THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Master in Equity

Appellate Case No. 2012-211971

Bill J. Vernon, Jr. and Sandra Vernon,	Respondents,
v.	
Landmarc Constructors, Inc., d/b/a Landmarc Custom Homes, Marcus Dunn, and Yoder's Building Supply, Inc. Defendants,	Of whom Landmarc Constructors d/b/a Landmarc Custom Homes and Marcus Dunn are Appellants,
Yoder's Building Supply, Inc.,	Third Party Plaintiff,
v.	
Sandra Ann Vernon and Billie James Vernon, Jr. Trustees, or their successors in trust, under the Sandra Ann Vernon Living Trust, Dated June 12, 2000, as thereafter amended, Gary Dunn, individually, and Kerri Dunn, individually,	Third Party Defendants.

RECORD ON APPEAL

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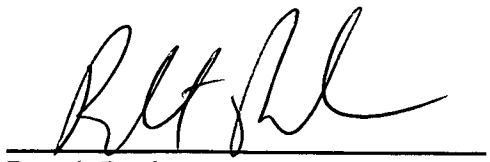

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I certify that this designation contains all material proposed to be included by any of the parties and not any other material.

February 21, 2013

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-23--564

Bill J. Vernon, Jr.

Sandra Vernon
PLAINTIFF(S)

Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes, Marcus Dunn

Yoder's Building Supply, Inc.
DEFENDANT(S)

Submitted by: V. Elizabeth Wright	Attorney for : ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Plaintiffs and Defendant Yoder's Building Supply, Inc. entered into a settlement whereby Yoder's agreed to file a satisfaction of mechanic's lien and in return for Plaintiffs' payment of $50,000. Both parties have filed a Stipulation of Dismissal dismissing all claims between the parties with prejudice.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Bill J. Vernon, Jr. and Sandra Vernon	Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes and Marcus Dunn	$282,283.61
Yoder's Building Supply, Inc.	Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes	$62,467.00 Verified

	and Marcus Dunn	
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

3023
Judge Code

3/28/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the 28 day of Mar, 20 12 and a copy mailed first class or placed in the appropriate attorney's box on this 28 day of Mar, 20 12 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer
CLERK OF COURT

Court Reporter:

ENTERED COMPUTER

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	CASE NO. 2010-CP-23-0564
Bill J. Vernon, Jr. and Sandra Vernon,)	
)	
Plaintiff,)	
)	
v.)	
)	
Landmarc Constructors, Inc. d/b/a)	
Landmarc Custom Homes, Marcus Dunn)	
and Yoder's Building Supply, Inc.,)	
)	
Defendants.	
Yoder's Building Supply, Inc.,)	
)	
Third-Party Plaintiff,)	**FINAL ORDER AND JUDGMENT**
)	
vs.)	
)	
Sandra Ann Vernon and Billie James)	
Vernon, Jr., Trustees, or their successors)	
In trust, under the Sandra Ann Vernon)	
Living Trust, Dated June 12, 2000, and as)	
Thereafter amended, Gary Dunn,)	
Individually and Kerri Dunn, individually.)	

This case came before me for trial on November 15-16, 2011 and involves multiple issues concerning accounting and related payments arising out of construction of a residence located in Greenville, South Carolina. By Order dated May 18, 2011, this case was referred to me pursuant to Rule 53, SCRCP. At the two-day trial, the attorneys for all parties were well prepared and zealously advocated their respective positions. Literally thousands of pages of documents were introduced at trial. Following the trial, counsel for the parties have briefed several unique legal issues and participated in multiple post-trial conference calls with the Court. Based upon the evidence and testimony presented, I hereby make the following findings of fact

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and conclusions of law.[1]

I. ISSUES

These consolidated mechanic's lien actions arose out of a residential construction contract between Plaintiffs and Third-Party Defendants Vernon ("Vernon") and Defendants and Third-Party Defendants Landmarc Constructors, Inc. and Marcus Dunn ("Landmarc") and of which Defendants and Third-Party Defendants Gary, Marcus and Kerri Dunn are principals. The Vernons contracted with Landmarc and Marcus Dunn to build their home on the lot they purchased at Lot 44, Cliffs at Mountain Park, entering into this contract on August 18, 2008. The contract was a cost-plus contract based on the actual cost of work plus fifteen percent (15%) for overhead and profit.

The contract called for Landmarc to submit periodic requests for payment with cost back-up. The Vernons would pay in full for approved costs plus 12% of the contractor's fee. The remaining 3% of the contractor's fees was to be withheld as retainage until the end of the contract. The contract also required Landmarc and to submit mechanic's lien waivers for itself and its suppliers and subcontractors to be submitted with each payment request. The mechanic's lien waivers were an inducement to the Vernons based on Landmarc's representation that all suppliers and subcontractors who performed services on the project for that particular billing period had been paid in full and the Vernons would be held harmless should any supplier or subcontractor sue for payment.

The Vernons and Landmarc agreed from the start that the Vernons' son-in-law Bryan Johnson would be involved in the project and that copies of bills sent by Landmarc were also to

[1] To the extent any finding of fact includes conclusions of law it is adopted as such; to the extent any conclusions of law include findings of fact, it is so adopted.

be sent to Mr. Johnson for his review. Mr. Johnson is a licensed residential builder from Edwards, Colorado.

Work on the project began on or about September 2008 and progressed through 2009. From October 23, 2008 through November 5, 2009 Plaintiffs paid in full for each invoice submitted to them. In November 2009 the Vernons first became aware of problems with the billing when they learned that certain subcontractors and suppliers had not been paid by Landmarc despite the fact that the Vernons had paid Landmarc in full. Mr. Bill Vernon contacted one supplier, Yoder's Building Supply ("Yoder's"), in November of 2009 to ascertain how much was owed to Yoder's. Mr. Wiley McClaine of Yoder's acknowledged that he was contacted by Mr. Vernon, but would only share with him that there was a balance due. McClaine did not tell Mr. Vernon any specific amount owed by Landmarc.

In December of 2009 the Vernons, with the assistance of their counsel Jeffrey Gray, met with Marcus and Kerri Dunn to discuss the project. On or about December 11, 2009 the Vernons terminated Landmarc's performance. After Landmarc was fired, mechanic's liens from various subcontractors and suppliers were filed on the project. Yoder's properly served its lien on December 18, 2009, in the amount of $139,047.30. Landmarc later filed its mechanic's lien in the amount of $134,510.49. The Landmarc lien included invoices from other subcontractors and retainage it was owed as a fee. Of the total amount of the Landmarc mechanic's lien, only $12,063.14 was for unpaid invoices from Yoder's.

From December 18, 2009 through February 10, 2010 the Vernons made payments totaling $60,837.00 to certain unpaid suppliers on the project. Additional mechanic's liens were recorded by Landmarc's suppliers: Marathon Lighting on December 30, 2009, Clayton Tile on January 21, 2010 and Ferguson Enterprises on February 3, 2010. On or about December 16,

2009, the residence was substantially completed and the Vernons applied for a certificate of occupancy.

On January 22, 2010, the Vernons filed their Complaint against Landmarc and Marcus Dunn also naming Yoder's Building Supply as a co-defendant due to the mechanic's lien filed on the property. On February 24, 2010, Yoder's filed its Answer to Complaint, Crossclaim and Counterclaims and Third-Party Complaint. This lawsuit resulted. The Vernons filed a statutory bond in accordance with S.C. Code Ann. § 29-5-110 in the amount of $423,917.92.

