

1 Q. Who is that, sir?

2 A. Chris Brown.

3 Q. Now, since the erosion event that Mr. Harness re-

4 ferred to a while ago on cross examination, . .

5 A. Yes, sir.

6 Q. . . what to the best of your knowledge has been the

7 status of this area since then?

8 A. It's been very accretional. One reason for the

9 massive renourishment project, we had a large sand bar out

10 offshore and we welded it together to increase the sand in

11 that area, and we had a total accretional area since that

12 one episode with erosion that I know of.

13 DIRECT EXAMINATION BY MR. HOWE:

14 Q. State your full name, please, sir.

15 A. David Henry Lucas.

16 Q. And tell the Court about how you came to own these two

17 pieces of property?

18 A. Well, of course, I still had a very good relation-

19 ship with all the sales force at Wild Dunes and we had faith

20 in the investment at Wild Dunes and the ocean front lots

21 had been sold and most of them had been built on. There

22 were very few remaining and it seemed like a supply and

23 demand situation, that it would be a very good investment

24 for us.

25 I was looking for another lot to build a home on for

1 myself and my family.

2 Q. So you--it was with the proceeds--part of the proceeds
3 from the sale of your interest that you bought these lots?

4 A. That's correct.

5 Q. Now, would you have thought of yourself as knowledg-
6 able about these two lots and their history?

7 A. I would think I was very knowledgable, yes, sir.

8 Q. You had been on the island since 1979?

9 A. Since 1978-79. That's correct.

10 Q. And you were well aware of the various studies and
11 the various information that had come forward about accre-
12 tion on the property?

13 A. Yes. One of my roles--it sort of expanded from being
14 just a contractor. I became--I sat in on all the board
15 meetings and I worked with Mr. Stevens and other people there
16 in doing a number of planning--we had twenty-five hundred
17 units we were allowed to build on the island and we had
18 to find out the best way--the best mix, single family versus
19 condominiums, and it was a long study.

20 As we say, we kept trying to make the biscuits and
21 the gravy come out together.

22 Q. When you closed--sold your interest in the island,
23 were you under any obligation to buy these lots?

24 A. No.

25 Q. Were you under any obligation to reinvest on the

1 island?

2 A. None whatsoever.

3 Q. So you had an opportunity to invest anywhere?

4 A. That's correct.

5 Q. And you had the pick of all the lots on the beach?

6 A. The ones that were left, yes.

7 Q. A pick of the undeveloped lots?

8 A. That's correct.

9 Q. And you had all the background and knowledge that you

10 had accumulated over the years?

11 A. Correct.

12 Q. And you chose these two?

13 A. That's correct.

14 Q. Why?

15 A. Well, we had always taken into consideration the move-

16 ment of the ocean, the Atlantic Ocean. I mean, it's obvious

17 that there is always a risk of a big storm or a hurricane.

18 One of the things that really attracted us to the island

19 and investment on the island was the studies we had done.

20 When we put lots up for sale or when we developed condomin-

21 iums we always took in the latest data that we had. We

22 didn't just go out and say we're going to stick these lots

23 one foot from the critical line. We never did that sort of

24 thing.

25 The Finches were very responsible developers and they

1 were very cognizant of the fact that there could be some
2 liability if they were not responsible.

3 So there were various studies. There were ongoing
4 studies done. They were always markers out on the beach so
5 they kept tabs on where erosion was and where accretion, and
6 every study that we had, and every study that I'm aware of,
7 said that the beach was an accretion area--an accreting
8 beach; that over the past fifteen hundred years that the
9 ocean has built oceanward, but that there would be sometimes
10 intermittent and temporary erosion during that period of
11 time.

12 I don't think you could equate the--every beach as
13 being erosion beach in the State of South Carolina. I would
14 contend there are certain very bad places where erosion
15 takes place, but I don't see how you can treat every place
16 the same.

