

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Court of Master and Equity

Shannon M. Phillips, Master and Equity Judge

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SC Court of Appeals

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APPELLATE CASE NO.: 2022-001304

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Kesha Petty, Appellant

v.

Cathy Biggerstaff, individually and as owner of B&B Amusement, Inc., and B&B Amusement, Inc., Respondent.

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FINAL REPLY BRIEF OF APPELLANT

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Kesha Petty  
553 Chastine Drive  
Spartanburg, SC 29301  
Appellant

March 23, 2023  
Spartanburg, South Carolina

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### CASES:

*Stanley Smith & Sons v. Limestone College*, 283 S.C. 430, 434, 322 S.E.2d 474, 478 (Ct. App. 1984).

*Niggel Assoc., Inc. v. Polo's of North Myrtle Beach, Inc.*, 296 S.C. 530, 374 S.E.2d 507 (Ct. App. 1988).

*Player v. Chandler*, 299 S.C. 101, 382 S.E.2d 891 (1989)

*Sauner vs. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (S.C. 2003)

*Sturkie v. Sifly*, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (S.C. App. 1984)

*Bishop v. S.C. Human Affairs Comm'n* (South Carolina Administrative Law Court, 2019)

*Mid-South Mgt. Co. Inc.*, 374 S.C. 588, 598, 649 S.E.2d 135, 141(S.C. App. 2007).

*Potomac Leasing Co. v. Otts Mkt.*, 292 S.C. 603, 606, 358 S.E.2d 154, 156 (Ct. App. 1987).

*See Green v Duke Power Co.*, 305 N.C. 603, 608, 290 S.E.2d 593 (1982)

## **Argument in Reply**

Without restating the issues or making redundant arguments which have been set forth in the opening brief, the Appellant offer the following points of clarification and rebuttal to the arguments raised by Respondents.

### **I. The Trial Court Err in finding that a contract/agreement existed between the parties?**

Respondents argue that there was no err on the Trial Court because the Trial Court did not find that an agreement existed between the parties. Appellant disagrees as the final order from the Trial Court uses terms of an agreement that did not exist. Judge Philips' Order states the parties agreed to rent, utilities, property tax, and insurance. However, these terms were the same terms that Judge Hayes said did not exist and were not agreed to. For example, Plaintiff testified that she never agreed to the payment of property tax (Transcript, p.32), yet property tax was used in the evaluation based solely on the testimony of the Respondent, which the Appellant denied. The Trial Court continued to use terms of an agreement that was already decided that did not exist and by using these terms the Trial Court was inaccurate and prejudicial to the Appellant. Even if the Trail Court did not err in finding that an agreement existed between the parties, which Appellant denies and admits only for the purpose of this argument, the Trial Court erred in deciding which terms to use. The only tangible evidence presented as to any possible terms would be the rent check that Appellant tried to give to Respondent for \$800.00 and a check for utilities, water, and lights, which the Respondent refused due to the parties not agreeing on the terms. (See Plaintiff's Exhibit 1). There was no tangible evidence at trial to prove that the Appellant agreed to pay property taxes. The Trial Court erred in its finding that terms of an agreement existed between parties, and further in determining which terms to use in any evaluation for damages. The Trial

Court created an inconsistent finding. No inconsistent verdicts can be rendered, as the court's concern is creating a possibility that a party will be prejudicated by different juries rendering inconsistent verdicts on the same issues. See Green v Duke Power Co., 305 N.C. 603, 608, 290 S.E.2d 593 (1982). The Trial Court clearly created an inconsistent verdict on the issue of breach of contract as the Trial Court clearly did not have jurisdiction to determine whether an agreement of terms was met between the parties, which the Trial Court did, when it used terms for damages that were not agreed upon.

II. **The Trial Court Erred in Finding that Cathy Biggerstaff and B&B Amusement was unjustly enriched by the Plaintiff and that the Plaintiff owed restitution to the Defendant.**

As stated in the opening brief, Both parties stated that Appellant never got to enjoy the building for the purpose she wanted to, which was to have an event business. Appellant was thrown out before she could enjoy the property. Therefore, Respondents owe Appellant for the work completed including but not limited to labor, equipment, repairs, supplies, and fixtures to a total of \$12,253.27(See Plaintiff's exhibit 2). It was noted in the beginning of the trial that both parties stipulated to the authenticity of the handwritten labor receipts that the Plaintiff produced (See Transcript 3-4). The Trial Court erred in dismissing the validity of those receipts and not including them because they were "not collaborated." The witnesses to those receipts were dismissed because there was no question as to the authenticity of the handwritten receipts. So, for the Trial Court to not consider the handwritten receipts is very prejudicial to the Appellant.

The Trial court erroneously ruled that Appellant did in fact have a benefit from the Respondents. However, all of the evidence in this matter showed that the Appellant was at no time enriched by the Respondents. In fact, all the evidence points to the opposite. The Trial Court

disregarded all the physical evidence presented which showed at no time did the Appellant gain anything from what transpired between the parties, but instead lost. The Appellant spent thousands of dollars to repair a building she never got to use for the purpose she intended to and was not reimbursed for it. Thus, the Appellant was not unjustly enriched by the Respondents.

The Respondents mention that Appellant was in possession of the property for nine months and uses the Request for Admit as evidence of this. However, during the trial, Respondents testify that in fact Appellant was only in possession of the building until August when the keys were returned to Respondents and Appellant was longer given access to the property (See Transcript pages, 109-110, 162-163). The Respondents also state that Appellant held “events” at the property, however, testimony at trial stated the building was not completed until July, and Appellant returned the keys in August (See Transcript page 119). Appellant further testified that although she was planning to have events, no such events took place. (See Transcript page 47). Again, there was no unjust enrichment received by Appellant and the Trial Court erred in concluding that Appellant did not meet the burden.

Just for sake of argument, let’s assume the first element of unjust enrichment is not met by the Appellant, which is denied and only admitted for the sake of argument on this point, but what benefit did the Respondents confer onto the Appellant? Appellant used her credit cards to pay for the supplies and renovations that were done to the building. She also paid other people to come and help her. She wanted to use the building for a business which she never did, therefore, the Trial Court is just wrong in stating that Appellant was enriched in any way by the Respondents. Respondents allowed Appellant to clean and renovate the building without ever stopping or compensating Appellant. Respondents received a whole building renovated and no benefit was ever conferred onto Appellant. Therefore, in fact it was Respondents who has failed to meet the

first element of unjust enrichment and the Trial Court clearly erred in concluding that Appellant did not. In fact, as stated in the opening brief, Respondents fail to meet the second and third elements of unjust enrichment since Respondents conferred no benefit onto Appellant and Appellant could not have realized any value from the non-existent benefit.

Respondents went on to sell the building thus receiving all the benefit without meeting any of the requirements for unjust enrichment. Respondents argue that the property was sold “undervalued” and that there was no benefit of the work the Appellant did, however, there was no physical evidence to prove this point. The Respondents did not have any property appraisals done before or after, however, just looking at the pictures that were presented by Appellant, any reasonable person would see that the work done to the property was a benefit for the property (See Plaintiff’s exhibit 4).

