHED OR DID YOU PUT A SHELL
14 OVER THE TOP OF IT.

15 A RIGHT. NO. THE SHED BECAME ADJUNCTION TO THE
16 GARAGE.

17 Q WHEN YOU TOOK TITLE TO THE PROPERTY, DID YOU
18 HAVE A LOAN? DID YOU BORROW MONEY FROM THE
19 BANK?

20 A NO.

21 Q DID YOU SECURE A LOCATION SURVEY OF THE
22 PROPERTY WHEN YOU PURCHASED IT?

23 A NO.

24 Q DID YOU SECURE A BOUNDARY SURVEY OF THE
25 PROPERTY WHEN YOU PURCHASED IT?

1 A NO.

2 Q DID THERE COME A POINT IN TIME WHEN YOU HAD THE
3 PROPERTY SURVEYED FOR ANY REASON?

4 A YES. WHEN I PUT IT UP FOR SALE, I FELT IT
5 NECESSARY TO HAVE IT.

6 Q WHEN DID YOU PUT THE PROPERTY UP FOR SALE?

7 A IN 2000. APPROXIMATELY. IT COULD'VE BEEN '99
8 OR 2000.

9 Q THAT'S WHEN MS. SENEZ PURCHASED THE PROPERTY
10 FROM YOU IN THE YEAR 2000?

11 A YES.

12 Q DID YOU HAVE ANY OTHER CONTRACTS PRIOR TO MS.
13 SENEZ THAT FELL THROUGH FOR ANY REASON?

14 A HUH-UH (NEGATIVE RESPONSE).

15 Q DID MS. SENEZ REQUIRE AS PART OF THE CONTRACT
16 CONTINENCY THAT THE PROPERTY BE SURVEYED OR HAD
17 YOU DONE THAT PRIOR TO PUTTING IT ON THE
18 MARKET.

19 A I HAD DONE IT FOR THE FENCE. I DIDN'T KNOW
20 WHERE TO PUT THE FENCE AND BALTIMORE COUNTY
21 SAID YOU HAD TO BE OFFSET FROM YOUR PROPERTY
22 LINE, SO THEN I PUT THE BOARDED FENCE UP.
23 THAT'S WHEN I HAD IT SURVEYED.

24 Q WAS THAT BOARD FENCE ERECTED IN 2000 OR PRIOR
25 TO 2000?

1 A FROM PROBABLY '98, '99, 2000, MOST OF IT WAS
2 THERE I THINK WHEN SHE CAME TO IT, WHICH WOULD
3 BE 2000.

4 Q NOW DID YOU LIVE ON THE PROPERTY WITH YOUR WIFE
5 CONTINUOUSLY, FROM THE YEAR 1980 UNTIL YOU SOLD
6 THE PROPERTY TO MS. SENEZ IN THE YEAR 2000?

7 A YES. AS SOON AS IT WAS HABITABLE.

8 Q WHEN YOU FINISHED YOUR CONSTRUCTION WORK ON THE
9 HOUSE, DID YOU HAVE TO SECURE WHAT'S CALLED A
10 USE AND OCCUPANCY PERMIT FROM BALTIMORE COUNTY?

11 A I'M SURE WE DID.

12 Q WHEN YOU MADE YOUR IMPROVEMENTS, DID YOU DO ANY
13 WORK TO THE BOATHOUSE THAT YOU MENTIONED WAS
14 THERE WHEN YOU BOUGHT IT?

15 A THE BOATHOUSE WAS NOT UPGRADED. WELL,
16 BASICALLY, WHEN WE CAME THERE WE BUILT A
17 BULKHEAD AND PIER. WE WIDENED THE EXISTING
18 PIER AND PUT SUPPORTS ON BOTH SIDES OF THE
19 BOATHOUSE.

20 Q WHEN YOU SAY SUPPORTS, WOULD THEY BE PILINGS
21 THAT HAD TO BE DRIVEN?

22 A YES.

23 Q SO YOU HAD A PILE DRIVER COME UP THE WATER AND
24 DRIVE THEM IN?

25 A BUILT THE BULKHEAD, PUT THOSE IN AND I EXPANDED

1 THE PIER.

2 Q EXPANDED THE PIER. DID YOU EXPAND THE
3 BOATHOUSE IN ANYWAY?

4 A NO.

5 Q YOU JUST UPGRADED THE STRUCTURAL INTEGRITY OF
6 IT, IS THAT A FAIR STATEMENT?

7 A YEAH, I WAS AFRAID IT WAS GOING TO FALL DOWN.

8 Q I DON'T WANT TO PUT WORDS IN YOUR MOUTH.

9 A WELL, WHAT WE PUT WAS FOUR PILES. SIX PILES
10 DOWN EITHER SIDE AND WHAT HE DID WAS HE WENT TO
11 THE OUTSIDE OF THE PIER, PUT IN A PILE THAT WAS
12 EQUAL TO, I GUESS, WHAT YOU CALL THE EAVES OF
13 THE ROOF AND HE PUT A CRUTCH ACROSS TO HOLD THE
14 BUILDING. BASICALLY, FOR SECURITY ON THE
15 BUILDING.