17 Q. Now, I'm going to hand you Exhibits 3 and 4, and
18 tell the Court what those are?

19 A. These are, I believe, the deeds on these lots.

20 Q. When did you buy Number 3 and how much did you pay
21 for it?

22 A. It's Lot 22 and 24. I paid Four Hundred Seventy-five
23 Thousand for Lot 22 and I believe that's dated--you might
24 help me out here, counsellor.

25 Q. Look on the signature page.

1 A. Okay. It was done December 3rd, 1986, and Lot 24, I
2 paid Five Hundred Thousand Dollars for it and that would
3 have been on the 3rd of December of 1986 also.

4 Q. Were these what we think of as arms-length transac-
5 tions?

6 A. Yes, they were definitely arms-length transactions.

7 Q. Any relationship between you and the seller that
8 would make--distort the price?

9 A. No, sir.

10 Q. Did you feel as though at the time you paid fair
11 market value for those lots?

12 A. I perhaps paid a little bit--yeah, I paid fair market
13 value for them.

14 Q. Now, at the time you bought those lots, what could
15 they be used for?

16 A. At that point in time they could be used to build
17 single family residential dwellings.

18 Q. Now, let's talk about Lot 22 first. What was your
19 intention as it relates to Lot 22?

20 A. Let's see. Now, Lot 22 was the Charleston side.

21 Q. That's to the left . .

22 A. Lot 22 was originally purchased with--just as an
23 investment, with an investment in mind. The idea being that
24 it already had some protection; that if there was a temporary
25 erosion that came back, it would be the one that I would

1 feel good about selling to someone else because it was pro-
2 tected.

3 Q. Lot 24--what were your intentions with regard to that
4 lot?

5 A. To build a home for myself, a residence for myself.

6 Q. What kind of residence could you build?

7 A. Well, it was sort of the opposite of what the
8 Coastal Council is saying. The ideal was to build the larger
9 the better. We did not intend to build a huge house there,
10 but I think somewhere in the neighborhood of thirty-five
11 hundred square feet to four thousand.

12 Q. Did you engage architects and engineers to work in
13 furtherance of Lot--work on Lot 22 and 24?

14 A. Yes. We had homes designed for both of those lots.

15 Q. What was done with regard to Lot 22?

16 A. We had a home perhaps--my brother at Cumberland
17 Corporation--had it designed and were pricing it out to
18 move forward and build it as a speculative home.

19 Q. Now, explain to the Court and for the record what
20 you mean when you say build it as a spec home.

21 A. Well, it would have been built for sale. It would
22 have been built without a buyer--a particular buyer in
23 mind.

24 Q. And was that your intention for that particular . .

25 A. Yes, that was one route. We were in no hurry to do

1 that because the lot was appreciating in value.

2 Q. I'm going to hand you Exhibit Number 5. Tell the
3 Court what Number 5 is.

4 A. These are plans drawn up for 11 Beechwood East,
5 which would be Lot 22, and it was done by Joe Tucker and
6 Associates, and it was designed to go on Lot 22.

7 Q. And was that to be a spec house?

8 A. Yes, it would have been a speculative house.

9 Q. All right.

10 THE COURT: When was that done?

11 A. Your Honor, I believe this is dated 8 25 87 so it
12 would have been an ongoing project. It's either an eight
13 or a three. It may be three. I think it was early March.
14 It was right after we purchased the lot.

15 THE COURT: The spec house?

16 A. Yes, sir.

17 thirty-five hundred and five thousand square feet. We were
18 trying to hit a specific market. So that was what the design
19 was aimed for.

