

1 easily visible.

2 THE COURT: The testimony is clear that
3 it's a jury question.

4 MR. DRAWAS: Understood, Your Honor.

5 THE COURT: That was clear.

6 MR. DRAWAS: Thank you, Your Honor.

7 THE COURT: All right. So I'll deny the
8 motion on that.

9 All right. Any additional motions,
10 Mr. Drawas?

11 MR. DRAWAS: No. I believe I'm going to
12 be joining Mr. Hill on one motion.

13 THE COURT: Mr. Hill?

14 MR. HILL: I'm going to come out of my
15 hole.

16 MR. DRAWAS: I'm sorry, Your Honor. I
17 probably should have done it from there.

18 THE COURT: It doesn't matter. Mr. Hill
19 said he couldn't see me because all the screens
20 are blocking me.

21 MR. HILL: I haven't seen you the whole
22 trial, Judge.

23 THE COURT: Probably because I'm short and
24 nobody could see me.

25 MR. HILL: Good to see you.

1 Judge, we would first move for a directed
2 verdict. It goes in components, but we have to
3 start with the fact that I've been sued as the
4 owner of the sidewalk. The operative claim
5 against Mr. Wright is Count 2 of the Amended
6 Complaint, paragraph 16, subparts A through G,
7 which A through E specifically talk about the
8 negligence of the sidewalk/pathway/walkway.

9 Then they talk about F, negligently
10 failing to provide a safe and secure means of
11 moving about the premises, presumably the same
12 premises they alleged above; and then a general
13 negligence, failing to act reasonable.

14 So the allegation is a premises liability
15 case against a landowner. We would move for
16 directed verdict on the fact that Mr. Wright
17 does not own the sidewalk and the area where
18 the plaintiff fell. Mr. Rodems cited the
19 testimony from Mr. Bambas that they admit, the
20 HOA rep admits that that sidewalk is owned by
21 the HOA and it is a common area. We talked
22 about the big picture. Whatever's not -- the
23 only thing that Mr. Wright owns is what's
24 conveyed to him. Everything else remains with
25 the association.

1 We put the evidence of the survey in. The
2 survey defines what Mr. Wright purchased, and
3 it specifically defines that he did not
4 purchase the sidewalk. He has no fee simple
5 ownership, no rights, no property rights in
6 that area so that he cannot be sued as a
7 landowner. Point one. I don't even think
8 there's any question about that.

9 That leads us to .2, which we talked about
10 briefly. As an adjoining landowner, the rights
11 owned -- the duties owed by Mr. Wright are very
12 limited. I'll cite to Scott vs. McCarty, 41
13 So.2d 989, Florida Fourth DCA 2010. And we
14 talked about this case law the other day. They
15 quote the Galo case that says, quote, "A
16 possessor of land is not liable to persons
17 outside the land for a nuisance resulting from
18 trees and natural vegetation growing on the
19 land. The adjoining property owner to each
20 such nuisance, however, is privileged to trim
21 back at the adjoining owner's own expense any
22 encroaching tree, roots, or branches and other
23 vegetation which has grown onto his property."

24 I mean, that's been the law --

25 THE COURT: Cite that case law again.

1 I'll make sure you-all write it down now.

2 MR. HILL: All right. 41 So.3d 989, Scott
3 vs. McCarty, M-C-C-A-R-T-Y.

4 I think I have another cite on the same
5 topic. Same -- it's basically the same case
6 law, Judge, but it's Balser vs. Ryan, R-Y-A-N,
7 263 So.3d 189 Florida First DCA 2018.

8 Again, Balser holding that, "It is well
9 established that an owner of a healthy tree is
10 not liable to an adjoining property owner for
11 damage caused by encroaching trees, branches,
12 or roots. But the adjoining property owner is
13 privileged to trim back at his own expense any
14 encroaching trees, roots, or branches which has
15 grown onto his property."

16 So the allegation and the clear evidence,
17 undisputed, is that any alleged issue was from
18 the tree roots, maybe from a tree on
19 Mr. Wright's property. We have no duty to
20 that. Once that crosses the line between
21 Mr. Wright's property and the HOA's property,
22 it's an HOA problem. So they had a privilege
23 to go in. They talked about pruning the roots.
24 If they wanted to, they have an absolute right
25 under Florida law to have done so on their own

1 property but it's not a duty of Mr. Wright.

2 So with that, then we get to, well, what
3 about any duty under Section 10.12 of the
4 declarations? That gets into the issue that
5 Your Honor raised earlier. There's three
6 points on this.

