ORIGINAL

IN THE SUPREME COURT OF OHIO

CARLOS SIVIT, et al.,	)	**Case No. 2013-0586**
Appellees	)	*On Appeal from the Eighth District Court of Appeals, Cuyahoga County, Ohio*
v.	)	
VILLAGE GREEN OF BEACHWOOD, L.P., et al.	)	*Court of Appeals Case No. 98401*
Appellants.	)	

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STATEMENT OF THE CASE AND FACTS

a. Introduction

This appeal stems from a highly destructive fire at a residential apartment building in October 2007. The jury endured a two-week trial in which it reviewed an abundance of evidence demonstrating the absurd disregard the landlords (Defendants) exhibited for the rights and safety of their tenants (Plaintiffs). The jury learned of the monetary savings the landlords accumulated while the rental property languished in a severe state of disrepair, despite combined assets exceeding $130,000,000.00. The jury heard testimony corroborating the actual knowledge the landlords possessed of the severe and life-threatening dangers presented in the way of the mixture of electrical faults and water leaks, both of which were rampant and readily apparent to every witness familiar with the building, including Appellants' own employees. The jury saw evidence that this was the second electrical fire at the same apartment complex over the course of three years; both fires resulting from the exact same construction assembly defects and utter lack of maintenance. The tenants all testified how they were forced to flee from their burning homes in the pre-dawn hours, some barely escaping with their lives. In fact, due to the regularity of false fire alarms (just a small example of the constantly unrepaired electrical irregularities) in the building, it is beyond fortunate that no human lives were lost in this event.

The jury's verdicts and the trial judge's rulings were affirmed by a unanimous three-judge panel of the Eighth District Court of Appeals. The full twelve-judge appellate court then unanimously declined an application for *en banc* consideration. This Court has now accepted this appeal for the purpose of examining three narrow questions:

(1) whether the "caps" imposed by R.C. 2315.21 are applicable to civil actions brought for violation of R.C. 5321.04; (2) whether the trial judge erred in allowing the claim for punitive damages to be considered by the jury; and (3) whether the trial judge erred in allowing the claim for violation of R.C. 5321.04 to be considered by the jury.[1]

b. The Parties

Plaintiffs-Appellees Carlos Sivit, Sonya Pace, David and Sidney Gruhin, Jason and Renee Edwards, Natalie Rudd, Prathibha Marathe, Hallie Gelb, Luciana Armanijigad, Mitchell Rosenberg, and Mohammed Marwali and Selvey Pangkey (collectively "Appellants") were all tenants of Building 8 of the subject apartment complex at the time of the fire. Defendant Village Green of Beachwood, L.P. ("VGOB") was the developer and has at all times been the sole owner of the 11 building complex. Defendant Forest City Residential Management Inc. ("FCRM") was the property manager/landlord at the time of the fire.

c. VGOB was the developer and owner of the subject apartment complex.

The subject residential buildings were developed by VGOB through a complex web of corporate entities representing a joint venture and partnership between Forest City Enterprises ("FC") and its Michigan based partners, Village Green Companies ("VG"). (Ex. A-6, Supp. 12). By the late 1980's, FC had acquired a large swath of undeveloped land in the City of Beachwood ("the City"). FC subdivided the land envisioning large-

[1] Appellants have included within their Merit Brief a fourth proposition of law which was not included in their Memorandum in Support of Jurisdiction. Appellees have filed a motion to strike the Merit Brief and/or that added proposition. Appellants further suggest, through passing reference, that this Court should address other issues, such as the final amount awarded for attorney fees, which were not timely raised in their jurisdictional memorandum. Appellees maintain that this Court's consideration should be limited solely to those issues properly preserved through timely appeal. All other components of the judgment are now final and no longer subject to appellate review.

scale residential developments of varying sorts in an overall scheme it called 'The Village.' One of the parcels in 'The Village' was designated for the construction of a multi-building apartment complex. (Tr. 640-42). FC and VG formed VGOB to develop and own that particular aspect of 'The Village.' (Ex. A-1, Supp. 1; Tr. 674-75, 689-91). VGOB then 'hired' a wholly-owned subsidiary of VG to act as "construction manager"[2] for the project. (Tr. 691). All of the tradesmen for the project contracted directly with VGOB for construction services performed and VGOB retained ultimate control over selection of all contractors. (Ex. A-3; Tr. 695-698). Upon completion and through a subsidiary (Village Green Management Co. – "VGMC"), VG assumed management of the complex.

d. The 2004 fire and ensuing litigation

Although not discussed in Appellants' Merit Brief, one of the central issues in the jury trial was a separate yet eerily identical electrical fire – concentrated in suites 110, 210, 310 – which destroyed Building 3 at the same complex three years prior (in 2004). (Ex. D-1, Supp. 30, D-2, Supp. 42, D-3a, Supp. 57, D-3b, Supp. 81). Multiple investigations were conducted into the cause of the 2004 fire and several tenants sued VGOB and certain other entities, including VGMC, for their losses. (Ex. G-1, Supp. 93 D-2, Supp. 42, D3a, Supp. 57). The ensuing litigation – which included a thorough review by the Eighth Appellate District – involved essentially the same claims, same defenses, same expert opinions, and same corporate entity defendants which are

[2] A 'construction manager' differs from a 'general contractor' in that it does not receive a lump sum payment from which to perform construction services. Rather, it simply manages the construction on the owner's behalf. The construction management agreement, which VGOB maintains has been "lost" somehow, was never produced for review and inspection.

presented in this case. See *Gilmore, et al. v. Village Green Mgt. Co., et al.*, 2008-Ohio-4556 (Appx.).

Plaintiff's expert, Ralph Dolence (Tr. 793-895, 922-74, 1162-65, 1185-1207), was first contacted regarding the 2004 fire by city officials to conduct a site examination given his highly-respected expertise in the fire investigative field, particularly with regard to electrical fires. (Tr. 1241, 1257). Following a thorough investigation, Dolence determined that the fire originated in the interstitial space between the second and third levels of the building. Dolence further concluded that the fire was caused by an electrical fault in the interstitial space which was the result of construction assembly defects left unrepaired. (Tr. 807-10). Multiple defects were noted in his report which was submitted to the City and available as a public record. (Ex. D-3a, Supp. 57; Tr. 826-28, 837-52). The City's fire investigative team reached substantially the same conclusions and issued a separate report. (Ex. D-2, Supp. 42).

Highly relevant to Dolence's ultimate opinion were the witness statements collected by the City following the 2004 fire. Specifically, numerous tenants reported constant electrical problems and other maintenance issues with the building, which included but were not limited to: noises in the walls; power surges; power outages; unusually high electric bills; constantly blown fuses and light bulbs; lights buzzing, dimming, and flickering; water infiltration; mold; elevator malfunctions; and false fire alarms. (Ex. D-1, Supp. 30, D-3a, Supp. 57; Tr. 1304-08). In addition to being reproduced in the fire investigators' reports, these tenant statements were recorded in a police incident report created following the fire. (Ex. D-1, Supp. 30).

The landlords were immediately notified of the 2004 fire (Tr. 768) and the likely causes. News of the fire and the investigative findings rapidly spread throughout the complex. In an attempt to both dispel the notion of landlord liability and pacify the remaining tenants in other buildings, VGOB (via the entity retained to manage the property at the time) circulated a letter to the residents of the complex falsely suggesting the absence of any evidence or findings that the fire was caused by electrical issues. (Ex. G-7, Supp. 98). The City was notified of this letter and responded aggressively. In correspondence issued to the attorney retained to represent all defendants in the prior lawsuit (and this lawsuit), and carbon copied directly to VGOB, the City characterizes the letter to the tenants as a gross misrepresentation of the investigative findings. (Ex. G-7, Supp. 98; Tr. 1580-1583).

> We are very concerned that this letter prepared by Village Green Management significantly misstates the facts and has the effect, if not the intent, of misleading the residents regarding the extent of the investigation and the possible causes of the fire.

When a large group of tenants filed a lawsuit to recover their massive losses, VGOB was named as a defendant. (Ex. G-1, Supp. 93; see also, Cuyahoga County C.P. Consolidated Case Nos. 542145, 562259, 572121, Appx.). The fire investigative report was attached as an exhibit to the complaint, which was filed in September 2004. Service of the complaint was perfected upon VGOB at FC's corporate headquarters in downtown Cleveland. (Tr. 1547-52). VGOB put on a vigorous defense throughout the more than five years of litigation, which included a three-day *Daubert* hearing at which Dolence's findings and opinions relative to the 2004 fire were thoroughly vetted, followed by an appeal to the Eighth Appellate District resulting in a remand to the trial court. The three-day *Daubert* hearing was held on December 27-28, 2006 and January 8, 2007, prior to the

2007 fire, which occurred while the case was pending in the court of appeals. As became apparent, the Appellants were totally focused on defending its claims of the first fire victims rather than addressing the dangers which existed in the other buildings and which ultimately destroyed Building 8.

e. FC acquired a full interest in VGOB in 2006.

In 2006, FC bought its partner out and purchased the entirety of its Michigan partner's ownership interest in VGOB. (Ex. G-6; Tr. 638-40).[3] According to FC, the property was not doing well from an operational standpoint. There was also a significant tax benefit which, in no small part, motivated the buy-out. (Tr. 771-72). FC assigned the task of managing the property to one of its wholly-owned subsidiaries, FCRM. (Ex. A-3, Supp. 7).

Prior to the purchase of VG's interest, Rod Brannon (FCRM's VP of Engineering)[4] (Tr. 237-386) performed a 'due diligence' inspection of the property. (Ex. C-3, Supp. 13). With respect to Building 8, Brannon acknowledged that "we took over a building that needed a lot of work" due to what he described as "poor maintenance" and "deferred maintenance." (Tr. 248). Specific to Building 8, Brannon added that "[w]e knew that we needed a lot of repairs[.]" (Tr. 378-80). Additionally, at the time of his

[3] In the several years of litigation preceding the trial in this case, VGOB wrongfully withheld the acquisition document, Exhibit G-6, leading Appellants to believe that the document was "lost" along with another key document – the construction management agreement. During the trial, the trial judge took particular issue with the non-production of this key document and ordered VGOB to utilize all efforts to locate the same when its continued existence became apparent from testimony presented by the defense. The document was then somehow quickly located and produced, confirming the trial judge's (and Appellants') suspicion of the inclusion of an indemnification clause for the prior fire and other pending liabilities. The document further shows a significant deduction ($5.8 million) from the fair market value in the purchase price due to "deferred maintenance."

[4] Brannon, the head of FCRM's engineering department, has never held any professional licenses in the engineering field. (Tr. 241).

inspection, Brannon was fully aware of the 2004 fire. (Tr. 255, 296-97, 308, 1663). However, in performing the purported 'due diligence' on the property, Brannon did not review – and, in fact, denied having any interest in reviewing – the police report, witness statements, expert opinions, or any other materials or evidence concerning the 2004 fire. (Tr. 298-304). Brannon testified that the purpose of his 'due diligence' inspection was not investigating safety concerns for the tenants, but was instead simply trying to justify a low-bid offer to purchase VG's ownership interest. (Tr. 253-54).

At the very outset of the 'due diligence' report Brannon submitted to his superiors at FC, he noted the 2004 fire because he felt that was "important" – even if the *cause* of that fire purportedly was not. (Ex. C-3, Supp. 13; Tr. 255). His report details several deficiencies with the property, including but not limited to "deferred" maintenance issues, water infiltration, improper venting, mold, insect infestation, failed flooring, and the need for a new roof, gutters, siding, windows and carpet (all due to rampant water infiltration). (Tr. 308-310). He testified that what he reported to his FC superiors was "13 years of capital needs neglect." (Tr. 275). But somehow, in the face of the red flags Brannon had raised, insufficient funds were allotted by Defendants to correct the deferred maintenance. (Tr. 310, 311, 368, 575-77, 585).

Following completion of the buy-out, Brannon talked often with Wanda Himmel (the previous management company's property manager retained by VGOB and FCRM to carryover her duties through the transition) (Tr. 534-622) about "any problems they were having with the building. (Tr. 252). Unit 310 was of particular concern due to abnormal amounts of water infiltration. He would also discuss all problems with the maintenance staff and visited the property on multiple occasions.

In addition to FC's inspection, the City inspected the property and identified several code violations specific to Building 8's state of disrepair, many of which were also identified in Brannon's due diligence report. (Ex. C-16, Supp. 23; Tr. 315-316). The building inspector followed up his visit with a letter to Appellants in 2006 notifying them of the violations "so that arrangements can be made to correct these conditions as soon as possible *for the safety and well being of the community* and to maintain the high standards of the community." The City's letter further advised that the owner of the property (VGOB) shall not rent or lease it until all repairs are made and certified by the City. (Ex. C-16, Supp. 23). Appellants ignored this restriction. (Tr. 320-21). Although Brannon responded to the City and openly acknowledged that "the building was allowed to deteriorate due to the lack of preventative maintenance[,]" the City's concerns were not remedied prior to the fire more than one year later. (Ex. C-19, Supp. 25, Tr. 320-22, 325, 357, 361-63, 370).

VGOB and FCRM did very slowly begin to solicit some bids for a few items on the lengthy list of needed repairs. One contractor notified them that, upon an inspection of the property, "significant" and "severe" water damage was found. (Tr. 338). An infrared scan of the building also provided notice of "poor construction and/or inferior materials." (Tr. 343).

No significant changes were made to the staffing at the complex, with essentially the same maintenance staff and management personnel carrying over their prior duties. In dealing with many of the issues, management was instructed to not repair several items previously noted and to have contractors "only bid the obvious" on others. (Ex. C-21,

Supp. 27; Tr. 353). The practice of deferring maintenance, just as the personnel and staff, was carried right through the 'transition' (in corporate name only) of management.

f. The 2007 Fire and Ensuing Investigation

The 2007 fire which caused Appellees' losses ignited due to an electrical fault in the interstitial space between the ceiling and the floor. The fire intensified within the open web-truss system in that concealed space, and eventually breached the walls in the early morning hours while the tenants were still asleep. No catastrophic injuries resulted only due to the heroism of Plaintiff Prathibha Marathe (Tr. 1314) and her 13 year-old daughter, Ananya. Young Ananya awoke to an orange glow in her bedroom and the sound of crackling flames near her window. Horrified, she alerted her mother. The two hastily evacuated their unit and pulled the fire alarm in the hallway. But when the alarm sounded, some tenants hesitated on evacuating due to the proliferation of recent false fire alarms in the building. Conscious of the likelihood for uncertainty, Prathibha and Ananya ran through the burning building screaming "REAL FIRE! REAL FIRE!" Fortunately, their heroic efforts allowed all of the tenants to evacuate just in time, albeit they were forced to watch helplessly as the fire destroyed their residences and all of their personal belongings and keepsakes. (Tr. 1317-19; 1440-41).

Following a thorough investigation which included a complete site examination, the point of origin was determined to be identical to that of the 2004 fire (i.e., the interstitial space between the floor of level three and the ceiling of level two). (Tr. 804, 1156). Also mirroring the 2004 fire, this fire was concentrated on the center of the building - suites 110, 210, and 310 - and caused extensive damage once it escaped the open-web interstitial space. Although the remaining building fragments were eventually

demolished, a thorough investigation of the site was completed prior thereto. Witness and resident statements were taken by the police. (Tr. 1306). No evidence of arson or accelerants was found on the scene.

Investigations were conducted by City personnel, the State Fire Marshall's office, and other professional fire investigators. (Tr. 853). Dolence's assistance and input was once again requested. Following his investigation, Dolence reached the exact same conclusions with regard to cause and origin as he did for the 2004 fire. (Tr. 810-11, 1185-87, 1232). In his investigative report and the hundreds of photographs shown to the jury, Dolence documented the "numerous National Electric Code violations and shoddy workmanship found during the site examination[.]" (Tr. 805, 1186). These same observations were also noted in his reports and testimony following the 2004 fire. (Ex. D-3a, Supp. 57; *Gilmore, et al. v. Village Green Mgt. Co., et al.*, 2008-Ohio-4556). Specifically, Dolence observed and documented multiple examples of unsecured feeder cables, wires double stapled, and wires pulled up against metal gusset plates with insulation damage, all in violation of applicable safety codes. (Tr. 852-95, 922-71).

Dolence also noted what was obvious to anyone who had ever set foot in the building – water infiltration was widespread. (Tr. 805-07). Just as Dolence had explained in detail following the 2004 fire, "[i]f a water problem persisted, a damp or wet environment at or about an electrical fault or failure would stimulate electrical conductivity, which could promote electrical activity at an electrical fault or failure." (Ex D-3a, Supp. 57). Not surprisingly, Appellants merely gloss over how importantly the issue of water leaks factored into the *only* expert testimony offered at the trial as to the origin and cause of the fire. Instead, they attempt to misrepresent Dolence's opinions by

continuing to harp on a single misdriven staple. However, **Dolence clearly testified at trial that, without a doubt ("100%"), this fire was caused by "faulty electrical wiring contaminated by water leaks" within the building.** (Tr. 1232, 1186-87).

The investigation gathered statements by numerous tenants regarding various electrical and water infiltration problems which, following the 2004 fire in a structurally identical building, Dolence and other investigators identified as indicative of conditions which dramatically increase the likelihood of an electrical fire. (Ex. D-3a, Supp. 57; D-2, Supp. 42). The complaints of electrical and water problems in the subject building are strikingly similar, and identical in significantly more respects than not, to the complaints provided by the tenants of Building 3 following the 2004 fire. (Tr. 1304-08). These *identical* complaints included, but were not limited to: noises in the walls; power surges; power outages; unusually high electric bills; constantly blown fuses and light bulbs; lights buzzing, dimming, and flickering; water infiltration; mold; elevator malfunctions; and false fire alarms. (Ex. D-2, Supp. 42, D-3a, Supp. 57; Tr. 1304-08).

In addition to tenant complaints, Mike Farlow (Tr. 407-32, 519-28), the former maintenance supervisor for the complex who had actually resided in Building 8 from September 2006 until just a few weeks before the fire, reported to the police and testified at trial that he was not surprised about the fire. (Tr. 519). Farlow noted multiple unattended maintenance issues with Building 8, which he described to the police as "water logged." (Tr. 416-18). At trial, he testified that there was "no doubt" in his mind that water was entering into and traveling throughout the building. (Tr. 426). He further confirmed that, in his capacity as Maintenance Supervisor, he observed numerous electrical problems in Building 8. (Tr. 422). The problems observed included (but were

not limited to) water dripping on electrical junction boxes, quick-fix electrical wiring, flooding, mildew and mold problems, lights flickering on and off, and false alarms going off. He noted that the exterior wood was rotted, that the roof was experiencing significant leaks and was in desperate need of replacement, and that the appliances were not properly or regularly maintained. He further noted that management was fully aware prior to the fire that the water infiltration was already causing short circuits in the alarm system, circuit breakers, and electrical fixtures. Water was entering the building through the roof, siding, and foundation. Moreover, it was no secret that the shoddy construction and lack of preventative maintenance of these buildings was the reason why these problems persisted. (Tr. 430-32).

Farlow, who resigned and fortunately (for him) moved out of the building a few weeks before the fire, voiced his concerns with management but little (if anything) was ever done to curb the readily apparent problems. Although Farlow informed Defendants about the multiple safety concerns he observed, including electrical issues, management just brushed him off and indicated they did not want to address the problems at that time. (Tr. 430-31). Farlow also maintained regular contact with and raised his concerns to his supervisors at FC's corporate office, including Brannon. (Tr. 431).

In addition to the numerous issues identified in the police report by current and former tenants of Building 8, the tenants called to testify at the trial reported similar concerns, noted an incompleteness in the maintenance records which Appellants falsely suggested to the jury were all-inclusive,[5] and affirmed that management did nothing more

[5] With the requisite expertise due to his professional field, Plaintiff-Appellee David Gruhin (Tr. 1398-1421) was able to explain to the jury that it would be easy to manipulate the computer program used by Appellants to maintain records.

than the bare minimum to resolve the numerous issues brought to its attention. (Tr. 1304-08, 1313-14, 1315-17, 1340-47, 1367-71, 1400-08, 1432-39). Remarkably, Appellants did not call to testify one single tenant from any building in the complex or any maintenance staff personnel to support their defenses.

Dolence's conclusion of a slow, smoldering electrical fire beneath unit #310 was further supported by the testimony of Plaintiff-Appellee Jason Edwards (unit #310). (Tr. 976-95). Edwards returned to his unit on October 22nd at approximately 3 p.m. Upon entering the building and his unit, Edwards could detect the distinct smell of smoke. The odor was particularly strong in his living room near the balcony area, and it only grew stronger as the night progressed. That afternoon, Edwards spoke directly with an employee of the Appellants and informed that person about the odor. The employee, while in the building, acknowledged the presence of the suspicious odor. Later that night, Edwards called the complex's 24-hour maintenance line, the number which was supplied at move-in, to report his concerns but received no response.

LAW AND ARGUMENT

A. Introductory Comments

All three of Appellants' propositions of law ask this Court to reverse a unanimous court of appeals panel decision affirming the jury's verdicts and trial judge's rulings, which the 12 judge En Banc panel unanimously declined to review. Moreover, Propositions II and III are premised on shameful misrepresentations of both the evidentiary record and the stated rationale of the court of appeals. Proposition of law IV is not properly before this Court (see previously filed motion to strike).

While addressing each proposition of law timely preserved for appeal and under the circumstances of this case, this Court must remain mindful of the 'two-issue rule.' "In brief, the two-issue rule states that if a jury receives instruction on two possible theories of liability * * * and the objecting party fails to submit a device, usually interrogatories, by which the jury's specific basis for determining liability can be ascertained, then no error will be found." *Cicchillo v. A Best Products Co.*, 2002-Ohio-4 (App. 8 Dist.), citing *Wagner v. Roche Laboratories*, 85 Ohio St.3d 457 (1999). Here, the jury found liability under two separate theories – negligent maintenance and negligent construction – and the Appellants failed to submit any interrogatory which assigned varying degrees of liability for damages to the two theories.

B. <u>Appellees' Response to Proposition of Law No. 1</u>

i. The Rules of Statutory Interpretation

"Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation." *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413, syllabus ¶5 (1944). An unambiguous statute is "to be applied, not interpreted." *Id.* This principle of judicial restraint when presented with a question of legislative intent has been consistently honored by this Court for well over a century and is one of the bedrocks of Ohio jurisprudence.

> [T]he intent of the lawmakers is to be **sought first of all the language employed**, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the lawmaking body, there is no occasion to resort to other means of interpretation. **The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it**

> **has plainly expressed, and hence no room is left for construction.**

Slingluff v. Weaver, 66 Ohio St. 621, 64 N.E. 574 (1902) (emphasis added).

The same principle was more recently re-enunciated by this Court in *State v. Teamer*, 82 Ohio St. 3d 490, 696 N.E.2d 1049, 1998-Ohio-193:

> To construe a statute, we first look at its **express wording**. We must give effect to the words of a statute and may not modify an unambiguous statute by deleting words used or inserting words not used. Simply stated, '**an unambiguous statute means what it says**.'