20 Q. Has that house been built?

21 A. No, sir, it has not been built.

22 Q. All work was stopped on it.

23 A. All work we had to stop, yes.

24 Q. And that has been as a result of the Beach Management
25 Act?

1 A. That's correct.

2 Q. What is the document you're looking at now?

3 A. This is the preliminary drawing on the house that I
4 was designing for personal use.

5 Q. And does it reflect on there anywhere whose house it
6 is?

7 A. Yes, it has Lucas residence on here.

8 Q. Where did you intend for that home to be built?

9 A. On Lot 24.

10 Q. Tell us a little bit about that house.

11 A. This house was designed by Ed Wiggins of Hilton Head.
12 We also had a small architectural mockup made out of card-
13 board but that has since disintegrated. We don't have it,
14 but this is one that I worked with--my wife and I worked
15 together on this plan.

16 Q. About how large is that?

17 A. I believe the heated square footage was thirty--it
18 looks like thirty-eight, almost thirty-nine hundred square
19 feet. That includes some storage space in there too.

20 Q. Mr. Lucas, do you owe any money on these lots?

21 A. Yes, sir. I owe a substantial sum of money on these
22 lots.

23 Q. What is the substantial sum?

24 A. The principal, I believe, is Nine Hundred--in excess
25 of Nine Hundred Fifty Thousand Dollars.

1 Q. And who do you owe that money to?
2 A. NCNB.
3 Q. Are they charging you any interest?
4 A. Yes, sir. They regularly send me the interest bills.
5 Q. What is the rate you borrowed money at?
6 A. One and a half over prime, I believe.
7 Q. And what has that averaged for the last year?
8 A. It would be in excess of Twelve Percent.
9 Q. What do you think these two lots are worth? I'd like
10 you to treat them separately if you think they should be
11 treated separately.
12 A. The value of Lot 22 I would say would be zero or less
13 and as a matter of fact would be a liability. Lot 24 again
14 zero or less.
15 Q. When you say or less, what do you mean by that?
16 A. Well, along with being the property owner, we have no
17 real use for that property. There are certain liabilities.
18 If someone falls down and breaks a leg on that lot or has an
19 accident . .
20 Q. I hand you Plaintiff's Exhibit 7 and ask what are
21 those?
22 A. These are taxes of Charleston County and the City of
23 Isle of Palms. These also would be a liability ongoing and
24 . .
25 Q. What do they show the taxes being for the individual

1 lots?

2 A. For Lot 22 it shows the amount due as One Thousand
3 Seven Hundred Sixty-seven Dollars and Twenty Cents, and for
4 the other lot the same amount.

5 Q. Now, prior to the Beach Management Act, looking at
6 these lots individually, what did you think they were worth?

7 A. Well, since they were only about four lots that were
8 available, ocean front in Wild Dunes, and Wild Dunes had
9 substantially built out---I mean, it was--there were houses
10 all up and down this beach and I figured that within a year
11 or two that these lots could be perhaps worth as much as
12 a Million Dollars apiece.

13 Q. Now, if the lots were worth a Million Dollars apiece,
14 or a total of Two Million Dollars . .

15 A. That's correct.

16 Q. . . and you owed--how much did you say you owed on
17 them?

18 A. I believe it was in excess of Nine Hundred Fifty
19 Thousand Dollars.

20 Q. And that would have left you a Million Fifty Thousand
21 Dollars, quote-quote, equity?

22 A. Minus carrying costs and minus costs of--other costs
23 of holding the property.

24 Q. Do you have any costs on these properties as it
25 relates to the Wild Dunes Association?

1 Q. As a landowner, with that understanding, what is the
2 value of the lots in the market place in your opinion?

3 A. In my opinion, . . .

4 MR. HARNESS: Your Honor, I object. He can state
5 what the property is worth to him. I don't know whether he
6 can go into market place of houses as an expert.

7 THE COURT: Restate your question, Mr. Howe.

8 BY MR. HOWE:

9 Q. I'll back up a little bit. Mr. Lucas, are you a
10 realtor?

11 A. Yes, I am. I hold a South Carolina real estate
12 broker's license.

13 Q. How long have you held that?

14 A. Oh, since about 1971.

15 Q. And when did you move to Isle of Palms?

16 A. In 1978-79.

17 Q. And prior to being an owner on the island, were you
18 in contact and familiar with the real estate sales on the
19 island?