II. PROCEDURAL HISTORY

1. The Vernons' complaint alleged causes of action against Defendants Landmarc and Marcus Dunn for fraud, breach of contract, breach of contract accompanied by a fraudulent act, conversion, violations of the South Carolina Unfair Trade Practices Act (S.C. Code Ann. § 39-5-10, *et. seq.*), accounting, contractual indemnity, equitable indemnity and injunctive relief. The Vernons sought declaratory relief against Yoder's pursuant to S.C. Code Ann. Sections 15-13-10, *et. seq.*
2. Mechanic's liens were filed by Yoder's Building Supply on December 18, 2011, Marathon Lighting on December 30, 2009, Clayton Tile on January 21, 2010, and Ferguson Enterprises on February 3, 2010.
3. On February 11, 2010 Landmarc filed its mechanic's lien for $139,510.49 against the Vernons. This amount was based on Landmarc's unpaid invoices dated December 5, 2009 and December 17, 2009 which included $60,837.96 plus $78,672.53 held as retainage. Of these amounts, Landmarc included $12,063.14 due to Yoder's.
4. On February 24, 2010 Yoder's Building Supply ("Yoder's") filed its Answer, Counterclaim, Cross-Claim and Third-Party Action against Plaintiffs, Landmarc, Marcus

Dunn, Sandra Ann Vernon and Billy James Vernon, Trustees Sandra Ann Vernon Living Trust, Gary Dunn and Kerri Dunn. Yoder's brought a claim for breach of contract and violation of S.C. Code Ann. Section 27-1-15 against Landmarc, a claim for foreclosure of its mechanic's lien against Landmarc and Vernons in the amount of $139,047.30 and a claim for violation of S.C. Code Ann. Section 29-7-10 against Gary, Marcus and Kerri Dunn.

5. On March 11, 2011, Landmarc and Marcus Dunn answered the Complaint and brought cross-claims against Vernons for foreclosure of mechanic's lien, breach of contract and unjust enrichment.
6. On March 25, 2011 Plaintiffs filed their Reply to the Yoder's Counterclaims.
7. On April 7, 2010 Plaintiffs replied to Landmarc's and Marcus Dunn's counterclaims.
8. On May 5, 2010 Landmarc and Marcus Dunn answered the cross-claims and third-party claims of Yoder's and brought counterclaims for unclean hands, failure to state a claim and breach of contract.
9. On June 3, 2010 Yoder's replied to Landmarc's and Marcus Dunn's counterclaims.
10. On May 18, 2011 this case was referred to the Master-in-Equity.

FINDINGS OF FACT

1. The contract between the Vernons and Landmarc is clear, unambiguous, and a cost-plus contract.
2. The contract calls for Landmarc's pay applications to be submitted in an itemized format based on actual costs expended plus 15% for a builder's fee, including overhead and profit.

3. Since the contract was based on actual costs plus 15%, there is no dispute concerning change orders.
4. As pertains to the Vernons, there is no significant issue concerning the workmanship by Landmarc.
5. The mechanic's lien waivers were drafted by Landmarc and Marcus Dunn (who signed the waivers) and cover only costs of labor and materials. There is no provision for estimated billing under the contract. Mechanic's lien waivers are specified in paragraph 5 of the contract.
6. In November 2009, the Vernons were first made aware that Landmarc and Marcus Dunn had not paid certain subcontractors and suppliers despite contrary representations that it had made payments and that no monies were due.
7. The Vernons made their last payment to Landmarc on November 16, 2009.
8. The Vernons terminated Landmarc and Marcus Dunn around December 11, 2009.
9. The residence was substantially completed on December 16, 2009.
10. Despite the fact that the contract called for payment of actual costs, Landmarc and Marcus Dunn in multiple instances included amounts over the true costs. The testimony offered by Landmarc and Marcus Dunn that this discrepancy was due to "estimates" and/or Landmarc's payment of insurance for subcontractors and for workman's compensation insurance was not credible.
11. Under the terms of the contract, Landmarc was not allowed to submit estimates as the amount due on the pay applications.
12. Landmarc and Marcus Dunn did not produce actual invoices as promised to the Vernons in an email communication.

13. The testimony of Yoder's witnesses Patrick Westbrook and Wiley McClain establish that the amounts Landmarc claimed were estimates in progress billings were substantially larger than the actual estimates submitted by Yoder's to Landmarc for drywall, insulation and stone work.

14. I find Bryan Johnson's testimony to be particularly credible based upon his experience as a contractor, his familiarity with the project, and his meticulous review and detailed presentation of his opinions during the trial. This is true, notwithstanding the fact that he is the son-in-law of Plaintiffs. As such, I accept his opinions and find that the Vernons are entitled to a credit in the amount of $18,416.99 for all the amounts overbilled as set forth in Plaintiffs' Exhibit 6, Tab 19, items 1-11 and 17.

15. After weighing the testimony of Marcus Dunn and Kerri Dunn and the testimony of Bryan Johnson concerning the overbilling, I find the Vernons owe nothing to Landmarc on the lien. According to Kerri Dunn the $46,000 represents the amount due Landmarc for the remaining 3% retainage after taking into consideration the Vernons' $60,837.96 payment to their suppliers and subcontractors. However, Landmarc's billing indicates that the actual amount of retainage is $31,601.25 and this amount should be reduced to $29,504.40 because the Vernons did not pay the December 4, 2009 bill which listed the amount of $2,096.85 for retainage for that billing period. All credits due to the Vernons from Landmarc should be deducted from this amount.

16. The testimony from Marcus and Kerri Dunn that they were not given a chance to "reconcile" the differences between actual costs and billed charges to the Vernons because they were fired is not credible. Some of the overbilled amounts were more than six months old before date of Landmarc's termination and Landmarc had more than

enough time to reconcile the overbilled amounts with actual costs.

17. I find that the Vernons paid Landmarc $21,430.85 for invoices submitted by Ferguson Enterprises on November 16, 2009, but that Landmarc did not pay that amount to Ferguson Enterprises.

18. There was no credible evidence offered by Landmarc to support its claim against Yoder's for the defective deck material in the amount of $36,000. Landmarc did not submit any proof to show that the deck material was defective. Landmarc made no formal claim against either Yoder's or the manufacturer, therefore, the claim is denied.

19. It is undisputed that Landmarc and Marcus Dunn established separate accounts for its projects with Bank of America. The Vernon project account number ended with 8447. All payments made by Landmarc to Yoder's for labor and materials pertaining to the Vernon project were made from this account.

20. I find that checks paid to Yoder's by Landmarc were not always properly credited to the Vernon account and that the responsibility is shared by both Yoder's and Landmarc. I find that check number 1383, in the amount of $22,493.27 from the Bank of America account ending in 8447, should be credited in its entirety to the Vernon account, based on the testimony of Wiley McClaine.

21. I also find that the finance charges in the amount of $12,630.80 which Yoder's made part of its mechanic's lien are not proper based on the testimony of Wiley McClaine and as a matter of law as discussed at page 15 below.

22. I find credible the testimony of Bryan Johnson concerning the amount owed by Landmarc to Yoder's in the amount of $62,467.00.

23. I find that the Yoder's lien should not be dissolved due to inaccuracies found in its

Statement of Account. I find that Yoder's did not willfully overstate the amount of its lien.