(Internal citations omitted). See also, *Provident Bank v. Wood*, 36 Ohio St.2d 101, 304 N.E.2d 378, 381 (1973) (recognizing that, under Ohio law, a court must first examine the language of the statute itself to determine the legislative intent and if a court determines that language of the statute conveys a meaning which is "clear, unequivocal and definite, at that point the interpretive effort is at an end, and the statute must be applied accordingly"); *Cline v. Ohio Bureau of Motor Vehicles*, 61 Ohio St.3d 93, 573 N.E.2d 77, 80 (1991) (when statutory language "is plain and unambiguous and conveys a clear and definite meaning, there is no need to apply rules of statutory interpretation").

By asking this Court to speculate as to what the General Assembly might have intended in the passage of R.C. 2315.21 and ignore the plain meaning of what it actually enacted, VGOB is seeking the very type of judicial activism not simply disfavored, but outright rejected by this Court's unwavering precedent.

ii. The Legislatively Imposed Limitations on Application of the 'Caps' on Punitive Damage Awards Provided by R.C. 2315.21(D).

The 'caps' on punitive damage awards created by Tort Reform III and codified in R.C. 2315.21 are to be applied **only** in civil cases which meet the definition of "tort

action" specifically contemplated by the General Assembly's most recent tort reform efforts. In relevant part, "tort action" for the purposes of R.C. 2315.21 is defined and limited in subsection (A)(1) as follows:

> "Tort action" means a civil action for damages for injury or loss to person or property. "Tort action" * * * does not include a civil action for damages for a breach of contract or another agreement between persons.

Due to this undeniable limiting language, the 'caps' provided by Tort Reform III do not universally apply to every case in which punitive damages are awarded. The General Assembly specifically narrowed its aim and limited application of the new punitive damage 'caps' to "tort actions" **as defined in the text** of the statute. Clearly, this "civil action for damages for a breach of contract or another agreement between persons" now on appeal is not merely outside the contemplation of Tort Reform III, it is explicitly excluded.

iii. The Lower Courts' Proper Exercise of Judicial Restraint.

The lower courts were not tempted by VGOB's invitation to engage in a speculative (at best) guessing game as to some legislative intent not communicated through, and indeed at significant variance with, the text of the statute. The unanimous appellate panel properly maintained its focus on the plain meaning of the unambiguous statutory language adopted by the General Assembly and affirmed the trial court's decision to not disrupt the punitive damage award levied by the jury against VGOB. Recognizing that the General Assembly meant what it wrote, the lower courts correctly ruled that VGOB cannot avail itself of 'caps' imposed on "tort actions" by R.C. 2315.21.

The very same judicial restraint with respect to R.C. 2315.21's application was demonstrated under similar circumstances by the Twelfth Appellate District in *Beaumont*

v. Albert, 2009-Ohio-6176 (App. 12 Dist.). After initially noting that punitive damages are generally not recoverable in an action involving breach of contract (as was presented in that case), the *Beaumont* court acknowledged the well-settled law in Ohio that punitive damages *are* recoverable in a civil action alleging a breach of contract if "the conduct constituting the breach is also a tort for which punitive damages are recoverable." *Id.*, citing *Lake Ridge Academy v. Carney*, 66 Ohio St.3d 376, 381 (1993). The court then examined the application of Tort Reform III's 'caps' to a breach of contract action which had resulted in a punitive damages award due to the peculiar nature of the conduct constituting the breach:

> * * * R.C. 2315.21, which governs the award of punitive damages in ***tort actions***, is inapplicable to "a civil damage for a breach of contract or another agreement between persons." Therefore, because Beaumont's claim was a civil action for damages resulting from her breach of contract, R.C. 2315.21(D)(2)(b) is inapplicable.

Beaumont at ¶ 36 (emphasis in the original and internal citations omitted); see also, *Kramer Consulting, Inc. v. McCarthy*, 2006 WL 581244 (S.D. Ohio Mar. 8, 2006) (determining that claims for breach of fiduciary duties are not contemplated within the definition of "tort action" set forth in Tort Reform III).

iv. The Non-Applicability of the Caps Imposed by R.C. 2315.21 to Civil Actions for Violation of R.C. 5321.04. [6]

The limited question accepted for review by this Court concerns only the application of R.C. 2315.21's definition of "tort action" to civil actions for violation of R.C. 5321.04 duties. Accordingly, this Court merely needs to decide whether *this case* is

[6] Prior to the jury trial, Appellants filed a motion to bifurcate the trial pursuant to R.C. 2315.21, which the trial court denied. Appellees agreed to a bifurcation in exchange for a dismissal of the interlocutory appeal filed shortly after the trial court's ruling. Appellees made this agreement in order to preserve the trial date and prevent further delay, but never acknowledged that R.C. 2315.21 was applicable to their claims.

a civil action for a breach of agreement between persons and, if so, whether the 'caps' imposed by R.C. 2315.21 can be applied to reduce the deterring effect of the jury's verdict. No court has found the statute to be applicable under such circumstances.

Despite VGOB consistently resorting to a tactic (the slippery slope argument) commonly found in arguments lacking in direct authority, the lower courts simply and very specifically held that the 'caps' have no application to the claims brought in *this* case for the breach of the agreements required (and attendant duties imposed) by R.C. 5321.04. Their reasoning was well-supported and did not require any unnecessary – and consequentially inappropriate – judicial exercise in statutory construction.

With respect to R.C. 5321.04, the obligations applicable to a "landlord who is a party to a rental agreement" are "created by virtue of the rental agreement." *Cotrell v. City of Piqua*, 2001 WL 62811, 2001 Ohio App. LEXIS 213 (App. 2 Dist.). The entire existence of these duties "rests on the privity of estate between [Landlord and Tenant] that their lease agreement creates." *Robinson v. C&L Assoc.*, 2010-Ohio-3118 (App. 2 Dist.). Any landlord who signs a rental agreement must 'agree' to fulfill the R.C. 5321.04 duties for the benefit of the tenant. Any breach of these duties would result in a civil action concerning an "agreement between persons."

However, given the mandatory, non-delegable nature of these duties, the breach of those duties also presents a civil action for which punitive damages are recoverable. The rationale for the rule normally precluding punitive damage awards in breach of contract actions does not stand when applied to claims for violation of R.C. 5321.04. Normally, "a party to a contract is free to breach the contract, subject to paying damages for the breach." Farnsworth, Contracts, Section 12.3, at 157 (2nd ed. 1998). Therefore,

there can be no action for malicious breach of contract because it is the policy of the law "only to require each party to choose before performing in accordance with the contract and compensating the other party for any injury resulting from a failure to perform." Posner, Economic Analysis of Law, 106 (3rd ed. 1986). **A landlord subject to the provisions of R.C. 5321.04 maintains no such freedom to breach the contract**. A landlord cannot simply elect to not provide running water, or elect to not maintain the electrical system. The attendant duties R.C. 5321.04 attaches to each and every rental agreement are not just contractually required, they are legally mandated.

v. Appellants' Misplaced Reliance on Case Authority.

VGOB largely relies upon the recently issued Eleventh Appellate District decision of *Stewart v. Siciliano*, 2012-Ohio-6123 (App. 11 Dist.). *Stewart* involved the question of whether the bifurcation provision of R.C. 2315.21 applied to a case involving claims against an insurance company for both breach of contract and a *separate* claim for the tort of bad faith. Seemingly uncertain as to the way it should rule, the Eleventh District initially noted that "[i]t is not apparent how the statute would apply in a hybrid case such as this one." Despite acknowledging that "it would not be an unreasonable interpretation of the statute to conclude that *the entire case* is outside the contemplation of R.C. 2315.21(B)(1)" (emphasis in the original), the court ultimately found the separate bad faith claim, for which punitive damages were awarded, to be within the contemplation of "tort action" as defined by R.C. Ch. 2315. The court's analysis was limited to the specific law of bad faith claims against insurance companies, and did not expand its decision for the much more encompassing proposition of law Appellants seek to create in this case.

VGOB's reliance on *Sherman v. Pearson*, 110 Ohio App.3d 70 (App. 1 Dist. 1996), a case which in no way addresses the application of R.C. 2315.21 to R.C. 5321.04 claims, is even further misplaced. *Sherman* simply recognized that R.C. 5321.04 claims could be considered a compulsory counterclaim under Civ.R. 13(A) to a landlord's action for forcible entry and detainer. As far as application to this case is concerned, the *Sherman* court did recognize that the tenant's claim for damages "does not sound entirely in tort" and that "[i]t is therefore inaccurate to characterize Sherman's personal injury claim as purely a tort claim." The court further correctly noted "[t]he rental agreement... gave rise to the landlord's statutory duty... [and the tenant's] negligence action depends upon evidence that her landlord tortiously breached the statutory duties that the Landlord and Tenant Act attaches to the rental agreement."

vi. The Due Process Protections against Excessive Punitive Damage Awards.

Contrary to Appellants' suggestions, the appellate panel's decision does not allow for limitless recovery of punitive damages against landlords. While R.C. 2315.21 must be considered by a court evaluating a punitive damage award rendered in a "tort action" as defined by that statute, constitutional guidelines (if raised in a timely filed motion for remittitur or otherwise) may be considered in any action in which punitive damages are awarded.

> Since at least 1991, the United States Supreme Court has recognized that the Due Process Clause of the Fourteenth Amendment imposes a limit on the size of punitive damage awards. *Pacific Mut. Life Ins. Co. v. Haslip* (1991), 499 U.S. 1, 111 S.Ct. 1032, 113 L.Ed.2d 1. *See also Honda Motor Co. v. Oberg* (1994), 512 U.S. 415, 420, 114 S.Ct. 2331, 129 L.Ed.2d 336 (citing *TXO Prod. Corp. v. Alliance Resources Corp.* (1993), 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366. The determination of whether a punitive damage award is unconstitutionally excessive is rooted in the Due Process Clause.

> *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.* (2001), 532 U.S. 424, 433–434, 121 S.Ct. 1678, 149 L.Ed.2d 674. An award of punitive damages violates due process when it can be categorized as "grossly excessive" in relation to the state's legitimate interests in punishing unlawful conduct and deterring its repetition. [*BMW v.*] *Gore*, 517 U.S. at 568, 116 S.Ct. 1589, 134 L.Ed.2d 809 [1996].

Barnes v. University Hospitals of Cleveland, 119 Ohio St.3d 173, 893 N.E.2d 142, 2008-Ohio-3344, ¶ 31.

Notably, one of the factors considered in a due process analysis is the disparity between the harm and the award. In fact, the "most commonly cited indicium of an unreasonable or excessive punitive damages award is its ratio to the actual harm inflicted on the plaintiff." *Barnes* at ¶ 34 citing *Gore*, 517 U.S. at 580. VGOB has elected to not make any such challenge to the jury's punitive damage award in this case. But, undeniably, that avenue of relief was an option for VGOB and is indeed still available under the law for any litigant against whom punitive damages are awarded, thereby dispelling with the false notion that the decision below, if allowed to stand, would open the floodgates for limitless recoveries of punitive damages.

C. <u>Appellees' Response to Proposition of Law No. 2</u>

i. The Applicable Standard of Review

Because this Court does not review challenges to the manifest weight of the evidence, Appellants' second proposition of law is limited to the question of whether the trial judge erred in denying their Rule 50 motion for a directed verdict on the issue of punitive damages. Rule 50 motions do not present factual issues but instead present questions of law. *Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co.*, 95 Ohio St.3d 512, 769 N.E.2d 835, 2002-Ohio-2842, ¶ 4. The trial court is limited to determining the

'legal sufficiency' of the evidence. Sufficiency is a test of adequacy and the reviewing court is, thus, merely required to determine whether *any* evidence exists which *can* possibly support a verdict in the plaintiffs favor. *Hamden Lodge v. Ohio Fuel Gas Co.*, 127 Ohio St. 469, 189 N.E. 246 (1934). "To hold that in considering a motion for directed verdict a court may weigh the evidence, would be to hold that a judge may usurp the function of the jury." *Ruta v. Breckenridge–Remy Co.*, 69 Ohio St.2d 66, 69, 430 N.E.2d 935 (1982), citing Section 5, Article I of the Ohio Constitution.

In relevant part, Civ.R. 50 provides:

> (A) Motion for directed verdict.
>
> * * *
>
> (4) When granted on the evidence. When a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue.

"The 'reasonable minds' test mandated by Civ.R. 50(A)(4) requires the court to discern only whether there exists any evidence of substantive probative value that favors the position of the nonmoving party." *Goodyear Tire & Rubber Co.*, citing *Ruta*. While a review of the evidence is necessary, the resulting analysis "does not involve weighing the evidence or trying the credibility of witnesses." *Ruta* at 68. The materiality of the evidence, not the conclusions to be drawn therefrom, is what is to be considered. *Id.* The non-moving party must be afforded "the benefit of all reasonable inferences" from the evidence supporting the facts essential to that party's claim. *Id.* Accordingly, "[t]he

evidence is granted its most favorable interpretation and is considered as establishing every material fact it tends to prove." *Id.* at 68-69.

ii. The Flaw in Appellants' Second Proposition

If for no other reason, Appellants' second proposition of law is without merit due to the inherent flaw that it assumes certain facts which are not supported by the record, particularly when the appropriate standard of review is applied. Most notably, Appellants simply ask this Court to assume that they did not have the requisite degree of actual/conscious knowledge to merit submission of the question of punitive damages to the jury. This argument was rejected by the trial judge, rejected by the jury, and rejected by the unanimous appellate panel.

iii. The Applicable Standards for Submission of Punitive Damages to the Jury.

The existence of actual malice is uniquely a question of fact for the jury. *Osler v. Lorain*, 28 Ohio St.3d 345 (1986). Deliberations on punitive damages were held due to Defendants' conscious disregard for the safety of their tenants, and the likelihood that such disregard had a great probability of causing substantial harm. Cf. *Preston v. Murty*, 32 Ohio St.3d 334 (1987). Furthermore, because it is difficult to ascertain a tortfeasor's mental state, a finding of actual malice may be inferred from conduct and surrounding circumstances. See *Joyce-Couch v. DeSilva*, 77 Ohio App.3d 278, 288, 602 N.E.2d 286 (App. 12 Dist. 1991).

The trial court correctly emphasized to the jury the strict standards required for an award of punitive damages. The jurors were instructed that a finding of actual malice was necessary and that the burden was on the Appellees to show by clear and convincing evidence that VGOB and/or FCRM consciously disregarded the rights and safety of their

tenants. The jury concluded that VGOB (but not FCRM) did in fact consciously disregard the dangers posed.

iv. Appellants' Misplaced Reliance on *Malone v. Courtyard by Marriot*

Appellants are apparently under the misconception that this Court's decision in *Malone v. Courtyard by Marriot, L.P.*, 74 Ohio St.3d 440 (1996) somehow changed the law in Ohio on the issue of punitive damages. *Malone* did not change the law, "but rather is a rephrasing of the requirement set out in *Preston v. Murty*... that a party possess knowledge of the harm that might be caused by his behavior." *Pavlides v. Niles Gun Show, Inc.*, 112 Ohio App.3d 609 (App. 5 Dist. 1996).

Merriam-Webster dictionary defines 'conscious' as "perceiving, apprehending, or noticing with a degree of controlled thought or observation." 'Disregard' is defined as "to pay no attention to: treat as unworthy of regard or notice." Quite obviously, to consciously disregard a danger, one must possess actual knowledge of the danger.

v. Sufficient Evidence was Presented to Support a Finding of Actual Malice

Deliberations on punitive damages were appropriately held due to Appellants' conscious disregard for the safety of their tenants, and the likelihood that their disregard had a great probability of causing substantial harm. Cf. *Preston,* supra. The evidence supported submitting the allegation of actual malice in the Complaint. The two-week trial produced evidence more than simply capable of supporting a finding that Appellants consciously disregarded code violations materially affecting health and safety; consciously disregarded their duty to make all repairs and do whatever is reasonably necessary to put and keep the residential premises in a fit and habitable condition, and

consciously disregarded their obligation to maintain in good and safe working order the conditions in Building 8.

Appellants' actions and, more importantly, their non-actions were more than 'sufficient' to support the finding of actual malice required for the jury to consider punitive damages. Furthermore, the finding of malice is a state of mind determination not normally decided as a matter of law. The existence of wanton, willful misconduct and/or conscious disregard for the rights and safety of others is uniquely a question of fact for the jury. *Osler*, supra.

Because it is difficult to ascertain another person's mental state, a finding of actual malice may be inferred from conduct and surrounding circumstances. See *Joyce-Couch*, supra. Here, the evidence demonstrated a reckless disregard for the rights and safety of the men, women, and children Appellants were duty bound to proactively protect. The jury was aware of the collective wealth and value of the two Appellants at $130,000,000. (Tr. 2234, Joint Exs. 1, 2). The jury was also aware of the $5.8 million in deferred maintenance deducted from Appellants' buy-out of its partner but not used for rehabilitation of the premises. (Ex. G-6).

In this particular case, it was not simply the inarguable fact that Appellants had notice of the statutory violations in Building 8, but rather the overwhelming volume of notice it continually ignored and continues to deny and ignore to this day. The overriding concern for Appellants was money, not safety. V.P. Brannon blamed the corporate office – "that priority would not have been set by me * * * I'm saying that you can only do what you have the money to do" – "we had to wait then for approval from higher powers to get the money." (Tr. 321, 310-11). Explaining why his assurances given to the City of

speedy repairs were not fulfilled, Brannon testified that "we didn't realize at that point in time that we were not going to have money to do that." (Tr. 326). To Appellants, there is a cost-benefit analysis that goes into complying with the law – "If I have the money [from the corporate office] to do it, yes" – "If we didn't have the money, I wouldn't do the job." (Tr. 353, 356). While a proposed equity budget for repairs was issued, "it was not enough." (C-22; Tr. 368). Ultimately, the repairs prior to the fire only amounted to "quick fixes" involving cosmetic issues. (Tr. 363-368). The budget allotted only $1 million of the $5.8 million needed for repairs. (Tr. 368-70).

While improper funding was the main excuse provided to the jury, Appellants also supplied some very puzzling reasons for the maintenance issues and why they remained unresolved. Regarding the City's *July 2006* notice of violations relative to Building 8 (Ex. C-16), Brannon told the jury that no action was taken prior to the *October 2007* fire because the repairs could not be completed in the "middle of Winter." (Tr. 318-319). He blamed the rotted exterior on woodpeckers and other "creatures." (Tr. 339, 377). He further attempted to claim that the water and mold within the building was caused by "toilet overflows" and condensation on the windows. (Tr. 265-66, 286, 331, 378). Regardless of how many excuses were offered, Appellants could not deny that they continued to rent the units in clear violation of the City's Order not to do so.

Brannon's testimony notably included his continued misrepresentations that Building 8 was wrapped with a plastic vapor barrier which kept the building water-tight. (Tr. 250, 256, 279-83, 327). In fact, as part of his assurance that the tenants would remain secure living in this building, he falsely told the City inspector that the building had been wrapped in tyvek "during original construction." (Ex. C-19). Dolence showed

photographs to the jury which completely refuted this claim. (Tr. 953). The building was constructed without a vapor barrier.

The evidence further showed that Building 8 was plagued with electrical irregularities mixing with well documented and extensive water infiltration for a significant period of time leading up to the 2007 fire. (Tr. 407-32). Yet, when contractors were brought to the property to supply specifications for repairs, they were told "to only bid the obvious." (Ex. C-21; C-13; Tr. 348-57). These contractors were left with no choice but to simply inform Appellants of their observations and advise that the conditions observed required further follow-up. (Tr. 347). Most of the issues noted in the months leading up to the 2007 fire related specifically to Building 8. (Tr. 360-61).

One of those issues indisputably known to all involved was the water infiltration. Appellants would prefer to ignore the hazard caused by water mixing with electrical faults, but as Dolence testified:

> Water is very significant in a fire. It was the cause of this fire. If you have an electrical issue – we talked about resistance heating, we talked about arc tracking. Many of them are stimulated arc tracking; specifically by water and moisture. You could have an electrical fault if – you know, it can sit there forever or a code violation. If something doesn't stimulate it or a catalyst to induce it, nothing is going to happen.

(Tr. 1187). These same warnings were issued by Dolence and the City's fire inspectors following the 2004 fire. However, instead of heeding the warnings of the professional fire investigators, Appellants (and their 'expert' for the 2004 fire) relied, for obvious litigation purposes, entirely on the statement of a passer-by (Debbie Rosen) to believe the fire started on the front patio of Unit 110.

Dolence and the jury properly dismissed this reliance as nonsensical. The 2004 fire occurred in the dead of Winter, the occupants of Unit 110 were not home at the time and did not smoke. No evidence of accelerants or arson (intentional or accidental) was found on the concrete patio. The only item on that patio was a very small and dead potted plant. Rosen never saw the potted plant. In fact, she could not see below the four-foot high patio railing from her distant vantage point. What she saw were flames and nothing else. Then, just moments later, she says the fire-rated furnace room door blew off the hinges and fell "into the fire." (Tr. 1895-1911). Even Appellants' own expert called to testify as to the origin and cause of the 2004 fire could not explain the physics of how that door blew off the hinges as Rosen describes if Appellants were also correct that the fire started in the potted plant. (Tr. 1756-1810). But Appellants nonetheless jumped at the chance to disingenuously create some shelter beneath her statement. However, the most basic common sense and physical evidence from the 2004 fire simply was not consistent with Rosen's lay-person 'opinion' as to the area of origin and Appellants' continued reliance on it only further demonstrated their conscious disregard.

Astonishingly, even though Appellants clearly acknowledged their awareness of the 2004 fire destroying their building and displacing numerous families, they continued to deny getting any notice of any electrical or maintenance problems. This just flew in the face of several official notices from the fire department and independent fire consultants. Each corporate representative attempted to deny the results of causation after the 2004 fire, but their senior executive could not avoid acknowledging the certified mail notice served at the corporate office by the clerk of court in 2004. This shameful

attempt to avoid the "notice" element of trial became obvious to the judge and the jurors, and deservedly contributed to the punitive aspects in the verdict.

The jury heard the testimony of Appellants' own employees such as Mike Farlow (Tr. 407-32; 519-28) on only doing what is necessary; Wanda Himmel, as just making do with what they had from headquarters; and Rod Brannon, that he told headquarters of the 13 years of neglect, but was not given funding to fix it up. The jury heard of missing documents miraculously appearing (or not) at trial, of Appellants sending out false letters of assurances to its tenants and ignoring City orders to repair and stop renting. Most ridiculously, the jury heard the false denials of the clear and many notices of deficiencies in the electrical and overall maintenance of the subject building. Apparent to all was Appellants' motivation of greed, which was in malicious disregard of the safety of its tenants.

vi. The Evidence was not Limited to Exterior Maintenance Issues

Utterly confounding and disturbing is how the Appellants continue to this day to argue that the notices provided were limited solely to exterior maintenance issues. Indeed, it was these unrepaired exterior maintenance issues which allowed water to enter through the roof, siding, flashing, and windows and freely travel through the walls and open-web truss ceilings where the electrical wiring was located. But Appellants would have this Court ignore the extensive record of witnesses who testified as to the electrical irregularities in the building and the notices given regarding those maintenance issues, including notices of electrical irregularities in the two suites between which the fire started. They also ignore the testimony of their own maintenance supervisor who provided key evidence as to Appellants' knowledge of these defects and management's

unwillingness to expend the funds necessary to make the needed repairs. Most notably, Appellants make no mention of the hundreds of photographs and detailed testimony provided after the first fire in 2004 which detailed the poor wiring practices, code violations, and other construction assembly defects discovered in the interior of these buildings – the same undisputed expert evidence of the cause of the fire in this case.