The Trial Court clearly abused its discretion in this matter. Respondents further in their reply state that “the Appellant did not argue parties’ agreement on rent, utilities, and property tax” and that is simply not true as stated above. This argument was well made throughout the trial and Appellant testified throughout that she never agreed to all the terms listed.

### **III. The Trial Court Erred in not declaring Cathy Biggerstaff personally liable.**

Appellant reiterates her argument as made in her opening brief. Appellant very clearly articulated the argument that proved that Cathy Biggerstaff acted as herself and not as an agent of B&B. Appellant testified that she always spoke with Ms. Biggerstaff as she understood as Biggerstaff as the owner of the building (See Transcript page13-14). In fact, when Appellant did try to pay Ms. Biggerstaff, she wrote the check payable directly to Cathy Biggerstaff, not B&B (see Plaintiff’s exhibit 6). During the interactions with the parties, Biggerstaff never made known to Appellant that she was acting as an agent for B&B (See Transcript page 151). In fact, just the

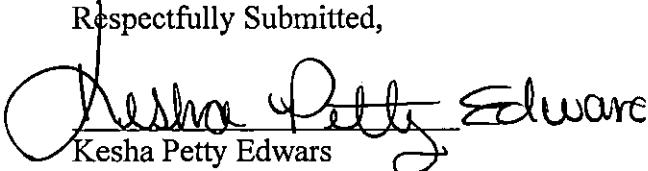
opposite as Biggerstaff admitted in trial that she only has one telephone number that she uses for personal use (See Transcripts page 146-147) and she admits that all the text messages she sent to Appellant at no time did she represent herself as an agent for B&B (See Transcript page 147). There was no notice given to Appellant that Biggerstaff was acting as an agent for B&B and there was no way for Appellant to know that Biggerstaff was acting as an agent at the time of their discussions about the property. The Trial Court clearly erred in this ruling.

### CONCLUSION

Based on the foregoing, in addition to the arguments made in the opening brief, the Appellant respectfully submit that the Trial Court erred in finding that the Respondent was unjustly enriched by the Appellant, and that Cathy Biggerstaff should not be held personally liable.

Wherefore, the Appellant respectfully request that the judgements be reversed.

Respectfully Submitted,

  
Kesha Petty Edwards  
553 Chastine Drive  
Spartanburg, SC 29301  
(864) 376-7780  
**Appellant**

March 23, 2023  
Spartanburg, South Carolina

PLAINTIFF'S  
EXHIBIT  
8/11/22  
FENGAD 800-681-6888

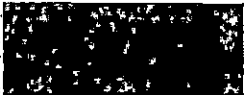
7-5-20

Pay to the Order of Cathy Biederstaff

Five hundred thirty five dollars 00/100

Wells Fargo Bank, NA  
South Carolina  
well Fargo.com

Utilities - water - lights



0100

8-3-2019

07-2161551-0111

Date

Pay to the  
Order of

Cathy Biggestoff

\$ 800.00

Eight hundred dollars 00/100

Dollars



Wells Fargo Bank, N.A.  
South Carolina  
wellsfargo.com

for Rent Payments





Cathy Biggerstaff

8645423997



Strickland's office

9:19 AM

Cathy I just dropped the keys of. The one that has the black on it is for the front door padlocks.

Cathy I just dropped the keys off.

11:41 AM

Wednesday, August 28, 2019



Did you take the keys to John's office?

8:58 AM

Yes

8:59 AM



Thank you

10:28 AM

Friday, August 30, 2019




+ Enter message



< Cathy Biggerstaff  
8645423997



Saturday, July 27, 2019

 Kesha I have three Dr appointments this coming Week so when your attorneys office called to conceal yesterday wednesday is possible the only day I can meet but suggested they could fax it to my attorney

12:09 PM


Okay thanks. They called me yesterday

12:10 PM

Saturday, August 3, 2019

I have your \$800 rent money

8:57 PM

 Who called you  
I haven't agreed to that amount

8:58 PM

It was \$800 a month

8:59 PM

+ Enter message



< Cathy Biggerstaff  
8645423997



I'll call Zack on Monday.  
Thank You

9:00 PM Thank You

Your welcome 9:05 PM

Monday, August 5, 2019

I'm also going to call Zack this morning would like to know who in his office called and told you that we had agreed on anything I haven't even seen a lease from him yet

8:45 AM

nobody called me and told me we had an agreement on anything. You told me 800 a month and unironed out property taxes

11:24 AM

No it was the insurance you had an issue with. Calling

+ Enter message





EXPENSE BREAKDOWN  
PETTY VS. BIGERSTAFF

Expenses for Repairs to Building:

- 1. James Thompson      \$3,300.00 (Labor work paid)
- 2. Wall Repairs      \$1,500.00 (Labor work paid)
- 3. Patching of walls      \$200.00 (Labor work paid)
- 4. Painting of walls      \$1,560.00 (Labor work paid)
- 5. Allen's Locksmith      \$110.00

- 6. Home Depot for materials
  - 04/03/19      \$391.22
  - 04/04/19      \$26.86
  - 04/04/19      \$9.61
  - 04/11/19      \$4.00
  - 04/13/19      \$84.84
  - 04/15/19      \$111.38
  - 04/18/19      \$67.87
  - 04/18/19      \$17.85
  - 04/19/19      \$128.96
  - 04/20/19      \$124.49
  - 04/25/19      \$23.97
  - 04/20/19      \$187.39
  - 04/26/19      \$53.56
  - 04/27/19      \$3.50
  - 04/27/19      \$40.65
  - 04/27/19      \$108.08
  - 04/48/19      \$10.69
  - 05/08/19      \$57.59
  - 05/11/19      \$168.94
  - 05/12/19      \$29.94
  - 05/14/19      \$14.43
  - 05/19/19      \$141.96
  - 05/23/19      \$183.46

05/24/19	\$166.16
05/27/19	\$83.33
05/28/19	\$64.16
05/31/19	\$200.00
06/01/19	\$33.71
06/01/19	\$207.94
06/01/19	\$143.80
06/03/19	\$363.58
06/04/19	\$27.70
06/06/19	\$4.47
06/07/19	\$17.78
06/08/19	\$191.76
06/09/19	\$216.51
06/13/19	\$184.65
06/13/19	\$31.16
06/16/19	\$45.29
06/19/19	\$40.84
06/28/19	\$69.15
07/10/19	\$46.25
<b>TOTAL</b>	<b>\$4129.48</b>

7. Lowes for material

04/13/19	\$276.92
04/18/19	\$63.56
05/02/19	\$76.78
05/06/19	\$84.13
05/13/19	\$42.78
05/13/19	\$21.40
05/13/19	\$50.27
05/17/19	\$47.01
05/22/19	\$93.53
05/28/19	\$49.20
<b>TOTAL</b>	<b>\$805.58</b>