20 A. Prior to moving down? Yes, sir.

21 Q. No, prior to being an owner.

22 A. Prior to being an owner, yes, very much so.

23 Q. And would you have--what information would you have
24 gathered prior to purchasing on the island?

25 A. Well, I saw the daily real estate sales figures. I

1 saw--I built a lot of properties for sale so I was very up
2 to date on costs and sales prices.

3 Q. After you owned on the island, were you--would you
4 have been familiar with--what would your contact have been
5 with real estate sales on that island?

6 A. Very closely with Fifty-four Million Dollar mortgage
7 sitting on it. It very close working activity--working
8 relationship.

9 Q. Would you have also owned a real estate company then?

10 A. Yes, we owned the Wild Dunes Real Estate.

11 Q. And what was your touch with the real estate company?

12 A. Daily management.

13 Q. Would you have been familiar with the sales?

14 A. I would have helped set prices on all new product.
15 As a matter of fact, I was the last word in setting the
16 prices.

17 Q. So you actually put the market price on the property?

18 A. That is correct.

19 Q. How many different pieces of property would you have
20 put a market price on?

21 A. Oh, I would have been involved in pricing probably a
22 thousand or fifteen--probably a thousand pieces of property
23 at Wild Dunes during the years I was there.

24 Q. And after you sold the island or were in the process
25 of selling the island, did you familiarize yourself with the

1 value of the real estate so that you could arrive at a fair
2 market price for your interests?

3 A. That's correct. I did and was well aware of the
4 values on the island.

5 MR. HOWE: I think that's enough for him to testify
6 as an expert. I know he's a landowner but I think that's
7 pretty good expert background.

8 THE COURT: And what is your question.

9 MR. HOWE: My question is, what do you believe the
10 fair market value of the property is today.

11 MR. HARNESS: Your Honor, I object still. I under-
12 stand he's a property owner and he has a background, but my
13 objection still remains. He's not an appraiser that's been
14 qualified to show he can do market analysis.

15 THE COURT: I'm going to overrule the objection.

16 A. Repeat the question once again.

17 Q. What do you think the fair market value of the
18 property is now?

19 A. I don't think it has a fair market value. I think
20 it's zero on both pieces of property. Again it has a
21 negative value to the owner.

22 Q. Will you have any hesitation in selling either one
23 of these lots to the public?

24 A. No, I would not.

25 Q. Why not?

1 A. Well, I mean, you're talking about at the present
2 time?

3 Q. In terms of--I mean if it weren't for the Beachfront
4 Management Act, would you have any reservations in terms of
5 selling it to somebody as a beachfront lot?

6 A. No, not a bit.

7 Q. Why not?

8 A. Whatsoever--well, as I stated beforehand, all of
9 the knowledge that I've gained in my ten years of associa-
10 tion at Wild Dunes has been this is an accretionary island--
11 accreting island, and that if there is erosion it will be
12 of temporary nature, and that has proven to be the case in
13 my observation in the last ten years.

14 The beach--the high water mark has moved from fairly
15 close to this, within a hundred feet, in the last two or
16 three years. It is now the length of a football field away
17 from the property line.

18 It's actually--I don't know if you consider it ocean
19 front any more but it's probably ocean view.

20 Q. Thank you, sir.

21 CROSS EXAMINATION BY MR. HARNESS:

22 Q. Just a few points. You indicated you have no reserva-
23 tion about the sale of your lots and that you have information
24 that would date back fifteen hundred years to show that the
25 island has accreted. Where did you draw that information?