D. Appellees' Response to Proposition of Law No. 3

Appellants' third proposition of law similarly requires an examination of the sufficiency (not the weight) of the evidence. The phrasing of the proposition incorrectly assumes that Appellants were held liable for unknown statutory violations. Essentially, Appellants contend that they had no 'notice' as required to find liability for violation of the duties imposed by R.C. 5321.04 and, therefore, are improperly asking this Court to weight the evidence on an issue which was directly presented to the jury and resolved on the evidence presented at trial.

The *sufficiency* of the evidence presented on notice was initially challenged through a motion for summary judgment, which was denied. Surprisingly, Appellants also challenged the sufficiency through a motion for directed verdict made at the close of Appellees' case. That motion was also denied and subsequently appealed to the Eighth District Court of Appeals, which conducted reviews of both the sufficiency and the manifest weight of the evidence, unanimously overruling both assigned error.

i. Violations of R.C. 5321.04 Constitute Negligence *Per Se*.

Appellants do not and never have contended that R.C. 5321.04 is a strict liability statute. Nor did the lower courts issue ever suggest that strict liability applies. Violations of R.C. 5321 result in a finding of negligence *per se*, not strict liability.

"The concept of negligence *per se* allows the plaintiff to prove the first two prongs of the negligence test, duty and breach of duty, by merely showing that the defendant committed or omitted a specific act prohibited or required by statute[.]" *Lang v. Holly Hill Motel, Inc.*, 122 Ohio St.3d 120, 2009-Ohio-2495 at ¶15. This is so because duties imposed by statute reflect public policy decisions, and alter the proof requirements. "Where a legislative enactment imposes a specific duty for the safety of others, failure to perform that duty is negligence *per se*." *Chambers v. St. Mary's School*, 82 Ohio St.3d 563, 565, 697 N.E.2d 198 (1998), citing *Eisenhuth v. Moneyhon*, 161 Ohio St. 367, 119 N.E.2d 440 (1954).

ii. Revised Code § 5321.04 Impose Affirmative, Non-Delegable Duties on all Residential Landlords in Ohio.

Revised Code § 5321.04, in relevant part, imposes the following affirmative, non-delegable duties on all residential landlords in Ohio to:

> (1) comply with the requirements of all applicable * * * codes that materially affect health and safety; (2) make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition; (3) keep all common areas of the premises in a safe and sanitary condition; and (4) maintain in good and safe working order and condition all electrical * * * fixtures * * * supplied or required to be supplied by him.

This Court has noted "the public policy and drastic changes made by the statutory scheme of R.C. Chapter 5321" and the legal implications which follow:

> R.C. 5321.04 imposes duties on the landlord to make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition. Furthermore, the purpose of the statute is to protect persons using rented residential premises from injuries. A violation of a statute which sets forth specific duties constitutes negligence *per se*.

Shroades v. Rental Homes, Inc., 68 Ohio St.2d 20 at 25 (1981).

Given the overwhelming abundance of evidence establishing the proliferation of code violations, the lack of preventative maintenance, the prevalence of deferred maintenance, and the general state of disrepair, Appellants wisely do not contest that a statutory violation occurred. They instead premise their appeal on the unsupportable argument that they should be 'excused' as a matter of law for their neglect because they, allegedly, had no knowledge of the specific defect which caused the fire.

iii. The Evidence was Sufficient to Support a Finding that Appellants had 'Actual Notice' of the Defective Conditions which caused the Fire.

In *Shroades*, this Court further held that, after a statutory violation is found, a plaintiff must show that the landlord either (1) received notice, (2) otherwise knew, or (3) that the tenant had made reasonable, but unsuccessful, attempts to notify the landlord of the defective condition. *Id.* at 26. Ohio jurisprudence has since expanded upon the 'notice' element first announced in *Shroades*. Particularly relevant here, notice of the exact defect is not necessary for actual notice to be inferred and liability to attach:

> [t]he concept of 'actual notice' is not limited to notice that a specific condition exists and that it is harmful. '[I]f it appears that the party has knowledge or information of facts sufficient to put a prudent man upon inquiry, and that he wholly neglects to make an inquiry or having begun it fails to prosecute it in a reasonable manner, then, also, the <u>inference</u> of actual notice is necessary and absolute.'

Walker v. Barnett Mgmt., Inc., 2004-Ohio-6632 at ¶ 50 (App. 8 Dist.).

Indeed, complaints of general electrical problems have routinely been found to be sufficient to satisfy the notice requirement of the Landlord-Tenant Act in cases involving fires at residential premises. See, e.g., *McKenzie v. Marlowe*, 1996 WL 715502 (App. 8 Dist.). Specifically, the notice requirement is satisfied if the landlord was "aware of some defective condition which needed attention." *Id.* "Notice * * * need not

specifically express the state of the defect with particularity beyond the scope of a layperson's knowledge of a faulty electrical system." *Id.*, citing *Blakley v. Riley*, 1992 WL 1163 (App. 10 Dist.). The tenant is *not* required to provide the landlord with notice of the *exact* defect if the landlord had notice of and failed to address a defective condition with the electrical system. *McKenzie* at 5. Consequently, whether the landlord "knew of the precise source of the hazards in the electrical system or not, [they had] * * * sufficient notice to satisfy the *Shroades* test and attach liability under R.C. 5321.04." *Id.*

The appellate districts which have had cause to address the issue are in agreement that notice of general electrical irregularities is sufficient to satisfy the *Shroades* standard. See *Wilhelm v. Heritage Mgmt. Co.*, 1998 WL 24342 (App. 12 Dist.) (reasoning that "although [the tenants] did not know the precise source of the electrical system malfunctions, [the landlord] was provided with sufficient notice to... attach liability"); *Blakley v. Riley*, supra (complaints regarding electrical irregularities sufficient to satisfy notice requirement).

In this case, *at an absolute minimum*, Appellants were "aware of some defective condition which needed attention." They were given ample notice of electrical malfunctions through tenant complaints, maintenance staff reports, inspections, official notices of code violations, prior fire investigations, and their own observations. Brannon's 'due diligence' inspection and report used to buy-out the former ownership partner revealed a lack of preventative maintenance and an abundance of deferred maintenance for which $5.8 million was offset from the purchase price, yet Appellants did nothing to correct the dangerous conditions. For a *significant* amount of time leading up to the 2007 fire, Building 8 was in a severe state of disrepair and was experiencing the

very same electrical irregularities and other serious maintenance issues both prevalent in Building 3 prior to the 2004 fire and specified by multiple fire investigative professionals as contributory factors to the 2004 fire. The building's maintenance supervisor had raised serious concerns to management with regard to the conditions in Building 8, including its electrical components. (Tr. 407-32). The City issued a notice of code violations precluding the continued renting and leasing of Building 8 more than one year prior to the fire, a notice and order which Appellants ignored and left unresolved. The notices which came in various forms were more than sufficient to put Appellants on 'actual' notice of the faulty electrical system and satisfy the notice requirement announced in *Shroades*.

iv. The Evidence was Sufficient to Support a Finding that Appellants had 'Constructive Notice' of the Defective Conditions which caused the Fire.

Of course, a finding of actual notice is unecessary (although certainly supported by the evidence) because, as landlords, Appellants were under an affirmative duty to know what they *should* have known regardless of whether someone *else* has provided notice of a defective condition. The notice requirement is hardly limited to 'actual' notice and the concept of 'constructive' notice is much more encompassing than Appellants have continually suggested. Cf. *Lansdale v. Dursch*, 1998 WL 769852 at 5 (App. 2 Dist.). Because R.C. § 5321.04(A)(4) requires a landlord to "maintain" in safe working order all electrical fixtures and appliances, the landlord is required "to take preventative action prior to the development of a defect." *Id.* at 4.

In *Shroades*, this Court specifically addressed the issue of subsection (A)(2) which imposes upon landlords the duty to make "repairs" to keep the premises in a fit and habitable condition. Subsection (A)(4), however, imposes a duty to "maintain" the

electrical wiring system. A key distinction between these terms has been noted in cases comparing the two. "Repair" is properly defined as "to restore by replacing a part or putting together what is torn or broken: fix." *Smith v. Ohio Edison, Inc.* (App. 2 Dist.), 1999 WL 6444. "Maintain" means "to keep in an existing state * * *: preserve from failure or decline." *Id.* Examining the language chosen by the General Assembly, the Second District reasoned:

> A duty to repair and a duty to maintain, therefore, are not synonymous, as one requires the landlord to fix what is broken or defective, and the other requires him to take preventative action prior to the development of a defect. * * * [I]t is nonsensical to require the tenant to show her landlord had notice of some defect when the landlord is under a statutory duty to prevent just such a defect." *Id.* We conclude that when a tenant claims * * * that the landlord breached his duty to maintain * * *, the tenant need only show that the landlord had actual or constructive notice that the appliance [or fixture] was improperly maintained.

Smith v. Ohio Edison, Inc., 1999 WL 6444 (App. 2 Dist.).

Contrary to established precedent, Appellants would have this Court believe that nothing short of evidence suggesting that they blatantly ignored precise knowledge of a single and specific staple (which they have now embraced on appeal as *the* cause of the fire) could ever satisfy the notice element. However, Ohio law does not require that the landlord had knowledge of and ignored the *specific* defect which led to the fire. There was no requirement under these circumstances which would require the tenants to prove that their landlords had definitive knowledge of the *exact* staple or other *precise* defect which provided the source of ignition. More than sufficient is the irrefutable fact that Appellants had notice of general electrical malfunctions and other contributory conditions, particularly the defects creating an environment of moisture mixing with the faulty electrical system, which required corrective action. This knowledge is particularly

relevant to this case considering the exact same mixture of water and electrical irregularities caused a fire at the same complex three years prior.

Ohio courts have routinely found that the notice requirement of the Landlord-Tenant Act is satisfied even when the landlord is not notified of the specific defect, but has simply received related complaints. See *Davis v. Burns*, 1997 WL 638276 (App. 3 Dist.) (landlord who had received general complaints about the condition of a stairwell was liable for a tenant's injuries caused when a step collapsed, despite the fact that the complaints did not specify a defect with that specific step); *Walker v. RLI Ents., Inc.*, 2007-Ohio-6819 (App. 8 Dist.) (landlord who had received complaints regarding potholes in the parking lot was liable for a tenant's broken ankle, even though the landlord was not on notice of the specific pothole which caused the injury).

v. Evidence Relative to the 2004 Fire Supported a Finding of Notice.

Although the element of notice was independently supported by evidence completed unrelated to the 2004 fire, the notices provided through that event, the statements of the tenants, and the reports and testimony of the investigators all firmly supported a finding that Appellants were well aware that these buildings were negligently constructed and maintained in violation of R.C. 5321.04. Appellants were aware of the highly damaging nature of this evidence and went to every effort to preclude admission of the same.

Because evidence relating to the 2004 fire was *highly* relevant to the claims and its probative value was not substantially outweighed by any prejudice claimed by Appellants, the trial court properly denied the motion in limine submitted prior to the trial. The 2004 fire constituted "[e]vidence of similar incidents or accidents [and was]

admissible to prove the existence of a particular defect, to prove causation, or to prove [Appellants'] knowledge of the danger." *De Pue v. Sears, Roebuck & Co.*, 812 F.Supp. 750, 751 (W.D. Mich., 1992), quoting *Koloda v. General Motors Parts Division*, 716 F.2d 373, 375-376 (C.A.6 1983). Evidence of prior incident is indisputably admissible and effective to show notice of a dangerous condition. *Hartford Fire Ins. Co. v. Pier I Imports-Midwest, Inc.*, 1987 WL 8933 (App. 6 Dist.). This general rule is particularly applicable when the prior incidents occurred at the same place or location, or by the same instrumentality. *Jaffe v. Powell*, 121 Ohio St. 355 (1929); *Brewing Co. v. Bauer*, 50 Ohio St. 560 (1893). The relevance and probative worth of past incidents becomes even more compelling "if the conditions in effect during the past incidents are 'substantially similar' to those at the time of the incident in question and the two events arise from the same cause." *Kolada* at 376. Here, Appellees introduced evidence relating to the 2004 fire to prove the negligent construction and maintenance practices were both present and known by Appellants prior to the 2007 fire.

Appellants' arguments regarding the 2004 fire *might* have been minimally persuasive if the earlier fire had occurred at a different apartment complex managed or owned by Appellants, or even in a building which was not constructed at the same time, by the same contractors and same oversight practices, and with an identical design. But in the circumstances presented, these two buildings were constructed during the course of a single development, using the same tradesmen, same practices, and same instrumentalities. Since the construction, the buildings were managed and maintained by the same entities.

Furthermore, the parallels and 'substantial similarity' between the two fires are nothing short of astonishing. Dolence even opined that the area of origin and cause of the two fires were *identical*. For each fire, Dolence concluded that the area of origin is the interstitial spaces – an open web truss system - between the floor and ceiling. For each fire, Dolence concluded that the cause of the fire was due to an electrical fault, resulting from shoddy workmanship in construction, which was greatly exasperated by moisture traveling unimpeded within the walls. Further still, Dolence reached his conclusions for the 2004 fire well prior to the occurrence of the 2007 fire and the adequacy and credibility of those conclusions has already been tested and judicially approved during the course of litigation following the 2004 fire. See *Gilmore*, supra. Both Dolence and the City's investigators independently concluded that the 2004 fire was electrical in origin and originated in the floor/ceiling space of Building 3. All experts (including the expert retained by Appellants who was not called as a trial witness) agreed that the 2007 fire was electrical in origin and originated in the floor/ceiling space of Building 8. Additionally, the jury was shown hundreds of photographs (upon which Dolence relied in formulating his opinions) of the two fires and their substantially similar, if not identical, destruction and burn pattern.

Dolence demonstrated through photographs and other evidence that Building 8 is identical in all material respects to the previous Building 3 as far as structure, construction, wiring methods, materials and design are concerned. The 2004 fire is, thus, highly relevant as to questions of whether or not Appellants had "notice" of a dangerous condition *which required remediation*. Dolence's findings and the City's findings were supplied during the course of the litigation involving the 2004 fire, and admittedly

received by Appellants. (Ex. G-1; Tr. 1549-51). Reports of these findings were attached to the complaint which was served upon VGOB at FC's headquarters in downtown Cleveland. (Tr. 1549-51). Dolence's deposition was taken multiple times and Appellants even called for a *Daubert* hearing at which his opinions were thoroughly flushed out and vetted. (Tr. 834). In his written report and testimony (all provided well prior to the 2007 fire), Dolence noted cable installation damage, unsecured feeder cables, poor wiring practices, and water infiltration which would "stimulate electrical conductivity and promote electrical activity at an electrical fault or failure, and also could lead to deterioration of wire insulation."

All of these investigative findings, which were attached to the complaint, subpoenaed by the *Gilmore* defendants (including VGOB), produced through discovery, introduced into evidence, and maintained as a public record by the City and the courts, also contained a detailed summary of tenant complaints regarding electrical and maintenance issues for Building 3 during the time leading up to the fire. Additionally, at the *Daubert* hearing, Dolence provided a power-point presentation containing numerous photos of the wiring and construction deficiencies in several of these structures, not just the building in question. Representatives of the Appellants in this case were physically present and observing during this presentation.

The City also conducted a thorough investigation into the 2004 fire and issued a written report authored by two credentialed fire investigators within the fire department – Inspectors Lutz and Rudersdorf. (Ex. D-2). In that report, the investigators noted "[w]iring found chaffed from rubbing up against gusset plate" and "[w]ires found double stapled." Ultimately, the investigators concluded that "electricity played a large part in

the ignition of the fire." Photographs of these deficiencies were attached to the City's report.

A police incident report was also issued following the investigation into the 2004 fire. In that report, tenant complaints were noted concerning conditions present in Building 3 prior to the fire. Hardly coincidental is that the tenant complaints noted in the police report written relative to the 2007 fire are *identical* in many respects to those contained in the 2004 report. (Ex. D-1). Not even Appellants, with all of the resources (financial and otherwise) at their disposal, could find an expert to testify that such parallels would not be highly significant to any investigation into the two fires. In fact, Appellants chose to not even put on the testimony of their expert who admitted (during his discovery deposition) to the significance of and concern he had with these parallels.

While Appellants consistently maintained during the litigation involving the 2004 fire that they had no notice of such defects (or the dangers posed thereby) *prior* to the fire, they cannot claim that they were not put on notice *following* the 2004 fire that all of these conditions existed at the complex and required further action on their part. Appellants were aware of the 2004 fire immediately thereafter. At the very least, VGOB was a named defendant in the litigation involving the 2004 fire and was therefore, through its retained counsel, supplied with all reports exchanged. Cf. *Nickschinski v. Sentry Insurance Co.*, 88 Ohio App.3d 185 (App. 8 Dist. 1993) (notice or knowledge of facts received by an attorney is properly considered knowledge or notice to the client).

Brannon performed what he claimed to be a 'due diligence' inspection of the entire property in 2006 and was aware of the 2004 fire at that time but denied having any interest in reviewing the police report, witness statements, expert opinions, or any other

materials or evidence concerning the 2004 fire. This lack of interest and requisite follow-up was readily admitted despite the fact that Appellants were indisputably made aware that there were professional investigative findings that the cause of the 2004 fire was electrical. (Exs. D-2, G-1, G-7).

Belying their own admissions and obvious knowledge of the investigations into the 2004 fire, Appellants' corporate representatives falsely and repeatedly testified to lack of any such knowledge at this trial. For the purposes of rebuttal and impeachment, and for the purposes of showing notice, Ex. G-7 was admitted into evidence despite Appellants' desperate attempts to keep it from the jury's view. (Tr. 1574-83, 1935-53). Highly damaging to Appellants' claims of ignorance, the direct recipient of that letter was in the courtroom at the defense table throughout this trial. Regardless, the contents of the letter were all confirmed by prior testimony and evidence. (Ex. D-2; Tr. 1234-61, 1756-1810).

In this case, Appellants consistently and unsuccessfully claimed that they had no notice of any defect which would have caused a fire or created a fire hazard. How many *more* fires have to occur, endangering the lives of their tenants they are duty-bound to protect, for these landlords to recognize that the same troublesome conditions contributing to both fires should not have been arrogantly ignored?

vi. Landlords are not Excused as a Matter of Law for Known Statutory Violations which Exist in Concealed Spaces.

Appellants' gross neglect cannot be excused simply because the final spark which caused the fire was in a concealed space. The evidence proved, and the jury concluded, that a great amount of causation was visible, not concealed. Regardless, what is "reasonably necessary" depends on the particular circumstances of each individual case

and the law imposes no limitation on the burden that may accompany compliance with R.C. 5321.04. If the circumstances require an inspection of the wiring practices behind walls or even a rewiring of the entire residential premises, then that is exactly what the landlord must do for the safety of the tenants.

Appellants obviously disagree. They suggest that investigating electrical irregularities, which have proven to be a fire hazard previously, in a building with an open-web truss ceiling/floor system (allowing an inspector to cut a hole at any spot in the ceiling or floor and view from one side of the building to the other side) is beyond what is reasonably necessary. For this proposition, Appellants incorrectly rely upon the unreported decision of *Abbott v. Haight Properties, Inc.*, 2000 WL 491731 (App. 6 Dist.).

Abbott does not stand for the notion that a landlord cannot be held liable under any circumstances when the defect occurs in a concealed space. That decision was premised on the specific facts presented in that case which are highly distinguishable from the evidence presented here. In *Abbott*, there was evidence presented of one single staple in an electrical wire causing the defect. There was no showing of the hundreds of rampant defects found throughout Appellants' buildings. There was no showing of a prior fire caused by the faulty wiring and lack of maintenance. There was no allegation that the electrical fire was ignited by a mixture of faulty wiring and readily apparent water leaks within the building. There was no evidence that the landlord in *Abbott* was actually responsible for and present during construction of the builing.

What was 'reasonably necessary' under the circumstances presented in *this* case might not have been 'reasonably necessary' based on the evidence considered in *Abbott*. If anything, *Abbott* might have had some application to the *Gilmore* case. But the

abundance of evidence regarding knowledge of both water leaks and electrical irregularities, in addition to the notices of hazards provided by the investigations and litigation following the 2004 fire, unequivocally differentiates the totality of the circumstances available for the jury's consideration in determining what was and what was not 'reasonably necessary.'

vii. Appellants were not only under a Duty to "Maintain" the Premises, they were obligated by R.C. 5321.04 to "Put" the Premises in a Fit and Habitable Condition.

Appellants are not excused from liability simply because a defect which contributed to the cause of the fire was caused during original construction. The partnership of VGOB was formed for an express purpose: "* * * to purchase land and improvements (the "Property") and **developing**, owning and operating an apartment complex on the Property and engaging in any and all activities necessary or incidental to the foregoing[.]" (Ex. A-1; Tr. 674-675). VGOB, therefore, was created to act initially as a "developer" and then, once construction was complete, as a "landlord" as that term is contemplated by Ohio law. Such was the very purpose for VGOB's 'existence':

> Q: So up to this point in summary then [VGOB] is an entity that was formed between [FC] and others to develop this property?
>
> A: It was the entity that carried on the development construction.
>
> Q: And to maintain the property?
>
> A: Correct.
>
> Q: And to lease the property?
>
> A: Correct.
>
> Q: And to construct the property?

A: Correct

(Tr. 690-691).

VGOB now claims that liability for any negligence in construction cannot attach because it claims to have hired independent contractors[7] to perform the actual labor at the construction site – i.e. the contractors VGOB hired to physically put "nail to wood." While the general independent contractor rule normally shields the employer from liability, an exception exists if the employer has a non-delegable duty. Because the duties imposed on landlords are non-delegable "[a] landlord may not shift to an independent contractor the responsibility of complying with laws designed for the physical safety of others." *Shump v. First Continental-Robinwood Assoc.*, 71 Ohio St.3d 414 (1994). Landlords are free to delegate any *work* required by law to an independent contractor, but may not delegate the *duty*. A landlord is therefore subject to liability for damages "caused by the contractor's failure to exercise reasonable care to make the leased property reasonably safe." *Id.*, quoting Restatement of the Law 2d, Property, Sec. 19.1.

> One who by statute or administrative regulation is under a duty to provide specified safeguards or precautions for the safety of others is subject to liability to the others for whose protection the duty is imposed for harm caused by the failure of a contractor employed by him to provide such safeguards or precautions.

Id., quoting 2 Restatement of the Law 2d, Torts, Section 424.

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[7] Appellees dispute that VGOB satisfactorily established, or even properly put the question to the jury, whether the trades were in fact independent contractors as defined by Ohio law. Simply calling a someone an independent contractor does not end the relevant inquiry.