16 Q WAS THE BUILDING MADE ANY WIDER AT THAT TIME?

17 A NO.

18 Q DID YOU HAVE TO SECURE A PERMIT FROM THE ARMY
19 CORPS OF ENGINEERS?

20 A HE DID.

21 Q YOUR PILE DRIVER?

22 A PILE DRIVER DID.

23 Q AFTER HE DID HIS WORK, WAS THERE SOME SORT OF
24 AN INSPECTION BY THE ARMY CORPS TO PASS IT?

25 A I DON'T HAVE ANY IDEA.

1 Q HAVE YOU EVER RECEIVED ANY NOTIFICATION FROM
2 THE ARMY CORPS OF ENGINEERS OR ANY OTHER
3 ENTITY, BE IT FEDERAL OR STATE OR LOCAL THAT
4 THE BOATHOUSE, THE WORK THAT YOU DID TO IT IN
5 ANYWAY, WAS NOT UP TO SNUFF WITH THE
6 REQUIREMENTS THAT NEED TO BE MET?

7 A NEVER, NO.

8 Q NO. OKAY. LET ME GET THIS DOCUMENT MARKED
9 REAL QUICK AND SHOW YOU THIS PICTURE. BEFORE I
10 DO THAT THOUGH, LET ME ASK YOU JUST A COUPLE OF
11 QUESTIONS. YOU ARE AWARE, ARE YOU NOT, THAT
12 THERE WAS A HURRICANE THAT CAME UP --- BODY OF
13 WATER, HAVE YOU EVER HEARD THAT --- AND DID
14 SOME DAMAGES TO CERTAIN PROPERTIES INCLUDING
15 YOUR FORMER PROPERTY.

16 A OKAY.

17 Q HAVE YOU SEEN THE PROPERTY SINCE THE HURRICANE
18 DAMAGE WAS SUSTAINED BY IT?

19 A I HAVEN'T SEEN THE PROPERTY SINCE I SOLD.

20 Q LET ME SHOW WHAT HAS BEEN MARKED AS DEFENDANT'S
21 EXHIBIT "3" AND ASK YOU IF THAT --- LET ME ASK
22 YOU WHAT THAT REPRESENTS?

23 A TO ME, WHAT IT REPRESENTS? DO YOU MEAN FROM
24 WHEN I WAS THERE?

25 Q YES, SIR. WHAT DOES THAT --

1 A WELL, THAT'S THE BOATHOUSE.

2 Q DOES THAT PICTURE FAIRLY AND ACCURATELY
3 DESCRIBE THE LOCATION AND CONDITION OF THE
4 BOATHOUSE SINCE 2000 WHEN YOU HAD THE PROPERTY?

5 A YEAH.

6
7 PHOTOGRAPH OF BOATHOUSE MARKED
8 FOR IDENTIFICATION AND INTRODUCED
9 INTO EVIDENCE AS DEFENDANT'S
10 EXHIBIT "3".
11

12 Q DO YOU NOTICE ANY DIFFERENCES TO THE BOATHOUSE
13 BETWEEN THEN AND, SAY, NOW?

14 A NO. SAME STRUCTURAL PILES IN THERE.

15 Q THERE IS A CEMENT, I GUESS, I WOULD CALL IT AND
16 THESE ARE MY WORDS AND FORGIVE ME IF I'M NOT
17 CORRECT. CORRECT ME IF YOU NEED TO --- AREA
18 WHERE YOU CAN GO DOWN INTO THE WATER AND LAUNCH
19 A BOAT.