24. I find that Yoder's is entitled to a pro rata share of the payments made by the Vernons to various subcontractors and suppliers after they fired Landmarc on December 16, 2009. I find that Ferguson Enterprises is entitled only to a pro rata share based on payments made by the Vernons after February 3, 2010. The table below sets out the proper distribution:[2]

Claimant	Amount	Date of Lien	Book #	Page
Yoder's Building Supply, Inc.	118,942.93	Dec. 18, 2009	MI 45	1580
Ferguson Enterprises, Inc.	1,500.00	Feb. 3, 2010	MI 46	1871
Total	120,442.93			

The amount paid by the Vernons in the time period of December 18, 2009 through February 10, 2010 is $60,837.96, therefore the pro rata share for Yoder's is $60,229.58 ($118,942.93÷ $120,442.93 =99% x $60,837.96), such sum representing Yoder's maximum recovery from the Vernons. Yoder's is entitled to only one recovery, thus any sums collected by Yoder's from Landmarc would be offset from the $60,229.58 owed from the Vernons.[3]

25. I find that the claim made by the Vernons for warranty issues in the amount of $79,090.33, found at Plaintiff's Exhibit 6, Tab 19, item 18, is not supported by any evidence, but is merely an estimate, therefore I deny this claim.

26. The Vernons are owed $125,351.34 by Landmarc and Marcus Dunn, which is based on

[2] See discussion at page 15 below as to the reduction of the original amount of the lien of $139,047.30 to $118,942.93

[3] Unlike the subcontractors paid in *Charleston Lumber Co., Inc. v. GPT, a Florida Partnership*, 303 S.C. 350, 400 S.E.2d 508 (Ct. App. 1991) all of the above-referenced subcontractors had just claims.

the remaining $29,504.40 owed on the Landmarc mechanic's lien minus the credit of $118,416.99 for overbilling and a credit of $36,438.75 for wrongful transfers from the Vernon account ending in 8447.

27. Yoder's is owed $62,467.00 from Landmarc based on the testimony of Brian Johnson.

28. Yoder's did not serve and file an offer of settlement as allowed by S.C. Code Ann. § 29-5-20.

29. In conclusion, the amount due from the Vernons to Yoders is less than one-half its original mechanic's lien in the amount of $139,047.30, therefore the Vernons are the prevailing party as relates to the claims between these two parties.[4] Since there is no amount due to Landmarc by the Vernons, the Vernons are the prevailing party as to claims relating to Landmarc.

30. I find that there is neither a factual basis nor a legal basis for recovery by Yoder's personally against Gary, Marcus or Kerri Dunn under S.C. Code Ann. Sections 29-7-10 or 29-7-20.

CONCLUSIONS OF LAW

A. Breach of Contract

Both the Vernons and Defendants Landmarc and Marcus Dunn brought claims for breach of contract. To recover for breach of contract the Plaintiffs must prove 1.) a binding contract entered into by the parties, 2.) breach or unjustifiable failure to perform the contract and 3.) damage suffered by Plaintiffs as a direct and proximate result of the breach. *Fuller v. Eastern Fire & Casualty Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602 (1962). The Vernons have proven their case for breach of contract. On or about August 8, 2008

[4] For reasons addressed below, the Vernons are not entitled to recover attorney's fees from Yoder's.

the parties entered into a cost-plus contract, which was made part of the trial record as Plaintiffs' Exhibit 1. Defendant Landmarc and Marcus Dunn breached the contract by failing to pay suppliers and subcontractors as evidenced in Plaintiffs' Exhibit 6. Defendants Landmarc and Marcus Dunn overbilled the Plaintiffs for invoices submitted by suppliers and subcontractors as evidenced by the testimony of Bryan Johnson and Plaintiffs' Exhibit 6.

While Defendants Marcus and Kerri Dunn testified that of the sum owed to Landmarc on the mechanic's lien was $46,000 because the Vernons had paid the supplier and subcontractor invoices covered by the Landmarc mechanic's lien, the actual amount owed is $2,600.87. However, based on the overpayments made by the Vernons to Defendants Landmarc and Marcus Dunn as evidenced in Plaintiffs' Exhibit 6, Tab 19, items 1-11 and 17, I find that Plaintiffs are entitled to a credit based on the amount they overpaid, that credit being in the amount of $118,416.99. Therefore, I find the Plaintiffs are entitled to damages based on breach of contract in the amount of $115,816.12.

B. Fraud

Plaintiffs brought an action for fraud against Defendants Landmarc and Marcus Dunn. To prove a cause of action for fraud the Plaintiffs must prove the following elements by clear and convincing evidence:

1. A representation;
2. Its falsity;
3. Its materiality;
4. Either knowledge of its falsity or a reckless disregard of its truth or falsity;

5. Intent that the representation must be acted upon;
6. The hearer's ignorance of its falsity;
7. The hearer's reliance on its truth;
8. The hearer's right to rely thereon; and
9. The hearer's consequent and proximate injury. *Kahn Cons. Co. v. S.C. Nat'l Bank of Charleston*, 275 S.C. 381, 384, 271 S.E.2d 414 (1980).

Based on the overstated mechanic's lien waivers and the overages I find that Defendants Landmarc and Marcus Dunn committed fraud against Plaintiffs by falsely representing the actual costs to be greater than they were[5]. As set forth on the mechanic's lien waivers themselves, Plaintiffs' Exhibit 3, the mechanic's lien waivers were representations made to the Plaintiff by theses Defendants that suppliers and subcontractors who had submitted invoices had been paid in full and that the amounts were correct. The testimony of Bryan Johnson as to the mechanic's liens filed on the project by four subcontractors, as well as the presence of Defendant Yoder's in this case, shows the representations were false. The representations were material in that they were intended to induce the payment of money by the Vernons. The evidence introduced, including the testimony of Bryan Johnson, proved that the Landmarc and Marcus Dunn knew of the falsity of the representations and that they intended the Vernons to act upon the representations by paying the amount set forth on the partial lien waivers. The testimony of Bill Vernon and Bryan Johnson establish that they were ignorant of the falsity of the representations and that they relied upon the representations. Due to the fact that the contract price was based on actual costs plus 15%, the Vernons had a right to rely upon the representations in the

[5] Although the overbillings were carried out by Landmarc, Marcus Dunn is not insulated from his personal liability for his tortious conduct because his signature appears on each of the mechanic's lien waivers.

progress billings. The filing of four mechanic's liens by suppliers and subcontractors establishes the consequent and proximate injury suffered by the Vernons. Likewise, that injury is also proven by the overpayments in the amount of $118,416.99, based on fraudulent progress billings. The evidence is clear, cogent and convincing, therefore, I conclude Defendants Landmarc and Marcus Dunn committed fraud and deceit against the Vernons.