E. Appellees' Response to Proposition of Law No. 4

Because Appellees' motion to strike is still pending at the time of filing this Merit Brief, a response to Appellants' fourth proposition of law is provided herein. However, by providing a response, Appellees do not waive their objection to the improper inclusion of any issue not properly preserved through the timely filing of the required notice of appeal and jurisdictional memorandum.

i. The Basis for a Negligent Construction Claim

VGOB initially attempted to escape liability for the blatant and widespread construction defects by contending Appellants' negligent construction claims were barred by the statute of repose. However, the trial court easily dismissed this argument because, as R.C. § 2305.131(B) provides:

> Division (A) of this section does not apply to * * * a person who is an **owner** of, * * * **landlord** of * * * in possession and control of an improvement to real property and who is in actual possession and control of the improvement to real property at the time that the defective and unsafe condition of the improvement to real property constitutes the proximate cause of the * * * injury * * * that is the subject matter of the civil action. (Emphasis added).

VGOB was the owner and both Appellants were the 'landlords' in actual possession and control of Building 8 at the time of the fire. Moreover, VGOB was the owner and in control of the real property at the time of construction, entered into contracts with those performing construction services, and maintained regular oversight on all phases of construction. (Tr. 695-98, 721-22). Simply put, the statute of repose was never intended to apply to the owner of real property and certainly not an owner/developer. Indeed, this Court has identified a legislative intent to shift safety responsibility to owners or others actually in control of the premises. *Groch v. Gen.*

Motors Corp. (2008), 117 Ohio St.3d 192. These Appellants simply do not suffer from what this Court described as "the predicament of builders, who have no legal right to enter an owner's property to correct a defect that is discovered after the builder's work is completed and turned over to the owner." VGOB had absolute control and unfettered access to correct any defect that was known or discovered. That distinction differentiates it from the laborers the statute of repose seeks to shield from liability. Cf. 2004 SB 80 § 6, eff. 4-7-05 (Senate Judiciary Committee Report).

Appellants give little but passing reference to what it refused to stipulate to prior to trial – that being, VGOB was not only the landlord, but was also (as explicitly found by the jury through interrogatory) the 'developer' of the subject property. For good reason, a "developer" is held to the same duty as the actual "builder." *Point East Condominium Owners' Assn. v. Cedar House Assoc.*, 104 Ohio App.3d 704 (App. 8 Dist. 1995). In that case, the developer alleged that since it hired a general contractor to perform the construction – who in turn hired subcontractors – it was not liable to the plaintiff. The court of appeals disagreed:

> The developer is, in a sense, the builder of the project, even though he may delegate to others the physical acts of construction. Given the current trend of expanding the exceptions to the rule of nonliability of one who has employed an independent contractor, and given the policy considerations favoring the imposition of at least initial liability upon the person who sits at the top of the pyramid of those who create the improvement, a strong argument may be advanced in favor of recognition of a nondelegable duty on the part of the developer.
>
> * * * * *
>
> Purchasers from a builder-seller depend on his ability to construct and sell a home of sound structure. Purchasers from a developer-seller depend on his ability to hire a contractor capable of

> building a home of sound structure. The buyers here had no control over [the developer's] choice of builder.

Id. Here, VGOB sat on top of the pyramid during construction. The complex corporate web crafted by FC and VG was constructed to "build and develop the property." The tenants had no choice over the selection of the "builders" who contributed to their injury. But they had every right to look to VGOB to provide a place to live free of shoddy workmanship and improperly installed electrical wiring which would place their lives in peril. Ironically, VGOB would hold the only recourse against the contractors, *McClure v. Alexander*, 2008-Ohio-1313 (App. 2 Dist.), but for their indemnification of them in the purchase agreement (Ex. G-6).

ii. Application of the Evidence

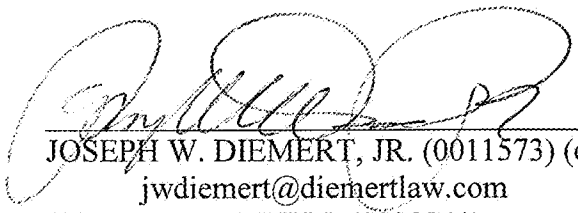
VGOB had a duty to ensure that Building 8 was constructed properly before renting it out to prospective tenants. Not in dispute is that the contractors failed to use reasonable care in the installation of the electrical wiring. After the 2004 fire and since the time of construction, Appellants were given ample direct notice of violations of code and construction assembly deficiencies, yet failed to take the necessary corrective action ordinary care would require. Specifically, VGOB was made aware of hazardous shortcuts taken during the construction process which exponentially increased the risk of arcing and/or resistance heating in the interstitial spaces of these structures, water infiltration throughout the buildings which contaminated and only increased the risk of a fire, and many other notable construction assembly defects. VGOB was further made aware that such conditions created fire hazards which would unreasonably jeopardize the safety of the tenants. Given these facts, the evidence was more than sufficient to

establish the elements of a common law claim for negligence in construction and allow the jury to render a verdict.

CONCLUSION

For all of the foregoing reasons, Appellees jointly and respectfully request that this Honorable Court affirm the well-reasoned decision of the court of appeals and affirm the judgment in its entirety.

Respectfully submitted,



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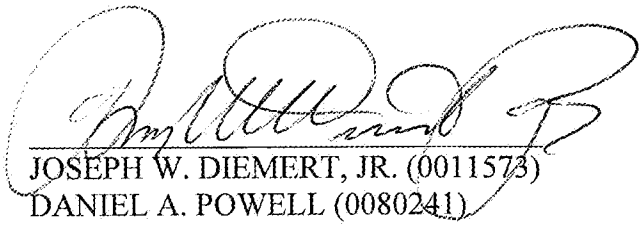

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Carlos Sivit, et al.

APPENDIX

JURY VERDICT FORM NO. 1

Do you find for the plaintiffs on their negligent maintenance claims (Landlord Liability) against Defendant Village Green of Beachwood LP?

Yes X

No ___

JURY VERDICT FORM NO. 2

Do you find for the plaintiffs on their negligent maintenance claims (Landlord Liability) against Defendant Forest City Residential Management Inc?

Yes X

No ___

JURY VERDICT FORM NO. 3

Do you find for the plaintiffs on their negligent construction claims (Developer Liability) against Defendant Village Green of Beachwood LP?

Yes X

No ___

JURY INTERROGATORY NO. 1

Place an "x" on the line next to the name of the Defendant if you find by a preponderance of the evidence that that Defendant knew or should have known of a defect or condition that caused the fire to occur.

Village Green of Beachwood L.P. _____

Forest City Residential Management, Inc. X

Frederick G. Lucale

Kathleen A. Johnson

Lawrence A. Moon

JURY INTERROGATORY NO. 1

Place an "x" on the line next to the name of the Defendant if you find by a preponderance of the evidence that that Defendant knew or should have known of a defect or condition that caused the fire to occur.

Village Green of Beachwood L.P. X

Forest City Residential Management, Inc. _____

JURY INTERROGATORY NO. 2

Do you find by a preponderance of the evidence that the fire was caused by a breach of Defendant Village Green of Beachwood LP's duties as landlord of the property?

Yes X

No _____

JURY INTERROGATORY NO. 3

Do you find by a preponderance of the evidence that the fire was caused by a breach of Defendant Forest City Residential Management, Inc.'s duties as landlord of the property?

Yes X

No _____

Lawrence A. Nixon

Kathleen A. Tichman

JURY INTERROGATORY NO. 4

Do you find by a preponderance of the evidence that that Defendant Village Green of Beachwood L.P. was the developer of the apartment complex?

Yes X No _____

Kathleen A. Johnson

Frederick E. Kreale

Lawrence A. Moon

JURY INTERROGATORY NO. 5

Do you find by a preponderance of the evidence that the fire was caused by negligent construction?

Yes X No _____

Lawrence A. Moon

Kathleen A. Tolman

JURY INTERROGATORY NO. 6

If you find for the Plaintiffs in this case, you must determine the amount of compensatory damages awardable to each Plaintiff?

Carlos Sivit	$ 107,430.00
Hallie Gelb	$ 27,256.00
David and Sidney Gruhin	$ 111,233.00
Jason and Margaret Edwards	$ 47,484.00
Sonya Pace	$ 214,873.00
Natalie Rudd	$ 38,850.00
Prathibha Marathe	$ 35,200.00

Total 582,326

Kathleen A. Johnson

Lawrence A. Moon

JURY VERDICT FORM "A"

Do you find for the plaintiffs on their punitive damages claim against Defendant Village Green of Beachwood LP?

Yes X

No

JURY VERDICT FORM "B"

Do you find for the plaintiffs on their punitive damages claim against Defendant Forest City Residential Management Inc?

Yes ____

No X

JURY VERDICT FORM "C"

If you answered yes on either Verdict Form "A" or "B", please state the amount of punitive damages to be awarded

$ 2,000,000.00

Lawrence A. Moon

Kathleen A. Johnson

JURY VERDICT FORM "D"

Do you find for the plaintiffs on their claim for reasonable attorney fees against Defendant ~~Forest City Residential Management Inc~~? (The amount to be reasonably determined by the Court) VILLAGE GREEN OF BEACHWOOD LP

Yes X

No ____

Lawrence R. Moon

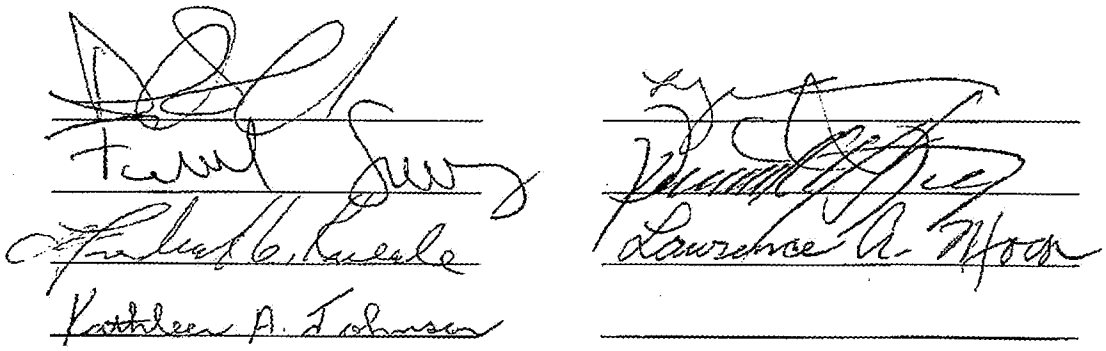
Kathleen A. Tolman

JURY VERDICT FORM "E"

Do you find for the plaintiffs on their claim for reasonable attorney fees against Defendant Forest City Residential Management Inc? (The amount to be reasonably determined by the Court)

Yes X

No ___



2008 Ohio 4566

Matthew Gilmore, et al. Plaintiffs-Appellants

v.

Village Green Management Company, et al. Defendants-Appellees

No. 90387, No. 90418.

Court of Appeals of Ohio, Eighth District, Cuyahoga.

RELEASED: September 11, 2008.

Joseph W. Diemert, Jr., Thomas M. Hanculak, Daniel A. Powell, Joseph W. Diemert, Jr. & Associates Co., L.P.A., 1360 S.O.M. Center Road, Cleveland, Ohio 44124, Attorneys for Appellants Matthew **Gilmore**, et al.

Daran P. Kiefer, Kreiner & Peters Co., L.P.A., P.O. Box 6599, Cleveland, Ohio 44101, Ted M. Traut, Weltman, Weinberg & Reis, 323 Lakeside Avenue, West, Suite 200, Cleveland, Ohio 44113, Attorneys for Appellants General Casualty Co. and Christopher Mears.

Alan I. Goodman, 55 Public Square, Suite 1300, Cleveland, Ohio 44113, Attorney for Appellants Amy and Buddy Dice.

Lawrence D. Pollack, Ulmer & Berne, L.L.P., Skylight Office Tower, 1660 West 2nd Street, Suite 1100, Cleveland, Ohio 44113-1448, Attorney for Appellees **Village Green Management** Co., et al.

Brian **Green**, Jennifer Stakes, Shapero & **Green**, L.L.C., Signature Square II, Suite 220, 25101 Chagrin Blvd., Cleveland, Ohio 44122, Attorneys for Allstate Insurance Company.

Patrick O'Malley, William H. Keis, Jr., Keis George, L.L.P., 55 Public Square, Suite 800, Cleveland, Ohio 44113, Attorneys for State Farm Fire & Casualty Company.

Before: Sweeney, A.J., Gallagher, J., and McMonagle, J.

JOURNAL ENTRY AND OPINION

JAMES J. SWEENEY, A.J.

{¶ 1} Plaintiffs-appellants, Matthew **Gilmore**, et al. ("plaintiffs"), appeal from a decision of the Cuyahoga County Court of Common Pleas, which partially granted defendants-appellees, **Village Green Management** Co., **Village Green** of Beachwood LP, and **Village Green** Residential Properties LTD's (collectively referred to as "the **Village**"), motion to exclude plaintiffs' expert witness's opinion that negligent construction in the **Village Green** apartments caused an electrical fault in the floor and ceiling space, which caused a fire to devastate the plaintiffs' apartments. Plaintiffs also ask us to reverse the trial court's grant of summary judgment to the **Village** as to all of

plaintiffs' claims. For the following reasons, we find that the trial court erred in barring plaintiffs' expert witness's testimony, and that the grant of summary judgment to the **Village** was therefore improper and reverse and remand.

{¶ 2} A review of the record reveals the following: On February 2, 2004, at approximately 1:58 p.m., Beachwood firefighters were called to Building 3 of the **Village Green** of Beachwood apartment complex in Beachwood, Ohio, after a passerby noticed flames near the patio of a first floor apartment moving up the side of the building. The fire progressed very rapidly through Building 3 destroying the wooden floor spaces and the roof. The Beachwood Fire Department extinguished the fire after approximately six hours. Although no one was injured, there was considerable property damage, and the following day, approximately one-third of Building 3 was demolished by a track hoe.

{¶ 3} Immediately following the fire, the Beachwood Fire and Police Departments began investigating the cause of the fire, including an evaluation of the scene, taking photographs, and talking to witnesses and residents. Ten days after the fire, the Beachwood Fire Department retained Ralph Dolence ("Dolence"), a fire investigation and electrical expert, to assist in their investigation.

{¶ 4} Following an extensive investigation, including an on-site investigation and analysis of the evidence obtained and collected, Dolence tendered a technical analysis report to the City of Beachwood Fire Department on May 21, 2004. In this report, Dolence concluded that the fire originated in the floor space below level 3 and the ceiling space above level 2 of Building 3. Although Dolence noted that "the exact fire cause and mode of failure will probably never be identified due to the destruction of the site and pertinent evidence," he nonetheless concluded, relying upon facts in evidence and the elimination of all other potential causes, that the cause of the fire was an electrical fault in the floor and ceiling space between levels 2 and 3 of Building 3. Dolence was subsequently retained as an expert for the plaintiffs.

{¶ 5} The plaintiffs filed a complaint against the **Village** alleging that the **Village's** negligent construction and/or maintenance of the building caused the February 2, 2004 fire. In support, they presented a preliminary report dated July 21, 2005, in which Dolence opined that the fire was electrical in nature and resulted from negligent construction of the building. Specifically, Dolence opined that missing wooden beams and negligent installation of the electrical feeder cables and wires caused the fire to occur and then rage out of control. Although Dolence identified other potential factors that could have contributed to the cause of the fire, including water deterioration and water infiltration, he nonetheless specifically concluded that "the only feasible ignition source in this ceiling and floor area was the electrical wiring and wiring devices and the wiring junction and splice points." Dolence again noted that "the total and devastating destruction of the section of the building where the fire originated makes it impossible for anyone to pinpoint the exact point and mode of failure."

{¶ 6} The **Village** moved to exclude Dolence's testimony pursuant to Evid.R. 702, arguing that his opinions were merely speculative and could not meet the standards for admissibility of *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993), 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469. The **Village** also moved for summary judgment, arguing that, if Dolence's testimony was excluded, plaintiffs cannot prove causation, a necessary element of their claims against the **Village**.

{¶ 7} A *Daubert* hearing was held on December 26 and 27, 2006 and January 8, 2007. At the hearing, Dolence testified that he followed the scientific method described in the National Fire Protection Association 921 Guidebook for Fire Investigations (hereinafter the "NFPA 921"), a multi-step process that guides fire investigators through fire investigations using both inductive and deductive reasoning, in conducting his investigation. He testified that he conducted a physical examination of the site, collected evidence, formed a hypothesis, and then tested that hypothesis.

{¶ 8} Based on his investigation, Dolence determined that the cause of the fire was an electrical problem. Dolence testified that he came to this conclusion after carefully ruling out all other possibilities such as arson, inadvertent negligence such as careless smoking, furnace failure, and the **Village's** theory that the fire started on a patio of an apartment on the first floor.

{¶ 9} Having determined that the fire was electrical in nature, Dolence testified that he investigated the cause of the electrical fire. Although Dolence conceded that the exact fire cause could never be identified due to the total destruction of the building, he was still able to come to a conclusion, based upon a reasonable degree of scientific certainty, that the cause of the electrical fire was due to the negligent construction of the building. Specifically, Dolence testified that (1) the open-web floor joist system used by the **Village** in constructing the building caused the fire to spread "totally [un] encumbered"; (2) that the gusset plates used to hold the wood slats in place were not cut to fit the specific needs of the 2x4's; (3) multiple electric feeder cables were placed under a single staple, which violates applicable building codes; and (4) multiple electric feeder cables were installed against the metal gusset plates, which causes "resistance heating" leading to fires.

{¶ 10} On August 10, 2007, the trial court granted the Villages' motion in limine in part and excluded Dolence's opinion that negligent construction caused the electrical fire. Specifically, the trial court held that:

{¶ 11} "Defendant's motion in limine seeking to exclude Dolence's testimony is denied. Dolence's opinion that the fire was electrical in origin may be admitted. Mr. Dolence's next conclusion—that the electrical problem causing the fire was necessarily the result of sloppy construction practices in running and fixing the electrical wires through the flooring braces—goes too far. It is an inference based upon an earlier inference. Mr. Dolence first infers the electrical origin of the fire and then infers the electrical problem stemmed from defective construction. This is impermissible. Mr. Dolence may only testify to the fire being electrical in origin."

{¶ 12} The court further held that Dolence's opinion "that the fire was caused by specific defects in the electrical wiring similar to those found in unburned parts of the building is too speculative to be heard by the jury."

{¶ 13} The trial court also granted the Villages' motion for summary judgment on the grounds that the plaintiffs could not demonstrate that any actions or inactions on the part of the **Village** were the proximate cause of the fire.

{¶ 14} It is from this judgment that plaintiffs appeal and raise two assignments of error for our review.

{¶ 15} "I. The trial court abused its discretion by granting, in part, appellees' motion to exclude the expert testimony of Ralph Dolence."

{¶ 16} In their first assignment of error, plaintiffs argue that the trial court erred in excluding the testimony of Ralph Dolence, their expert on the cause of the fire. As an initial matter, we note that the determination of the admissibility of expert testimony is within the discretion of the trial court and that such decisions will not be disturbed absent an abuse of discretion. *Valentine v. PPG Industries*, 110 Ohio St.3d 42, 43, 2006-Ohio-3561.

{¶ 17} Evid.R. 702 provides:

{¶ 18} "A witness may testify as an expert if all of the following apply:

{¶ 19} "(A) The witness's testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;

{¶ 20} "(B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;

{¶ 21} "(C) The witness's testimony is based on reliable scientific, technical, or other specialized information. To the extent that the testimony reports the result of a procedure, test, or experiment, the testimony is reliable only if all of the following apply:

{¶ 22} "(1) The theory upon which the procedure, test, or experiment is based is objectively verifiable or is validly derived from widely accepted knowledge, facts, or principles;

{¶ 23} "(2) The design of the procedure, test, or experiment reliably implements the theory;

{¶ 24} "(3) The particular procedure, test, or experiment was conducted in a way that will yield an accurate result."

{¶ 25} Here, the credentials and experience of Dolence as an expert are not in dispute. Accordingly, the sole issue is whether his testimony is reliable under Evid.R. 702(C).

{¶ 26} In determining whether the opinion of an expert is reliable under Evid.R. 702(C), a trial court examines whether the expert's conclusion is based on scientifically valid principles and methods. *Valentine*, supra at 44. In evaluating the reliability of scientific evidence, several factors are to be considered: (1) whether the theory or technique has been tested; (2) whether it has been subjected to peer review; (3) whether there is a known or potential rate of error; and (4) whether the methodology has gained general acceptance. *Miller v. Bike Athletic Co.* (1998), 80 Ohio St.3d 607, 611.

{¶ 27} A court should not focus on whether the expert opinion is correct or whether the testimony satisfies the proponent's burden of proof at trial. *Valentine*, supra at 44. Moreover, evidence should not be excluded merely because it is questionable or confusing, since the experts' opinions would be subject to cross-examination and the credibility of their conclusions left to the trier of fact. *Miller v. Bike Athletic Co.*, supra at 614; *State v. Nemeth* (1998), 82 Ohio St.3d 202, 211.

{¶ 28} Here, Dolence noted that "the exact fire cause and mode of failure will probably never be identified due to the destruction of the site and pertinent evidence." However, by employing the scientific method set forth in the NFPA 921, Dolence testified, with a reasonable degree of scientific certainty, that the cause of the fire was electrical in nature and that the cause of the electrical fire was the negligent construction of the floor joists and the placement of the electrical feeder cables between the floor and ceiling of the second and third floors.

{¶ 29} Dolence testified that he reached this conclusion by personally inspecting the fire site, examining the evidence and speaking with numerous witnesses. He determined due to burn patterns that the fire originated in the floor space below Suite 311 and the ceiling space of Suite 211. He then made a determination as to the causes of the fire from this area of origin.

{¶ 30} By using the deductive reasoning cited in the NFPA 921, Dolence systemically eliminated other potential causes of the fire such as arson, inadvertent negligence such as careless smoking, furnace failure, or a potted plant on a first floor patio. It was through this method of deductive reasoning that Dolence concluded that the sole possible cause of the fire was electrical in nature, and that the cause of the electrical fire was due to negligent construction. Specifically, Dolence testified that (1) the open-web floor joist system used by the **Village** in constructing the building caused the fire to spread "totally [un]encumbered"; (2) that the gusset plates used to hold the wood slats in place were not cut to fit the specific needs of the 2x4's; (3) multiple electric feeder cables were placed under a single staple, which violates applicable building codes; and (4) multiple electric feeder cables were installed against the metal gusset plates which causes "resistance heating" and leads to fires. While Dolence admitted that water deterioration and oxidation "could" have contributed to the problem, he still opined, with a reasonable degree of scientific certainty, that faulty installation of the wiring was the cause of the electrical fire.

{¶ 31} Contrary to the trial court's finding, we do not find that Dolence's conclusion that negligent construction caused the electrical fire was merely "speculative" or "an inference based upon an inference." His finding that the fire was electrical in nature is based on the scientific method established by the NFPA 921. Specifically, Dolence came to this conclusion based on his own observations, data collected, documents reviewed, witness accounts, and because he had ruled out all other possibilities.