20 A UH-HUH (AFFIRMATIVE RESPONSE).

21 Q WAS THAT THERE WHEN YOU OWNED THE PROPERTY?

22 A YES.

23 Q DID YOU PUT IT THERE OR WAS IT ALREADY THERE?

24 A I PUT IT THERE.

25 Q YOU PUT IT THERE?

1 A YES.

2 Q WAS THAT PART OF THE WORK THAT YOU DID IN THE
3 YEAR 2000?

4 A YES.

5 Q YOU DID NOT HAVE ANY SURVEY WORKED ON I BELIEVE
6 AT THE TIME THAT YOU PUT THAT IN?

7 A HUH-UH (NEGATIVE RESPONSE).

8 COURT REPORTER: YOU'VE GOT TO SAY YES
9 OR NO.

10 Q YOU NEED TO SAY YES OR NO, FOR THE RECORD SO
11 SHE COULD PUT IT DOWN.

12 A OH, EXCUSE ME. SAY IT AGAIN?

13 Q YOU PUT THAT BOAT RAMP IN YOURSELF?

14 A YES.

15 Q THERE WAS NO SURVEY WORKED ON AT THAT TIME?

16 A NO.

17 Q THE PROPERTY --- THE PICTURE RATHER IN EXHIBIT
18 "3", THAT I'M SHOWING YOU APPEARS TO SHOW A
19 DECK IN THE FRONT, YOU'D AGREE?

20 A YES.

21 Q WAS A DECK ON YOUR HOUSE WHEN YOU SOLD IT TO
22 MS. SENEZ?

23 A NO.

24 Q NO DECK OF ANY KIND?

25 A GRASS.

1 Q JUST GRASS. OKAY. WERE THERE SLIDING GLASS
2 DOORS ON THE FRONT OF THE BUILDING THAT FACES
3 THE WATER?

4 A YES.

5 Q WERE THEY BLOCKED OFF IN SOME FASHION SO THAT
6 WHEN YOU OPEN THE DOOR, IF THERE WAS NOT A DECK
7 THERE, WHAT WAS THERE?

8 A WELL, THE ORIGINAL DECK WAS HERE. WHICH DECK
9 ARE YOU SPEAKING OF?

10 Q I'M SORRY, THE DECK THAT WAS THERE WHEN YOU HAD
11 IT.

12 A YEAH.

13 Q THERE WAS A DECK?

14 A OH, YEAH. ABSOLUTELY, YEAH, TWO DECKS, AS A
15 MATTER OF FACT ON THE FRONT.

16 MS. SENEZ: AND IT ALSO HAS A PORCH.

17 MR. LANZI: OBJECT.

18 MR. CARNEY: YOU CAN'T SAY ANYTHING.

19 Q SO, THERE WERE TWO DECKS?

20 A YES.

21 Q HOW WOULD YOU --- WAS ONE ABOVE THE OTHER?

22 A YES.

23 Q HOW WOULD YOU ACCESS THE TOP DECK FROM THE
24 HOUSE?

25 A FROM THE BEDROOM.

1 Q WOULD THAT BE THROUGH SLIDING GLASS DOORS OR A
2 DOOR OF SOME SORT?

3 A YES. SLIDING GLASS DOORS.

4 Q SLIDING GLASS DOORS FROM THE BEDROOM ONTO A
5 PORCH?

6 A YES.

7 Q APPROXIMATELY HOW LARGE WAS THAT PORCH?

8 A PROBABLY SIX BY TWENTY.

9 Q SIX BY TWENTY?

10 A I DON'T KNOW FOR SURE.

11 Q APPROXIMATELY. I UNDERSTAND.

12 A THE BUILDING WAS TWENTY-TWO FEET.

13 Q DID IT TRAVERSE THE MAJORITY OF THE WIDTH OF
14 THE PROPERTY?

15 A OF THE ORIGINAL PROPERTY. YES. I MEAN, YOU
16 --- GO AHEAD.

17 Q HOW DID ACCESS THE LOWER PORCH?

18 A FROM THE LIVINGROOM.

19 Q WOULD THE LIVINGROOM BE ON GROUND LEVEL OR
20 ABOVE GROUND?

21 A ABOVE GROUND.

22 Q WHEN YOU MADE THE IMPROVEMENTS TO THE BUILDING,
23 WAS THERE A FOOTPRINT THAT EXISTED THAT YOU
24 ADHERED TO OR DID YOU ALTER IT IN SOME FASHION?

25 A NO. IT WAS THE SAME FOOTPRINT EXCEPT THAT I

1 CLOSED IN THE EXISTING PORCH, BUT IT WAS THE
2 SAME FOOTPRINT. IN OTHER WORDS, WHAT I BUILT
3 STAYED OVER WHAT WAS THERE. YES.