7 Number 1 I would argue it is
8 unconscionable.

9 Number 2, I would argue that there's been
10 a clear waiver of the enforcement of 10.12.

11 Number 3, to the extent we go beyond those
12 two and the court has to construe all of these
13 provisions to the declarations together,
14 there's no way you can construe everything and
15 still find that 10.12 requires a duty from the
16 homeowner. That is totally inconsistent with
17 all the other provisions.

18 So let's start with unconscionability.
19 Florida Supreme Court Basulto vs. Hileah
20 Automotive, 141 So.2d 1145. Judge, this is one
21 of the more recent enunciations by the Supreme
22 Court on unconscionability. The law is that we
23 have always required some element of procedural
24 and substantive unconscionability. This
25 decision, the Basulto decision, talks about

1 it's a sliding scale. You have to -- it used
2 to be you had to have independently showing
3 them both. This is well, the more
4 substantively unconscionable it is, you don't
5 really need to show that much procedural. I
6 think in this case we have both.

7 10.12 is stuck into -- I forget how many
8 pages. I'll tell you in a second -- a package
9 of the declarations that are provided, 43
10 pages, 47 pages of declarations that a
11 homeowner gets when they buy a property in
12 Kay's Landing.

13 As we discussed throughout the trial,
14 probably ad nauseam, nearly 99 percent of those
15 provisions talk about the duties of the
16 association, what's a common area, its common
17 use enjoyment, and the extensive duties of the
18 association to maintain those.

19 Then you get to 10.12 and all of a sudden
20 snuck in there somewhere by the developer,
21 presumably, is this provision that puts it on
22 the homeowners to maintain and repair damage,
23 quote "damage" -- that's the duty -- to
24 property to the sidewalks abutting the land.

25 Again, so now 10.12, contrary to every

1 other provision in the declaration, says even
2 if the association goes out intentionally --
3 Mr. Keller brought this up on several
4 witnesses -- goes out there with a jackhammer
5 or a truck or whatever it is, drives over the
6 sidewalk in front of the house that the unit
7 owner doesn't own and damages it, they can send
8 them the bill and say, hey, get out there and
9 fix that, or I'm going to fine you or I'll fix
10 it myself and you owe me the cost of repair
11 plus interest.

12 I think Your Honor recognized before how
13 patently unfair that is. And it's not just us.
14 It's not just us. Every witness that we called
15 from the association backed that up.
16 Mr. Morris was maybe the most colorful when he
17 said the drafter ought to be shot, tongue in
18 cheek, of course. But they talked about how
19 it's conflicting. It's confusing. It doesn't
20 make any sense.

21 Mr. Bambas talked about it and Mr. Keller
22 was asking the questions, like, do you get how
23 weird this is? Mr. Bambas says, well, as crazy
24 as it sounds, that's how it works.

25 It is totally -- totally contrary to the

1 entire document. And it's just patently unfair
2 to take a landowner, unwittingly, because not
3 too many people are going to read this minutia,
4 just take a landowner and say, hey, you now
5 have to go out and fix everything even if the
6 association creates the harm or creates the
7 hazard or they know about the hazard, even
8 that's a common area, contrary to every other
9 provision, even though it's owned by them, not
10 your property, too bad, so sad. You have to go
11 out and fix it. I think the Court recognized
12 the inherent unfairness in that.

13 Again, it's not just the Court. It's the
14 association themselves recognized how patently
15 unfair that is.

16 And that goes to my waiver argument. The
17 waiver argument is they all read it. They saw
18 it and said, yeah, we're not doing that. That
19 is too unfair. We have all of these provisions
20 where the association is supposed to fix this
21 area. We have all the provisions that talk
22 about the maintenance accounts, 15.5, where
23 people pay all of their good money in and it's
24 held there for the very purpose of fixing the
25 common areas like this. And the association

1 said on numerous occasions throughout 2016 and
2 forward, we're not going to do that. We're not
3 enforcing 10.12. Yeah, we get it. We see what
4 it says. That seems unfair, even to them, and
5 that they voluntarily relinquished a known
6 right. They knew they had the right to do it.
7 They voluntarily said, yeah, no, that's not how
8 we're going to play this. We're going to use
9 the management accounts that we have and we're
10 going to pay the money.

11 So, again, the voluntary relinquishment of
12 a known right is a waiver. They have clearly
13 waived the enforcement of this provision.