C. Conversion

Plaintiffs also brought an action for conversion against Defendants Landmarc and Marcus Dunn. Conversion is the unauthorized assumption and exercise of the right of ownership over the goods or personal chattels of another, to the exclusion of the owner's rights. *Castell v. Stephenson Finance Co.*, 244 S.C. 45, 135 S.E.2d 311 (1964), *Steele v. Victory Savings Bank*, 295 S.C. 290, 368 S.E.2d 91 (Ct. App. 1988). Bryan Johnson's testimony and Plaintiffs' Exhibit 6, Tabs 12 and 19 establish that Defendants transferred monies from an account set up by Defendants to disburse funds from the Plaintiffs to suppliers and subcontractors on the Vernon project to other Landmarc accounts having nothing to do with the Vernon project. Defendants Marcus and Kerri Dunn also wrote checks from the Vernon project account to themselves, which was not allowed under the contract as set out in Plaintiffs' Exhibit 6, Tabs 12, 13, 14 and 15. I therefore find Defendants Landmarc and Marcus Dunn wrongfully converted monies belonging to the Plaintiffs and that the amount of $36,438.75 is to also be credited to the Plaintiffs. Thus, in addition to the credit owed the Vernons for overbilling in the amount of $118,416.99, the Vernons are also owed a credit for $36,438.75 for the wrongfully converted bank

account funds.[6]

D. Breach of Contract Accompanied by Fraudulent Acts

1. Partial Lien Waivers Containing False Information.

Plaintiffs brought an action for breach of contract accompanied by fraudulent acts. The elements of this cause of action are 1.) a breach of contract, 2.) fraudulent intent relating to the breach and 3.) an overt act accompanying the breach. *Harper v. Etheridge*, 290 S.C. 112, 348 S.E.2d 374 (1986). I find that Defendant Landmarc breached the contract with the Vernons by failing to pay suppliers and subcontractors as called for in the contract, by overbilling the Vernons and by wrongfully converting funds from the Vernon account to other accounts. I also find fraudulent intent and overt fraudulent acts when Defendants Landmarc and Marcus Dunn submitted partial lien waivers to the Plaintiffs for payment, representing that the payments were for actual costs and that suppliers and subcontractors had been paid in full. Defendants Landmarc and Marcus Dunn committed fraudulent acts accompanying the breach when they submitted partial lien waivers that were inflated above the actual invoices submitted by the suppliers and subcontractors and when they forged the names of certain subcontractors and suppliers as described below. I also find that Defendants Landmarc and Marcus Dunn did not in fact pay suppliers and subcontractors as evidenced by the mechanic's liens filed on the project by four suppliers: Yoder's Building Supply, Ferguson Enterprises, Marathon Lighting and Clayton Tile. Therefore I find Plaintiffs are entitled to judgment on the cause of action of breach of contract accompanied by a fraudulent act.

2. Forgery

I also find that Landmarc, via Marcus Dunn, forged names on several invoices

[6] Although the Vernons are entitled to one recovery, the award of $36,438.75 is not duplicative.

submitted for payment. Invoices from Southern Gutter and Siding, Deer Painting, Yoder's and Glenco Fireplaces, submitted as part of Plaintiff's Exhibit 6, contain printed signatures of employees which were never authorized by the above-mentioned suppliers and subcontractors. Testimony from Patrick Westbrook, an employee of Yoder's, also supports the finding that Landmarc forged signatures on lien waivers for Yoder's. I find fraudulent intent in Landmarc's acts of forging the signatures and I find that Landmarc committed overt acts when the forged invoices were submitted to the Vernons for payment. Obviously, it was necessary for Landmarc to forge the signatures of these subcontractors to carry out the fraudulent scheme of overbilling the Vernons for more than the actual subcontractor invoices.

E. Contractual Indemnity/ Attorney's Fees by Contract

Plaintiffs brought a cause of action for contractual indemnity, citing Section 13 of the contract entered into with Defendant Landmarc. This section reads as follows:

> "Should legal proceedings become necessary for either party to enforce the terms and conditions of this agreement, the prevailing party shall be entitled to full reimbursement for all reasonable costs and expenses incurred, including reasonable attorney's fees."

I find that because the Vernons had to bring a lawsuit in order to enforce the terms and conditions of the contract. I also find that the Vernons are the prevailing party in this lawsuit and as a result, they are entitled to full reimbursement for the court costs and attorney's fees associated with this action, by contract and also as the prevailing party in defending Landmarc's mechanic's lien pursuant to S.C. Code Ann. 29-5-10(b).[7]

F. Equitable Indemnity

[7] Although I find that the Vernons are entitled to relief under contractual and equitable indemnity, the Vernons have elected to recover attorney's fees under the mechanic's lien statute. The amount shall be determined at a later hearing.

In this lawsuit Third-Party Plaintiff and Defendant Yoder's Building Supply ("Yoder's") brought a claim against both Defendants Landmarc and Marcus Dunn as well as the Vernons due to the fact that Landmarc did not pay Yoder's in full for materials and labor used on the project. In *Fowler v. Hunter*, 388 S.C. 355, 697 S.E.2d 531 (2010), the South Carolina Supreme Court ruled that a plaintiff could collect if he was compelled to pay damages because of negligence imputed to him as the result of another's tortious act. The elements are:

1. Indemnitor was liable for causing plaintiff's damages,
2. Indemnitee was exonerated from any liability for those damages, and
3. Indemnitee suffered damages as result of claims against it which were eventually proven to be fault of indemnitor.

I also find that the Vernons were required to defend the Yoder's claims and had to file with the Greenville County Register of Deeds a bond in the amount of $423,917.92 in order to bond off mechanic's liens brought because of lack of payment on the part of Landmarc. I find that Plaintiffs did pay Landmarc in full for all invoices submitted by Yoder's. Therefore, I find that Plaintiffs are entitled to equitable indemnity from Landmarc and are entitled to be paid for the expense of acquiring and maintaining the bond, including costs and attorney's fees to be determined by the Court in a post-hearing.

G. Foreclosure of Yoder's Mechanic's Lien

Yoder's acknowledged that finance charges of $12,630.80 were not proper for inclusion in its mechanic's lien. *See* e.g. *Sea Pines Co. v. Kiawah Island Co., Inc.*, 268 S.C. 153, 232 S.E.2d 501 (1977). Further, I find that one check, Check # 1383 dated 10/23/09, sent by Landmarc to be applied to the Vernon account was not fully credited. I therefore find that the amount of $7,473.57 should also be deducted from the Yoder's lien

amount, to compensate for the partially applied check. Thus, after reducing the lien by the finance charges and credit due, the correct amount of the Yoder's lien is $118,942.93. ($139,047.30 - $12,630.80 for finance charges and - $7,473.57 for credit = $118,942.93)

The parties acknowledge that the Vernon's disbursement of $60,837.99 after Yoder's filing its liens is the total amount available for the payment of "just claims" payable pursuant to S.C. Code Ann § 29-5-60. As of the time of the Vernons' payment the following liens were made against the Vernons' property:

Claimant	Amount	Date of Lien	Book #	Page
Yoder's Building Supply, Inc.	118,942.93	Dec. 18, 2009	MI 45	1580
Ferguson Enterprises, Inc.	1,500.00	Feb. 3, 2010	MI 46	1871
Total	120,442.93			

The total of all such "just claims" is $120,442.93. Yoder's percentage of this total is approximately 99%, therefore, Yoder's is entitled to recover $60,229.58 from Plaintiffs. ($118,942.93÷ $120,442.93 =99% x $60,837.96) This is an unfortunate example of an owner's obligation to pay twice where it makes a disbursement after notice of the lien attaches. While Yoder's could have helped itself by candidly advising Mr. Vernon of the amount due, such conduct does not provide the Vernons a defense under mechanic's lien law. I conclude, however, that the Vernons are entitled to recovery of this sum from Landmarc and Marcus Dunn as additional damages.