4 Q WAS THERE ANY TYPE OF FOUNDATION IN THAT
5 FOOTPRINT WHEN YOU PURCHASED THE PROPERTY?

6 A YES.

7 Q WAS THAT A CINDER BLOCK FOUNDATION?

8 A YES.

9 Q DID YOU, WHEN YOU MADE THE IMPROVEMENTS THAT
10 YOU REFERRED TO, EXTEND THE PROPERTY IN ANY
11 DIRECTION? NORTH, SOUTH, EAST OR WEST? WIDEN
12 IT IN SOME FASHION?

13 A NO.

14 Q WAS THERE A RETAINING WALL OF ANY SORT THAT
15 EXISTED WHEN YOU OWNED THE PROPERTY?

16 A A RETAINING WALL, WHERE?

17 Q WALKING DOWN TOWARD THE WATER BETWEEN YOUR
18 PROPERTY AND THE PROPERTY THAT'S NOW OWNED BY
19 MR. AND MRS. COLLINS, LOCATED AT 339 WORTON
20 ROAD.

21 A YES.

22 Q WHAT TYPE OF WALL WAS THERE?

23 A CONCRETE BLOCK.

24 Q DID YOU HAVE YOUR CONTRACTOR ERECT THAT WALL OR
25 WAS IT THERE?

1 A NO, IT WAS ERECTED BY THE OWNER?

2 Q THE PRECEDING OWNER?

3 A THE PRECEDING OWNER.

4 Q DURING YOUR PERIOD OF OWNERSHIP, DID YOU EVER
5 SUFFER ANY DAMAGE FROM ANY TYPES OF STORMS,
6 HURRICANES OR NORTHEASTERS?

7 A NOT TO MY KNOWLEDGE --- NOT THAT I CAN
8 REMEMBER. NO.

9 Q DID YOU SUFFER ANY EROSIONS OF YOUR LAND IN AN
10 ORDINARY COURSE OR AS A RESULT OF ANY STORMS?

11 A SOME RUNOFF, I GUESS YOU WOULD SAY, FROM THE
12 WATER THAT DRAINS DOWN THE DRIVEWAY.

13 Q WAS YOUR PROPERTY SERVICED BY A SUMP PUMP?

14 A YES.

15 Q WAS THERE A SUMP PUMP THERE WHEN YOU BOUGHT IT
16 OR DID YOU HAVE ONE INSTALLED?

17 A I INSTALLED IT.

18 Q WHERE WAS THAT SUMP PUMP INSTALLED?

19 A IT WAS INSTALLED BETWEEN THE TWO BUILDINGS AT
20 THE WATER EDGE OF THE SMALL BUILDING. BY SMALL
21 BUILDING, FIGURE THERE ARE TWO ROOMS IN THE
22 BASEMENT. THERE WAS THE ORIGINAL BUILDING AND
23 THE ONE HE BUILT ON THE BACK. IT'S AT THAT
24 POINT.

25 Q HE BEING YOUR CONTRACTOR?

1 A NO. HE BEING THE GUY THAT OWNED IT BEFORE I
2 GOT IT.

3 Q OH, I SEE. THAT'S WHERE THE SUMP PUMP WAS
4 LOCATED?

5 A YES.

6 Q WAS YOUR SUMP PUMP OPERABLE DURING THE PERIOD
7 OF YOUR OWNERSHIP?

8 A YES.

9 Q DID YOU EVER HAVE ANY PROBLEMS WITH THE SUMP
10 PUMP DURING YOUR PERIOD OF OWNERSHIP?

11 A YES. ONCE.

12 Q WHAT TYPE OF PROBLEM DID YOU HAVE?

13 A THE SUMP PUMP FAILED TO OPERATE.

14 Q WAS IT OVERWHELMED BY WATER FROM A STORM?

15 A YEAH.

16 Q DID YOU HAVE TO REPLACE THE SUMP PUMP?

17 A I DID.

18 Q AFTER YOU REPLACED --- DO YOU RECALL WHEN THAT
19 WAS?

20 A NO.

21 Q WHEN YOU REPLACED THE SUMP PUMP, DID IT OPERATE
22 IN NORMAL FASHION FROM THAT POINT FORWARD?

23 A YES.

24 Q DID YOU EVER HAVE ANY PROBLEMS WITH THE SUMP
25 PUMP THEREAFTER? PRIOR TO THE TIME YOU SOLD

1 THE PROPERTY TO MS. SENEZ?

2 A NO. IT WAS A SUBMERGIBLE PUMP. IT WAS A
3 DIFFERENT PUMP, BUT, NO, I HAD NO PROBLEMS WITH
4 IT AT ALL.

5 Q WHEN THE PUMP WAS OPERATING PROPERLY, WHERE
6 WOULD THE WATER BE DISCHARGED?

7 A IT WOULD BE DISCHARGED ORIGINALLY, INTO THE
8 DRIVEWAY AND THEN I HAD A DRAIN PUT IN THAT PUT
9 IT OVERBOARD, BUT THE PUMP ITSELF PUMPED INTO
10 THE DRIVEWAY.