{¶ 32} Similarly, his finding that the electrical fire was caused by faulty construction is also based on the scientific method established by the NFPA 921. His conclusion that the fire was caused by negligent construction is supported by facts independent of his determination that the fire was electrical; to wit: damaged cables, missing floor joists, exposed edges of the metal gusset plates, and multiple cables under one staple.

{¶ 33} While the **Village** provided their own experts, who opined that the fire started on a first floor patio and was not due to an electrical fire, Dolence's opinion (as well as that of the **Village's** experts) would be subject to cross-examination. See *Miller v. Bike Athletic Co.*, supra. The court's role as gatekeeper does not focus upon the conclusions that an expert draws. *Hertzfeld v. Hayward Pool Products, Inc.*, Lucas App. No. L-07-1168, 2007-Ohio-7097. When a competing expert points out weaknesses in the strength of an expert's conclusion, it does not turn the challenged expert's

conclusion into the type of "subjective belief or unsupported speculation," which *Daubert* prohibits. Id. A challenged expert's testimony does not have to sustain, at the time of summary judgment, the offering party's burden of proof at trial. *Miller v. Bike Athletic Co.*, supra at 607.

{¶ 34} Assignment of Error I is sustained.

{¶ 35} "II. The trial court erred by granting appellees' motion for summary judgment as genuine issues of material fact exist and appellees are not entitled to judgment as a matter of law."

{¶ 36} The trial court granted summary judgment to the **Village** in the absence of some of Dolence's testimony, concluding that plaintiffs could not advance a material fact relevant to causation. It stated that "Plaintiffs have offered no evidence that Defendants' conduct in any way caused or contributed to cause the fire" because "Mr. Dolence's expert opinion as allowed by the Court indicates that he cannot say what precisely caused the electrical problem giving rise to the fire."

{¶ 37} An appellate court reviews a grant of summary judgment de novo, the same standard used by the trial court. *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35, 36. Pursuant to Civ.R. 56, a trial court is required to construe the evidence in a light most favorable to the non-moving party, determine whether any genuine issues of material fact exist, and determine whether reasonable minds could differ as to whether judgment should be entered against the non-moving party. Civ.R. 56 (C). An appellate court, reviewing a grant of summary judgment, also examines the record in the light most favorable to the party opposing the motion. *Engel v. Corrigan* (1983), 12 Ohio App.3d 34.

{¶ 38} In the first assignment of error, we held that Ralph Dolence's testimony is relevant and reliable on the issue of causation; to wit: his opinion that negligent installation of electrical cables and negligent construction of floor joists caused the electrical fire in Building 3. Given that both parties offer competing expert testimony as to the cause of the fire that destroyed the plaintiffs' belongings, we find that summary judgment was improperly granted.

{¶ 39} Reversing summary judgment on the basis of the trial court's improper evidentiary ruling is proper because it affects the substantial rights of the adverse party. *O'Brien v. Angley* (1980), 63 Ohio St.2d 159, 164-165. In its grant of summary judgment, the trial court explicitly relied on the fact that the plaintiffs had no expert witness to establish causation in order to conclude that they could not advance a genuine issue of fact. The prejudice to plaintiffs is clear.

{¶ 40} Assignment of Error II is sustained.

{¶ 41} For the foregoing reasons, we reverse with respect to Ralph Dolence testifying on the issue of causation. The grant of summary judgment is also reversed. We remand for further proceedings consistent with this opinion.

Judgment reversed and remanded.

It is ordered that appellants recover from appellees their costs herein taxed.

The court finds there were reasonable grounds for these appeals.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, ADMINISTRATIVE JUDGE.

CHRISTINE T. McMONAGLE, J., CONCURS SEAN C. GALLAGHER, J., DISSENTS.

SEAN C. GALLAGHER, J., DISSENTING:

{¶ 42} I respectfully dissent from the majority opinion. I would find that the trial court did not abuse its discretion when it performed its gatekeeping function under Evid.R. 702 and excluded portions of Dolence's testimony.

{¶ 43} The majority opinion sets forth the standard for determining whether an expert opinion is reliable under Evid.R. 702(C). In making this determination, the trial court has been given the role of gatekeeper. As stated in *Valentine*, 110 Ohio St.3d at 44, "Because even a qualified expert is capable of rendering scientifically unreliable testimony, it is imperative for a trial court, as gatekeeper, to examine the principles and methodology that underlie an expert's opinion."

{¶ 44} In this case, the trial court thoroughly reviewed the reliability analysis as set forth in *Daubert*, 509 U.S. 579, and its progeny, under both Ohio and federal case law. See *Gen. Elec. Co. v. Joiner* (1997), 522 U.S. 136; *Kumho Tire Co. v. Carmichael* (1999), 526 U.S. 137; *Valentine*, supra; *State v. Drummond* (2006), 111 Ohio St.3d 14; *Miller v. Bike Athletic Company* (1998), 80 Ohio St.3d 607; *State v. Nemeth* (1998), 82 Ohio St.3d 202. It then considered Dolence's testimony and determined that his conclusion that the fire was electrical in nature was the product of reliable principles and methods as established by NFPA 921. However, the trial court determined that Dolence's conclusion that the specific cause of the electrical fire stemmed from defective construction was too speculative. This determination was supported by the record.

{¶ 45} In the technical analysis report dated May 21, 2004, which Dolence provided to the City of Beachwood Fire Department, Dolence concluded that the fire originated between the ceiling space above Suite 211 and the floor space below suite 311 and that the most probable cause was an electrical fault, failure, or malfunction. In reaching this conclusion, Dolence relied upon facts in evidence and then eliminated all other potential causes for the fire. However, Dolence was unable to state the specific cause of the electrical fire and opined that "the exact cause and mode of failure will probably never be identified due to the destruction of the site and pertinent evidence." In a preliminary report dated July 21, 2005, Dolence identified other potential factors that could have contributed to the cause of the fire, including water deterioration to electrical wiring insulation and water infiltration into junction boxes and wiring device splices. He again stated that "the exact fire cause and mode of failure will never be identified." He then testified at the hearing that it was his opinion that the fire was caused by some type of resistance heating with the wiring system. Significantly, he conceded that the source could be "the actual wiring itself," which could have had a problem or defect with it. He then stated that he did not know what type of connection it was or what type of electrical resistance

heating it was. He stated: "It could have been a poor termination based on oxidation. It could have been a damaged wire that heated. There are several scenarios based on the condition of the wiring and the wiring method that I saw that it could have been." Indeed, Dolence was able to identify a number of possible factors that could have been the proximate cause of the fire, but he was unable to do anything more than speculate as to the specific cause of the fire.

{¶ 46} Ohio courts have found that a trial court does not abuse its discretion in excluding expert testimony where "there is simply too great an analytical gap between the data and the opinion proffered." Id., citing *Gen. Elec. Co. v. Joiner* (1997), 522 U.S. 136, 146. In this case it was in the province of the trial court's role as gatekeeper, upon finding the testimony unreliable, to exclude any testimony by Dolence that the electrical problem stemmed from defective construction. The record supports a conclusion that there was too great a gap between the data and the expert's proffered opinion and that his conclusion was speculative. I do not find any abuse of discretion with respect to the trial court's determination.

{¶ 47} I also believe the trial court properly granted summary judgment to appellees because appellants failed to offer evidence that appellees' conduct in any way caused or contributed to cause the fire. Accordingly, I believe the trial court's judgment should be affirmed.

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CASE INFORMATION

CV-04-542145 MATTHEW GILMORE ET AL vs. VILLAGE GREEN MANAGEMENT CO. ET AL

Docket Information

Filing Date	Side	Type	Description	Image
11/14/2012	P1	SR	RULE 26 NOTIFICATION(20441845) SENT BY REGULAR MAIL SERVICE. TO: MATTHEW GILMORE 3816 WESTWOOD ROAD, STE 209 UNIVERSITY HTS, OH 44118-0000	
11/14/2012	D1	SR	RULE 26 NOTIFICATION(20441844) SENT BY REGULAR MAIL SERVICE. TO: VILLAGE GREEN MANAGEMENT COMPANY 30833 NORTHWESTERN HWY FARMINGTON HILLS, MI 48334-0000	
08/17/2010	D2	$$	PAYMENT ON ACCOUNT MADE ON BEHALF OF VILLAGE GREEN MANAGEMENT COMPANY IN THE AMOUNT OF $103.80	
08/17/2010	D3	$$	PAYMENT ON ACCOUNT MADE ON BEHALF OF VILLAGE GREEN OF BEACHWOOD LP IN THE AMOUNT OF $61.80	
08/17/2010	D4	$$	PAYMENT ON ACCOUNT MADE ON BEHALF OF VILLAGE GREEN OF BEACHWOOD LP IN THE AMOUNT OF $61.80	
08/17/2010	D5	$$	PAYMENT ON ACCOUNT MADE ON BEHALF OF VILLAGE GREEN RESIDENTIAL PROPERTIES LTD IN THE AMOUNT OF $61.80	
07/28/2010	N/A	CS	COURT COST ASSESSED MATTHEW GILMORE BILL AMOUNT 332.8 PAID AMOUNT 462 AMOUNT DUE -129.2 VILLAGE GREEN MANAGEMENT COMPANY BILLED C/O ATTY BILL AMOUNT 103.8 PAID AMOUNT 0 AMOUNT DUE 103.8 VILLAGE GREEN OF BEACHWOOD LP BILLED C/O ATTY BILL AMOUNT 61.8 PAID AMOUNT 0 AMOUNT DUE 61.8 VILLAGE GREEN OF BEACHWOOD LP BILLED C/O ATTY BILL AMOUNT 61.8 PAID AMOUNT 0 AMOUNT DUE 61.8 VILLAGE GREEN RESIDENTIAL PROPERTIES LTD BILLED C/O ATTY BILL AMOUNT 61.8 PAID AMOUNT 0 AMOUNT DUE 61.8	
07/28/2010	N/A	CS	COURT COST ASSESSED VILLAGE GREEN MANAGEMENT COMPANY BILL AMOUNT 103.8 PAID AMOUNT 0 AMOUNT DUE 103.8 VILLAGE GREEN OF BEACHWOOD LP BILL AMOUNT 61.8 PAID AMOUNT 0 AMOUNT DUE 61.8 VILLAGE GREEN OF BEACHWOOD LP BILL AMOUNT 61.8 PAID AMOUNT 0 AMOUNT DUE 61.8 VILLAGE GREEN RESIDENTIAL PROPERTIES LTD BILL AMOUNT 61.8 PAID AMOUNT 0 AMOUNT DUE 61.8	
05/04/2010	N/A	JE	UPON NOTICE FROM PARTIES FILED 04/30/10, ALL CLAIMS RESOLVED AND THE CASE IS DISMISSED WITH PREJUDICE. FINAL. COURT COST ASSESSED AS EACH THEIR OWN. CLPAL 05/03/2010 NOTICE ISSUED	
04/30/2010	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) NOTICE OF DISMISSAL..... LAWRENCE D POLLACK 0042477	
03/24/2010	N/A	JE	PRE TRIAL CONFERENCE HELD ON 03/23/2010. PARTIES AGREED TO CONTINUE THE TRIAL SET FOR 04/12/10 TO 05/03/10 AT 9:00 AM IN ORDER TO FINALIZE A PROPOSED SETTLEMENT. JURY TRIAL SET FOR 05/03/2010 AT 09:00 AM. CLPAL 03/23/2010 NOTICE ISSUED	
03/09/2010	N/A	JE	FINAL PRE-TRIAL SET FOR 03/23/2010 AT 09:00 AM. CLPAL 03/08/2010 NOTICE ISSUED	
10/02/2009	N/A	JE	THIS CAME TO BE HEARD ON PLAINTIFF ALLSTATE'S BRIEF IN SUPPORT OF RETAINING JURISDICTION AND DEFENDANTS' MEMO IN OPPOSITION TO THE SAME. THE COURT DECLARES THAT PLAINTIFF	

			ALLSTATE IS NOT AN ACTIVE PARTY TO THIS CASE OR CASE NUMBER 572121 SINCE THIS COURT ENTERED JUDGMENT AGAINST PLAINTIFF ALLSTATE ON 08/13/2007 AND PLAINTIFF ALLSTATE DID NOT APPEAL THAT DECISION. CLCCC 10/01/2009 NOTICE ISSUED
09/29/2009	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) MEMORANDUM IN OPPOSITION TO PLTF ALLSTATE INSURANCE COMPANY'S MOTION TO RETAIN JURISDICTION. LAWRENCE D POLLACK 0042477
09/21/2009	P	BR	PLAINTIFF'S BRIEF IN SUPPORT OF RETAINING JURISDICTION..... KAREN BURKE (0077333)
07/21/2009	N/A	JE	SCHEDULING CONFERENCE HELD ON 07/20/2009. COURT DISCUSSED VARIOUS TRIAL ISSUES. PARTIES TO BRIEF THE ISSUE OF THE PARTIES REMAINING IN THE ACTION. JURY TRIAL SET FOR 04/12/2010 AT 09:00 AM. CLPAL 07/20/2009 NOTICE ISSUED
06/23/2009	N/A	JE	IN ORDER TO CLARIFY THE 06/09/09 JE, PLAINTIFF'S COMPLAINT ALLEGES THAT THE DEFENDANTS NEGLIGENT CONSTRUCTION OR MAINTENANCE CAUSED THE 02/02/04 FIRE. THE COURT'S JE GRANTING JUDGMENT IN FAVOR OF DEFENDANTS ONLY PERTAINS TO THE NEGLIGENT CONSTRUCTION CLAIM. THE REMAINING CLAIM OF NEGLIGENT MAINTENANCE SHALL PROCEED TO TRIAL. CLPAL 06/23/2009 NOTICE ISSUED
06/22/2009	N/A	OT	NOTICE OF APPEARANCE OF COUNSEL FOR PLTF ALLSTATE INSURANCE COMPANY...BRIAN GREEN, ESQ 0063921AND KAREN BURKE 0077333
06/09/2009	P	MO	PLAINTIFF(S) MATTHEW GILMORE(P1), SARAH GILMORE(P2), YOUNG JIN JEON(P3), FARZAD NAJAM(P4), SARIAH NAJAM(P5), COURTNEY NAPPIER(P6), NAZALEE TOPALIAN O HEARN(P7), BARRY O HEARN(P8), SAMIR PINKHAS(P9), RENATA PINKHAS(P10), DR ELLIS SAMPRAM(P11), ROSALIND SIGEL(P12), CECILIA SINGH(P13), DINESH SINGH(P14) and DEREK WILLIAMS(P15) UNOPPOSED MOTION TO CONTINUE TRIAL DATE DANIEL A POWELL 0080241 07/20/2009 - GRANTED
06/09/2009	N/A	JE	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D2) AND VILLAGE GREEN OF BEACHWOOD LP(D3) MOTION FOR PARTIAL SUMMARY JUDGMENT..... LAWRENCE D POLLACK 0042477, FILED 04/15/2009, IS GRANTED. DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D2) AND VILLAGE GREEN OF BEACHWOOD LP(D3) MOTION FOR PARTIAL SUMMARY JUDGMENT..... LAWRENCE D POLLACK 0042477, FILED 04/15/2009, IS GRANTED. OHIO LAW DOES NOT IMPOSE LIABILITY ON THE ORIGINAL OWNER OF REAL ESTATE FOR THE TORTIOUS CONDUCT OF THE BUILDER OR DEVELOPER OF THAT REAL ESTATE. THERE IS NO ISSUE OF MATERIAL FACT UPON THE EVIDENCE PROPERLY BEFORE THE COURT ON THE ISSUE OF WHETHER THE DEFENDANTS ACTUALLY CONSTRUCTED THE APARTMENT COMPLEX. THE UNDISPUTED EVIDENCE ESTABLISHES THAT THE DEFENDANTS DID NOT CONSTRUCT, BUILD OR DEVELOP THE APARTMENT BUILDING(S) WHERE THE FIRE OCCURRED. ACCORDINGLY THE DEFENDANTS HAVE NO LIABILITY TO PLAINTIFFS. JUDGMENT IS ENTERED IN FAVOR OF DEFENDANTS AND AGAINST PLAINTIFFS ON THE NEGLIGENT CONSTRUCTION CLAIMS OF PLAINTIFFS' COMPLAINT. PARTIAL. CLTMP 06/08/2009 NOTICE ISSUED
06/01/2009	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN OF BEACHWOOD LP(D3) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) REPLY MEMORANDUM IN SUPPORT OF PARTIAL MOTION FOR SUMMARY JUDGMENT..... LAWRENCE D POLLACK 0042477

05/15/2009	P1	BR	PLAINTIFF MATTHEW GILMORE ET AL BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND REQUEST FOR SANCTIONS. JOSEPH W DIEMERT (0011573)
04/15/2009	D	MO	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D2) and VILLAGE GREEN OF BEACHWOOD LP(D3) MOTION FOR PARTIAL SUMMARY JUDGMENT..... LAWRENCE D POLLACK 0042477 06/09/2009 - GRANTED
02/12/2009	N/A	JE	PRE TRIAL CONFERENCE HELD ON 02/12/2009. PRETRIAL HELD REGARDING ALL CONSOLIDATED CASES. THE DISPOSITIVE MOTION SCHEDULE, AS DISCUSSED DURING THE PRETRIAL, IS AS FOLLOWS: MSJ TO BE FILED BY 04/15/09; BIO TO BE FILED BY 05/15/09; REPLY, IF ANY, TO BE FILED BY 06/01/09. PARTIES MAY CONDUCT NECESSARY DISCOVERY. CLTMP 02/12/2009 NOTICE ISSUED
12/22/2008	N/A	JE	CAPTIONED CASE BEING REMANDED TO THE COURT OF COMMON PLEAS BY ORDER OF THE COURT OF APPEALS; THIS MATTER IS HEREBY RETURNED TO THE DOCKET OF JUDGE JANET R BURNSIDE (302). ADMINISTRATIVE JUDGE NANCY R. MCDONNELL CLRDT 12/22/2008 NOTICE ISSUED
12/18/2008	N/A	JE	P1 MATTHEW GILMORE JOINT MOTION TO SET NEW TRIAL DATE DANIEL A POWELL 0080241, FILED 10/24/2008, IS GRANTED. TRIAL SET FOR 07/20/2009 AT 09:00 AM. PRE TRIAL CONFERENCE SET FOR 02/12/2009 AT 09:00 AM. CLTMP 12/17/2008 NOTICE ISSUED
12/11/2008	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) NOTICE OF FILING AMENDED AFFIDAVIT OF HEIDI MUCH..... LAWRENCE D POLLACK 0042477
10/24/2008	P1	MO	P1 MATTHEW GILMORE JOINT MOTION TO SET NEW TRIAL DATE DANIEL A POWELL 0080241 12/18/2008 - GRANTED
10/23/2008	P	JE	****CA**** JUDGMENT: REVERSED AND REMANDED. OSJ. NOTICE ISSUED.
12/21/2007	P1	$$	PAYMENT ON ACCOUNT MADE ON BEHALF OF GILMORE/MATTHEW/ IN THE AMOUNT OF $362.00
12/11/2007	N/A	CS	COURT COST ASSESSED MATTHEW GILMORE BILLED C/O ATTY BILL AMOUNT 462 PAID AMOUNT 100 AMOUNT DUE 362
12/11/2007	N/A	CS	COURT COST ASSESSED MATTHEW GILMORE BILL AMOUNT 462 PAID AMOUNT 100 AMOUNT DUE 362
12/11/2007	N/A	CS	COURT COST ASSESSED MATTHEW GILMORE BILL AMOUNT 231 PAID AMOUNT 100 AMOUNT DUE 131 DEREK WILLIAMS BILL AMOUNT 231 PAID AMOUNT 0 AMOUNT DUE 231
11/01/2007	N/A	JE	THIS ENTRY MADE TO CORRECT CLERICAL ERROR IN JE OF 10/30/2007. IN SAID ENTRY THE COURT STATED PLAINTIFF HAD VOLUNTARILY DISMISSED ITS CLAIMS. THE ENTRY SHOULD HAVE STATED THAT DEFENDANTS HAVE FILED A NOTICE OF VOLUNTARILY DISMISSAL OF THEIR COUNTERCLAIM IN CASE CV 542145. DEFENDANTS' COUNTERCLAIM IS HEREBY DISMISSED WITHOUT PREJUDICE. CLTMP 10/31/2007 NOTICE ISSUED
10/30/2007	N/A	JE	PLAINTIFF HAVING FILED A NOTICE OF DISMISSAL, CASE DISMISSED WITHOUT PREJUDICE. FINAL. COURT COST ASSESSED TO THE PLAINTIFF(S). CLTMP 10/29/2007 NOTICE ISSUED
10/25/2007	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) DEFENDANTS' NOTICE OF VOLUNTARY DISMISSAL OF COUNTERCLAIMS. LAWRENCE D POLLACK 0042477

