

Exhibit B

In the Matter Of:

GALLERY COMM ASSOC vs K. HOVNANIAN AT GALLERY

CV2020-008714

EDWARD FRONAPFEL

August 23, 2022



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1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2 IN AND FOR THE COUNTY OF MARICOPA

3 GALLERY COMMUNITY ASSOCIATION, an Arizona non-profit
4 corporation,
5 Plaintiff,

6 v. CASE NO. CV2020-008714

7 K. HOVNIANIAN AT GALLERY, LLC, an Arizona limited
8 liability company; K. HOVNIANIAN ARIZONA OPERATIONS,
9 LLC, an Arizona limited liability company; K. HOVNIANIAN
10 DEVELOPMENTS OF ARIZONA, INC., an Arizona corporation;
11 K. HOVNIANIAN COMPANIES OF ARIZONA, LLC, an Arizona
12 limited liability company; JOHN DOES I-X AND JANE DOES
13 I-X, WHITE CORPORATIONS I-X; BLACK PARTNERSHIPS I-X;
14 and GRAY LIMITED LIABILITY COMPANIES I-X,
15 Defendants.

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K. HOVNIANIAN AT GALLERY, LLC, an Arizona limited
liability company; K. HOVNIANIAN ARIZONA OPERATIONS,
LLC, an Arizona limited liability company; K. HOVNIANIAN
DEVELOPMENTS OF ARIZONA, INC., an Arizona corporation;
K. HOVNIANIAN COMPANIES OF ARIZONA, LLC, an Arizona
limited liability company,
Third-Party Plaintiffs,

v.

CHAS ROBERTS AIR CONDITIONING, INC., an Arizona
corporation; DESERT VISTA, INC., an Arizona corporation;
GOTHIC LANDSCAPING, INC., a California corporation;
HOME BUILDERS SITE SERVICES OF ARIZONA, LLC, an Arizona
limited liability company; LEBLANC BUILDING CO., INC.,
an Arizona corporation; LIBERTY CONSTRUCTORS, LLC, an
Arizona limited liability company, d/b/a LIBERTY
ARIZONA; RENCO, LLC, an Arizona limited liability
company, d/b/a RENCO ROOFING; R/S SERVICE & SUPPLY,
INC., an Arizona corporation; SARGON MASONRY
CONSTRUCTION, LLC, an Arizona limited liability
company; and DOES 1-50,
Third-Party Defendants.

1 document represent?

2 A. It's just a way to summarize as we go through
3 the findings which buildings we found the issues on.
4 Not meant to be an exhaustive detail, but at least to
5 provide some information to the reviewer of where we
6 found issues.

7 Q. Okay. This document -- this document doesn't
8 really tell us where you tested for anything, just
9 where you have made a final observation of one or more
10 examples of the condition at that particular building;
11 is that fair?

12 A. Correct. We're to look where we did
13 intrusive examinations, would be observation drawing
14 sets, indicated under "Attachments," on the last page
15 of the report.

16 Q. Okay. Now, the first instance of the
17 observation drawings set that I came across starts at
18 page Gallery SBSA 4552.

19 A. Right. G0.00, the layout set addresses.

20 Q. I'm going to put that up on the screen.

21 (Exhibit 48 was marked for identification.)

22 Q. (BY MR. HOROWITZ) I'll give you control of
23 this. We'll mark this as Exhibit 48. It's a file --
24 for anyone who wants to follow along with opening the
25 file yourself, it's Gallery SBSA 004552.

1 "SBSA Observe Drawing." That's the file
2 name. And, Ed, you can scroll through this. Tell me
3 in your own words what this -- what this document or
4 set of documents is and what it represents.

5 A. So the G series is just a general overview.
6 The A1-point series is --

7 Q. When you say "the G series," you're talking
8 about the first page of this document, right?

9 A. Correct, G0.00.

10 Q. And then everything else is -- everything
11 else is something a little different than this
12 overview. What's -- what is -- what are we looking at
13 that starts at the second page of this document?

14 A. The A series, which will be the Interior
15 Observation A1 series, indicating photo number,
16 photographer, date, and location, noting what they were
17 looking at in that regards.

18 The initials on the side, Jerod Faris, Ed
19 Fronapfel, Sameer Rampurawala, for example. So that
20 way, we can essentially get our field notes into a
21 single document.

22 Q. Okay. And it's your general practice to
23 combine all of your field notes into a document that's
24 indexed to the particular photographs that you took,
25 correct?

1 A. Correct.

2 Q. And if -- if your job file was produced in a
3 way that was marked and indexed to your original discs,
4 I would be able to look at this and find the IT1 disc
5 and go to, for example, on this page, A103 that you're
6 showing, Bates Number 4555.

