

Friday, August 17, 2012

Owner-Buyer's Attorney
San Jose, California 95113

**RE: Owner-Buyer v. Builder, Sellers, et al.
Section I of V**

Site Address: Woodside, California
Report Title: Claims of Construction Deficiencies and Disclosure Analysis
(Revision 3, Addendum 3)

**This Document is Protected From Disclosure Pursuant to Evidence Code Sections 1119,
1152 & 1154 et seq. and is for Settlement Purposes Only.**

Dear Attorney:

This report is for Mediation purposes and supersedes our earlier reports. This is Revision 3, Addendum 3 to our 9/23/10 Claims of Construction Deficiencies and Disclosure Analysis. This report includes all current claims and construction defect repair costs. We previously published Revision 2, Addendum 2 on 3/9/11.

We were asked to review historical job and real estate transaction documentation, perform site inspections, photo-document site conditions, and perform investigative testing. This report comprises our findings.

This report has five sections, organized into two binders. The **Format** of this report is defined in detail on page 15. In short, Section I summarizes our findings and provides background to this case; our Preliminary Allocation Chart is inserted at the end of Section I; Section II is our issue-by-issue claims listing and detailed analysis; Section III is our photo album; Section IV holds documents illustrating the actual costs to repair, such as the Schedule of Values; and, Section V contains selected Sources of Information, such as reduced-size plans, referenced experts' reports, and other pertinent documents.

Summary:

The total claim, as far as is known at this time, against Builder, Sellers, et al., is \$871,473.92. Of this total, \$538,885.35 is for direct construction costs of repair. The remainder is for other costs summarized on pages 4-5. See exclusions on page 5.

COMMENTS:**History:**

The house was fully remodeled and added on to in 2005-2006 by Builder for Mr. and Ms. Seller. The addition remodel building permit was applied for on 6/15/04. The construction falls under the 2001 California Building Code and other model codes.

The Owner-Buyer purchased the subject property from the Sellers. The final sign-off of the permit, a condition of the sale, was done on 4/8/08. Escrow closed on 4/16/08.

The Owner-Buyer started to experience problems less than one year later, in January and February 2009. She observed water leaking through her Kitchen's ceiling and light fixtures, presumably from the Master Bathroom Balcony or its exterior door above. The south window in the Family Room had water dripping from the window onto the window stool and pooling on the window seat. She also observed large water stains on the Entry wall.

During the winter of 2009, the Owner expressed her concern regarding the above leaks to the Sellers. The Sellers referred her to the Builder. The Builder was not available in the Winter, Spring or Summer of 2009. In the Fall of 2009, the Builder removed the Master Bathroom exterior door, observed the flashing, resealed and reinstalled the door. The Builder sealed the copper valley that was leaking into the entry wall. The Family Room window was not repaired. The Builder referred the Owner to the window manufacturer.

The Owner did not think that these repairs in 2009 were an adequate solution to the leaks. She asked the Sellers to discuss more significant repairs, which would stand the test of time. The Sellers rejected the Owner's request. We have tested the locations where the repairs were made and they still leak.

During the winter of 2010, the Family Room window continued to leak. Additionally, a leak manifested in the Family Room ceiling.

The Owner has stated that she experiences headaches and annoying odors coming from the mechanical system, particularly in the Master Bedroom.

On 6/9/10, we were asked to inspect the site, review background documentation, test the home's assemblies, and write a report of our findings.

During the winter of 2011, additional water intrusion issues arose. These items include water leaking through the ceiling of one of the downstairs bathrooms and in the interior of the entry hall.

Disclosure:

We were asked to review the Sellers' disclosure documents and comment on their relation to the conditions we observed on site.

We include our comments regarding disclosure in Section II of this report.

Status of the Repair:

Some repairs were made prior to MFC's involvement. A partial repair to the Master Bedroom Balcony was made by the Builder, at no expense to the Owner. Asphalt buried in a large portion of the southern end of the property was discovered and removed at the Owner's expense. A post-purchase landslide occurred and was temporarily stabilized at the Owner's expense.

Starting in June 2010, MFC developed conceptual repairs necessary to bring all identified construction defects into compliance with current building codes and industry standards. Construction defects and repairs relating to structural issues were developed in consultation with PBSE, a consulting structural engineer. We produced a Request for Bid based on these conceptual repairs to the building.

We provided 3 qualified general contractors with the Request for Bid, walked them through the property, and discussed the necessary repairs with each. RMG's bid was the lowest by roughly \$95,000.00 and was selected. Repairs began in July of 2011. Throughout this report, we refer to the work performed by RMG as The Repair Project. The Repair Project was substantially complete in April of 2012, aside from tile installation on the Master Bathroom Balcony and minor punch list items.

Some repairs have been electively postponed for economical reasons.

The Request for Bid did not include landslide mitigation/drainage repair items.