8. Ollies \$109.08

9. Trash Removal \$60.00

10. Harbor Freight \$13.24

04/23/19	\$14.81
05/06/19	\$20.53
06/17/19	\$64.49
<b>TOTAL</b>	<b>\$113.07</b>

8. Builders First Source \$366.06-

**TOTAL OF ALL REPAIRS: \$12,253.27**

**LOST OF CONTRACTS**

1. 8/30/19	\$1500 (meant to be weekly, so loss is higher)
2. 1/11/20	\$1500
3. 1/08/20	\$1300
4. 1/18/20	\$800

**Total Lost of Contracts \$5,100.00**

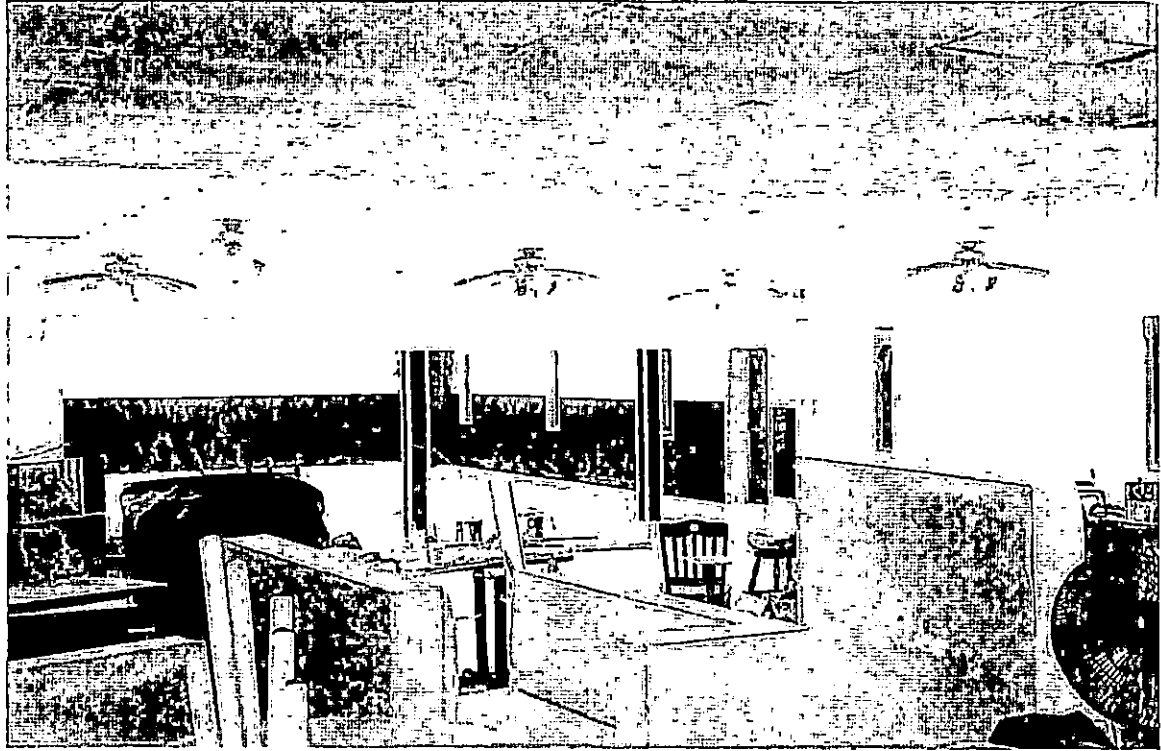
<b>REPAIRS</b>	<b>\$12,253.27</b>
<b>LOC</b>	<b>\$5,100.00</b>

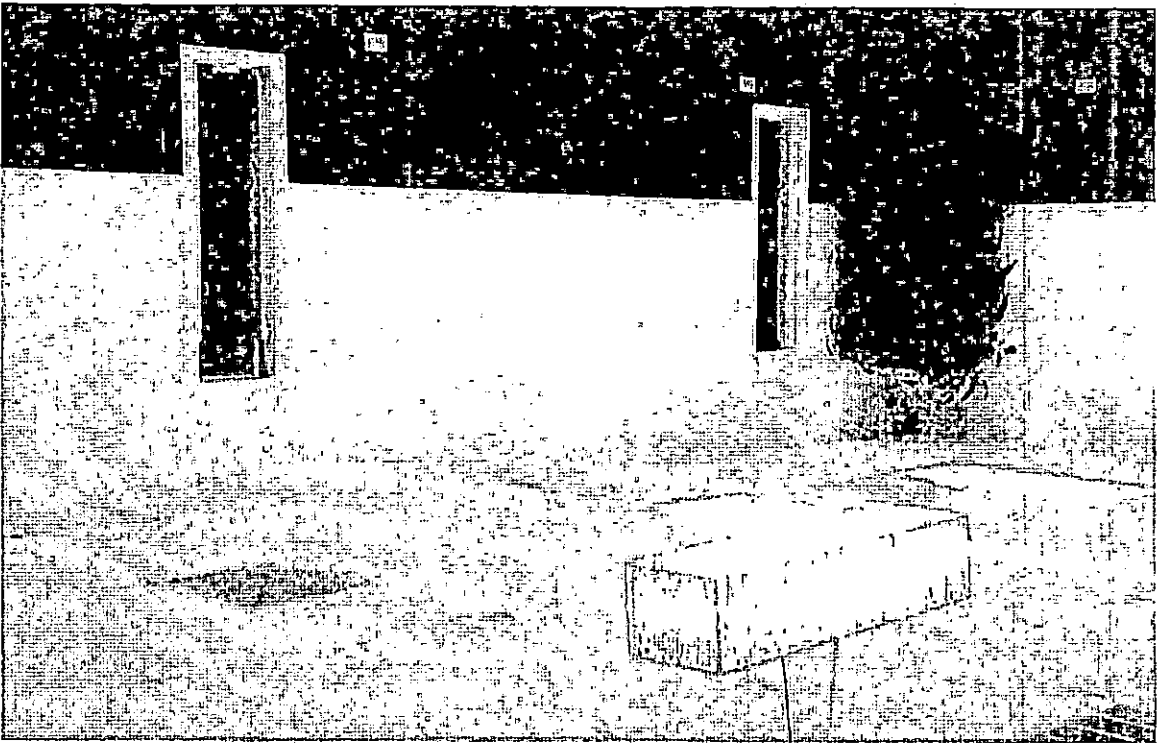
**TOTAL IN ACTUAL DAMAGES: \$17,353.27**