7 I could look at, for example, in that
8 Unit 3125, you've got a bubble note, 20 to 27 to
9 interior. I could look at the bubble and see that this
10 should be in this IT1 of photos by JBF, and I could
11 look at the photographs that you took for -- and I
12 would be able to find -- if I could find numbered
13 Photographs 20 through 27, the photos you took inside
14 that unit of the conditions at the interior, correct?

15 A. That is correct.

16 Q. Okay. And then, for -- for those -- if I was
17 going to look at -- once again, for example, from that
18 Unit 3125, if I -- you've got some photographs, 278B
19 through 268B, and in a square, talking about upper
20 level racked or trim separation, et cetera, I look at
21 the Number B, and find if I -- if I had -- if your job
22 file was produced in a way that allowed me to locate
23 the OBS3 disc, I could look at Photos 278 to 288 and
24 see the photographs described there, correct?

25 A. Correct.

1 Q. Okay. Is this set of your observation
2 documents that we're looking at as Exhibit 48 -- is
3 this a comprehensive set? And the reason I ask is
4 there are a couple of other stray observation document
5 photographs. I'm not sure if those are supplements or
6 if those are included in this already.

7 A. Can you read that back? I'm not sure I heard
8 all that.

9 (Requested portion of the transcript was read
10 back by the reporter.)

11 THE DEPONENT: I would have to look at the
12 dates of those. There are times with tech memos or --
13 or maybe a singular observation that would not get put
14 back onto these.

15 Q. (BY MR. HOROWITZ) Okay. There --

16 A. Typically, we try to get everything onto
17 those drawings. But that does happen on occasion that
18 there'll be standalone docs.

19 Q. There's two. And let me show you one of
20 them. We'll mark this as Exhibit 49.

21 (Exhibit 49 was marked for identification.)

22 Q. (BY MR. HOROWITZ) I'll represent to you,
23 this came from the same set. It's got a similar
24 document title. It's -- the file name is Gallery SBSA
25 004628, "SBSA Observe Drawing Set, Building A." Let me

1 share this.

2 A. You said 004628?

3 Q. I did. Let me try again to open --

4 A. That should be the B drawing sets. Those are
5 repair drawings. What's what the B is for.

6 Q. Okay. I'm sharing the document now that
7 we've marked as Exhibit 49.

8 A. Yeah. So this is a Civil Building for Repair
9 for Building A, indicating where to get the water out
10 of the bounded area and which landing to repair coming
11 down from the staircase.

12 Q. Okay. And there are other pages in the B set
13 with similar drawings. All three pages of this
14 document are your recommended repairs for civil issues,
15 correct?

16 A. There should be four pages there. You've
17 mentioned three. It does look on top, pages 1 through
18 4 --

19 Q. Yeah.

20 A. -- those are the B series repair, yes, sir.

21 Q. Yeah. My mistake. We have B1 through B4.
22 And I'm going to stop share of this document. There's
23 one other. And this one might be related to a
24 supplement. Bates Number 5193. We'll mark this as
25 Exhibit 50.

1 (Exhibit 50 was marked for identification.)

2 THE DEPONENT: 5193 is Sheet A102. And there
3 were revisions made to that based upon individual
4 observations due to water leaks. Those will be in the
5 clouded diagrams. So if you can pull it up, I'll point
6 those up.

7 So it's an update to the original A102, but
8 specific to, in this case, water damage that we were
9 asked to look at. So I can date -- let me highlight
10 here. I think I can. So you can see that.

11 Q. (BY MR. HOROWITZ) Let me -- let me give you
12 control of this one. So we're looking at page 5193,
13 the same one, A102. You're talking about the bubbled
14 area on the left side, "Upper level water damage"?

15 A. No, on the left I just highlighted, and one
16 below.

17 Q. Okay.

18 A. Those are updated. That was the cloud
19 revision, just like you would in original design
20 documents so we knew there was a change made.

21 Q. Okay. Got it. So the five pages in this set
22 would replace certain pages in the observation drawing
23 set at 4552, correct?

24 A. Correct. It'll replace Sheet A102, A103,
25 C201, C304, and C306.

1 Harrington, I've not done a rebuttal to that report.

2 Q. Okay. And you don't still need to see the
3 document; you've had the chance to review something and
4 be refreshed, correct?

5 A. Correct.

6 Q. Okay.

7 A. Give me one second. Laura just responded.
8 So everything --

9 Q. Yeah. Go ahead.

10 A. No, it must have just been the power.

11 Q. Okay.

12 A. Thank you.

13 Q. Okay. Are there any other reports or
14 supplements that I left out?

15 A. I don't believe so.

16 Q. Okay. And just going back to the observation
17 summaries, Exhibit 48, as supplemented by changes in
18 Exhibit 50, have -- let me find the best way to ask
19 this.

20 There isn't any single document that I can
21 look to that is going to describe or summarize all of
22 the observations or intrusive testing; is it -- is that
23 correct?