Direct Construction Costs of Repair:

The direct construction costs of repair, provided in this report, are the contracted costs to repair. RMG provided a Schedule of Values as a part of their contract documents. The Schedule of Values includes the specific cost for each repair. Each repair is labeled with a MFC Number which correlates to each claim in Section II of this report. Change order costs are also assigned to specific claims and, where applicable, are explained in Section II in the "Repair Cost Notes" field of the claim.

Postponed repairs, those included in RMG's contract with the Owner-Buyer, have been assigned their repair cost amount shown in RMG's Schedule of Values.

RSE, a consulting geotechnical engineering firm, has provided conceptual repair costs for future grading repairs, those claimed in MFC# 1.02, based on RSE's report, dated 8/16/12.

Recap of Costs:

#	Issue	Discussion	Value
A	Direct Construction Costs of Repair	See Section IV for RMG's Schedule of Values and their Change Orders.	\$538,885.35
B	Estimated Cost of Repair	See Section V for RSE's report, dated 8/16/12. RSE provided MFC with a conceptual repair cost.	\$62,863.21
C	Loss of Use	The scope of the repair work required that the Owner move from the premises temporarily. "Loss of Use" is our umbrella term for costs related to the Owner not being able to live in her residence, including: costs of moving out and back in; short-term storage of valuable household items; utilities; renter's insurance; and, the cost of a short-term rental for something similar to this residence.	\$68,276.00
D	Disclosure Report for Future Sale	Due to our investigation of the observable defects which pre-existed the purchase of the property, the Owner now bears the responsibility to disclose the defects, if she chooses to sell the property. To relieve the Owner of the burden associated with the disclosure, we will provide a Disclosure Report once the repairs have been completed. The disclosure report will document that the observed defects have been repaired.	\$6,342.00

#	Issue	Discussion	Value
E	Consulting Fees	Myles F. Corcoran Construction Consulting, Inc., as of 8/14/12, for our investigation of the claims, providing the conceptual repair design, and overseeing the repair work.	\$167,415.14
		HQA, a consulting contractor on heating, ventilating and air-conditioning issues, performed an investigation of claims and specified repairs relating to the mechanical and plumbing systems.	\$8,461.82
		Construction defects and repairs relating to structural issues were developed in consultation with PBSE, a consulting structural engineer.	\$2,712.50
		Construction defects and repairs relating to geotechnical issues were developed in consultation with RSE.	\$15,665.00
		SCS, General Contractor, assisted with our Investigative Testing and the repair of areas exposed during our Investigative Testing.	\$852.90
Total:			\$871,473.92

Exclusions:

Following are items/issues not included in our report:

1. Costs of energy loss due to:
 - a. MFC 4.05 Register Boxes Not Insulated
 - b. MFC 4.06 Supply Air Wye Branches Not Properly Insulated
 - c. MFC 4.07 Refrigerant Suction Lines Not Properly Insulated
 - d. MFC 4.12 Supply and Return Air Plenums Not Sealed Properly
 - e. MFC 4.20 Return Air Ducting Is Not Insulated
 - f. MFC 4.21 Return Air Ducting Is Not Sealed
 - g. MFC 4.26 Refrigerant Line Insulation Damaged
 - h. MFC 4.29 Ductwork Is Lying on Ground
 - i. MFC 4.30 Ductwork Is Smashed
 - j. MFC 4.31 Ductwork Has Numerous Holes
 - k. MFC 4.33 Ducts Pinched/Restricted
 - l. MFC 7.07 Insulation Damaged

2. Repair costs of construction deficiencies we have not identified or observed.
 - a. We have made great effort to identify all of the construction deficiencies at the property. However, additional defects may exist.
3. Consulting Fees beyond 8/14/12 to investigate defects and design repairs.
4. Legal Fees.
5. Expert Fees for assistance in pursuing claims.
6. Costs for Owner-elected items are excluded from this report. Owner-elected items include, but are not limited to:
 - a. Removal of the Masonry Fireplace
 - b. Tyvek Air Barrier Installation
 - c. Powder Coat on Railings
 - d. Interior Paint Upgrades
 - e. Alarm Upgrade
 - f. Upgrade to Copper Mechanical Vents

Analysis:

See Section II for our analysis of the issues.

Sources of Information:

Our sources include California Building Code 2001, California Mechanical Code 2001, National Electric Code 1999, and, by reference, Uniform Building Code 1997, Uniform Plumbing Code 1997, Uniform Mechanical Code 2000, our site inspections, and our experience. Selected pages of these model building codes are feathered into Section II, following the related claim.

The following additional sources either have selected pages feathered into Section II or are included in whole within the "Sources" report section, Section V. A bold font SI number indicate the source is included in Section V in its entirety.