H. Violations of South Carolina Unfair Trade Practices Act, S.C. Code Ann. 39-5-10 *et. seq.*

Defendants Landmarc and Marcus Dunn committed unfair and deceptive acts when they

submitted false mechanic's lien waivers, overbilled for invoices submitted by suppliers and subcontractors, failed to pay suppliers and subcontractors and transferred funds from the Vernon account ending in 8447to other personal accounts held by Marcus and Kerri Dunn. Landmarc's and Marcus Dunn's actions, particularly where four subcontractors were forced to file mechanic's liens on the property due to non-payment, strongly indicate the potential for repetition. *York v. Conway Ford, Inc.*, 325 S.C. 170, 480 S.E.2d 726 (1996). The Vernons suffered damages in the amounts they paid for overbilled invoices, amounts they paid that were wrongfully transferred to Marcus Dunn's personal accounts and the costs they have incurred in bonding off the mechanic's liens filed on the property. Further, I find the violations of the Unfair Trade Practices Act to be willful as defined in S.C. Code Ann. § 39-5-140(a) because Landmarc and Marcus Dunn, who had worked on other construction projects, knew or should have known their conduct was in violation of this Act. Further, Marcus Dunn's testimony in which he testified that he overbilled the Vernons to cover workman's compensation insurance and insurance of suppliers and subcontractors simply is not credible. Therefore, the Vernons are entitled to treble damages as set forth in the Unfair Trade Practices statute. *Global Protection Corp. v. Halbersberg,* 332 S.C. 149, 503 S.E.2d 483 (Ct. App. 1998). [8]

The damages are as follows:

Overbillings by Landmarc	$118,416.99
Transfer of Vernon funds to Dunn's personal accounts	$ 36,438.75
Total damages	$154,855.74
Trebled	$464,567.22

[8] Although I find that the Vernons have established their Unfair Trade Practices Claim, the Vernons have elected to recover punitive damages under their fraud claim rather than treble damages under SCUTPA.

Punitive Damages

Punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future. *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 396, 134 S.E.2d 206, 210 (1984). Punitive damages also serve "as a vindication of private rights when it is proved that such have been wantonly, willfully or maliciously violated." *Harris v. Burnside*, 261 S.C. 190, 196, 199 S.E.2d 65, 68 (1973). Punitive damages may be awarded only upon a finding of actual damages. *Carroway v. Johnson*, 245 S.C. 200, 139 S.E.2d 908 (1965).

As set forth above, the Vernons are entitled to actual damages from Landmarc and Marcus Dunn. In order to find punitive damages this Court must examine 1.) defendant's degree of culpability, 2.) duration of the conduct, 3.) defendant's awareness or concealment, 4.) the existence of similar or past conduct, 5.) likelihood the award will deter the defendant or others from like conduct, 6.) whether the award is reasonably related to the harm likely to result from such conduct, 7.) defendant's ability to pay and 8.) other factors deemed appropriate. *Gamble v. Stevenson*, 305 S.C. 104, 111-112, 406 S.E.2d 350, 354 (1991).

Defendants Landmarc and Marcus Dunn demonstrated a high degree of culpability. The testimony of Marcus and Kerri Dunn concerning insurance costs, billing the estimated costs to the Vernons and the inability to reconcile due to being fired from the job simply is not credible. The overbilling, transfer of funds and the failure to pay suppliers and subcontractors was not due to simple mistakes or lack of experience, but were deliberate acts on the part of Defendants Landmarc and Marcus Dunn. It is clear that the Defendants' conduct continued throughout their work on the Vernon project and it is clear Defendants Landmarc and Marcus Dunn were aware of their conduct. The scope of the overbillings and the fact that four subs filed mechanic's liens

on the project indicate a pattern of misconduct on the part of Defendants Landmarc and Marcus Dunn. It is likely that an award of punitive damages will serve as a warning to Defendants Landmarc and Marcus Dunn and others that this conduct will not be tolerated by this Court. An award of punitive damages is reasonable related to the damages suffered by the Vernons who have had to pay costs and attorney's fees to bring this action, who have had to maintain a bond to cover the mechanic's liens filed on their property and who have paid a considerable amount in overbillings and wrongful transfers. While the Defendants Landmarc and Marcus Dunn's wealth is a relevant factor in determining the award of punitive damages, it is not necessary controlling, *Frazier v. Badger*, 361 S.C. 94, 603 S.E.2d 587 (2004) and Defendants Landmarc and Marcus Dunn's egregious conduct outweighs any consideration of their ability to pay. [9] Therefore, this Court finds punitive damages are appropriate and award punitive damages to the Vernons in the amount of one-half of the actual damages of $154,855.74, or $77,427.87.

ATTORNEY FEES

The Vernons are the prevailing party in the foreclosure action brought by Landmarc and Marcus Dunn and are therefore entitled to have attorney's fees paid by both defendants. Because the Vernons have elected this remedy, I find the Vernons cannot recover attorney's fees for either contractual indemnity or equitable indemnity. The amount of attorney fees and costs recoverable will be set at a later hearing.

On the strength of the language in S.C. Code Ann. § 29-5-20, the Vernons argue that they are also the prevailing party as to the Yoder's mechanic's lien inasmuch as the amount awarded to Yoder's, $60,229.50, is less than one-half of the Yoder's mechanic's lien in the amount of

[9] The South Carolina Court of Appeals in its recent decision of *Solley v. Navy Federal Credit Union, Inc.*, Opinion number 4937, February 1, 2012 affirmed an award of punitive damages based on the egregious conduct of bank.

$139,047.30. They also note that Yoder's, the Third-Party Plaintiff in the foreclosure action, made no offer of settlement as allowed in S.C. Code Ann. § 29-5-20. They argue that had Yoder's made an offer under the statute less than $120,459.00 ($60,229.50 x 2), then it would have been the prevailing party. As Yoder's did not do so, the Vernons are the prevailing party for the determination of attorney's fees. The Vernons also note that the terms of their offer of settlement to Landmarc called for Landmarc to pay off all mechanic's liens filed on the property, not just the Yoder's lien. The Vernons argue that they are the prevailing party and as such they are entitled to recover reasonable attorney's fees as a matter of law.

I find that S.C. Code § 29-5-10(b) provides, "For purposes of the award of attorneys' fees, the determination of the prevailing party is based upon one verdict in the action". The same language is found in S.C. Code § 29-5-20(b), which governs liens such as the Yoder's lien.

Yoder's lien rights are only as good as Landmarc Constructors, Inc.'s lien rights. The overwhelming focus of the trial was Landmarc's entitlement to and amount of any recovery. This Court determined that the inaccurate and improper billings resulted in the Vernons owing nothing to Landmarc.

However, Yoder's is being granted judgment against the Vernons in the amount of $60,229.53; which is almost 90% of what it sought in its claim against the Vernons. Yoder's is also entitled to judgment against Landmarc in the amount of $62,467.00. Clearly, even though the Court finds that is not entitled to recovery under the facts of this case, the Court cannot find that Landmarc wrongfully filed its lien. And, it is likewise clear that, due the Landmarcs' claim, most of the costs incurred by the Vernons would have been expended even if Yoder's had not filed its lien.

The evidence established that the Vernons and Yoder's were damaged by Landmarc, so

Landmarc should bear the attorney's fees, not Yoder's. To reach a contrary result would be to ignore the intent of the Legislature, in addition to other sound principles of equity. I also find that the Vernons' offer of settlement takes into account the equitable nature of the Statute's application. The Vernons made no offer of settlement to Yoder's directly. Their offer of settlement was for Landmarc to pay the $50,000 and for Landmarc to be responsible for Yoder's lien. That puts the mid-point between Yoder's lien and the Vernons' offer at $44,500.00. To assess any attorney's fees against Yoder's would not be consistent with the intent of the applicable statutes. Further, as Yoder's lien rights are only as good as Landmarc's lien rights, I find that neither the Vernons nor Yoder's is entitled to attorney's fees against the Vernons concerning the Yoder's lien.