11 Q YOU SAY, IT DRAINED. WHAT KIND OF DRAIN ARE
12 YOU REFERRING TO?

13 A BASICALLY, A DRAIN FROM THE BOTTOM OF THE SUMP
14 DOWN THE DRIVEWAY AND OVERBOARD.

15 Q YOU SAY, OVERBOARD, MEANING INTO THE WATER?

16 A YES.

17 Q DO YOU RECALL WHEN YOU HAD THAT DRAINAGE SYSTEM
18 INSTALLED, APPROXIMATELY?

19 A I HAVE NO IDEA.

20 Q WAS IT EARLY INTO YOUR PERIOD OF OWNERSHIP OR
21 LATER INTO IT?

22 A I CAN TELL YOU HOW IT WAS DONE, WHO DID IT AND
23 ALL THAT, BUT I CAN'T FOR THE LIFE OF ME TELL
24 YOU WHEN IT WAS DONE. IT WOULD BE EARLY IN, I
25 WOULD SAY.

1 Q DO YOU RECALL WHO DID THAT WORK?

2 A ANOTHER LOCAL CONTRACTOR.

3 Q DO YOU RECALL HIS NAME BY ANY CHANCE?

4 A I DON'T THINK I DO. I REALLY CAN'T.

5 Q YOUR PROPERTY LINE RELATIVE TO 339 WORTON ROAD,
6 WAS THAT MARKED IN SOME FASHION OR DEMARKED, I
7 GUESS IS THE RIGHT WORD.

8 A WELL, THERE'S A FENCE, YEAH.

9 Q THERE'S A FENCE BETWEEN YOUR PROPERTY AT 341
10 AND THE 339 PROPERTY?

11 A YES.

12 Q WHEN YOU LIVED THERE, DID YOU KNOW THE OWNERS
13 OF 339?

14 A WELL.

15 Q COULD YOU TELL ME THEIR NAMES PLEASE?

16 A SURE. GEORGE AND MADGE COOK.

17 Q I UNDERSTAND THAT THEY'RE NO LONGER LIVING? IS
18 THAT CORRECT?

19 A THAT'S CORRECT.

20 Q BOTH OF THEM ARE DECEASED?

21 A DECEASED.

22 Q DID THEY DIE WHILE YOU STILL OWNED WORTON ROAD?

23 A YES.

24 Q DO YOU RECALL APPROXIMATELY WHEN MR. COOK DIED?

25 A I'D SAY IT MIGHT'VE BEEN 2000. IT WOULD BE

1 PROBABLY EARLY TO MID-90'S THAT HE DIED.

2 Q HOW ABOUT HIS WIFE, MRS. COOK?

3 A ABOUT THE SAME. HE WASN'T LONG BEHIND HER.

4 Q SHE DIED FIRST AND HE SHORTLY THEREAFTER?

5 A NO. HE DIED FIRST AND THEN SHE DIED. SO
6 GEORGE DIED FIRST, YEAH.

7 Q DID YOU HAVE A GOOD RELATIONSHIP WITH THE
8 COOKS?

9 A FINE.

10 Q YOU INDICATE THAT THERE WAS A FENCE THAT RAN
11 DOWN BETWEEN THE HOUSES?

12 A UH-HUH (AFFIRMATIVE RESPONSE).

13 Q WAS THAT FENCE THERE WHEN YOU PURCHASED THE
14 PROPERTY OR DID YOU HAVE IT ERECTED?

15 A IT WAS THERE. OR, WHAT FENCE NOW. THERE'S
16 THREE FENCES.

17 Q I'M SORRY. THE FENCE BETWEEN 339 AND 341.

18 A THERE WAS A CONCRETE BLOCK FENCE WITH A
19 FOUNDATION ON BOTH SIDES OF THE PROPERTY. ON
20 THE SIDE THAT YOU'RE SPEAKING OF. ON 339, IT
21 WENT DOWN TO THE BULKHEAD.