14 And then lastly, Judge, you know, you have
15 to construe this -- if you get past those, you
16 have to construe this as a matter of law. I'll
17 be honest. I don't know how in the world you
18 construe 10.12 consistently with 9.5 and then
19 every other provision that we cited, starting
20 with the definition, rolling into 9.7, complete
21 supervision, operation, and control and
22 management of the common areas by the
23 association.

24 9.5 and 9.6 talking about the
25 association's duty for the paved areas. 10.1

1 talks about, "The association shall at all
2 times maintain, repair, and replace the common
3 areas."

4 10.12 is the outlier. It's just
5 impossible for this Court to construe all of
6 the provisions and give any of those other
7 provisions meaning, knowing what we know now
8 that the sidewalk is a common area and not
9 choose to ignore 10.1 -- 10.12.

10 That gets us to the leaves argument. So
11 the -- Mr. Drawas tried to bring in some
12 evidence. I don't think he was successful.
13 But he tried to show that maybe these leaves
14 played a part in what happened.

15 Judge, we would argue that's irrelevant
16 because the duty -- any duty that existed to
17 cure the leaves was only by the amendment to
18 10.12. That's where that language first came
19 in. It wasn't in the original 10.12. It's
20 only in the later version that was passed in
21 2019. And then Mr. Drawas was very adept at
22 showing, like, well, wait a minute. That's not
23 effective until everybody signs off. There's a
24 vote, and we record it. That didn't happen
25 until 2020, well after this incident. So the

1 revised version talking about leaves, debris,
2 et cetera was not even in effect on this date
3 of incident.

4 And then, factually, we asked the
5 plaintiff herself, did leaves -- could you say
6 that leaves played any part in that? And she
7 couldn't. She affirmatively said, "No, I
8 can't. I don't know why I didn't see it. I
9 can't say that it was leaves obscuring the
10 area, which is why I did it." So even if you
11 get all the way down that ladder somehow, we
12 are still entitled to a directed verdict.

13 Lastly would be any code violation.
14 Number 1, I don't think there's been evidence
15 of a specific code that the plaintiffs are
16 asserting. Dr. Boeshaghi showed some ANSI
17 photos and some ASTM standards. All right.
18 Those are standards, but it's not a code. It's
19 not a building code or a statutory provision.

20 So under Sibert (ph), I don't know that
21 anything has been provided to you that you can
22 construe and instruct the jury on. And then
23 there's been no evidence that any of those
24 codes would apply to Mr. Wright as a nonowner
25 of the property.

1 So unless the Court has any other
2 questions, I think that kind of lays out our
3 progression.

4 THE COURT: Mr. Drawas, do you want to
5 respond to that?

6 MR. DRAWAS: Sure, Your Honor.

7 First, for the record, we would disagree
8 that 10.12 should be interpreted that way. It
9 is clear from the declarations that that area
10 from the home, pursuant to 10.12, was the
11 responsibility of Mr. Wright. And the Court --
12 the interpretation of the contract is for the
13 Court, and we would request the Court interpret
14 that as the literal language it has that makes
15 the obligation on Mr. Wright to repair and
16 maintain the sidewalk in front of his home.

17 The other issue, Your Honor, is I would --
18 while I appreciate the compliments along with
19 the questioning, the -- Ms. Kottler did concede
20 that she had answered interrogatories that said
21 that she could not see because the area was
22 covered in trees. She may not have remembered
23 it here five years later, but she conceded that
24 she did not disagree that that was her answer
25 five years ago and her memory was that back

1 then and the -- so that is the question for the
2 jury to determine what she believes may have
3 happened. She certainly wasn't -- didn't pick
4 a lane on the leaves, but it was -- she was all
5 over the place a little bit as to what the
6 leaves played. So there's certainly evidence
7 that the leaves at some point in her mind
8 covered the area, which would have completely
9 masked the area in question and could have
10 obscured her view of this alleged condition.

11 I would add that it's not just about the
12 amendments -- the amendment language. There
13 is, under 11.29, which is maintenance by
14 owners, 11.29.1, standard of maintenance -- and
15 this is from -- the version that was in effect
16 on the date of loss, that says, "All lawns,
17 landscaping, and sprinkler systems, and any
18 property, structures, improvement, fences, and
19 all appurtenances and -- not maintained by the
20 association shall be well maintained and kept
21 in a first-class, good, safe, clean, neat, and
22 attractive condition consistent with the
23 general appearance of Kay's Landing by the
24 owner of each home. Each owner is specifically
25 responsible for maintaining all grass,

1 landscaping, and improvements within any
2 portion of the lot." And then at the end there
3 it says, "Each owner shall be responsible for
4 root trimming within any portion of his or her
5 lot."