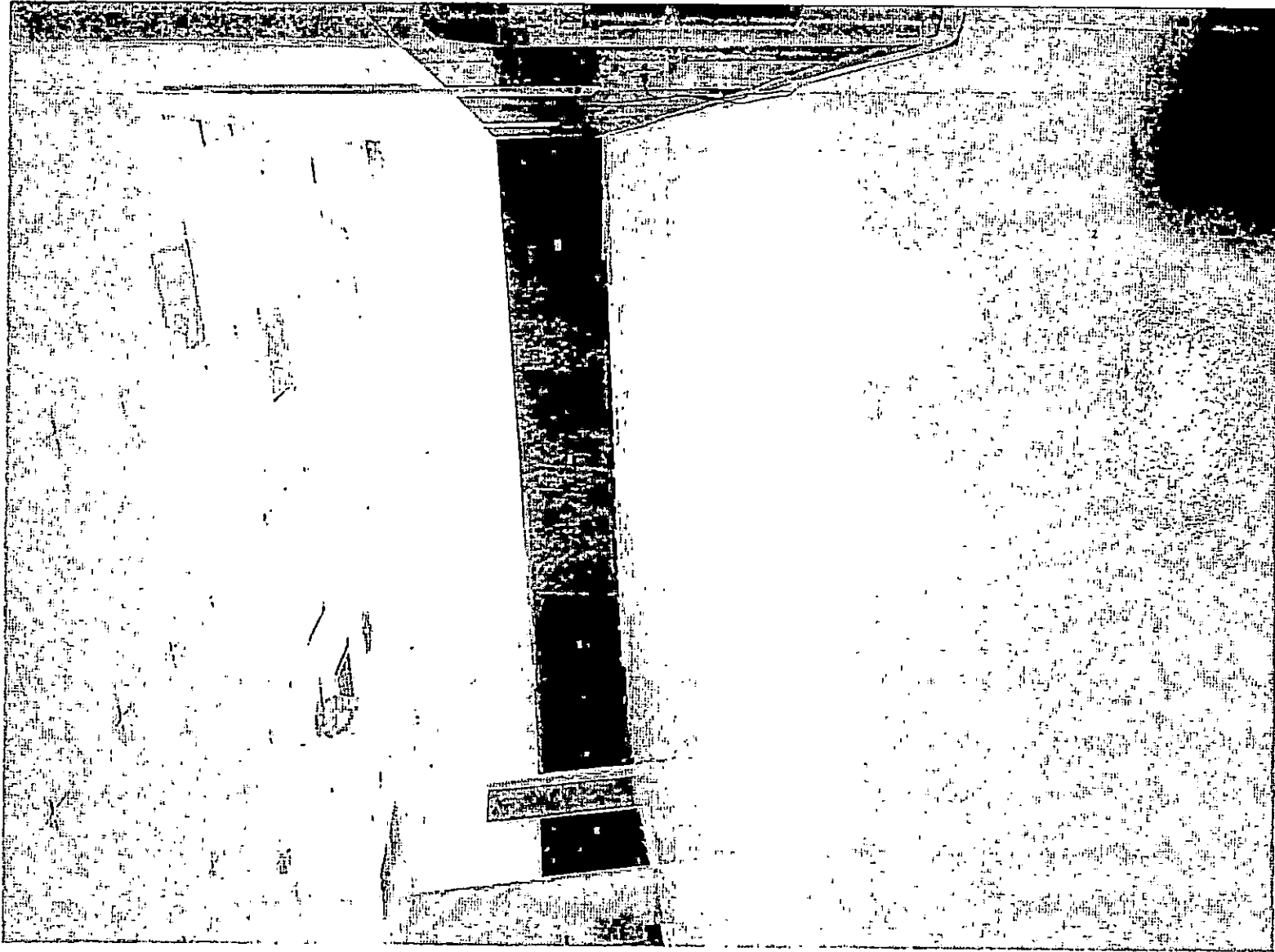
**\* Three door paying events were cancelled.**

FENGAD 800-631-6086  
PLAINTIFF'S  
EXHIBIT  
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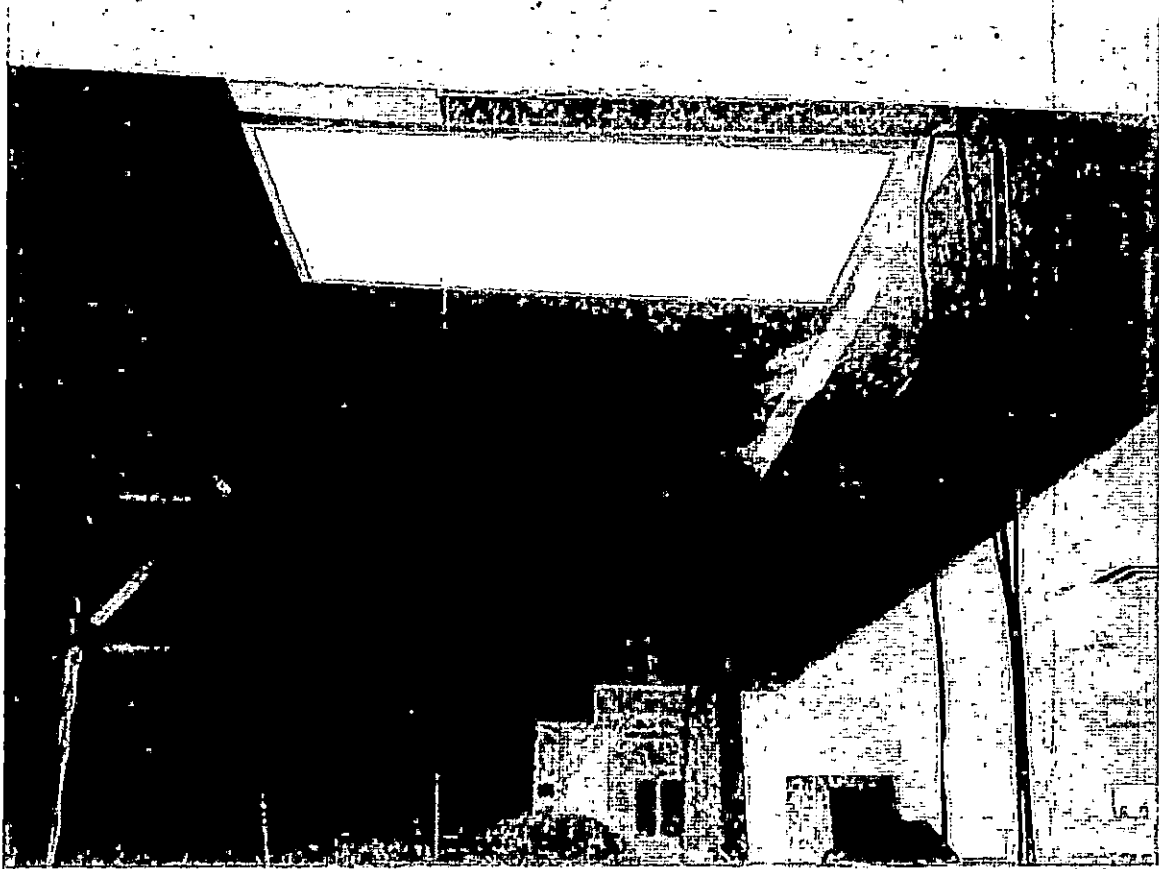