10/16/2007	P1	CA	TRANSCRIPT OF PROCEEDINGS FILED AND TRANSMITTED TO THE COURT OF APPEALS ON CA NO. 90387. 2 VOLUMES AND 1 FOLDER OF EXHIBITS.
09/17/2007	P1	CA	APPELLANT'S 9B RECORD TRANSMITTED TO THE COURT OF APPEALS CONSISTING OF THE TRANSCRIPT OF THE DOCKET, JOURNAL ENTRIES AND THE ORIGINAL PAPERS ON CA NO. 90418.
09/14/2007	P1	CA	---------- NOTICE OF APPEAL ---------- CA NO. 90418 NOTICE OF APPEAL FILED BY THE PLTF. APPELLANT W/A 9B PRAECIPE AND DOCKETING STATEMENT ON THE REGULAR CALENDAR. COPIES MAILED.
09/10/2007	P1	CA	APPELLANT'S 9B RECORD TRANSMITTED TO THE COURT OF APPEALS CONSISTING OF THE TRANSCRIPT OF THE DOCKET, JOURNAL ENTRIES AND THE ORIGINAL PAPERS ON CA NO. 90387.
09/07/2007	P1	CA	---------- NOTICE OF APPEAL ---------- CA NO. 90387 NOTICE OF APPEAL FILED BY THE PLTF. APPELLANT W/A 9B PRAECIPE AND DOCKETING STATEMENT ON THE REGULAR CALENDAR. COPIES MAILED.
08/16/2007	N/A	JE	THIS ENTRY CORRECTS JE OF 8/13/2007, WHICH ERRONEOUSLY ASSESSED COSTS TO DEFENDANTS. COURT COSTS SHALL BE ASSESSED TO PLAINTIFFS AS DEFENDANTS ARE THE PREVAILING PARTY. COURT COST ASSESSED TO THE PLAINTIFF(S). CLTMP 08/15/2007 NOTICE ISSUED
08/10/2007	N/A	JE	8/9/07: DEFENDANTS MOTION IN LIMINE TO EXCLUDE THE EXPERT TESTIMONY OF RALPH DOLEUCE IS GRANTED IN PART AND DENIED IN PART. DEFENDANTS MOTION FOR SUMMARY JUDGMENT IS GRANTED. JUDGMENT FOR DEFENDANTS UPON ALL OF THE COMPLAINTS FILED BY ALL PLAINTIFFS IN THESE CONSOLIDATED CASES....OSJ....FINAL....NOTICE ISSUED. COURT COST ASSESSED AS DIRECTED.
01/09/2007	N/A	CS	COURT REPORTER FEE
01/05/2007	N/A	JE	FINAL ARGUMENT ON DEFENDANTS' MOTION IN LIMINE WILL BEGIN AT 8:15 AM ON 1/8/2007 RATHER THAN 9:00 AM ON SAME DATE. THE COURT NOTIFIED ALL PARTIES OF TIME CHANGE BY PHONE ON 1/4/2007. THE COURT ALSO FAXED TO ALL PARTIES ON 1/4/2007 TWO QUESTIONS THE COURT WOULD LIKE THE PARTIES TO ANSWER AT FINAL ARGUMENT. BOOK 3763 PAGE 0088 01/05/2007 NOTICE ISSUED
01/02/2007	N/A	CS	COURT REPORTER FEE
12/28/2006	N/A	JE	ON 12/27/2006 AND 12/28/2006, THE COURT HELD A HEARING AND HEARD EVIDENCE ON DEFENDANTS' MOTION IN LIMINE TO EXCLUDE TESTIMONY OF RALPH DOLENCE. PARTIES TO RETURN FOR FINAL ARGUMENT ON 1/8/2007 AT 9:00 AM. HEARING SET FOR 01/08/2007 AT 09:00 AM. BOOK 3757 PAGE 0729 12/28/2006 NOTICE ISSUED
12/21/2006	P	OT	PLAINTIFF(S) MATTHEW GILMORE(P1), SARAH GILMORE(P2), YOUNG JIN JEON(P3), FARZAD NAJAM(P4), SARIAH NAJAM(P5), COURTNEY NAPPIER(P6), NAZALEE TOPALIAN O HEARN(P7), BARRY O HEARN(P8), SAMIR PINKHAS(P9), RENATA PINKHAS(P10), DR ELLIS SAMPRAM(P11), ROSALIND SIGEL(P12), CECILIA SINGH(P13), DINESH SINGH(P14) and DEREK WILLIAMS(P15) NOTICE OF SUBSTITUTION OF COUNTSEL. DANIEL A POWELL 0080241
11/06/2006	D1	OT	D1 VILLAGE GREEN MANAGEMENT COMPANY NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF DEFTS MOTION IN LIMINE TO EXCLUDE TESTIMONY OF PLTFS EXPERT RALPH DOLENCE. LAWRENCE D POLLACK 0042477
10/30/2006	N/A	JE	HEARING SET FOR 12/26/2006 AT 01:00 PM. HEARING SHALL BE ON DEFENDANT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF PLAINTIFFS' EXPERT RALPH DOLENCE. THE COURT NOTIFIED ALL COUNSEL BY PHONE OF THE HEARING DATE ON 10/26/2006. BOOK 3708 PAGE 0656 10/30/2006 NOTICE ISSUED

06/30/2006	N/A	JE	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) MOTION FOR LEAVE TO FILE REPLY TO PLAINTIFF'S SURREPLY IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT FILED. LAWRENCE D POLLACK 0042477, FILED 04/26/2006, IS GRANTED. BOOK 3601 PAGE 0453 06/30/2006 NOTICE ISSUED
04/26/2006	D	MO	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) MOTION FOR LEAVE TO FILE REPLY TO PLAINTIFF'S SURREPLY IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT FILED. LAWRENCE D POLLACK 0042477 06/30/2006 - GRANTED
04/26/2006	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) REPLY TO PLAINTIFFS' SURREPLY IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT FILED.. LAWRENCE D POLLACK 0042477
04/20/2006	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) REPLY MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE TESTIMONY OF RALPH DOLENCE. LAWRENCE D POLLACK 0042477
04/20/2006	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) SUPPLEMENTAL MEMORANDUM IN OPP TO PLTFS MOTION TO FILE SURREPLY IN OPP TO MOTION FOR SUMMARY JUDGMENT. LAWRENCE D POLLACK 0042477
04/19/2006	N/A	JE	PLAINTIFF(S) MATTHEW GILMORE(P1), SARAH GILMORE(P2), YOUNG JIN JEON(P3), FARZAD NAJAM(P4), SARIAH NAJAM(P5), COURTNEY NAPPIER(P6), NAZALEE TOPALIAN O HEARN(P7), BARRY O HEARN(P8), SAMIR PINKHAS(P9), RENATA PINKHAS(P10), DR ELLIS SAMPRAM(P11), ROSALIND SIGEL(P12), CECILIA SINGH(P13), DINESH SINGH(P14) and DEREK WILLIAMS(P15) MOTION FOR LEAVE TO FILE SUR-REPLY TO DEFTS' REPLY TO PLTFS' BRIEF IN OPPOSITION TO SUMMARY JUDGMT.....FILED JOSEPH W DIEMERT 0011573, FILED 04/14/2006, IS GRANTED. BOOK 3536 PAGE 0259 04/19/2006 NOTICE ISSUED
04/18/2006	P	BR	PLAINTIFF(S) MATTHEW GILMORE(P1), SARAH GILMORE(P2), YOUNG JIN JEON(P3), FARZAD NAJAM(P4), SARIAH NAJAM(P5), COURTNEY NAPPIER(P6), SAMIR PINKHAS(P9), RENATA PINKHAS(P10), DR ELLIS SAMPRAM(P11), ROSALIND SIGEL(P12), CECILIA SINGH(P13), DINESH SINGH(P14) and DEREK WILLIAMS(P15) SUR-REPLY BRIEF TO DEFTS'. REPLY BRIEF TO PLTFS' BRIEF IN OPPOSTION TO SUMMARY JUDGMT..... AMY C. BAUGHMAN 0077621
04/18/2006	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3) and VILLAGE GREEN OF BEACHWOOD LP(D4) MEMORANDUM IN OPP TO PLTFS LEAVE TO FILE SURREPLTY TO DEFTS REPLY BRIEF IN OPP TO SUMMARY JUDGMENT. LAWRENCE D POLLACK 0042477
04/14/2006	P	MO	PLAINTIFF(S) MATTHEW GILMORE(P1), SARAH GILMORE(P2), YOUNG JIN JEON(P3), FARZAD NAJAM(P4), SARIAH NAJAM(P5), COURTNEY NAPPIER(P6), NAZALEE TOPALIAN O HEARN(P7), BARRY O HEARN(P8),

			SAMIR PINKHAS(P9), RENATA PINKHAS(P10), DR ELLIS SAMPRAM(P11), ROSALIND SIGEL(P12), CECILIA SINGH(P13), DINESH SINGH(P14) and DEREK WILLIAMS(P15) MOTION FOR LEAVE TO FILE SUR-REPLY TO DEFTS' REPLY TO PLTFS' BRIEF IN OPPOSITION TO SUMMARY JUDGMT.....FILED JOSEPH W DIEMERT 0011573 04/19/2006 - GRANTED
04/10/2006	P1	BR	P1 MATTHEW GILMORE BRIEF IN OPPOSITION TO DEFTS. MOTION IN LIMINE TO EXCLUDE TESTIMONY OF PLTF. EXPERT RALPH DOLENCE. JOSEPH W DIEMERT 0011573
04/10/2006	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMT..... LAWRENCE D POLLACK 0042477
04/10/2006	N/A	JE	PER PHONE CONVERSATION WITH BOTH DEFENSE AND PLAINTIFFS' COUNSEL PARTICIPATING, THE COURT GRANTS PLAINTIFFS LEAVE THROUGH 4/10/2006 TO FILE BIO TO DEFENDANTS' MOTION IN LIMINE. DEFENDANTS DO NOT OPPOSE THIS EXTENSION. BOOK 3528 PAGE 0861 04/10/2006 NOTICE ISSUED
04/07/2006	N/A	BR	ALLSTATE INSURANCE CO'S. BRIEF IN OPPOSITION TO DEFT'S. MOTION FOR SUMMARY JUDGMT. & MOTION IN LIMINE..... BRIAN J GREEN (0063921)
04/07/2006	N/A	SC	HEARING SCHEDULED FOR 04/25/2006 AT 09:00 AM IS CANCELLED. (NOTICE SENT)
04/07/2006	N/A	BR	STATE FARM FIRE AND CASUALTY CO. BRIEF IN OPPOSITION TO DEFTS. MOTION IN LIMINE TO EXCLUDE THE TESTIMONY OF RALPH P. DOLENCE. PATRICK J O'MALLEY (0064987)
04/07/2006	N/A	BR	STATE FARIM FIRE AND CASUALTY CO. BRIEF IN OPPOSITION TO DEFTS. MTION FOR SUMMARY JUDGMENT. PATRICK J O'MALLEY (0064987)
04/06/2006	N/A	JE	THE COURT CANCELS THE FOLLOWING DATES: HEARING SET FOR 4/25/2006 TRIAL SET FOR 5/8/2006 FINAL PRETRIAL SET FOR 5/1/2006 THE COURT WILL SET NEW SCHEDULE AFTER IT HAS HAD AN OPPOTUNITY TO CONSIDER THE PARTIES' SUBMISSIONS ON MOTION IN LIMINE AND MSJ. BOOK 3527 PAGE 0220 04/06/2006 NOTICE ISSUED
04/03/2006	P	BR	PLAINTIFF(S) MATTHEW GILMORE(P1), SARAH GILMORE(P2), YOUNG JIN JEON(P3), FARZAD NAJAM(P4), SARIAH NAJAM(P5), COURTNEY NAPPIER(P6), SAMIR PINKHAS(P9), RENATA PINKHAS(P10), DR ELLIS SAMPRAM(P11), ROSALIND SIGEL(P12), CECILIA SINGH(P13), DINESH SINGH(P14) and DEREK WILLIAMS(P15) PLTFS' BRIEF IN OPPOSITION TO DEFTS' MOTION FOR SUMMARY JUDGMT..... JOSEPH W DIEMERT 0011573
04/03/2006	N/A	JE	THIS ENTRY MADE TO CORRECT JE OF 3/29/2006, BOOK 3521, PAGE 0034. PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO FILE BIO TO DEFENDANT'S MOTION IN LIMINE IS GRANTED THROUGH 4/7/2006 RATHER THAN 4/3/2006. BOOK 3523 PAGE 0768 04/03/2006 NOTICE ISSUED
03/29/2006	N/A	JE	P1 MATTHEW GILMORE MOTION FOR EXTENSION OF TIME TO FILE PLTFS BRIEF IN OPP TO DEFTS MOTION IN LIMINE AMY C. BAUGHMAN 0077621, FILED 03/27/2006, IS GRANTED THRU 4/3/06. BOOK 3521 PAGE 0034 03/29/2006 NOTICE ISSUED
03/27/2006	P1	MO	P1 MATTHEW GILMORE MOTION FOR EXTENSION OF TIME TO FILE PLTFS BRIEF IN OPP TO DEFTS MOTION IN LIMINE AMY C. BAUGHMAN 0077621 03/29/2006 - GRANTED
03/16/2006	N/A	JE	PLAINTIFF'S MOTION TO RESPOND TO DEFENDANTS MOTION IN LIMINE AND MOTION FOR SUMMARY JUDGMENT IN ONE RESPONSE.....BRIAN GREEN 0063921, FILED 03/13/2006, IS GRANTED THRU 4/3/06. BOOK 3512 PAGE 0100 03/16/2006 NOTICE ISSUED

03/13/2006	N/A	MO	PLAINTIFF'S MOTION TO RESPOND TO DEFENDANTS MOTION IN LIMINE AND MOTION FOR SUMMARY JUDGMENT IN ONE RESPONSE.....BRIAN GREEN 0063921 03/16/2006 - GRANTED
03/06/2006	D	MO	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) MOTION FOR SUMMARY JUDGMENT LAWRENCE D POLLACK 0042477 08/28/2007 - UNKNOWN
03/06/2006	D	MO	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) MOTION IN LIMINE TO EXCLUDE TESTIMONY OF PLTFS EXPERT, RALPH DOLENCE LAWRENCE D POLLACK 0042477 08/28/2007 - UNKNOWN
03/02/2006	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) DEPOSITION OF HARLEY RUDERSDORF TAKEN ON 4-12-05 AT 1:15 P.M.. LAWRENCE D POLLACK 0042477
03/02/2006	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) DEPOSITION OF JOHN T. PAGE TAKEN ON 8-2-05 AT 9:00A.M.. LAWRENCE D POLLACK 0042477
03/02/2006	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) DEPOSITION OF LT. PHILIP L. CORPORA TAKEN ON 8-2-05 AT 8:30 A.M.. LAWRENCE D POLLACK 0042477
03/02/2006	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) NOTICE OF FILING DEPOSITION TRANSCRIPTS. LAWRENCE D POLLACK 0042477
03/01/2006	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) NOTICE OF FILING DEPOSITION TRANSCRIPT OF SHAWN LUTZ..... LAWRENCE D POLLACK 0042477
03/01/2006	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) NOTICE OF FILING DEPOSITION TRANSCRIPTS OF RALPH P. DOLENCE..... LAWRENCE D POLLACK 0042477
03/01/2006	D1	OT	DEPOSITION OF RALPH P. DOLENCE TUESDAY, JAN. 25, 2005....ON THE DAY AND DATE SET FORTH ABOVE, AT 9:00A.M.....
03/01/2006	D1	OT	DEPOSITION OF RALPH P. DOLENCE VOLUME II MONDAY, NOV. 21, 2005.....ON THE DAY AND DATE SET FORTH ABOVE, AT 9:30A.M.....
03/01/2006	D1	OT	DEPOSITION OF SHAWN LUTZ TUES., APRIL 12, 2005....ON THE DAY AND DATE SET FORTH ABOVE, AT 9:00A.M.....
02/15/2006	N/A	OT	. GENERAL CASUALTY CO.'S NOTICE OF IDENTIFICATION OF EXPERTS.. TED M TRAUT (0072514)

02/07/2006	N/A	OT	ALLSTATE INS. CO. PLFT. FOR CONSOLIDATED CASE NO. (CV 572121) NOTICE OF IDENTIFICATION OF EXPERTS.....FILED. JENNIFER STAKES (0074765)
01/31/2006	N/A	OT	STATE FARM FIRE & CASUALTY CO. NOTICE OF IDENTIFICATION OF EXPERTS..... PATRICK J O'MALLEY (0064987)
12/23/2005	N/A	JE	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) MOTION TO CONSOLIDATE LAWRENCE D POLLACK 0042477, FILED 09/16/2005, IS GRANTED. DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY (D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) DEFT'S. MOTION TO CONSOLIDATE FOR DISPOSITIVE MOTIONS & TRIAL..... LAWRENCE D POLLACK 0042477, FILED 10/27/2005, IS GRANTED. BOOK 3464 PAGE 0291 12/23/2005 NOTICE ISSUED
12/14/2005	N/A	SC	HEARING SET FOR 04/25/2006 AT 09:00 AM.
11/18/2005	D1	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) MEMORANDUM IN OPPOSITION TO WRITTEN OBJECTIONS OF PTLFS. EXPERT WITNESS TO DET. SUBPONEA. LAWRENCE D POLLACK 0042477
11/10/2005	D1	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) NOTICE OF CHANGE OF ADDRESS AND PHONE NUMBER. LAWRENCE D POLLACK 0042477
10/31/2005	D1	SR	SUBPOENA FOR: MR. RALPH DOLENCE, DOLENCE ELECTRIC TECHNICAL CONSULTANTS, INC., ISSUED OCT. 27, 2005 - SERVED OCT. 28, 2005.
10/31/2005	N/A	JE	PRETRIAL HELD AS TO DISCOVERY SCHEDULE AND FURTHER COURT DATES. EXPERT DISCOVERY TO BE COMPLETE BY 1/31/06; DISPOSITIVE MOTIONS DUE 3/6/06; REPLY BRIEFS DUE 4/3/06. DAUBERT HEARING SET FOR 4/25/06 AT 9:00 A.M. (COUNSEL TO FILE MOTION WELL PRIOR TO HEARING DATE). FINAL PRETRIAL WITH ALL PARTIES PRESENT SET FOR 5/1/06 AT 9:00 A.M. JURY TRIAL SET FOR 5/8/06 AT 9:00 A.M. BOOK 3432 PAGE 0824 10/31/2005 NOTICE ISSUED
10/27/2005	D	MO	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) DEFT'S. MOTION TO CONSOLIDATE FOR DISPOSITIVE MOTIONS & TRIAL..... LAWRENCE D POLLACK 0042477 12/23/2005 - GRANTED
10/11/2005	P1	OT	P1 MATTHEW GILMORE NOTICE OF APPEARANCE. AMY C. BAUGHMAN 0077621
09/29/2005	N/A	JE	DEFT'S MTN TO CONSOLIDATE #572121 (JUDGE NANCY MCDONNELL) W/ #542145 (JUDGE BURNSIDE), FILED 9/16/05), IS GRANTED. BOOK 3413 PAGE 0353 09/29/2005 NOTICE ISSUED
09/16/2005	D	MO	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) MOTION TO CONSOLIDATE LAWRENCE D POLLACK 0042477 12/23/2005 - GRANTED
09/16/2005	D	MO	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and

			VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) MOTION TO CONSOLIDATE LAWRENCE D POLLACK 0042477 09/29/2005 - GRANTED
09/07/2005	P1	OT	P1 MATTHEW GILMORE NOTICE OF SUBSTITUTION OF COUNSEL. JOSEPH W DIEMERT 0011573
08/16/2005	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO EXTEND DISCOVERY CUT OFF OR IN THE ALTERNATIVE MOTION TO RECONSIDER COURT'S EXTENSIONS OF DISCOVERY CUT OFF. LAWRENCE D POLLACK 0042477
08/09/2005	P1	MO	PLTF'S MOTION TO EXTEND DISCOVERY CUT-OFF DATE.....(W)... JEFFREY J SOKOLOWSKI (0072926) 08/09/2005 - GRANTED
08/09/2005	N/A	JE	PLTF' MATTHEW GILMORE'S MOTION TO APPOINT SPECIAL PROCESS SERVER....(W)... JEFFREY J SOKOLOWSKI (0072926), FILED 07/21/2005, IS GRANTED. PLTF'S MOTION TO EXTEND DISCOVERY CUT-OFF DATE.....(W)... JEFFREY J SOKOLOWSKI (0072926), FILED 08/09/2005, IS GRANTED BECAUSE NO DISC CUT OFF HAS BEEN SET IN THIS ACTION. NO SUCH EXTENSION IS NEEDED NOW OR IN FUTURE. BOOK 3382 PAGE 0795 08/09/2005 NOTICE ISSUED
08/01/2005	P1	OT	PLTF'S NOTICE OF SERVICE OF PLTF'S EXPERT REPROT & CURRICULUM VITAE.....(W)... JEFFREY J SOKOLOWSKI
07/28/2005	N/A	JE	PLAINTIFF'S MOTION FILED 07-21-05 REQUESTING THE APPOINTMENT OF MEGAN SPANER AND REID GUARNIERI AS SPECIAL PROCESS SERVERS IS GRANTED...OSJ...VOL.3374 PGS.0846-0848...NOTICE ISSUED
07/28/2005	P1	SR	SUBPOENA FOR: NEWS CHANNEL 5, ATTN: JOHN BUTTE, ISSUED JULY 28, 2005 .
07/28/2005	P1	SR	SUBPOENA FOR: WKYC - TV 3, ATTN: RICHARD MOORE, ISSUED JULY 28, 2005 .
07/26/2005	D1	SR	SUBPOENA FOR: GREG LIGGETT % PAUL F. LEVIN, SERVING TO KAREN STOHAR, ON JULY 25TH 2005 .
07/26/2005	D1	SR	SUBPOENA FOR: MATT DOMONKOS % PAUL F. LEVIN, SERVING TO KAREN STOHAR, SECRETARY ON JULY 25TH 2005 .
07/26/2005	D1	SR	SUBPOENA FOR: DAN WOCHELE % PAUL F. LEVIN, SERVING TO KAREN STOHAR, SECRETARY ON JULY 25TH 2005 .
07/26/2005	D1	SR	SUBPOENA FOR: LT. PHIL CORPORA % PAUL F. LEVIN, SERVING TO KAREN STOHAR, SECRETARY ON JULY 25TH 2005 .
07/26/2005	D1	SR	SUBPOENA FOR: JACK PAGE % PAUL F. LEVIN, SERVING TO KAREN STOHAR, SECRETARY ON JULY 25TH 2005 .
07/26/2005	D1	SR	SUBPOENA FOR: KEN KAPLAN, % PAUL F. LEVIN, SERVED TO KAREN STOHAR ON JULY 25TH 2005 .
07/21/2005	P1	MO	PLTF' MATTHEW GILMORE'S MOTION TO APPOINT SPECIAL PROCESS SERVER....(W)... JEFFREY J SOKOLOWSKI (0072926) 08/09/2005 - GRANTED
07/21/2005	P1	CS	JULY 21, 2005 SERVED SUBPOENA ON: BELFOR USA JESSICA BOWLER
07/21/2005	P1	SR	SUBPOENA FOR: BELFOR USA, ATTN: ANYONE ABLE TO ACCEPT SERVICE, ISSUED JULY 21, 2005 .
07/12/2005	N/A	JE	ATTYS DIEMERT, JR., HANCULAK, & SOKOLOWSKI'S MTN TO W/DRAW RE: PLTFS NAZALEE TOPALIAN O'HEARN & BARRY O'HEARN, FILED 7/7/05, IS GRANTED. ACTION IS STAYED AGAINST SAID PLTFS FOR 60 DAYS, OR THRU 9/12/05, TO ALLOW PLTFS EITHER: (1) TO CAUSE NEW COUNSEL TO ENTER AN APPEARANCE, OR (2) TO FILE A NOTICE OF INTENT TO PROCEED PRO SE. FAILURE OF PLTFS DO EITHER ONE OF THE FOREGOING WILL RESULT IN ACTION BEING DISMISSED AGAINST SAID PLTFS. ATTYS DIEMERT, ETC., ARE ORDERED TO PROVIDE SAID