22 Q SO IT'S A CONCRETE BLOCK FENCE ON THE 339 SIDE
23 OF THE TWO CONTIGUOUS PROPERTIES?

24 A YES.

25 Q DID ANY PART OF --- FROM YOUR PROSPECTIVE AT

1 LEAST, DID ANY PART OF THAT CONCRETE BLOCK WALL
2 SIT ON ANY OF YOUR PROPERTY?

3 A I DON'T KNOW.

4 Q WAS IT YOUR IMPRESSION THAT ANY PART OF IT SAT
5 ON YOUR SIDE OF THE PROPERTY OR DID YOU THINK
6 IT SAT ALL ON 339'S SIDE?

7 A 339. I REALLY DIDN'T CARE.

8 Q THAT BLOCK WALL WAS THERE WHEN YOU BOUGHT THE
9 PROPERTY?

10 A YES.

11 Q YOU INDICATED THAT IT STARTED FROM BELOW GRADE
12 AND ROSE ABOVE GRADE, CORRECT?

13 A YES.

14 Q HOW FAR DOWN BELOW THE SOIL DID THE BLOCK WALL
15 GO, IF YOU KNOW?

16 A THERE WERE TWO WALLS IN THERE. THE FIRST ONE
17 FELL OVER. GEORGE OWNED A BAR. HE HAD WORK
18 DONE BY PEOPLE THAT FREQUENTED HIS BAR. THE
19 FIRST GUY WHO PUT IN THERE EVIDENTLY PUT A
20 FOUNDATION ABOUT THAT DEEP.

21 Q INDICATE FOR THE RECORD, ABOUT SIX OR EIGHT
22 INCHES.

23 A IT WASN'T EVEN THAT. YOU COULD HARDLY SEE IT
24 ON THE BOTTOM OF THE BLOCK.

25 Q LET ME STOP YOU REAL QUICK. WAS THIS WORK DONE

1 BECAUSE THE FIRST WALL FELL OVER?

2 A NO, THIS IS THE WALL THAT FELL OVER.

3 Q THERE WAS NO WALL THERE WHEN YOU FIRST BOUGHT
4 THE PROPERTY?

5 A THERE WAS A WALL THERE. IT FELL OVER.

6 Q OKAY. THAT'S WHAT I'M SAYING. THERE WAS AN
7 EXISTING WALL WHEN YOU BOUGHT THE PROPERTY IN
8 1980.

9 A RIGHT.

10 Q YOU BELIEVE IT WAS ON THE 349 SIDE OF PROPERTY
11 LINE. RIGHT OR WRONG, BUT THAT WAS YOUR
12 BELIEF?

13 A I WOULD ASSUME.

14 Q THAT WALL FELL OVER?

15 A YES.

16 Q DO YOU KNOW WHY IT FELL OVER?

17 A NO FOUNDATION. WELL, WATER RUSHING DOWN,
18 PROBABLY, UNDERMINED IT.

19 Q WHEN THE WALL FELL OVER, DID IT FALL TOWARD
20 YOUR SIDE OF THE PROPERTY?

21 A NO.

22 Q IT FELL TOWARDS THE 339 SIDE?

23 A UH-HUH (AFFIRMATIVE RESPONSE).

24 Q DID THE WHOLE WALL FALL DOWN OR JUST A PORTION
25 OF IT?

1 A THE WHOLE DAMN THING FELL OVER.

2 Q THE WHOLE DAMN THING.

3 A IT WAS AMAZING, IT JUST --- THE WHOLE THING
4 WENT LIKE THAT. IT'S A SOFT AREA DOWN THERE.

5 Q AS A CONSEQUENCE OF THAT WALL FALLING DOWN,
6 YOUR NEIGHBOR, MR. COOK HAD A NEW WALL ERECTED?

7 A HE GOT A GOOD MECHANIC.

8 Q DID YOU CONTRIBUTE IN ANYWAY TO THE COST OF
9 ERECTING THAT NEW WALL?

10 A NO.

11 Q HE PAID FOR IT IN ITS ENTIRETY?

12 A ABSOLUTELY.

13 Q DO YOU RECALL THE NAME OF THE CONTRACTOR THAT
14 HE HIRED?

15 A NO, I DON'T.

16 Q WHAT TYPE OF WALL DID HE ERECT?

17 A HE PUT UP A CONCRETE BLOCK WALL, AGAIN.

18 Q THE SAME TYPE OF WALL THAT WAS THERE BEFORE?

19 A HE PUT DRAINS IN IT.

20 Q WHEN YOU SAY "DRAINS", DESCRIBE FOR THE RECORD
21 WHAT YOU MEAN BY DRAINS?

22 A WELL, HE FELT THAT THE ORIGINAL WALL WENT DOWN
23 FROM WATER BUILD UP BEHIND IT COMING DOWN OFF
24 OF THE PROPERTIES. THAT PROPERTY DRAINS FROM
25 THE ROAD LITERALLY, ALL DOWN MY DRIVEWAY.