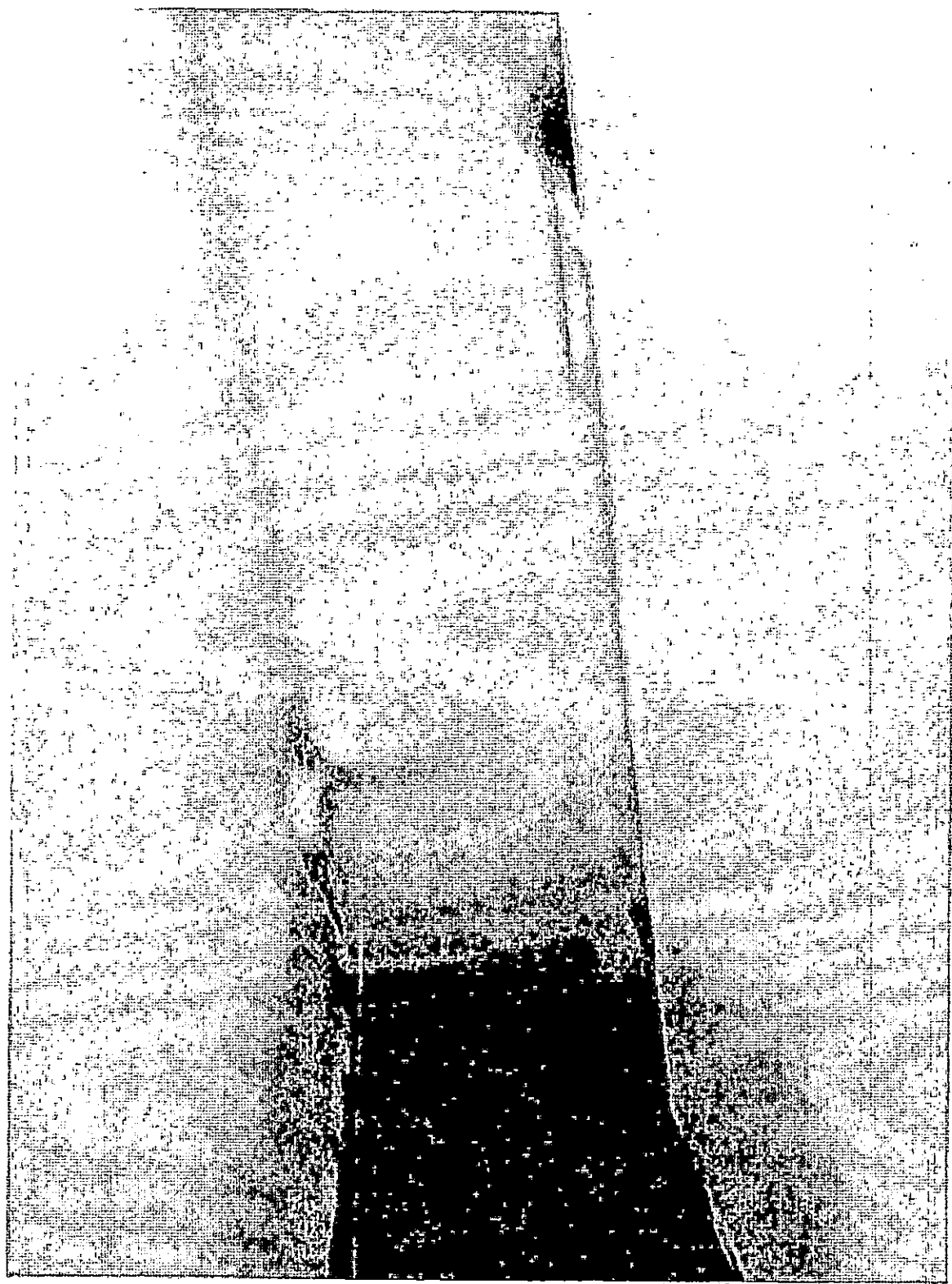


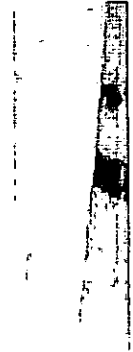
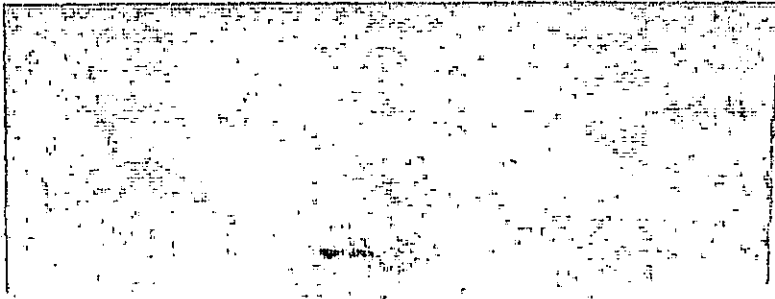