			PLTFS W/ A COPY OF THIS JOURNAL ENTRY. BOOK 3364 PAGE 0920 07/12/2005 NOTICE ISSUED
07/07/2005	P1	MO	P1 MATTHEW GILMORE MOTOIN TO WITHDRAW RE: PLTFS. NAZALEE TOPALIAN O'HEARN AND BARRY O'HEARN JEFFREY J SOKOLOWSKI 0072926 07/12/2005 - GRANTED
07/07/2005	N/A	JE	P1 MATTHEW GILMORE MOTION TO EXTEND DISCOVERY CUT OFF DATE CURRENTLY 07-08-05 UNTIL 08-09-05 JEFFREY J SOKOLOWSKI 0072926, FILED 06/30/2005, IS GRANTED. BOOK 3362 PAGE 0251 07/07/2005 NOTICE ISSUED
06/30/2005	P1	MO	P1 MATTHEW GILMORE MOTION TO EXTEND DISCOVERY CUT OFF DATE CURRENTLY 07-08-05 UNTIL 08-09-05 JEFFREY J SOKOLOWSKI 0072926 07/07/2005 - GRANTED
06/29/2005	P	JE	6-28-05. MTN DENIED. ORC 10(B) REQUIRES SERVICE OF MTNS TO WITHDRAW UPON THE AFFECTED PLTFS BEFORE CT. CAN GRANT...VOL 3356 PG 0980...NOTICE ISSUED
06/22/2005	P1	MO	P1 MATTHEW GILMORE MOTION TO WITHDRAW RE: PLTFS NAZALEE TOPALIAN O'HEARN AND BARRY O'HEARN..... JEFFREY J SOKOLOWSKI 0072926 06/29/2005 - DENIED
06/13/2005	N/A	JE	DEFTS' MTN TO CONSOLIDATE #562259 (JUDGE MANNEN) W/ THIS ACTION IS GRANTED. PARTIES TO FOLLOW PREVIOUSLY SET SCHEDULING ORDER. BOOK 3347 PAGE 0120 06/13/2005 NOTICE ISSUED
06/03/2005	D	MO	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) MOTION TO CONSOLIDATE LAWRENCE D POLLACK 0042477 06/13/2005 - GRANTED
06/03/2005	N/A	JE	PLTFS' MTN TO EXTND DISCVRY CUT-OFF DATE, FILED 5/23/05, IS GRANTED. PARTIES TO FOLLOW SCHEDULING ORDER AS SET FORTH IN CRT'S 3/2/05 JE, BK 3283 PG 335, I.E., PLTFS' EXP RPT TO BE PROD TO DEFTS BY 8/1/05. DEFTS' EXP RPT TO BE PROD TO PLTFS BY 10/1/05. PT SET FOR 10/27/05 AT 9:00 AM. BOOK 3341 PAGE 0977 06/03/2005 NOTICE ISSUED
05/23/2005	P	JE	PLTF'S MOTION TO COMPEL DISCOVERY GRANTED WITH LIMITATIONS...OSJ. VOL.3334 PGS.0057-0058 NOTICE ISSUED
05/23/2005	P1	MO	P1 MATTHEW GILMORE MOTION TO EXTEND DISCOVERY CUT-OFF DATE JEFFREY J SOKOLOWSKI 0072926 06/03/2005 - GRANTED
05/12/2005	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1) and VILLAGE GREEN MANAGEMENT COMPANY(D2) MEMORANDUM IN OPPOSITION TO PLTFS' MOTION TO COMPEL DISCOVERY. LAWRENCE D POLLACK 0042477
05/06/2005	P1	MO	P1 MATTHEW GILMORE PLTFS' MOTION TO COMPEL DISCOVERY.....FILED JEFFREY J SOKOLOWSKI 0072926 05/19/2005 - GRANTED
03/23/2005	D1	OT	D1 VILLAGE GREEN MANAGEMENT COMPANY NOTICE OF APPEARANCE. LAWRENCE D POLLACK 0042477
03/18/2005	D	AN	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1) and VILLAGE GREEN MANAGEMENT COMPANY(D2) ANSWER. WITH JURY DEMAND LAWRENCE D POLLACK 0042477
03/14/2005	D	JE	STIPULATION THAT PARTIES HEREBY STIPULATE DEFTS' ANSWER TO COMPLAINT, COUNTERCLAIM, DISCOVERY RESPONSES AND PLTFS' REPLY TO COUNTERCLAIM IN GILMORE, ET AL...ARE HEREBY INCORPORATED INTO DICE, ET AL AND THAT NO FURTHER RESPONSES ARE REQUIRED...OSJ. VOL.3289 PG.0557 NOTICE ISSUED
03/08/2005	P	OT	PLAINTIFF(S) MATTHEW GILMORE(P1) and SARAH GILMORE(P2) STIPULATION. JEFFREY J SOKOLOWSKI 0072926
03/02/2005	N/A	JE	3/2/05 STATUS CONFERENCE HELD. MTNS TO CONSOLIDATE CASE NOS. 554451 (JUDGE P. CORRIGAN) & 554870 (JUDGE D. MATIA) ARE

			GRANTED. ALL PARTIES, INCLUDING PARTIES FROM CONSOLIDATED ACTIONS, TO FOLLOW SCHEDULING ORDER SET FORTH BELOW. ATTY LARRY POLLACK WILL INFORM COUNSEL FOR CONSOLIDATED ACTIONS OF SCHEDULING ORDER. CASE WILL NOT PROCEED TO MEDIATION. PLTFS' EXP RPT TO BE PROD TO DEFTS BY 8/1/05. DEFTS' EXP RPT TO BE PROD TO PLTFS BY 10/1/05. PT SET FOR 10/27/05 AT 9:00 AM. 6/1/05 PT IS CANCELLED. BOOK 3283 PAGE 0335 03/02/2005 NOTICE ISSUED
03/01/2005	D1	SR	SUBPOENA FOR: URSULINE COLLEGE, SERVED FEB. 28, 2005 .
02/28/2005	D1	MO	D1 VILLAGE GREEN MANAGEMENT COMPANY MOTION TO CONSOLIDATE.... LAWRENCE D POLLACK 0042477 03/04/2005 - GRANTED
02/18/2005	D1	SR	SUBPOENA FOR: HARLEY RUDERSDORF, FIRE INSPECTOR/INVESTIGATOR, CITY OF BEACHWOOD FIRE DEPARTMENT SERVED 2/17/2005 BY SERVING TO PAT VANEK .
02/18/2005	D1	SR	SUBPOENA FOR: SHAUN LUTZ, FIRE INSPECTOR/INVESTIGATOR, CITY OF BEACHWOOD FIRE DEPARTMENT SERVED FEB 17, 2005 ON PAT VANEK SECRETARY .
01/21/2005	N/A	JE	PLAINTIFFS' MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT INSTANTER, FILED 01/12/2005, IS DENIED. NEW PLAINTIFFS MUST FILE THEIR OWN ACTION AND PAY THEIR FILING FEE AND COURT WILL CONSIDER CONSOLIDATION. BOOK 3258 PAGE 0192 01/21/2005 NOTICE ISSUED
01/12/2005	P1	MO	P1 MATTHEW GILMORE MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT INSTANTER JOSEPH W DIEMERT 0011573 01/21/2005 - DENIED
01/05/2005	D1	SR	SUBPOENA FOR: MR. RALPH DOLENCE, DOLENCE ELECTRIC TECHNICAL CONSULTANTS, INC. .
12/03/2004	P1	OT	P1 MATTHEW GILMORE PLAINTIFF'S, MATTHEW GILMORE REPLY TO DEFENDANTS' COUNTERCLAIM. JEFFREY J SOKOLOWSKI 0072926
12/02/2004	N/A	JE	PRE-TRIAL HELD ON 11/29/2004. PARTIES TO CONDUCT ALL FACT DISCOVERY BY 6/1/05. A TELE STATUS CONF TO BE HELD 3/2/05 AT 9:00 AM & TO BE INITIATED BY PLTF. AT 3/2/05 STATUS CONF, CRT & PARTIES TO DETERMINE IF ACTION AMICABLE FOR MEDIATION. PRETRIAL SET FOR 06/01/2005 AT 09:00 AM. AT 6/1/05 PT CRT TO SET EXP RPT DATES ON ISSUE OF LIABILITY IF STILL CONSTESTED ALONG W/ FPT & TRIAL DATE. BOOK 3230 PAGE 0063 12/02/2004 NOTICE ISSUED
11/23/2004	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) STIPULATED PROTECTIVE ORDER. LAWRENCE D POLLACK 0042477
11/15/2004	D2	SR	CERTIFIED MAIL RECEIPT NO. 5653943 RETURNED 11/15/2004 FAILURE OF SERVICE ON DEFENDANT VILLAGE GREEN MANAGEMENT COMPANY - ADDRESSEE UNKNOWN NOTICE MAILED TO PLAINTIFF(S) ATTORNEY
11/12/2004	N/A	SC	PRE-TRIAL SCHEDULED FOR 12/02/2004 AT 02:45 PM IS CANCELLED. JUDGE: JANET R BURNSIDE (302) REASON: ATTY POLLACK SCHEDULING CONFLICT. .
11/12/2004	N/A	JE	PRE-TRIAL PREVIOUSLY SCHEDULED FOR 12/02/2004 AT 02:45 PM IS RESCHEDULED FOR 11/29/2004 AT 12:45 PM. RESET BY AGREEMENT OF PARTIES & CRT.. . BOOK 3218 PAGE 0866 11/12/2004 NOTICE ISSUED
11/05/2004	D3	AN	D3 VILLAGE GREEN OF BEACHWOOD LP DEFTS' ANSWER TO COMPLAINT AND COUNTER-CLAIM...(WITH JURY DEMAND ENDORSED HEREON)... LAWRENCE D POLLACK 0042477
11/01/2004	D1	SR	SUBPOENA FOR: RALPH DELENCE, COLENCE ELECTRIC TECHNICAL CONSULTNTS, INC., SERVED NOV. 1, 2004 .

11/01/2004	N/A	JE	PRE-TRIAL SET FOR 12/02/2004 AT 02:45 PM. NO CMC TO BE HELD. CLIENTS NEED NOT BE PRESENT. FAILURE OF PLTF TO APPEAR WILL RESULT IN ACTION BEING DISMISSED. FAILURE OF DEFT TO APPEAR WILL RESULT IN DFLT JUDGMT. BOOK 3212 PAGE 0096 11/01/2004 NOTICE ISSUED
10/27/2004	D2	SR	SUMS COMPLAINT(5653943) SENT BY CERTIFIED MAIL. TO: VILLAGE GREEN MANAGEMENT COMPANY 1423 EAST MAIN STREET COLUMBUS, OH 43205-2035
10/22/2004	D2	CS	WRIT FEE
10/12/2004	D2	SR	INSTRUCTION FOR SERVICE ON VILLAGE GREEN MANAGEMENT CO. FILED.
10/07/2004	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN MANAGEMENT COMPANY(D2), VILLAGE GREEN OF BEACHWOOD LP(D3), VILLAGE GREEN OF BEACHWOOD LP(D4) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D5) LEAVE TO PLEAD.. LAWRENCE D POLLACK 0042477
10/04/2004	D2	SR	CERTIFIED MAIL RECEIPT NO. 5440831 RETURNED 10/04/2004 FAILURE OF SERVICE ON DEFENDANT VILLAGE GREEN MANAGEMENT COMPANY - ADDRESSEE UNKNOWN NOTICE MAILED TO PLAINTIFF(S) ATTORNEY
09/27/2004	D1	SR	CERTIFIED MAIL RECEIPT NO. 5440830 RETURNED BY U.S. MAIL DEPARTMENT 09/20/2004 VILLAGE GREEN MANAGEMENT COMPANY MAIL RECEIVED AT ADDRESS 09/16/2004 SIGNED BY OTHER.
09/27/2004	D1	SR	CERTIFIED MAIL RECEIPT NO. 5440830 RETURNED BY U.S. MAIL DEPARTMENT 09/20/2004 VILLAGE GREEN MANAGEMENT COMPANY MAIL RECEIVED AT ADDRESS 09/16/2004 SIGNED BY OTHER.
09/27/2004	D1	SR	CERTIFIED MAIL RECEIPT NO. 5440830 RETURNED BY U.S. MAIL DEPARTMENT 09/20/2004 VILLAGE GREEN MANAGEMENT COMPANY MAIL RECEIVED AT ADDRESS 09/16/2004 SIGNED BY OTHER.
09/24/2004	D3	SR	CERTIFIED MAIL RECEIPT NO. 5440832 RETURNED BY U.S. MAIL DEPARTMENT 09/20/2004 VILLAGE GREEN OF BEACHWOOD LP MAIL RECEIVED AT ADDRESS 09/15/2004 SIGNED BY OTHER.
09/24/2004	D4	SR	CERTIFIED MAIL RECEIPT NO. 5440833 RETURNED BY U.S. MAIL DEPARTMENT 09/20/2004 VILLAGE GREEN OF BEACHWOOD LP MAIL RECEIVED BY ADDRESSEE 09/14/2004.
09/22/2004	D5	SR	CERTIFIED MAIL RECEIPT NO. 5440834 RETURNED BY U.S. MAIL DEPARTMENT 09/16/2004 VILLAGE GREEN RESIDENTIAL PROPERTIES LTD MAIL RECEIVED AT ADDRESS 09/15/2004 SIGNED BY OTHER.
09/14/2004	D4	SR	SUMS COMPLAINT(5440833) SENT BY CERTIFIED MAIL. TO: VILLAGE GREEN OF BEACHWOOD LP 200 PUBLIC SQUARE SUITE 2300 CLEVELAND, OH 44114-0000
09/14/2004	D3	SR	SUMS COMPLAINT(5440832) SENT BY CERTIFIED MAIL. TO: VILLAGE GREEN OF BEACHWOOD LP 50 PUBLIC SQUARE SUITE 1160 CLEVELAND, OH 44113-0000
09/14/2004	D2	SR	SUMS COMPLAINT(5440831) SENT BY CERTIFIED MAIL. TO: VILLAGE GREEN MANAGEMENT COMPANY 6450 POE AVE #107 DAYTON, OH 45414-0000
09/14/2004	D1	SR	SUMS COMPLAINT(5440830) SENT BY CERTIFIED MAIL. TO: VILLAGE GREEN MANAGEMENT COMPANY 30833 NORTHWESTERN HWY FARMINGTON HILLS, MI 48334-0000
09/14/2004	D5	SR	SUMS COMPLAINT(5440834) SENT BY CERTIFIED MAIL. TO: VILLAGE GREEN RESIDENTIAL PROPERTIES LTD 815 SUPERIOR AVENUE NE CLEVELAND, OH 44114-0000
09/09/2004	D5	CS	WRIT FEE
09/09/2004	D4	CS	WRIT FEE
09/09/2004	D3	CS	WRIT FEE
09/09/2004	D2	CS	WRIT FEE
09/09/2004	D1	CS	WRIT FEE

09/03/2004	P1	SR	COMPLAINT WITH JURY DEMAND FILED. SERVICE REQUEST - SUMMONS BY CERTIFIED MAIL TO THE DEFENDANT(S).
09/03/2004	N/A	SF	JUDGE JANET R BURNSIDE ASSIGNED (RANDOM)
09/03/2004	P1	SF	LEGAL RESEARCH
09/03/2004	P1	SF	LEGAL NEWS
09/03/2004	P1	SF	LEGAL AID
09/03/2004	P1	SF	COMPUTER FEE
09/03/2004	P1	SF	CLERK'S FEE
09/03/2004	P1	SF	DEPOSIT AMOUNT PAID JOSEPH W DIEMERT & ASSOCIATES
09/03/2004	N/A	SF	CASE FILED

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CASE INFORMATION

CV-05-572121 ALLSTATE INSURANCE COMPANY vs. VILLAGE GREEN OF BEACHWOOD LIMITED PARTNERSHIP

Docket Information

Filing Date	Side	Type	Description	Image
05/04/2010	N/A	JE	THE 10/02/09 ENTRY RESOLVED ALL PENDING CLAIMS AND THIS ENTRY IS INTENDED TO CHANGE THE STATUS OF THIS CASE TO "FINAL." CLPAL 05/03/2010 NOTICE ISSUED	
03/24/2010	N/A	JE	PRE TRIAL CONFERENCE HELD ON 03/23/2010. PARTIES AGREED TO CONTINUE THE TRIAL SET FOR 04/12/10 TO 05/03/10 AT 9:00 AM IN ORDER TO FINALIZE A PROPOSED SETTLEMENT. JURY TRIAL SET FOR 05/03/2010 AT 09:00 AM. CLPAL 03/23/2010 NOTICE ISSUED	
10/02/2009	N/A	JE	THIS CAME TO BE HEARD ON PLAINTIFF ALLSTATE'S BRIEF IN SUPPORT OF RETAINING JURISDICTION AND DEFENDANTS' MEMO IN OPPOSITION TO THE SAME. THE COURT DECLARES THAT PLAINTIFF ALLSTATE IS NOT AN ACTIVE PARTY TO THIS CASE OR CASE NUMBER 572121 SINCE THIS COURT ENTERED JUDGMENT AGAINST PLAINTIFF ALLSTATE ON 08/13/2007 AND PLAINTIFF ALLSTATE DID NOT APPEAL THAT DECISION. CLCCC 10/01/2009 NOTICE ISSUED	
09/21/2009	P	BR	PLAINTIFF'S BRIEF IN SUPPORT OF RETAINING JURISDICTION..... KAREN BURKE (0077333)	
07/21/2009	N/A	JE	SCHEDULING CONFERENCE HELD ON 07/20/2009. COURT DISCUSSED VARIOUS TRIAL ISSUES. PARTIES TO BRIEF THE ISSUE OF THE PARTIES REMAINING IN THE ACTION. JURY TRIAL SET FOR 04/12/2010 AT 09:00 AM. CLPAL 07/20/2009 NOTICE ISSUED	
06/22/2009	P1	OT	P1 ALLSTATE INSURANCE COMPANY NOTICE OF APPEARANCE OF COUNSEL... BRIAN J GREEN 0063921AND KAREN BURKE 0077333	
06/09/2009	N/A	JE	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D2) AND VILLAGE GREEN OF BEACHWOOD LP(D3) MOTION FOR PARTIAL SUMMARY JUDGMENT..... LAWRENCE D POLLACK 0042477, FILED 04/15/2009, IS GRANTED. DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D2) AND VILLAGE GREEN OF BEACHWOOD LP(D3) MOTION FOR PARTIAL SUMMARY JUDGMENT..... LAWRENCE D POLLACK 0042477, FILED 04/15/2009, IS GRANTED. OHIO LAW DOES NOT IMPOSE LIABILITY ON THE ORIGINAL OWNER OF REAL ESTATE FOR THE TORTIOUS CONDUCT OF THE BUILDER OR DEVELOPER OF THAT REAL ESTATE. THERE IS NO ISSUE OF MATERIAL FACT UPON THE EVIDENCE PROPERLY BEFORE THE COURT ON THE ISSUE OF WHETHER THE DEFENDANTS ACTUALLY CONSTRUCTED THE APARTMENT COMPLEX. THE UNDISPUTED EVIDENCE ESTABLISHES THAT THE DEFENDANTS DID NOT CONSTRUCT, BUILD OR DEVELOP THE APARTMENT BUILDING(S) WHERE THE FIRE OCCURRED. ACCORDINGLY THE DEFENDANTS HAVE NO LIABILITY TO PLAINTIFFS. JUDGMENT IS ENTERED IN FAVOR OF DEFENDANTS AND AGAINST PLAINTIFFS ON THE NEGLIGENT CONSTRUCTION CLAIMS OF PLAINTIFFS' COMPLAINT. PARTIAL. CLTMP 06/08/2009 NOTICE ISSUED	
12/22/2008	N/A	JE	CAPTIONED CASE BEING REMANDED TO THE COURT OF COMMON PLEAS BY ORDER OF THE COURT OF APPEALS; THIS MATTER IS HEREBY RETURNED TO THE DOCKET OF JUDGE JANET R BURNSIDE (302). ADMINISTRATIVE JUDGE NANCY R. MCDONNELL CLRDT 12/22/2008 NOTICE ISSUED	

12/18/2008	N/A	JE	P1 MATTHEW GILMORE JOINT MOTION TO SET NEW TRIAL DATE DANIEL A POWELL 0080241, FILED 10/24/2008, IS GRANTED. TRIAL SET FOR 07/20/2009 AT 09:00 AM. PRE TRIAL CONFERENCE SET FOR 02/12/2009 AT 09:00 AM. CLTMP 12/17/2008 NOTICE ISSUED
10/23/2008	P	JE	****CA**** JUDGMENT: REVERSED AND REMANDED. OSJ. NOTICE ISSUED.
10/16/2007	P1	CA	TRANSCRIPT OF PROCEEDINGS FILED AND TRANSMITTED TO THE COURT OF APPEALS ON CA NO. 90387. 2 VOLUMES AND 1 FOLDER OF EXHIBITS.
09/17/2007	P1	CA	APPELLANT'S 9B RECORD TRANSMITTED TO THE COURT OF APPEALS CONSISTING OF THE TRANSCRIPT OF THE DOCKET, JOURNAL ENTRIES AND THE ORIGINAL PAPERS ON CA NO. 90418.
09/14/2007	P1	CA	---------- NOTICE OF APPEAL ---------- CA NO. 90418 NOTICE OF APPEAL FILED BY THE PLTF. APPELLANT(GENERAL CASUALTY CO.) W/A 9B PRAECIPE AND DOCKETING STATEMENT ON THE REGULAR CALENDAR. COPIES MAILED.
09/10/2007	P1	CA	APPELLANT'S 9B RECORD TRANSMITTED TO THE COURT OF APPEALS CONSISTING OF THE TRANSCRIPT OF THE DOCKET, JOURNAL ENTRIES AND THE ORIGINAL PAPERS ON CA NO. 90387.
09/07/2007	P1	CA	---------- NOTICE OF APPEAL ---------- CA NO. 90387 NOTICE OF APPEAL FILED BY THE PLTF. APPELLANT W/A 9B PRAECIPE AND DOCKETING STATEMENT ON THE REGULAR CALENDAR. COPIES MAILED.
08/16/2007	N/A	JE	THIS ENTRY CORRECTS JE OF 8/13/2007, WHICH ERRONEOUSLY ASSESSED COSTS TO DEFENDANTS. COURT COSTS SHALL BE ASSESSED TO PLAINTIFFS AS DEFENDANTS ARE THE PREVAILING PARTY. COURT COST ASSESSED TO THE PLAINTIFF(S). CLTMP 08/15/2007 NOTICE ISSUED
08/13/2007	N/A	JE	DEFENDANTS' MOTION IN LIMINE TO EXCLUDE THE EXPERT TESTIMONY OF RALPH DOLENCE IS GRANTED IN PART. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IS GRANTED. SEE JOURNAL ENTRY OF 8/10/2007 IN CONSOLIDATED CASE CV 542145 FOR FULL OPINION. FINAL. COURT COST ASSESSED TO THE DEFENDANT(S). CLTMP 08/13/2007 NOTICE ISSUED
01/05/2007	N/A	JE	FINAL ARGUMENT ON DEFENDANTS' MOTION IN LIMINE WILL BEGIN AT 8:15 AM ON 1/8/2007 RATHER THAN 9:00 AM ON SAME DATE. THE COURT NOTIFIED ALL PARTIES OF TIME CHANGE BY PHONE ON 1/4/2007. THE COURT ALSO FAXED TO ALL PARTIES ON 1/4/2007 TWO QUESTIONS THE COURT WOULD LIKE THE PARTIES TO ANSWER AT FINAL ARGUMENT. BOOK 3763 PAGE 0093 01/05/2007 NOTICE ISSUED
01/02/2007	N/A	CS	COURT REPORTER FEE
12/28/2006	N/A	JE	ON 12/27/2006 AND 12/28/2006, THE COURT HELD A HEARING AND HEARD EVIDENCE ON DEFENDANTS' MOTION IN LIMINE TO EXCLUDE TESTIMONY OF RALPH DOLENCE. PARTIES TO RETURN FOR FINAL ARGUMENT ON 1/8/2007 AT 9:00 AM. HEARING SET FOR 01/08/2007 AT 09:00 AM. BOOK 3757 PAGE 0734 12/28/2006 NOTICE ISSUED
10/30/2006	N/A	JE	HEARING SET FOR 12/26/2006 AT 01:00 PM. HEARING SHALL BE ON DEFENDANT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF PLAINTIFFS' EXPERT RALPH DOLENCE. THE COURT NOTIFIED ALL COUNSEL BY PHONE OF THE HERING DATE ON 10/26/2006. BOOK 3708 PAGE 0661 10/30/2006 NOTICE ISSUED
04/07/2006	N/A	SC	FINAL PRE-TRIAL SCHEDULED FOR 05/01/2006 AT 09:00 AM IS CANCELLED. (NOTICE SENT)
04/07/2006	N/A	SC	TRIAL BY JURY SCHEDULED FOR 05/08/2006 AT 09:00 AM IS CANCELLED. (NOTICE SENT)
04/06/2006	N/A	JE	THE COURT CANCELS THE FOLLOWING DATES: HEARING SET FOR 4/25/2006 TRIAL SET FOR 5/8/2006 FINAL PRETRIAL SET FOR 5/1/2006 THE COURT WILL SET NEW SCHEDULE AFTER IT HAS HAD AN