CONCLUSION

Based upon the evidence I find and conclude the following:

The Vernons are awarded judgment under the Breach of Contract and Conversion causes of action in the amount of $154,855.74 for actual damages against Defendants Landmarc and Marcus Dunn. [10]

The Vernons are entitled to an award of punitive damages against Landmarc arising out of the Fraud cause of action. I find the punitive damages amount shall be ½ of the actual damages, or $77,427.87.

Defendant Yoder's has a basis for a judgment in the amount of $60,229.58 against the Vernons arising out of the claim under the Mechanic's Lien statutes. As noted above, the Vernons would likewise be entitled to judgment in this amount, $60,229.58, against Defendants Landmarc and Marcus Dunn under the Foreclosure of Yoder's Mechanic's Lien cause of action.

[10] The Vernons have elected attorney's fees under S.C. Code Ann. § 29-5-10.

However, the Court has since been informed that the Vernons and Yoder's have agreed to a settlement whereby the Vernons have paid Yoder's $50,000 in full satisfaction of the Yoder's mechanic's lien. That being so, I find that the Vernons are entitled to recover the amount of the settlement, $50,000, from Landmarc and Marcus Dunn.

Defendant Yoder's is awarded judgment in the amount of $62,467.00 against Defendant Landmarc.

Defendants Landmarc, Marcus Dunn, Kerri Dunn and Gary Dunn[11] are not entitled to collect from either the Vernons or Yoder's.

No party to this action is awarded interest.

Attorney fees shall be determined by the Court at a later hearing.

IT IS SO ORDERED.

Charles B. Simmons
Presiding Judge, 13th Judicial Circuit

Greenville, SC

3/7, 2012

[11] Counsel for all parties agree that Gary Dunn performed some work on the Vernon home, but was not part of any of the acts committed by Landmarc and Marcus Dunn.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP2300564

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
2017 MAR 28 A 9:45

Bill J Vernon Jr *vs.* Landmarc Constructors Inc

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order,_of judgment in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to jwhite@greenvillecounty.otg.If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Charles B Simmons

T. S. Stern Jr. Covington Patrick Hagins Stern & Lewis P.O. Box 2343 Greenville, SC 29602
Hard Copy

Thomas Elihue Dudley Kenison, Dudley & Crawford, Llc 704 E. McBee Ave. Greenville, SC 29601
John Brandt Rucker P.O. Box 949 Mauldin, SC 29662

ATTORNEY(S) FOR THE PLAINTIFF(S)

V Elizabeth Wright Covington Patrick Hagins Stern & Lewis P O Box 2343 Greenville, SC 29602 Hard Copy

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

28

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

COPY

IN THE COURT OF COMMON PLEAS

Bill J. Vernon, Jr. and Sandra Vernon

Plaintiff(s)

vs.

Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes, Marcus Dunn and Yoder's Building Supply, Inc.,

Defendant(s)

2010 JAN 22 PM 2:01

FILED-CLERK OF COURT
GREENVILLE CO S C.

CIVIL ACTION COVERSHEET

2010 - CP - 23 - 0564

(Please Print)
Submitted By: T. S. Stern, Jr.
Address: 211 Pettigru Street
Greenville, SC 29601

SC Bar #: 5337
Telephone #: (864) 242-9000
Fax #: (864) 233-9777
Other:
E-mail: sstern@covpatlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete*

- ☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
- ☐ This case is subject to **ARBITRATION** pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- ☐ This case is subject to **MEDIATION** pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☑ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Sexual Predator (510)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture (840)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Other (699)

Submitting Party Signature: T. S. Stern, Jr. **Date:** Jan 22, 2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES ONLY

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Case are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Cases which are appellate in nature such as appeals or writs of certiorari;

    c. Post Conviction relief matters;

    d. Contempt of Court proceedings;

    e. Forfeiture proceedings brought by the State;

    f. Cases involving mortgage foreclosures; and

    g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.

4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

** Florence, Horry, Lexington, Richland, Greenville, and Anderson

COPY

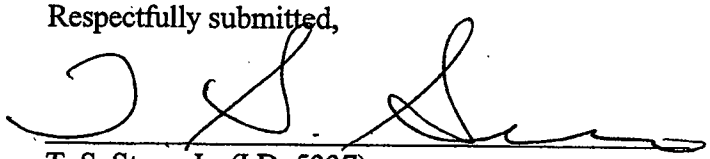
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CASE NO. 2010-CP-23-0564
COUNTY OF GREENVILLE	)	
	)	
Bill J. Vernon, Jr. And Sandra Vernon,	)	
	)	
Plaintiffs,	)	**SUMMONS**
	)	
vs.	)	**(Jury Trial Demanded)**
	)	
Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes, Marcus Dunn and Yoder's Building Supply, Inc.,	)	
	)	
Defendants.	)	

2010 JAN 22 PM 2:01

FILED-CLERK OF COURT
GREENVILLE CO S C.
PAUL B. WICKENSIMER

YOU ARE HEREBY summoned and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their offices, 211 Pettigru Street, P.O. Box 2343, Greenville, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court and judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,



T. S. Stern, Jr. (I.D. 5337)
Covington, Patrick, Hagins & Lewis
Post Office Box 2343
Greenville, SC 29602
(864) 242-9000

Attorneys for Plaintiffs

January____, 2010

Greenville, South Carolina

COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CASE NO. 2010-CP-23-0564

2010 JAN 22 PM 2:01
FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENSIMER

Bill J. Vernon, Jr. and Sandra Vernon,	)	
Plaintiff,	)	
	)	**VERIFIED COMPLAINT**
v.	)	**(JURY TRIAL DEMANDED)**
	)	
Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes, Marcus Dunn and Yoder's Building Supply, Inc.,	)	
Defendants.	)	

The Plaintiffs, Bill J. Vernon, Jr. and Sandra Vernon complaining of the Defendants would respectfully show the Court as follows:

Parties and Jurisdiction

1. Plaintiffs, Bill J. Vernon, Jr. and Sandra Vernon are individuals residing in Greenville County, South Carolina.

2. Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes ("Landmarc") is a South Carolina corporation with its principal place of business in Greenville County, South Carolina.

3. Upon information and belief, Defendant Marcus Dunn ("Dunn") owns and/or is otherwise in control of Defendant Landmarc and resides in Greenville County, South Carolina.

4. Defendant Yoder's Building Supply, Inc. is a South Carolina corporation doing business in Greenville County.

5. This Court has jurisdiction over the parties to and subject matter of this action as the subject property is located in Greenville County, South Carolina.

General Allegations

6. On or about August 18, 2008, Plaintiffs Bill J. Vernon, Jr. and Sandra Vernon and Defendant Landmarc entered into a construction agreement for a new home ("Contract") whereby Landmarc agreed to build a single-family residence on a property known as Lot 44 Cliffs at Mountain Park, 470 High Ridge Parkway, Travelers Rest, Greenville County, South Carolina.

7. In exchange for Landmarc's agreement to build Plaintiff's home, Plaintiffs agreed to pay Landmarc for the "costs of the work" plus fifteen percent (15%) and based upon an estimated cost of $785,765, which together with overhead and profit for a total estimated budget of $903,629. The "cost plus" nature of the contract made it intrinsically a fiduciary agreement based upon trust and confidence and requiring Defendants to properly account for and to document all costs of the work.