6 Mr. Wright testified that he hired
7 landscapers to take care of his tree, to edge
8 around the sidewalk, to clean the sidewalk. He
9 admitted that he was responsible for cleaning
10 the sidewalk and to keep it free of trees --
11 from the leaves from his tree. There is no
12 dispute that any leaves in front of his home
13 would have fallen directly from the oak tree
14 above the -- above the sidewalk. There is an
15 allegation, therefore, that his liability would
16 have been to not maintain his property, his
17 tree on his property, which caused leaves to
18 fall on the sidewalk and cover the area and
19 potentially obscure the dangerous condition.
20 That is a question for the jury to determine
21 whether or not he failed to maintain his tree
22 and if that failure affected the -- was
23 negligence in this case that led to
24 Ms. Kottler's fall and damages.

25 I understand counsel's position about the

1 tree roots once they enter the property of the
2 homeowners' association. However, Mr. Wright
3 took no steps any time to cut the roots to
4 prevent this from happening. None of this
5 would have been happened if Mr. Wright had
6 properly maintained his tree. Whether it was
7 to prune his roots as required or to maintain
8 his -- the tree as required or to clean the
9 leaves off the sidewalk as required.

10 Therefore, pursuant to that language, I believe
11 that directed verdict as to Mr. Wright would be
12 inappropriate and these are all questions for
13 the jury.

14 THE COURT: Plaintiff, response.

15 MR. RODEMS: Yes. Thank you, Judge.

16 Let me start with this. I think everybody
17 in the courtroom will agree with the gentleman
18 who said somebody should be shot,
19 metaphorically. This is a very poorly written
20 document, really. There are so many internal
21 inconsistencies. And I understand the Court's
22 position that somehow or other you've got to
23 ferret out what makes sense out of this
24 document.

25 And we relied on this document too when we

1 filed this lawsuit. We relied on 10.12 for the
2 duty being created on the property owner -- I'm
3 sorry -- on the adjoining property owner. So
4 we had a good-faith basis to plead the claim.

5 Obviously, we can't know at that precise
6 moment, because there was not a declaratory
7 judgment action, how this would play out. But
8 let me say this: We are in agreement that
9 Mr. Wright did not own the sidewalk. He's not
10 the owner. The HOA is. We can agree on that.

11 I also agree with counsel that Scott vs.
12 McCarty is dispositive. And the reasoning of
13 the Court is, is the rationale for this
14 conclusion that -- was that it was wiser to
15 leave the individual to protect himself than to
16 subject the others to the annoyance of actions
17 at law which will likely be enumerable with the
18 number of trees in the state of Florida.

19 So the law is clear that the HOA, at any
20 time it wanted, could have cut down any
21 adjoining trees that were hanging over the
22 property or cut the roots, even if it killed
23 the tree. That's the law.

24 So Mr. Wright did not have a duty to
25 inspect his roots. But what he did have a duty

1 to do under this is he had a duty to inspect
2 the sidewalks for aesthetics. And that duty,
3 it extended to cleaning it and making sure it
4 was clean and presentable.

5 And I'm looking for that now.

6 (Attorneys conferring.)

7 THE COURT: That's a legal term.

8 MR. RODEMS: Yes, I'll stipulate.

9 Okay. But he did have some duty to
10 inspect the sidewalk because you can't keep it
11 clean unless you're looking at it. And he was
12 clear that he didn't inspect it.

13 Now, the question is, is once he goes out
14 there and he looks at it and says, "Oh, there's
15 some mold. I need to pressure wash it." But
16 if he went out and saw that it was elevated,
17 what is his duty in that instance? I don't
18 have an answer for you on that. But I'm
19 pointing out that the law doesn't just say you
20 have to own it. If you're in possession or
21 control of property, then you have the same
22 duties to maintain it in a reasonably safe
23 condition.

24 But if you look at the standpoint of he
25 was supposed to inspect it for aesthetics --

1 and we can look at that picture. There's mold
2 on the part that's buckling. So there's an
3 argument to be made. I don't know if it's
4 going to carry the day or not. I'm going to do
5 my best.