1 A. From a study done by, I believe, Tim Cannery's Company
2 that we had commissioned.

3 Q. All right, but you don't deny the fact that there
4 were serious erosion problems in 1983?

5 A. It depends on your definition of serious.

6 Q. Describe it for me. What sort of erosion did occur
7 in 1983?

8 A. We had erosion in two areas, north and south of the
9 sand bar.

10 Q. And did they threaten buildings on the island?

11 A. I don't think the buildings were ever seriously
12 threatened, no.

13 Q. The scarp line was at the face of the building, was it
14 not true?

15 A. The scarp line was at the face of the building.

16 Q. That means that the Atlantic Ocean at some point
17 in time reached that point?

18 A. I would--yes, I guess so.

19 Q. But you don't consider that serious erosion?

20 A. It depends on what your definition of serious is
21 again. I mean, it was certainly serious to those buildings,
22 but it was not serious to the entire development of Wild
23 Dunes. It was temporary erosion. We were assured by the
24 studies by the same people who drew the setback line that
25 you are speaking of now that this was not going to be the

1 case and that the land was going to build up, which in fact
2 it has at the rate of two to three feet per year since the
3 temporary erosion problem.

4 Q. But has the ocean not also eroded out other parts of
5 the Wild Dunes section in the last few years?

6 A. I think erosion goes on every day.

7 Q. So isn't it true that while you say this is an
8 accreting island--that this island is accreting, that there
9 are serious erosional events that occur?

10 A. I'm simply restating what the studies say, and that
11 is that it is an accretionary island and that there will
12 be temporary erosional processes since it is a dynamic pro-
13 cess. I am not an expert in hydraulics but I have read
14 the reports of the experts.

15 Q. Did the report tell you that in 1963 that these lots
16 were in the ocean?

17 A. They did not.

18 Q. Did the reports tell you that between 1973 and 1977
19 these lots were positioned out on the beach?

20 A. No, they did not.

21 Q. So you said you had all that information available
22 for the last fifteen hundred years. Do you think you had a
23 full picture presented to you by these people who gave you
24 information?

25 A. I think we had a very full picture, and the informa-

1 tion was that over the past fifteen hundred years the island
2 has accreted and that has been at least substantiated by
3 photographs that showed the advance of the dune lines.

4 As to the two particular lots, the two particular
5 lots were not studied but the entire Wild Dunes Development
6 was studied. Again, individual erosion does occur in
7 spots temporarily, but the overall impact has been accretion-
8 ary which it has done for the past eight or nine years at
9 the rate of two or three feet per year.

10 Q. Did you make any effort at anypoint in time to get any
11 permits to construct?

12 A. We submitted a permit through Wild Dunes, yes.

13 Q. To whom?

14 A. To Wild Dunes--to the Wild Dunes Review Board.

15 Q. Did they complete their study and give you an okay on
16 construction?

17 A. They didn't do a study. They put--they did not give us
18 an okay.

19 Q. They did not give you an okay, meaning that they did npt
20 make a final decision?

21 A. That's correct.

22 Q. Did you--would you have needed any permits from Isle
23 of Palms?

24 A. Yes, we would have needed one from the City of Isle
25 of Palms.

1 Q. Did you make any effort prior to passage of the Act
2 to obtain a permit in order to grandfather your structures?

3 A. No, we did not.

4 Q. Did you apply for any permits from the South Carolina
5 Coastal Council at any point in time regarding these lots?

6 A. No, we did not.

7 Q. Did you ever challenge the locations of lines on the
8 lots as allowed for?

9 A. No, we did not.

10 DONALD PARDUE, being duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. HOWE:

13 Q. Did they swear you in, Mr. Pardue?

14 A. Yes, sir.

15 Q. We don't want to take any chances. Where are you
16 from originally?

17 A. Atlanta, Georgia.

18 Q. And what do you do for a living?

19 A. I'm a real estate appraiser and also am a broker?

20 Q. You're an MAI?

21 A. That's correct.

22 Q. How long have you been an MAI?

23 A. Approximately six and a half years.

24 Q. What does the term MAI stand for?

25 A. That is a member of the American Institute of Real