- SI 1. "The NRCA Roofing and Waterproofing Manual-Fifth Edition," by the National Roofing Contractors Association, 2003.
- SI 2. "California Building Performance Guidelines for Residential Construction," published by The Building Standards Institute, 2002-2004.

- SI 3. Permit plan set, by JMG, drawn 4/15/04, including revisions up through last date 2/15/06; Addendum A, dated 11/10/05; and Addendum B, dated 2/17/06.
- SI 4. Engineering Geology Review Comments, by The Town of Woodside Geology Department, dated 6/22/04, 7 pages.
- SI 5. Drainage Plan, Sheet C1, from SPG, Inc., dated 3/4/05, revised 6/27/05.
- SI 6. Subject Property Sales Flyer, headed "Welcome Home," from Listing Agent Seller of Seller Properties (from time of property listing, undated).
- SI 7. Real Estate Transfer Disclosure Statement, signed by the Seller on 1/31/08, 3 pages.
- SI 8. PRDS Supplemental Seller's Checklist (Supplement to Transfer Disclosure Statement), signed by the Seller on 1/31/08, 9 pages.
- SI 9. Property Inspection Report, by HG Inc, dated 2/27/08, 22 pages.
- SI 10. Mold Analysis Report, from EHS, dated 7/28/10, 6 pages.
- SI 11. Field Test Report No. A2385.01-302-43, by ATI, dated 8/4/10, 15 pages.
- SI 12. Window Quote by TSS, dated 9/10/10, 7 pages.
- SI 13. "Analysis of the H.V.A.C. and Plumbing Systems" report by HQA, dated 9/17/10, 159 pages.
- SI 14. "Request for Bid, Request for Bid - Revision 1, and Request for Bid - Revision 2" by Micah Rodler of MFC, dated, respectively, 4-1-11, 4-19-11 and 4-22-11.
- SI 15. "Site Inspection Memorandum 1" by Micah Rodler of MFC, dated 7/13/11, 15 pages.
- SI 16. "Claims of Defective Grading and Repair Recommendations" by RSE, dated 8/16/12, 33 pages.
- SI 17. Various conversations with the Owner.

Format:

There are five sections to this report. Sections I, II, and III are in Binder 1. Sections IV and V are in Binder 2. They are as follows:

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Section I: This section is intended as an overview, background to and summary of our response. Our Preliminary Allocation Chart is inserted at the end of this section.

Section II: This section presents an item-by-item discussion and contains several fields of information for each issue. The legend for these fields is found on page 1 of Section II. Reading the legend is integral to understanding the report. This section is printed on yellow paper.

Selected supporting documentation pages, such as referenced codes, are inserted directly following each issue, as we deemed relevant, copied on white paper. Full versions of some of these inserts are again attached in the "Sources" report Section V. Most (if not all) clouds and highlights are by MFC.

Section III: Photographs taken by MFC and the Owner-Buyer. Images captured from the online mapping service, Bing Maps. We have printed 207 images on 52 pages.

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Section IV: This section contains the Repair Cost Documents. These are RMG's Schedule of Values and their approved Change Orders. An account statement and invoices are included to show what portion of the contracted costs has been paid by the Owner to date. One invoice is pending completion of Punch List items.

Section V: These are the Sources of Information, additional background documents not feathered into Section II. They are described above in detail, starting on page 13.

This a complicated construction deficiency report. We have used several formats to organize the information in different ways: by room, by elevation, by deficiency, by cost to repair, etc. We have made our best effort to correctly cross-reference all of the documentation, but realize that errors are possible. We are available to answer any questions regarding organization which may arise during a review of this report.

Limitations and Assumptions to the Report

This Study is not to be construed as a guarantee or warranty, nor as an opinion as to the advisability of purchase or sale.

No reliance on this report will be made by anyone other than the client for whom it was written. We have made reasonable efforts to assure that this report is accurate; however, we cannot assume any liability for damages which may result from it or for any conditions which this report may fail to disclose.

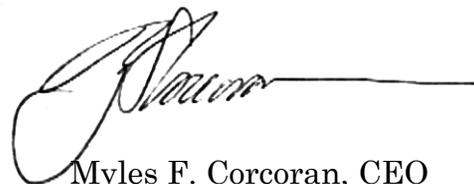
The information contained in this report is deemed reliable as of the date(s) of inspection, but it is not guaranteed. Our conclusions, conceptual estimates, and recommendations are based on our current understanding of the issues in question and of the related codes and standards, on our opinions, and on professional conjecture where necessary.

This report does not warrant against the contingency of unforeseen conditions or circumstances, unreliable information, nor unpredictable inflationary/deflationary spirals. We are not responsible for acts of omissions of the client nor of third parties not under our direct control. The scope of this report is expressly limited to the components described herein.

Very truly yours,



Micah Rodler
Senior Inspector/Consultant



Myles F. Corcoran, CEO