6 There's an argument to be made that he
7 should have inspected it, whether he had to
8 take the following duty and go to the HOA and
9 say, "It doesn't have any mold. It doesn't --
10 but it's buckling and you-all need to deal with
11 that because it's not me." I can't make an
12 argument on that because I don't have a basis
13 to say that he had a further duty. I don't see
14 it in there. But it would seem to me that if
15 you went out there and inspected it
16 aesthetically and you said, "It looks great.
17 It doesn't have any mold or mildew, but, boy,
18 it's buckling up about an inch and it looks
19 dangerous."

20 As far as the 10.12 of the declaration, I
21 defer to the Court on that. This is your
22 interpretation. It is -- it is hard to fathom
23 how someone who doesn't own property can be
24 responsible for repairing it. So I'll leave it
25 at that.

1 And I understand that counsel says -- for
2 Mr. Wright says he can't construe the contract
3 and he can't harmonize. I may be paraphrasing
4 what he said. But the -- the -- there are
5 competing provisions, so the Court is going to
6 have to decide which ones apply and which ones
7 don't.

8 As far as the leaves argument, I read the
9 interrogatory answer. And, you know, this is
10 what it says. And we're looking at the answer
11 to number 6. Quote, "On March 24, 2019, at
12 approximately 11:00 p.m., my husband and I took
13 a walk around our neighborhood when I tripped
14 and fell due to a raised uneven portion of
15 sidewalk. I fell on my left side and shoulder.
16 I was carrying a flashlight. There were no
17 warning signs or any other indications of the
18 dangerous condition and the area was covered by
19 leaves. There was nothing I could do to
20 prevent this incident."

21 Now, what do we do with that phraseology
22 in that interrogatory that was read to the jury
23 when compared to the testimony of both
24 Ms. Kottler and Mr. Brown and what they saw
25 that night? It is crystal clear from the

1 testimony, she didn't slide on leaves. She --
2 Mr. Hill would call it stubbing your toe. She
3 said it was like her foot hit a wall or
4 something like that and she went down. It is
5 clear that what caused it was that, the uneven
6 level, not some leaves or whatever.

7 So, again, I don't know how the Court
8 harmonizes that. I don't know because I'm not
9 you. You're the judge. I don't know if that
10 creates a factual question that has to be
11 resolved by the jury.

12 The concept is duty, breach, proximate
13 cause, damages. We know we've got damages. We
14 know we've got duty. There's enough evidence
15 of breach for the jury to consider. I don't
16 know how the Court reconciles the proximate
17 cause. I would suggest that the whole thing
18 goes to the jury and the jury decides whether
19 Mr. Wright was negligent.

20 And that's all I've got, Your Honor.
21 Thank you.

22 THE COURT: Last word, Mr. Hill.

23 MR. HILL: Yes, Judge, just briefly.

24 MR. DRAWAS: Your Honor, may I have a
25 chance to respond as well?

1 MR. HILL: It's our motion.

2 MR. DRAWAS: I understand.

3 THE COURT: Right. Last word is Mr. Hill.
4 Mr. Hill?

5 MR. HILL: Yes, Judge. I would say, first
6 of all, any common law duty would be addressed
7 by McCarty because they talk about any
8 encroaching tree, roots, branches and/or other
9 vegetation which has grown onto his property.
10 So I believe that would cover leaves on the
11 common law side.

12 As far as the provisions, the -- first of
13 all, even if it's in the declarations, is that
14 a duty that Mr. Wright now owns to Ms. Kottler,
15 as someone who was just walking? I think that'
16 a legitimate question.

17 But I don't think it matters because under
18 the declarations, the provision you were
19 looking for, I think, Mr. Rodems, is
20 notwithstanding the foregoing, each owner shall
21 be responsible to clean and keep free of
22 debris, mold, mildew, and discoloration the
23 sidewalk abutting the lot of the home.

24 He's right. That is from the second
25 amendment to the declaration for Kay's Landing.

1 That is the amended portion of 10.12, which, as
2 we established, was not effective until 2020,
3 almost a year after this incident.

4 MR. RODEMS: I concede that point, Your
5 Honor.

6 MR. HILL: I guess Mr. Drawas wants us to
7 talk about 11.29.1, which hasn't come up before
8 and wasn't discussed, but okay.

9 It says, "All lawns, landscaping, and
10 sprinkler systems and any structures,
11 improvements, fences, and appurtenances shall
12 be well maintained and kept in first-class,
13 good, safe, clean, neat, and attractive
14 condition consistent with the general
15 appearance of Kay's Landing."