8. Notwithstanding the foregoing, the total amount paid to date by Plaintiffs is approximately $978,981.54 and Defendants Landmarc and Dunn have sought payment of additional invoices and all retainage totaling $139,510.49. Moreover, the work remains only 85% complete.

9. In connection with progress payments, Defendants Landmarc and Dunn provided partial lien waiver forms which provided, *inter alia*:

- All charges except retainage for labor performed and material furnished by affiant through the cutoff date will be paid in full upon receipt and subsequent funding of a check in the amount stated about by a financial institution doing business with the public in the states of North and South Carolina.
- All other persons who have furnished labor or material to affiant for the

work will be paid all amounts to which they are entitled.

- Affiant agrees to indemnify and hold the owner harmless against all liability, cost, or expense including attorney's fees and court and other costs from any claim action by affiant or any person claiming by, through or under affiant with respect to the representations and waivers in this document.
- All labor and materials supplied by Landmarc on the project were in accordance with the plans and specifications.
- All labor was performed in a good and workman-like manner.

10. Copies of such partial lien waivers are attached hereto and incorporated as Exhibit "A."

11. To date Plaintiffs have requested supporting documentation as to Defendant Landmarc's costs. However, notwithstanding such demand, Defendants Landmarc and Dunn have failed and refused to provide such documentation.

12. Plaintiffs would allege and show that notwithstanding the partial lien waivers presented by Defendants Landmarc and Dunn to Plaintiffs such Defendants have not paid at least the following subcontractors and materialmen despite representations contained in the partial lien waivers that they had or would be paid:

a. Yoder's Building Supply, Inc.

b. Glenco Fireplaces

c. Marathon Lighting

d. Holder Electric

e. The Cook Station

f. Deer Painting

g. Rigsby's Hardwood Flooring

13. In addition, as fully alleged below, Defendant Landmarc has failed to perform the work in a good and workmanlike manner, and has grossly mismanaged the construction of Plaintiffs' home.

14. By reason of its improper performance of work, Plaintiffs terminated Defendant Landmarc's performance on December 17, 2009.

15. Thereafter, Plaintiffs were served with a Notice and Certificate of Mechanic's Lien by Yoder's Building Supply, Inc. ("Yoder's Building") in the amount of $139,047.30.

16. Thereafter, Plaintiffs were served with a Notice and Certificate of Mechanic's Lien by Marathon Lighting in the amount of $9,872.76.

17. Thereafter, Plaintiffs were served with a Notice and Certificate of Mechanic's Lien by Clayton Tile Distributing Co, Inc in the amount of $6.824.59.

FOR A FIRST CAUSE OF ACTION
(Fraud and Deceit)

18. Plaintiffs herein incorporate by reference all prior and subsequent allegations consistent herewith.

19. Defendants Landmarc and Dunn represented to Plaintiffs that subcontractors and materialmen would be paid in accordance with the terms of the contract and partial lien waivers.

20. The representations by Landmarc and Dunn were false in that notwithstanding the representations, Defendants failed to pay subcontractors and materialmen with funds paid to Landmarc for the benefit of those subcontractors and materialmen.

21. Plaintiffs would allege and show that the Defendants committed at least the

following specific acts of fraud and deceit:

i. In billing Plaintiffs and receiving payment of $222,880.02 for materials supplied by Yoder's Building, but paying Yoder's Building only $83,832.72, resulting in an underpayment to Yoder's of $139,047.30. In addition, Defendants billed Plaintiffs an additional $5,356.57, which is included within the additional invoices referenced in Paragraph 8 above;

ii. In billing Plaintiffs and receiving payment of $65,657.00 for labor materials supplied by Yoder's Stone, when Yoder's Stone had billed only $58,981.38 to Defendants, but paying Yoder's Stone only $58,981.38, resulting in an overbilling to Plaintiffs of $6,675.62;

iii. In billing Plaintiffs and receiving payments of $19,323.00 for Yoder's Drywall, when Yoder's Drywall had billed only $13,323.00 to Defendants, but paying Yoder's Drywall $13,323.00, resulting in an overbilling to Plaintiffs of $6,000.00;

iv. In billing Plaintiffs and receiving payment of $7,814.00 for Yoder's Insulation, when Yoder's Insulation had billed only $5,451.10 to Defendants, but paying Yoder's Insulation $5,451.10, resulting in an overbilling to Plaintiffs of $2,326.90;

v. In billing Plaintiffs and receiving payment of $22,152.50 for Deer Painting, when Deer Painting had billed only $14,543.00 to Defendants, and in paying Deer Painting only $7,000.00, resulting in an overbilling to Plaintiffs of $7,609.50 and short pay to Deer Painting of $7,543.00. In addition, Defendants billed Plaintiffs an additional $7,543.50 which is

included within the additional invoices referenced in Paragraph 8 above;

vi. In billing Plaintiffs and receiving payment of $2,890.00 for Southern Gutter & Siding, when billed and paying Southern Gutter & Siding only $1,890.00, resulting in an overbilling to Plaintiffs of $1,000.00;

vii. In billing Plaintiffs and receiving payment of $137,800.35 for Matt Lynn Custom Carpentry, when billed and paying Matt Lynn Custom Carpentry only $114,006.50, resulting in an overbilling to Plaintiffs of $23,795.85;

viii. In forging the name of Matt Lynn's principal on many Landmarc subcontractor application forms;

ix. In billing Plaintiffs and receiving payment of $3,795.00 for Glenco Fireplaces, when being billed and paying Glenco Fireplaces only $1,810.00, resulting in an overbilling to Plaintiffs of at least $1,985.00. In addition, Plaintiffs billed Defendants an additional $1,985.50 which is included within the additional invoices in Paragraph 8 above;

x. In billing Plaintiffs and receiving payment of $9,872.76 for Marathon Lighting, while paying $0.00 to Marathon Lighting, resulting in an underpayment to Marathon Lighting of at least $9,872.76;

xi. In billing Plaintiffs and receiving payment of $6,576.40 for Rigsby's Hardwood Flooring, when being billed and paying Rigsby's Hardwood Flooring only $4,183.40, resulting in an overbilling to Plaintiffs of $2,393.00. In addition, Plaintiffs billed Defendants an additional $5,547.00 which is included within the additional invoices in Paragraph 8 above;

xii. And in billing Plaintiffs and receiving payment from Plaintiffs of $2,513.99 for Holder Electric, but failing to pay any amount to Holder Electric, resulting in an underpayment to Holder Electric of at least $2,513.99. In addition, Plaintiffs billed Defendants an additional $3,086.00 which is included within the additional invoices in Paragraph 8 above;

22. The representations by Landmarc and Dunn, including the foregoing acts, were material in that they induced Plaintiffs to make payments totaling approximately $980,000. Moreover, Defendants' representations were also made to induce payment of construction loan proceeds from Plaintiffs' construction lender, a federally insured financial institution based in Greenville County.

23. Plaintiffs had a right to rely upon the representations in the partial lien waivers and in fact relied on those in as much as those were statements under oath by Defendant Marcus Dunn.

24. The misrepresentations by Landmarc and Dunn were made with the intent to deceive Plaintiffs and Plaintiffs were ignorant of the falsity of Landmarc's and Dunn's misrepresentations.