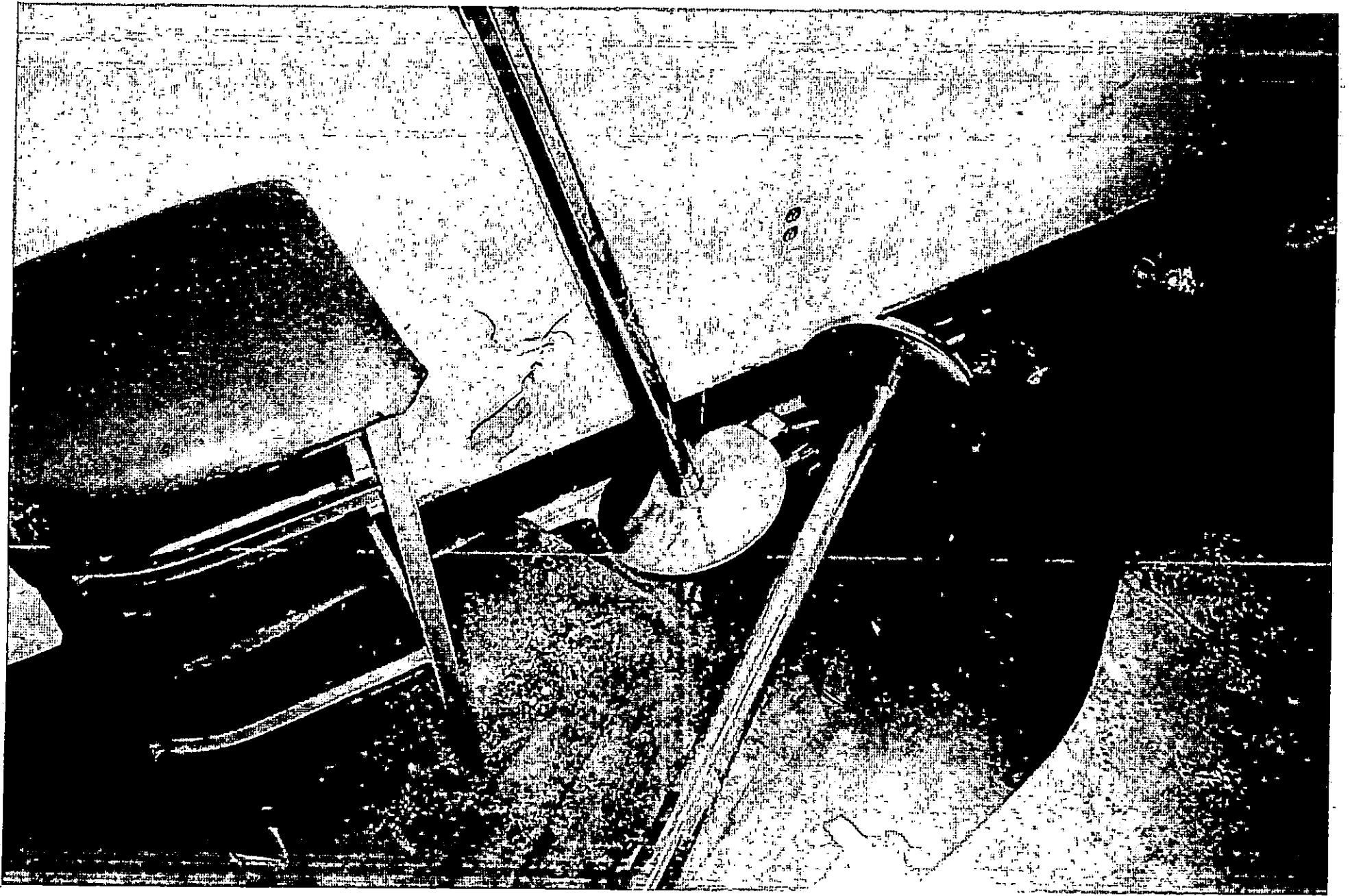




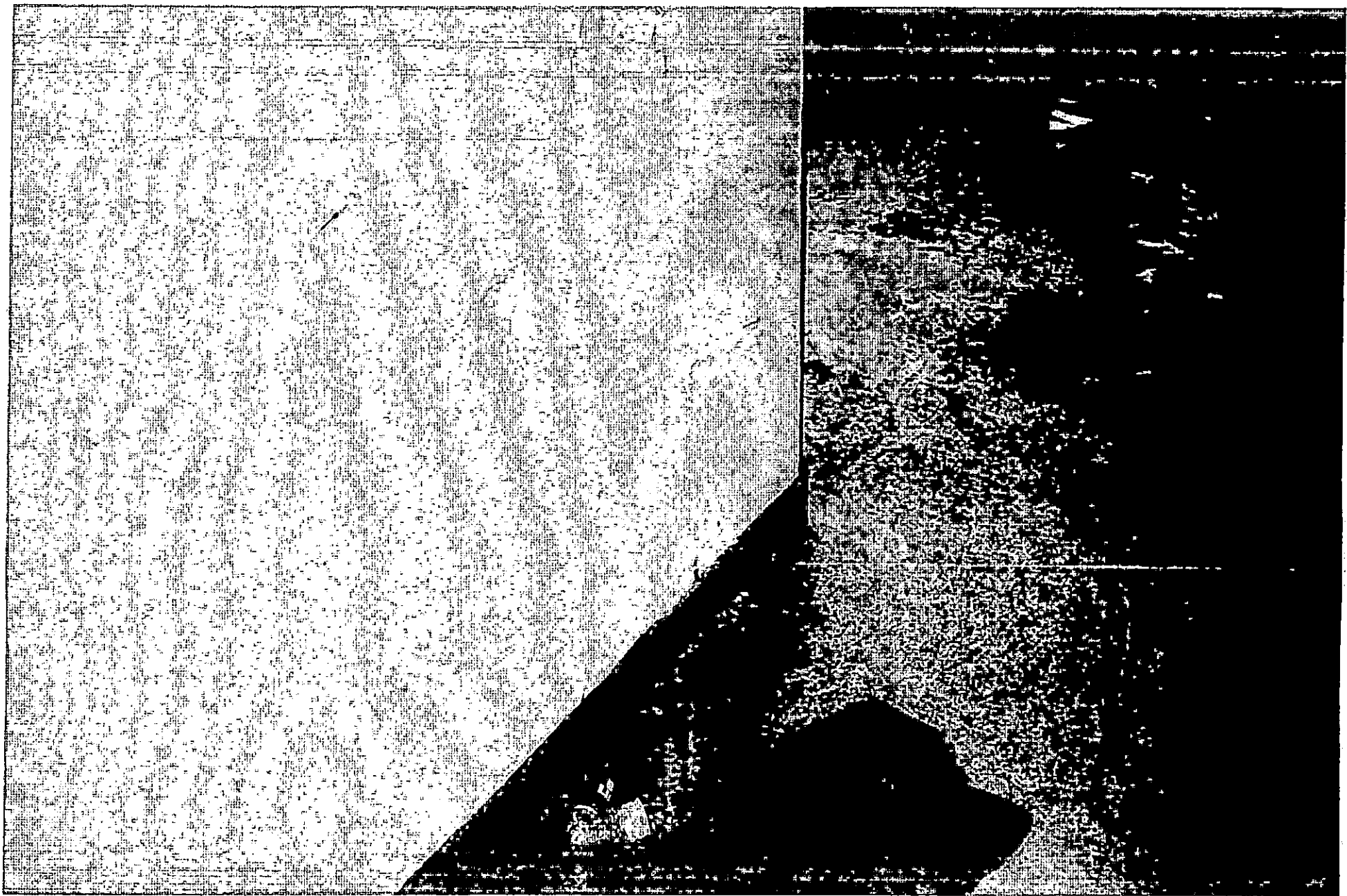


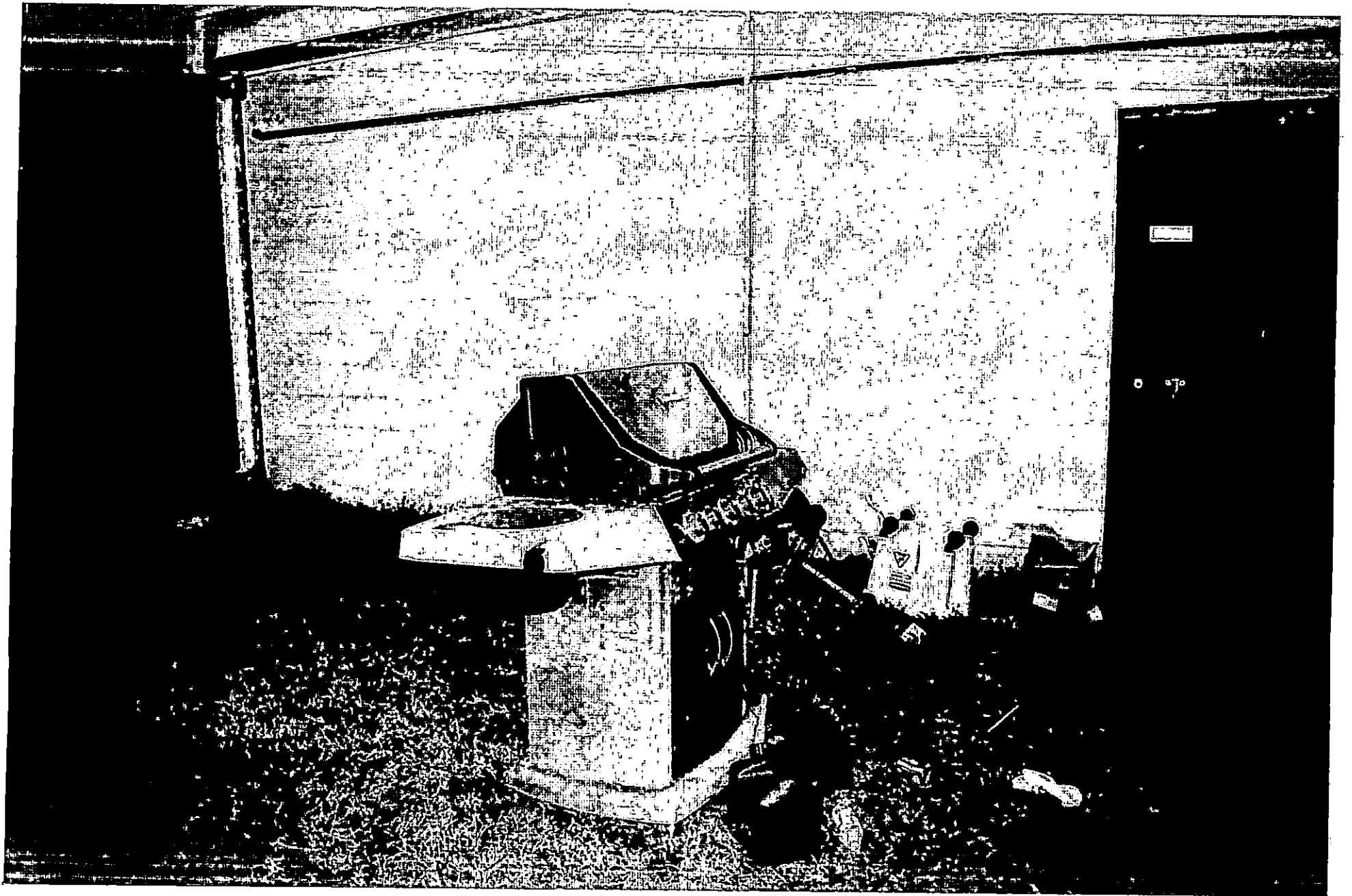


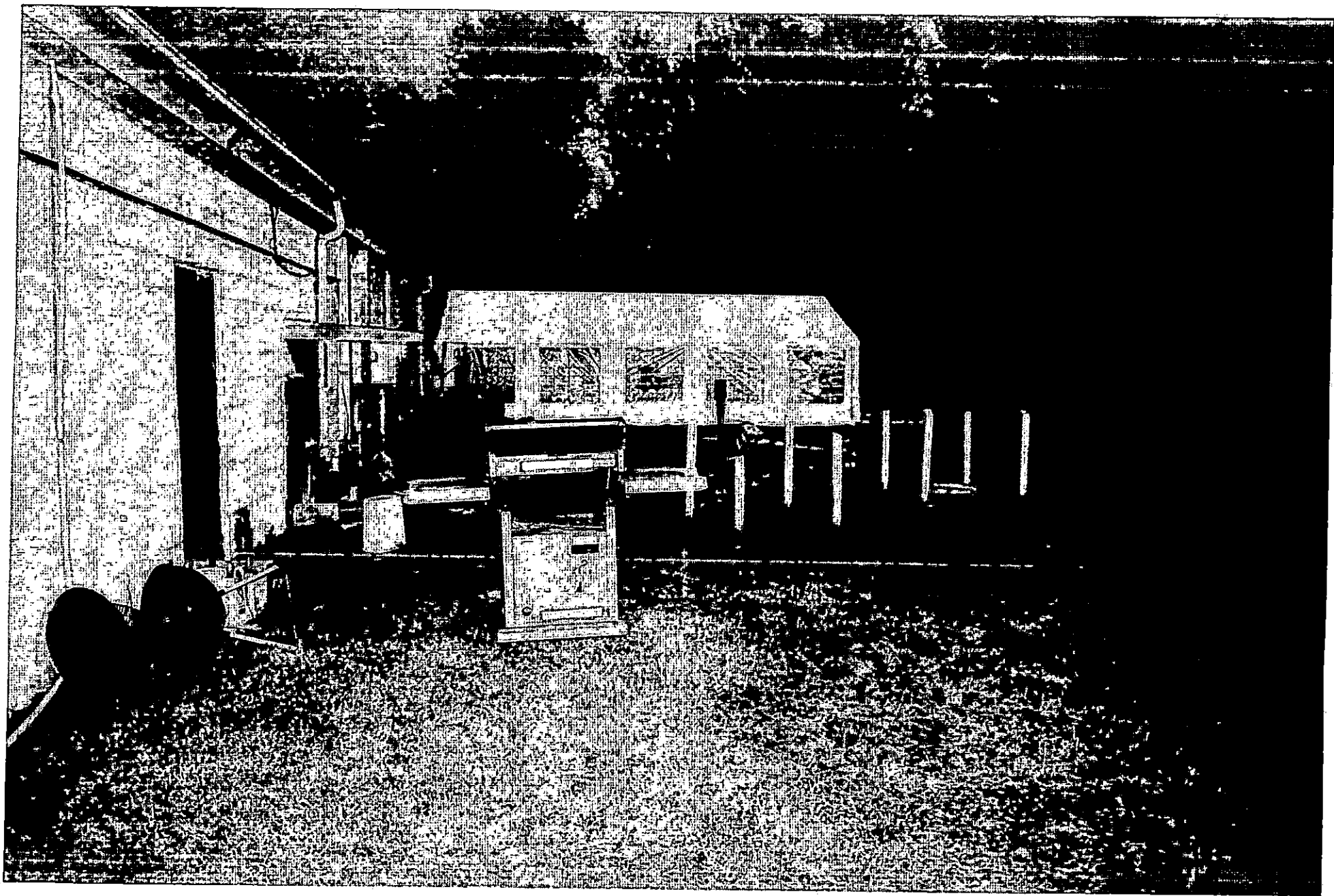


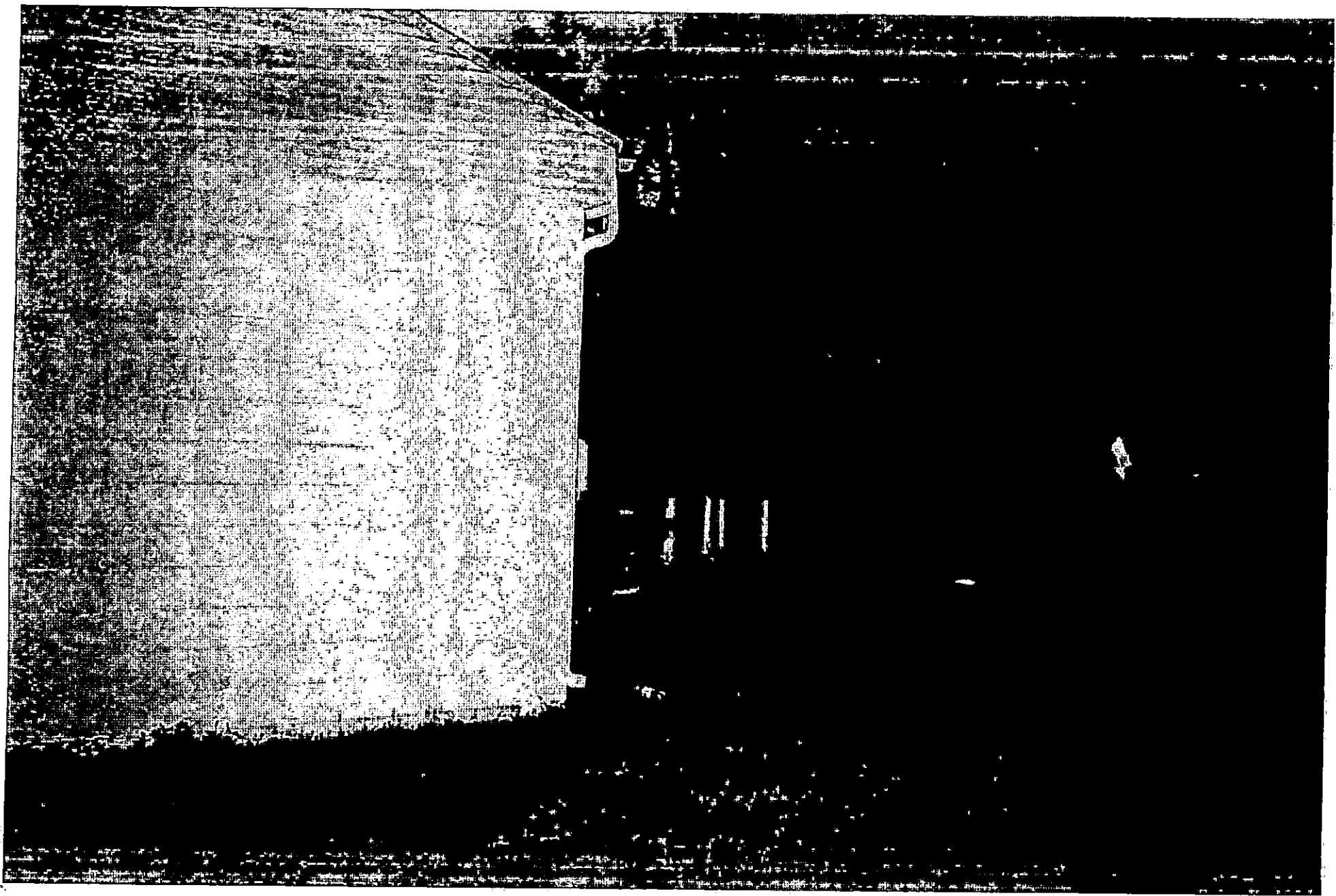


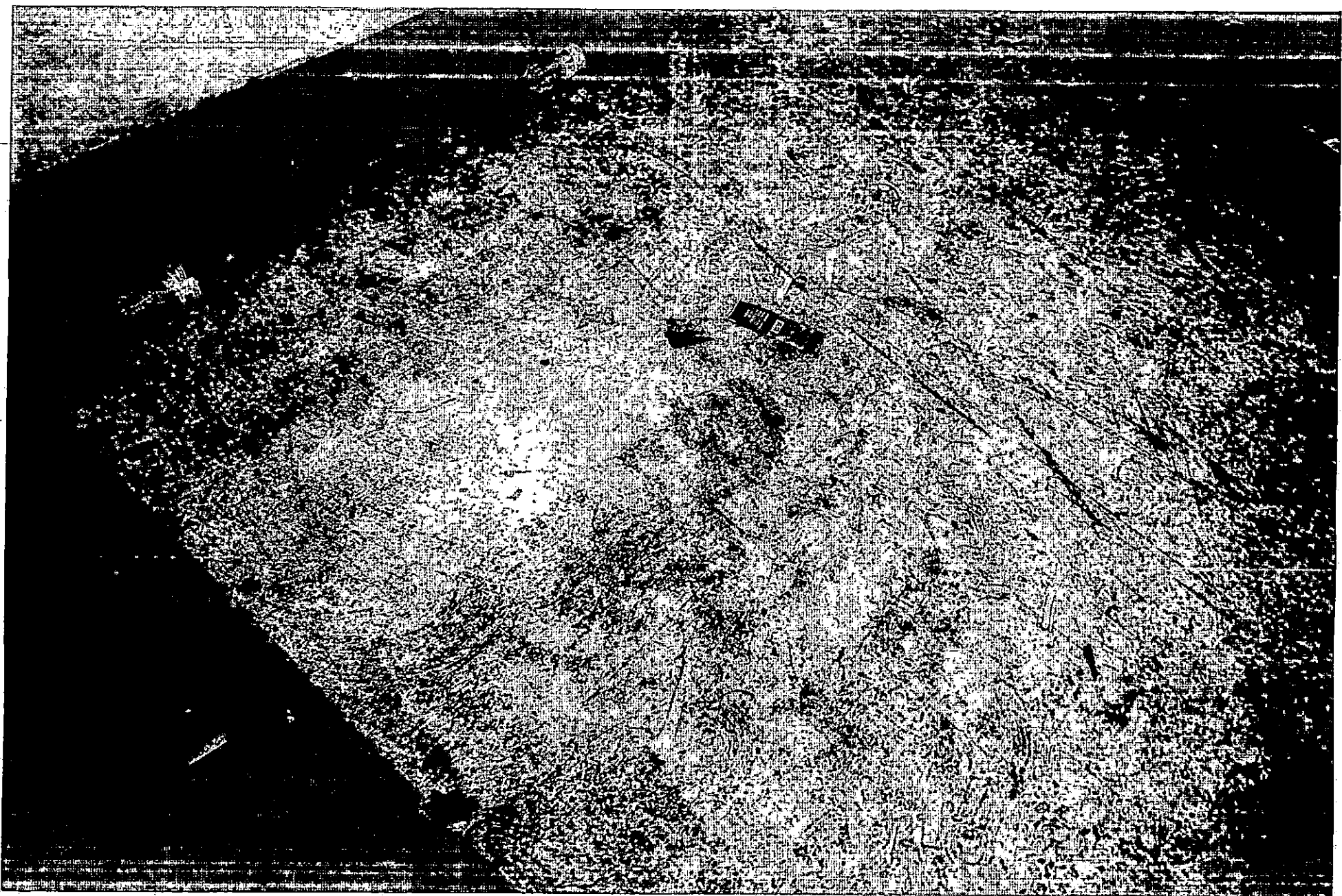
















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Kisha Edwards  
503 Chastore Drive  
Spartanburg, SC 29301

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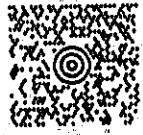
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KESHA EDWARDS  
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THE UPS STORE #2841  
STE C14  
2163 E MAIN ST  
DUNCAN SC 29334-9208

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3 LBS 1 OF 1  
SHIP WT: 3 LBS  
DATE: 23 MAR 2023

COLUMBIA SC 29201-3769



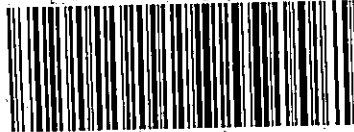
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