1 Q WHEN YOU SAY, "THE PROPERTY", ARE YOU REFERRING
2 TO 339 OR 341 OR BOTH?

3 A BOTH. WHAT HAPPENED WAS, THE WATER COMING DOWN
4 MY DRIVEWAY GOT BEHIND HIS WALL AND HIS WALL
5 FELL OVER. SO WHEN HE PUT IT BACK UP AGAIN, HE
6 PUT DRAINS IN IT SO THE WATER WOULD COME
7 THROUGH IT AND WOULDN'T KNOCK IT DOWN.

8 Q ARE THOSE DRAINS --- CORRECT IF I'M WRONG ---
9 ARE THEY KNOW AS WEEP HOLES?

10 A YEAH.

11 Q HOW DEEPLY INTO THE GROUND, APPROXIMATELY, DID
12 HE PUT THE FOUNDATION OF THIS WALL?

13 A I HAVE NO IDEA?

14 Q WAS IT DEEPER THAN THE OLD WALL?

15 A I'M GOING TO ASSUME, BECAUSE IT'S STILL THERE.

16 Q DO YOU RECALL WHAT YEAR THIS WAS WHEN HE PUT
17 THE NEW WALL UP?

18 A NO.

19 Q APPROXIMATELY?

20 A NO IDEA. IT WOULD HAVE TO BE LATE '80'S, I
21 WOULD SAY. MAYBE EARLY --- I DON'T KNOW. I
22 REALLY --- IT ISN'T SOMETHING I KEPT IN MY
23 HEAD.

24 Q I UNDERSTAND.

25 A I WAS TOO BUSY DOING OTHER THINGS AND I CAME

1 BACK ONE DAY AND IT WAS THERE. IT WAS THAT
2 SIMPLE.

3 Q HOW HIGH ABOVE GRADE DID THAT WALL RISE?

4 A THE DRIVEWAY IS APPROXIMATELY TWO AND A HALF TO
5 THREE FEET ABOVE GRADE ON THAT SIDE. IT WAS
6 AGAIN, I GUESS, A FOOT ABOVE GRADE ON MY SIDE,
7 WHICH WOULD MAKE IT FOUR FEET ABOUT GRADE DOWN
8 THERE. I KNOW I HAD TROUBLE WHEN MY KNEES GOT
9 BAD GETTING OVER IT, SO IT HAD TO BE AT LEAST
10 FOUR FEET.

11 Q DESCRIBE FOR THE RECORD, IF YOU WOULD, WHERE
12 THAT WALL STARTED AND WHERE IT ENDED AND, I
13 GUESS, IF WE COULD WHY DON'T WE REFER TO WHAT'S
14 BEEN MARKED AS EXHIBIT NUMBER "2", WHICH I
15 BELIEVE IS THE DEETS'S, WHAT I CALL THE DEET'S
16 BOUNDARY SURVEY THAT THE PARTIES HISTORICALLY
17 HAVE AGREED UPON REGARDING ITS ACCURACY.

18 A THAT'S CORRECT.

19 Q IF YOU COULD, MR. MYERS --- FROM THE SHED TO
20 THE BULKHEAD?

21 A THE PART OF THE WALL THAT FELL DOWN, THERE WAS
22 A SHORT SECTION OF THE WALL THAT WAS IN THERE
23 THAT HAD BEEN FROM THE OLD SHED BEFORE HE MOVED
24 IT. I DON'T KNOW WHEN THAT HAPPENED, BUT THIS
25 SORT OF JUTTED OUT, SO HE JUST COMPLETED IT

1 FROM THERE DOWN. THIS IS WHAT FELL DOWN.

2 Q YOU'RE INDICATING, FOR THE RECORD, FROM THE
3 SHED TO THE BULKHEAD?

4 A BASICALLY. FROM THE CONCRETE --- FROM THE OLD
5 FOUNDATION, I GUESS, IS THE ONLY WAY I COULD
6 PUT IT. THERE WAS A SECTION OF HIS WALL THAT
7 GOT LIKE THIS AND LIKE THIS, BASICALLY. SO
8 WHETHER HE REPLACED THAT AT THAT AT THE TIME, I
9 DON'T KNOW. I DON'T REMEMBER THAT FAR. I
10 REMEMBER THIS WENT FARTHER.