			OPPOTUNITY TO CONSIDER THE PARTIES' SUBMISSIONS ON MOTION IN LIMINE AND MSJ. BOOK 3527 PAGE 0225 04/06/2006 NOTICE ISSUED
02/07/2006	P1	OT	P1 ALLSTATE INSURANCE COMPANY NOTICE OF IDENTIFICATION OF EXPERTS. THIS IS CONSOLIDATED CASE WITH CASE (CV 542145)..... JENNIFER STAKES 0074765
01/31/2006	P1	OT	P1 ALLSTATE INSURANCE COMPANY NOTICE OF IDENTIFICATION OF EXPERTS..... PATRICK J O'MALLEY 0064987
01/10/2006	N/A	SC	TRIAL BY JURY SET FOR 05/08/2006 AT 09:00 AM.
01/10/2006	N/A	SC	FINAL PRE-TRIAL SET FOR 05/01/2006 AT 09:00 AM.
10/31/2005	N/A	JE	PRETRIAL HELD. FINAL PRETRIAL SET FOR 5/1/06 AT 9:00 A.M. TRIAL DATE SET FOR 5/8/06 AT 9:00 A.M. SEE DOCKET IN CV-04-542145 FOR DISCOVERY SCHEDULE. BOOK 3432 PAGE 0826 10/31/2005 NOTICE ISSUED
09/29/2005	N/A	JE	THE CAPTIONED CASE IS HEREBY TRANSFERRED TO THE DOCKET OF JUDGE JANET R BURNSIDE(302) FOR CONSOLIDATION WITH CASE NO. CV-04-542145. BOOK 3413 PAGE 0088 09/29/2005 NOTICE ISSUED
09/23/2005	D1	SR	CERTIFIED MAIL RECEIPT NO. 7255282 RETURNED BY U.S. MAIL DEPARTMENT 09/21/2005 VILLAGE GREEN OF BEACHWOOD LIMITED PARTNERSHIP MAIL RECEIVED AT ADDRESS 09/20/2005 SIGNED BY OTHER.
09/19/2005	D1	SR	SUMS COMPLAINT(7255282) SENT BY CERTIFIED MAIL. TO: VILLAGE GREEN OF BEACHWOOD LIMITED PARTNERSHIP 50 PUBLIC SQ STE 1160 CLEVELAND, OH 44113-0000
09/15/2005	D1	AN	D1 VILLAGE GREEN OF BEACHWOOD LIMITED PARTNERSHIP ANSWER TO COMPLAINT. WITH JURY DEMAND LAWRENCE D POLLACK 0042477
09/15/2005	D1	CS	WRIT FEE
09/12/2005	P1	SR	COMPLAINT FILED. SERVICE REQUEST - SUMMONS BY CERTIFIED MAIL TO THE DEFENDANT(S).
09/12/2005	N/A	SF	JUDGE NANCY R MCDONNELL ASSIGNED (RANDOM)
09/12/2005	P1	SF	LEGAL RESEARCH
09/12/2005	P1	SF	LEGAL NEWS
09/12/2005	P1	SF	LEGAL AID
09/12/2005	P1	SF	COMPUTER FEE
09/12/2005	P1	SF	CLERK'S FEE
09/12/2005	P1	SF	DEPOSIT AMOUNT PAID SHAPERO & GREEN LLC
09/12/2005	N/A	SF	CASE FILED

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CASE INFORMATION

CV-05-562259 LENE SAMPRAM vs. VILLAGE GREEN MANAGEMENT CO. ET AL

Docket Information

Filing Date	Side	Type	Description	Image
08/23/2010	P1	$$	PAYMENT ON ACCOUNT MADE ON BEHALF OF SAMPRAM/LENE/ IN THE AMOUNT OF $33.10	
08/17/2010	D2	$$	PAYMENT ON ACCOUNT MADE ON BEHALF OF VILLAGE GREEN OF BEACHWOOD LP IN THE AMOUNT OF $63.50	
08/17/2010	D3	$$	PAYMENT ON ACCOUNT MADE ON BEHALF OF VILLAGE GREEN OF BEACHWOOD LP IN THE AMOUNT OF $21.50	
08/17/2010	D4	$$	PAYMENT ON ACCOUNT MADE ON BEHALF OF VILLAGE GREEN RESIDENTIAL PROPERTIES LTD IN THE AMOUNT OF $21.50	
07/28/2010	N/A	CS	COURT COST ASSESSED LENE SAMPRAM BILLED C/O ATTY BILL AMOUNT 133.1 PAID AMOUNT 100 AMOUNT DUE 33.1 VILLAGE GREEN OF BEACHWOOD LP BILLED C/O ATTY BILL AMOUNT 63.5 PAID AMOUNT 0 AMOUNT DUE 63.5 VILLAGE GREEN OF BEACHWOOD LP BILLED C/O ATTY BILL AMOUNT 21.5 PAID AMOUNT 0 AMOUNT DUE 21.5 VILLAGE GREEN RESIDENTIAL PROPERTIES LTD BILLED C/O ATTY BILL AMOUNT 21.5 PAID AMOUNT 0 AMOUNT DUE 21.5	
07/28/2010	N/A	CS	COURT COST ASSESSED LENE SAMPRAM BILL AMOUNT 133.1 PAID AMOUNT 100 AMOUNT DUE 33.1 VILLAGE GREEN OF BEACHWOOD LP BILL AMOUNT 63.5 PAID AMOUNT 0 AMOUNT DUE 63.5 VILLAGE GREEN OF BEACHWOOD LP BILL AMOUNT 21.5 PAID AMOUNT 0 AMOUNT DUE 21.5 VILLAGE GREEN RESIDENTIAL PROPERTIES LTD BILL AMOUNT 21.5 PAID AMOUNT 0 AMOUNT DUE 21.5	
05/04/2010	N/A	JE	UPON NOTICE FROM PARTIES FILED 04/30/10, ALL CLAIMS RESOLVED AND THE CASE IS DISMISSED WITH PREJUDICE. FINAL. COURT COST ASSESSED AS EACH THEIR OWN. CLPAL 05/03/2010 NOTICE ISSUED	
03/24/2010	N/A	JE	PRE TRIAL CONFERENCE HELD ON 03/23/2010. PARTIES AGREED TO CONTINUE THE TRIAL SET FOR 04/12/10 TO 05/03/10 AT 9:00 AM IN ORDER TO FINALIZE A PROPOSED SETTLEMENT. JURY TRIAL SET FOR 05/03/2010 AT 09:00 AM. CLPAL 03/23/2010 NOTICE ISSUED	
07/21/2009	N/A	JE	SCHEDULING CONFERENCE HELD ON 07/20/2009. COURT DISCUSSED VARIOUS TRIAL ISSUES. PARTIES TO BRIEF THE ISSUE OF THE PARTIES REMAINING IN THE ACTION. JURY TRIAL SET FOR 04/12/2010 AT 09:00 AM. CLPAL 07/20/2009 NOTICE ISSUED	
06/22/2009	N/A	OT	NOTICE OF APPEARANCE OF COUNSEL FOR PLTF ALLSTATE INSURANCE COMPANY ...BRIAN GREEN 0063921 AND KAREN BURKE 0077333	
06/09/2009	P	MO	UNOPPOSED MOTION TO CONTINUE TRIAL DATE DANIEL A POWELL (0080241) 07/20/2009 - GRANTED	
06/09/2009	N/A	JE	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D2) AND VILLAGE GREEN OF BEACHWOOD LP(D3) MOTION FOR PARTIAL SUMMARY JUDGMENT..... LAWRENCE D POLLACK 0042477, FILED 04/15/2009, IS GRANTED. DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D2) AND VILLAGE GREEN OF BEACHWOOD LP(D3) MOTION FOR PARTIAL SUMMARY JUDGMENT..... LAWRENCE D POLLACK 0042477, FILED 04/15/2009, IS GRANTED. OHIO LAW DOES NOT IMPOSE LIABILITY ON THE ORIGINAL OWNER OF REAL ESTATE FOR THE TORTIOUS CONDUCT OF THE BUILDER OR DEVELOPER OF THAT REAL ESTATE. THERE IS NO ISSUE OF MATERIAL FACT UPON	

			THE EVIDENCE PROPERLY BEFORE THE COURT ON THE ISSUE OF WHETHER THE DEFENDANTS ACTUALLY CONSTRUCTED THE APARTMENT COMPLEX. THE UNDISPUTED EVIDENCE ESTABLISHES THAT THE DEFENDANTS DID NOT CONSTRUCT, BUILD OR DEVELOP THE APARTMENT BUILDING(S) WHERE THE FIRE OCCURRED. ACCORDINGLY THE DEFENDANTS HAVE NO LIABILITY TO PLAINTIFFS. JUDGMENT IS ENTERED IN FAVOR OF DEFENDANTS AND AGAINST PLAINTIFFS ON THE NEGLIGENT CONSTRUCTION CLAIMS OF PLAINTIFFS' COMPLAINT. PARTIAL. CLTMP 06/08/2009 NOTICE ISSUED
05/15/2009	P1	BR	PLAINTIFF MATTHEW GILMORE ET AL BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND REQUEST FOR SANCTIONS. JOSEPH W DIEMERT (0011573)
12/22/2008	N/A	JE	CAPTIONED CASE BEING REMANDED TO THE COURT OF COMMON PLEAS BY ORDER OF THE COURT OF APPEALS; THIS MATTER IS HEREBY RETURNED TO THE DOCKET OF JUDGE JANET R BURNSIDE (302). ADMINISTRATIVE JUDGE NANCY R. MCDONNELL CLRDT 12/22/2008 NOTICE ISSUED
12/18/2008	N/A	JE	P1 MATTHEW GILMORE JOINT MOTION TO SET NEW TRIAL DATE DANIEL A POWELL 0080241, FILED 10/24/2008, IS GRANTED. TRIAL SET FOR 07/20/2009 AT 09:00 AM. PRE TRIAL CONFERENCE SET FOR 02/12/2009 AT 09:00 AM. CLTMP 12/17/2008 NOTICE ISSUED
10/24/2008	N/A	MO	MATTHEW GILMORE, ET AL AND GENERAL CASUALTY CO., ET AL'S JOINT MOTION TO SET NEW TRIAL DATE DANIEL A POWELL (0080241) 12/31/2008 - GRANTED
10/23/2008	P	JE	****CA**** JUDGMENT: REVERSED AND REMANDED. OSJ. NOTICE ISSUED.
10/16/2007	P1	CA	TRANSCRIPT OF PROCEEDINGS FILED AND TRANSMITTED TO THE COURT OF APPEALS ON CA NO. 90387. 2 VOLUMES AND 1 FOLDER OF EXHIBITS.
09/17/2007	P1	CA	APPELLANT'S 9B RECORD TRANSMITTED TO THE COURT OF APPEALS CONSISTING OF THE TRANSCRIPT OF THE DOCKET, JOURNAL ENTRIES AND THE ORIGINAL PAPERS ON CA NO. 90418.
09/14/2007	P1	CA	---------- NOTICE OF APPEAL ---------- CA NO. 90418 NOTICE OF APPEAL FILED BY THE PLTF. APPELLANT W/A 9B PRAECIPE AND DOCKETING STATEMENT ON THE REGULAR CALENDAR. COPIES MAILED.
09/10/2007	P1	CA	APPELLANT'S 9B RECORD TRANSMITTED TO THE COURT OF APPEALS CONSISTING OF THE TRANSCRIPT OF THE DOCKET, JOURNAL ENTRIES AND THE ORIGINAL PAPERS ON CA NO. 90387.
09/07/2007	P1	CA	---------- NOTICE OF APPEAL ---------- CA NO. 90387 NOTICE OF APPEAL FILED BY THE PLTF. APPELLANT W/A 9B PRAECIPE AND DOCKETING STATEMENT ON THE REGULAR CALENDAR. COPIES MAILED.
08/16/2007	N/A	JE	THIS ENTRY CORRECTS JE OF 8/13/2007, WHICH ERRONEOUSLY ASSESSED COSTS TO DEFENDANTS. COURT COSTS SHALL BE ASSESSED TO PLAINTIFFS AS DEFENDANTS ARE THE PREVAILING PARTY. COURT COST ASSESSED TO THE PLAINTIFF(S). CLTMP 08/15/2007 NOTICE ISSUED
08/13/2007	N/A	JE	DEFENDANTS' MOTION IN LIMINE TO EXCLUDE THE EXPERT TESTIMONY OF RALPH DOLENCE IS GRANTED IN PART. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IS GRANTED. SEE JOURNAL ENTRY OF 8/10/2007 IN CONSOLIDATED CASE CV 542145 FOR FULL OPINION. FINAL. COURT COST ASSESSED TO THE DEFENDANT(S). CLTMP 08/13/2007 NOTICE ISSUED
01/05/2007	N/A	JE	FINAL ARGUMENT ON DEFENDANTS' MOTION IN LIMINE WILL BEGIN AT 8:15 AM ON 1/8/2007 RATHER THAN 9:00 AM ON SAME DATE. THE COURT NOTIFIED ALL PARTIES OF TIME CHANGE BY PHONE ON 1/4/2007. THE COURT ALSO FAXED TO ALL PARTIES ON 1/4/2007 TWO

			QUESTIONS THE COURT WOULD LIKE THE PARTIES TO ANSWER AT FINAL ARGUMENT. BOOK 3763 PAGE 0091 01/05/2007 NOTICE ISSUED
01/02/2007	N/A	CS	COURT REPORTER FEE
12/28/2006	N/A	JE	ON 12/27/2006 AND 12/28/2006, THE COURT HELD A HEARING AND HEARD EVIDENCE ON DEFENDANTS' MOTION IN LIMINE TO EXCLUDE TESTIMONY OF RALPH DOLENCE. PARTIES TO RETURN FOR FINAL ARGUMENT ON 1/8/2007 AT 9:00 AM. HEARING SET FOR 01/08/2007 AT 09:00 AM. BOOK 3757 PAGE 0732 12/28/2006 NOTICE ISSUED
10/30/2006	N/A	JE	HEARING SET FOR 12/26/2006 AT 01:00 PM. HEARING SHALL BE ON DEFENDANT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF PLAINTIFFS' EXPERT RALPH DOLENCE. THE COURT NOTIFIED ALL COUNSEL BY PHONE OF THE HERING DATE ON 10/26/2006. BOOK 3708 PAGE 0659 10/30/2006 NOTICE ISSUED
04/06/2006	N/A	JE	THE COURT CANCELS THE FOLLOWING DATES: HEARING SET FOR 4/25/2006 TRIAL SET FOR 5/8/2006 FINAL PRETRIAL SET FOR 5/1/2006 THE COURT WILL SET NEW SCHEDULE AFTER IT HAS HAD AN OPPOTUNITY TO CONSIDER THE PARTIES' SUBMISSIONS ON MOTION IN LIMINE AND MSJ. BOOK 3527 PAGE 0223 04/06/2006 NOTICE ISSUED
11/10/2005	N/A	JE	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN OF BEACHWOOD LP(D2), VILLAGE GREEN OF BEACHWOOD LP(D3) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D4) MOTION TO CONSOLIDATE LAWRENCE D POLLACK 0042477, FILED 06/03/2005, IS GRANTED. BOOK 3439 PAGE 0727 11/10/2005 NOTICE ISSUED
11/10/2005	N/A	JE	PLTF' MATTHEW GILMORE'S MOTION TO APPOINT SPECIAL PROCESS SERVER....(W)... JEFFREY J SOKOLOWSKI (0072926), FILED 07/21/2005, IS GRANTED. PLTF'S MOTION TO EXTEND DISCOVERY CUT-OFF DATE.....(W)... JEFFREY J SOKOLOWSKI (0072926), FILED 08/09/2005, IS GRANTED. BOOK 3439 PAGE 0726 11/10/2005 NOTICE ISSUED
08/09/2005	D1	MO	PLTF'S MOTION TO EXTEND DISCOVERY CUT-OFF DATE.....(W)... JEFFREY J SOKOLOWSKI (0072926) 11/10/2005 - GRANTED
08/01/2005	D2	OT	PLTF'S NOTICE OF SERVICE OF PLTF'S EXPERT REPROT & CURRICULUM VITAE.....(W)... JEFFREY J SOKOLOWSKI
07/21/2005	D1	MO	PLTF' MATTHEW GILMORE'S MOTION TO APPOINT SPECIAL PROCESS SERVER....(W)... JEFFREY J SOKOLOWSKI (0072926) 11/10/2005 - GRANTED
06/27/2005	D	JE	STIPULATION..THE PARTIES HEREBY STIPULATE THAT DEFTS' ANSWER TO COMPLAINT, COUNTERCLAIM FOR DECLARATORY JDGMNT AND DISCOVERY RESPONSES AND PLTFS' REPLY TO COUNTERCLAIM AND PLTFS' RESPONSES TO REQUEST FOR ADMISSIONS.....AND THAT NO FURTHER RESPONSES ARE REQUIRED...GRTD. OSJ VOL 3354 PG 884. NOTICE ISSUED.
06/15/2005	N/A	JE	THE CAPTIONED CASE IS HEREBY TRANSFERRED TO THE DOCKET OF JUDGE JANET R BURNSIDE(302) FOR CONSOLIDATION WITH CASE NO. CV-04-542145. BOOK 3348 PAGE 0368 06/15/2005 NOTICE ISSUED
06/13/2005	D	OT	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN OF BEACHWOOD LP(D2), VILLAGE GREEN OF BEACHWOOD LP(D3) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D4) STIPULATION. LAWRENCE D POLLACK 0042477
06/06/2005	N/A	SR	SCHEDULE ATTORNEY NOTICE. NOTICE GENERATED FOR DIEMERT/JOSEPH/W ON 06/06/2005 17:03:24
06/06/2005	N/A	SR	SCHEDULE ATTORNEY NOTICE. NOTICE GENERATED FOR POLLACK/LAWRENCE/D ON 06/06/2005 17:03:24
06/06/2005	N/A	SC	CASE MGMNT CONFERENCE SET FOR 06/28/2005 AT 08:00 AM.
06/03/2005	D1	SR	CERTIFIED MAIL RECEIPT NO. 6604324 RETURNED 06/03/2005 FAILURE OF SERVICE ON DEFENDANT VILLAGE GREEN MANAGEMENT COMPANY - NO SUCH NUMBER NOTICE MAILED TO PLAINTIFF(S) ATTORNEY

06/03/2005	D	MO	DEFENDANT(S) VILLAGE GREEN MANAGEMENT COMPANY(D1), VILLAGE GREEN OF BEACHWOOD LP(D2), VILLAGE GREEN OF BEACHWOOD LP(D3) and VILLAGE GREEN RESIDENTIAL PROPERTIES LTD(D4) MOTION TO CONSOLIDATE LAWRENCE D POLLACK 0042477 11/10/2005 - GRANTED
05/20/2005	D3	SR	CERTIFIED MAIL RECEIPT NO. 6604326 RETURNED BY U.S. MAIL DEPARTMENT 05/19/2005 VILLAGE GREEN OF BEACHWOOD LP MAIL RECEIVED AT ADDRESS 05/13/2005 SIGNED BY OTHER.
05/18/2005	D4	SR	CERTIFIED MAIL RECEIPT NO. 6604327 RETURNED BY U.S. MAIL DEPARTMENT 05/16/2005 VILLAGE GREEN RESIDENTIAL PROPERTIES LTD MAIL RECEIVED AT ADDRESS 05/13/2005 SIGNED BY OTHER.
05/18/2005	D2	SR	CERTIFIED MAIL RECEIPT NO. 6604325 RETURNED BY U.S. MAIL DEPARTMENT 05/17/2005 VILLAGE GREEN OF BEACHWOOD LP MAIL RECEIVED AT ADDRESS 05/16/2005 SIGNED BY OTHER.
05/12/2005	D4	SR	SUMS COMPLAINT(6604327) SENT BY CERTIFIED MAIL. TO: VILLAGE GREEN RESIDENTIAL PROPERTIES LTD 815 SUPERIOR AVENUE N E CLEVELAND, OH 44114-0000
05/12/2005	D3	SR	SUMS COMPLAINT(6604326) SENT BY CERTIFIED MAIL. TO: VILLAGE GREEN OF BEACHWOOD LP 200 PUBLIC SQUARE, SUITE 2300 CLEVELAND, OH 44114-0000
05/12/2005	D2	SR	SUMS COMPLAINT(6604325) SENT BY CERTIFIED MAIL. TO: VILLAGE GREEN OF BEACHWOOD LP 50 PUBLIC SQUARE, SUITE 1160 CLEVELAND, OH 44113-0000
05/12/2005	D1	SR	SUMS COMPLAINT(6604324) SENT BY CERTIFIED MAIL. TO: VILLAGE GREEN MANAGEMENT COMPANY 6450 POE AVENUE #107 DAYTON, OH 45414-0000
05/09/2005	D4	CS	WRIT FEE
05/09/2005	D3	CS	WRIT FEE
05/09/2005	D2	CS	WRIT FEE
05/09/2005	D1	CS	WRIT FEE
05/06/2005	N/A	SF	JUDGE ANN T MANNEN ASSIGNED (RANDOM)
05/06/2005	P1	SF	LEGAL RESEARCH
05/06/2005	P1	SF	LEGAL NEWS
05/06/2005	P1	SF	LEGAL AID
05/06/2005	P1	SF	COMPUTER FEE
05/06/2005	P1	SF	CLERK'S FEE
05/06/2005	P1	SF	DEPOSIT AMOUNT PAID JOSEPH W DIEMERT & ASSOCIATES
05/06/2005	N/A	SF	CASE FILED
05/06/2005	P1	SR	COMPLAINT WITH JURY DEMAND FILED. SERVICE REQUEST - SUMMONS BY CERTIFIED MAIL TO THE DEFENDANT(S).

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