16 There is no evidence that -- where is the
17 evidence that any of that didn't happen? We
18 have the one photo of a very nice-looking tree.
19 No one said anything about the tree nor that it
20 was a structure, improvement, fence, or
21 appurtenance. That provision just has no
22 application.

23 And then it goes on to, "Say maintaining
24 grass, landscaping, and improvements." All
25 right. Well, there's no indication that any of

1 the grass or landscaping was ill maintained.

2 And moreover, Judge, those leaves -- this
3 is March in the state of Florida. Where is the
4 evidence that any of those leaves were directly
5 from -- I am not an arborist, but I don't think
6 some of those leaves would have come from that
7 tree. And there is no evidence that those are
8 the leaves that would have come from the tree.
9 Where did they come from? It blows everywhere.
10 We got -- you know how the guys blow
11 everywhere. Nobody knows where they come from.
12 And, most importantly, there's no evidence that
13 the leaves had any relationship to the
14 approximate cause of Ms. Kottler's fall.

15 THE COURT: Okay. So let me first address
16 the -- it is clearly no dispute that
17 Mr. Wright's property line ended at the
18 sidewalk and that Mr. Wright did not own the
19 sidewalk. So to the extent that he was sued as
20 the owner of the sidewalk, he's not the owner
21 of the sidewalk.

22 When I talked about Section 10.12 being
23 invalid and unenforceable and being
24 unconscionable, I neglected to mention -- and I
25 want to make sure that it's clear for the

1 record now -- that part of my ruling that it's
2 unconscionable is that Section 10.12 of the
3 declarations attempts to hold responsible for
4 repair and replacement and damage to a driveway
5 which is not owned by the homeowner to the
6 homeowner. And it even says, "Each owner shall
7 be responsible to repair any damage to a
8 driveway which comprises part of a home and the
9 sidewalk and driveway abutting in the front lot
10 of the home."

11 Here's the kicker: "Including, but not
12 limited to, any damage caused by the
13 association or by the holder of any easement
14 over which such driveway or sidewalk is
15 constructed."

16 So what you're saying is that the
17 association can cause damage -- Mr. Keller
18 raised that -- and that the homeowner would be
19 responsible even though the homeowner doesn't
20 own the sidewalk. Mr. Bambas testified, well,
21 that's meant for if the utility company comes
22 in and causes damage.

23 So anybody can come in and damage the
24 sidewalk in front of somebody's home, and
25 Section 10.12 is going to make the homeowner

1 responsible for repairing that damage? Uh-uh.
2 That's unconscionable. Ain't going to happen.
3 Not enforceable, not valid. No, no, and no.

4 The -- the case law that you were pointing
5 to, Scott vs. McCarty and Balser vs. Ryan, are
6 exactly what I recall the law to be and that
7 is, in fact, what the law is.

8 I like the argument of waiver by
9 enforcement because all of the testimony that
10 is completely unrefuted is that any repair to
11 any sidewalk that's ever occurred in the
12 neighborhood has been undertaken by the HOA and
13 has been paid for from the HOA funds, which,
14 obviously, part of the HOA dues that are
15 collected cover that and go into the special
16 fund.

17 The only thing that even remotely might
18 have come into play here is if there had been
19 an argument made and evidence presented to
20 support it that leaves in the area obstructed
21 Mrs. Kottler's view of the sidewalk. However,
22 there's been no testimony that leaves in the
23 area obstructed her view of the sidewalk, not
24 by the interrogatories, not by her own
25 testimony, not by any stretch of the

1 imagination.

2 Even Ms. Kottler's husband, when he said
3 that he went back to go look and inspect the
4 area where she fell, he was asked a specific
5 question: Did you have to brush any leaves out
6 of the way to see it? He said no.

7 And so in taking this testimony in the
8 light most favorable -- even in looking at that
9 in the light most favorable to the nonmoving
10 party, the motion for directed verdict -- for
11 defendant Wright is granted.

12 MR. HILL: Thank you, Your Honor.

13 THE COURT: Any additional -- any further
14 motions, Plaintiff?

15 MR. RODEMS: Yes, Your Honor. Plaintiffs
16 move for directed verdict that the homeowners'
17 association owns the sidewalk where the fall
18 occurred and that, under Florida law, it has a
19 nondelegable duty to maintain it in a
20 reasonably safe condition.

21 THE COURT: Hold on. Hold on. I'm not a
22 court reporter. I don't move that fast.

23 Mr. Drawas.

24 MR. DRAWAS: On that limited issue, I
25 think it's pretty clear that they owned it. I