11 Q INDICATING, FOR THE RECORD, HALFWAY BETWEEN THE
12 SHED AND THE BULKHEAD?

13 A WELL, I DON'T KNOW THE DISTANCES, BUT THIS IS
14 FROM THE SHED, BECAUSE THE SHED --- HE MOVED
15 THINGS AROUND WHEN HE WAS IN THERE, BUT THIS IS
16 THE WALL THAT I REMEMBER. HE PROBABLY DID
17 REPLACE THE WHOLE THING I WOULD IMAGINE,
18 BECAUSE THIS PART OF IT LOOKED PRETTY GOOD, BUT
19 I'M NOT SURE. I JUST DON'T KNOW.

20 Q WHEN YOU SAY IT RAN FROM THE SHED TO THE
21 BULKHEAD, DESCRIBE FOR THE RECORD WHAT YOU MEAN
22 BY THE BULKHEAD?

23 A WE HAD A CONCRETE BULKHEAD ACROSS HIS PROPERTY.

24 Q THAT WOULD RUN PERPENDICULAR TO THE WALL?

25 A YES.

1 Q THAT WOULD PREVENT EROSION FROM TAKING PLACE
2 AND THAT WOULD BE HIS, IF NOT HIS BOUNDARY
3 LINE, SORT OF THE EDGE OF HIS PROPERTY?

4 A YES.

5 Q THEREAFTER WOULD BE SAND AND THEN WATER.

6 A YES.

7 Q WHEN YOU FIRST MOVED THERE PRIOR TO THE WALL
8 FALLING DOWN, DID YOU MAINTAIN THE PROPERTY UP
9 TO THE EDGE OF THE WALL?

10 A YEAH.

11 Q WHEN I SAY MAINTAIN, DID YOU CUT THE GRASS?

12 A YEAH.

13 Q DID YOU WEED WHACK OR GET THE WEEDS TAKEN CARE
14 OF THAT WOULD GROW NEAR THE WALL IF THEY DID
15 GROW NEAR THE WALL?

16 A YES.

17 Q WAS ANY PLANTINGS OF ANY SORT THAT WERE ON THE
18 339 PROPERTY, WOULD THEY EVER GROW TO THE POINT
19 WHERE THE CAME OVER ONTO 341, IF YOU RECALL?

20 A I DON'T REMEMBER ANY PLANT --- WELL, NO, I
21 DON'T REMEMBER THAT.

22 Q DID YOU EVER HAVE TO TRIM ANY TREES OR SHRUBS
23 OR PLANTS THAT MAY HAVE BEEN GROWING ON THE 339
24 SIDE THAT MAY HAVE BLOOMED ONTO YOUR SIDE?

25 A NOT THAT I REMEMBER?

1 Q DID HE HAVE ANY PLANTINGS OR TREES THAT WERE
2 CLOSE TO THE WALL DURING THE TIME THAT YOU WERE
3 NEIGHBORS? MR. AND MRS. COOK AND YOU AND YOUR
4 WIFE, THAT REQUIRED TRIMMING?

5 A IF THERE WAS ANYTHING THERE THAT I WOULD
6 REMEMBER, IT WOULD HAVE BEEN UP AT THE SHED. I
7 DON'T REMEMBER ANY KIND OF PLANTINGS BETWEEN
8 THAT SHED AND THE BULKHEAD.

9 Q FAIR ENOUGH. DID YOU AND MR. COOK EVER HAVE
10 ANY DISPUTE REGARDING THE LOCATION OF THE WALL?

11 A NO.

12 Q WE'VE USED THE WORDS FENCE AND WALL, SORT OF
13 INTERCHANGEABLY, SO I WANT TO TRY TO MAKE SURE
14 WE'RE STRAIGHT FOR THE RECORD. WAS THERE ANY
15 TYPE OF WOODEN STRUCTURE ATTACHED TO OR CLOSE
16 TO THE CONCRETE WALL THAT WE'VE BEEN TALKING
17 ABOUT?

18 A HUH-UH (NEGATIVE RESPONSE).

19 Q IT WAS PURELY A ---

20 A CONCRETE WALL.

21 Q CONCRETE WALL. AND WHEN YOU SAY CONCRETE, WAS
22 IT CINDER BLOCK OR CONCRETE?

23 A IT WAS CONCRETE BLOCK.

24 Q CONCRETE WITH WEEP HOLES IN IT.

25 A YEAH. A CAP BLOCK.