24 A. Those are primarily going to be the
25 observation drawings that we talked about. Those are

1 going to -- for example, if I went to the C series --

2 Q. Uh-huh.

3 A. -- it will indicate what we saw in those
4 areas. For example, if you went to Gallery SBSA
5 004559, and you'll see summary at the openings of what
6 we found.

7 Q. If I look at 4559, I'll see your -- if I look
8 at page 4559, which is part of your observation
9 drawings set, I will see notes that have photo
10 references and a description of defect conditions or
11 damages that you found during your observation. That's
12 what you're saying, correct?

13 A. Yes.

14 Q. There isn't anywhere besides the observation
15 matrices that I can look to get a -- to get a
16 comprehensive summary of either the intrusive testing
17 or the observations, correct?

18 A. Outside of reading the report in full, no,
19 sir.

20 Q. Even if I do read the report in full, or I
21 look at your -- each page of your observation drawings
22 set, I'm not necessarily going to get a comprehensive
23 view of all the locations where you did investigation
24 testing; is that correct?

25 A. No, sir. The investigation and testing is

1 shown on those sheets.

2 Q. Okay.

3 A. So that does describe those conditions,
4 whether it was observed, measured or photographed.

5 Q. Does it describe all the locations that you
6 intrusively tested?

7 A. Yes, sir. There'll be a box, just like you
8 see there that is being pointed to. And all the
9 intrusive testing, all the vertical elevations would be
10 shown there.

11 Q. Okay. Let's go back to your report in
12 Exhibit 47. And if you want to go to a page, I'll turn
13 to that so we can keep -- get this part moving along
14 quickly. Refer to your report if you need to. Most of
15 my -- most of my questions are going to be fairly
16 general for this part.

17 In regard to geotech conditions, you noted
18 here that the designs are generally consistent with the
19 soil report, correct?

20 A. The second report; yes, sir. Not the GTI
21 one, but the second report appeared to be, as far as
22 the foundation design.

23 Q. Okay. You don't have any reference to
24 defects in the geotechnical design or in any
25 construction in relation to the geotechnical issues in

1 Q. Yeah. Before that, I asked if I had fairly
2 and accurately described your --

3 A. Prong 2?

4 Q. -- ordinarily -- what you ordinarily refer to
5 as a Prong 2, just -- just so -- just so we're clear
6 we're talking about the same thing here.

7 A. The resultant manifestation due to the
8 inability of a system to perform, resulting in damage
9 to otherwise nondamaged property; yes, sir.

10 Q. Okay. Great. And every location where you
11 saw -- every location where you saw installation error
12 in your intrusive testing would be identified in the
13 observation matrix, correct?

14 A. The matrix in the drawings. Every building
15 in the matrix, the drawings would show the locations.

16 Q. Okay. And every area where you specifically
17 noted the damage or deterioration would also be noted
18 in the observation matrix, correct?

19 A. In the drawings.

20 Q. I'm sorry; in the observation drawings.
21 Thank you for that correction. All right. In general
22 terms, could you explain to me where you observed the
23 noncompliant weather-resistant barrier condition that
24 you described?

25 A. Well, the product, we found that throughout,

1 between the 20-minute and the 60-minute. That was a
2 hundred percent of the issue. In regards to each
3 location of missing, mislapped will be indicated on the
4 elevation drawings.

5 Q. And you write some kind of dispute with BHA's
6 statement about the location of the observed
7 conditions. Can you explain to me the disagreement?
8 And I can -- and I can pull up your --

9 A. Pull that up.

10 Q. -- pull up your reply, if you would like to
11 refer to that.

12 A. Yes, please.

13 Q. And this is the document we've received,
14 marked Gallery SBA 005399. That's the beginning of the
15 Bates number as well. I'm going to share the document.
16 I'm going to give control to Ed and mark this one as
17 Exhibit 51.

18 (Exhibit 51 was marked for identification.)

19 THE DEPONENT: 38 pages, that's correct.
20 That's the May 2nd, 2022, report, regarding --

21 Q. (BY MR. HOROWITZ) (Unintelligible.)

22 A. -- the rebuttal to BHA.

23 Q. Okay. Yeah. I've -- I've tabbed over to
24 page 15, which is where I think this is discussed.
25 We've got -- you've got control of the document. You

C E R T I F I C A T I O N

I, WENDY MCCAFFREY, Registered Professional Reporter and Notary Public within the State of Colorado, commissioned to administer oaths, do hereby certify that previous to the commencement of the examination, the deponent, EDWARD FRONAPFEL, was duly sworn by me to testify to the truth in relation to matters in controversy between the said parties; that the said deposition was taken in stenotype by me at the time and place aforesaid and was thereafter reduced to typewritten form by me; and that the foregoing is a true and correct transcript of my stenotype notes thereof.

I further certify that I am not an attorney nor counsel nor in any way connected with any attorney or counsel for any of the parties to said action nor otherwise interested in the outcome of this action.

My commission expires: January 31, 2024.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of September, 2022.



Wendy McCaffrey
Registered Professional Reporter