25. As a result of the frauds by Landmarc and Dunn, Plaintiffs have suffered damages proximately caused by Landmarc and Dunn, and are entitled to compensatory and punitive damages, costs, and Attorney's Fees.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

26. Plaintiffs herein incorporate by reference all prior and subsequent allegations consistent herewith.

27. Plaintiffs and Defendant Landmarc by and through Defendant Dunn entered into a contract for valuable consideration which is binding upon the parties.

28. Plaintiffs have fully performed all obligations on their part.

29. Defendants Landmarc and Dunn breached or unjustifiably failed to perform to the contract in at least the following respects:

a) By failing to account for the costs on the project;

b) By failing to perform work in a good and workmanlike manner;

c) By failing to provide their best efforts to ensure completion by the stated completion date;

d) By failing to provide supervision of the project;

e) By misappropriating and converting funds intended for the payment of subcontractors and materialmen, and;

f) By mismanaging the project;

30. In addition, Defendants have failed to perform work in a good and workmanlike manner in at least the following respects:

a) The entry steps to the front porch fail to meet code and must be rebuilt;

b) In constructing the rear deck in a defective manner, resulting in warping due to standing moisture;

c) In failing to properly budget, plan for and construct retaining walls;

d) In failing to finish the garage doors, voiding the warranty;

e) In failing to timely stain exterior siding;

f) In failing to properly design and construct the chimney, causing it to be rejected by the Architectural Review Board, and in causing damage to the

roof and other building components;

g) In constructing the floor of the screen porch in a manner which does not drain, resulting in standing water and causing damages to the floor and its components;

h) In installing incorrect exterior light back plates;

i) In failing to construct the master bath countertops in a good and workmanlike manner;

j) In incorrectly wiring the basement heat pump;

k) In incorrectly locating the gas shut off valve for the main fireplace;

l) In improperly finishing all wood floors;

m) In improperly installing carpet;

n) In failing to connect an attic gas vent;

o) In improperly selecting or installing the kitchen stove hood;

p) In failing to properly install the icemaker;

q) In improperly locating the dryer vent;

r) In failing to properly paint the interior;

s) In improperly installing of the interior stair handrail;

t) In improperly ordering and storing of material to be used for the project;

u) And, in failing to seal the tops and bottoms of interior doors.

31. As a result, Plaintiffs have been damaged as a direct and proximate result of the breaches of contract by Landmarc and Dunn.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Acts)

32. Plaintiffs herein incorporate by reference all prior and subsequent allegations

consistent herewith.

33. As described above, Defendant Landmarc breached or unjustifiably failed to perform under the contract.

34. Defendant Landmarc's breaches were done with a fraudulent design and intent.

35. Defendants Landmarc and Dunn committed overt fraudulent acts in connection with such breach including but not limited to the following:

a) Materially increasing costs in excess of the contract price;

b) Charging Plaintiffs for labor and material not part of the work at Plaintiffs' residence;

c) Using and converting funds earmarked for the payment of subcontractors and materialmen for their own benefit;

d) By withholding documentation and refusing to account for costs;

e) By receiving credits on accounts related to Plaintiffs' residence and using those credits for Defendants personal benefit;

e) By providing partial lien waivers which were knowingly false;

f) By knowingly executing a scheme to defraud an insured financial institution in violation of S.C. Code Ann. § 34-3-110; and

g) By failing to pay subcontractors and materialmen in violation of S. C. Code Ann. § 29-7-20.

h) By forging the signature of on or more subcontractors in violation of S.C. Code Ann. §16-13-10.

36. As a result of such willful and wanton conduct by Defendants Landmarc and Dunn, Plaintiffs seek compensatory and punitive damages against such Defendants in an amount

to be determined by a jury.

FOR A FOURTH CAUSE OF ACTION
(Conversion)

37. Plaintiffs herein incorporate by reference all prior and subsequent allegations consistent herewith.

38. Plaintiffs would allege and show that Plaintiffs had an interest in the monies paid to Defendant Landmarc to ensure subcontractors and materialmen were properly paid for work.

39. Defendants Landmarc and Dunn converted money and property for their own personal use without Plaintiffs' permission.

40. As a result of such conversion, Plaintiffs have been damaged in the amount of monies converted plus interest.

41. Because such conversion was accomplished by Defendants either recklessly, willfully and wantonly or with conscious indifference to the Plaintiffs' rights, Plaintiffs' seek punitive damages in addition to actual damages plus interest up to the time of trial.

FOR A FIFTH CAUSE OF ACTION
(Violation of the Unfair Trade Practices Act)

42. Plaintiffs herein incorporate by reference all prior and subsequent allegations consistent herewith.

43. Defendants Landmarc and Dunn are engaged in the trade or commerce as defined by South Carolina Code Annotated § 39-5-10, et seq. ("SCUTPA").

44. Upon information and belief, Defendants Landmarc and Dunn have repeated unfair and deceptive acts on multiple occasions against Plaintiffs and others, as evidenced by pending actions against them.

45. Such unfair and deceptive acts are capable of repetition and in fact have been

repeated, and thus have an impact on the public interest.

46. Given these Defendants' business experience and education, Defendants' use of such acts and practices was willful as they knew or should have known such acts violate the South Carolina Unfair Trade Practices Act.

47. Defendants' acts were unethical and oppressive.

48. As a direct and proximate result of Defendants' acts or practices, Plaintiffs have experienced significant loss and injury. Defendants' acts were willful, wanton and in reckless disregard for Plaintiff's rights and as a result, Plaintiffs are entitled to treble damages.

FOR A SIXTH CAUSE OF ACTION
(Accounting)

49. Plaintiffs herein incorporate by reference all prior and subsequent allegations consistent herewith.

50. Plaintiffs are entitled to the equitable remedy of an accounting, due to the aforesaid acts of bad faith, fraud and breach of duties including the failure to account for all monies paid.

FOR A SEVENTH CAUSE OF ACTION
(Contractual Indemnity)

51. Plaintiffs herein incorporate by reference all prior and subsequent allegations consistent herewith.

52. Plaintiffs would respectfully allege and show that Plaintiffs, by contract, are entitled to indemnity for all liability, cost or expenses including attorney's fees and court and other costs from any claims of subcontractors or suppliers who were to be paid from funds received by Landmarc from Plaintiffs.

FOR AN EIGHTH CAUSE OF ACTION
(Equitable Indemnity)

53. Plaintiffs herein incorporate by reference all prior and subsequent allegations consistent herewith.

54. Plaintiffs would allege and show that they are entitled to equitable indemnification against the Defendants Landmarc and Dunn by reason of any claims made by subcontractors, including without limitation Yoder's Building Supply, Inc. and Marathon Lighting.

FOR A NINTH CAUSE OF ACTION
(Declaratory Relief Pursuant to S.C. Code Ann. 15-53-10, 17, 309)

55. Plaintiffs herein incorporate by reference all prior and subsequent allegations consistent herewith.

56. Defendant Yoder's Building is named a party by reason of the Notice and Certificate of Mechanic's Lien filed against the property of the Plaintiffs in the amount of $139,047.30.

57. Plaintiffs seek a declaration of the rights and responsibilities of the parties hereto for the lien of Yoder's Building including, without limitation, whether or not Plaintiffs, having paid Defendant Landmarc in full is entitled to the benefit of the payment defense as set forth in S.C. Code Ann. §29-5-20(B).

FOR A TENTH CAUSE OF ACTION
(Injunctive Relief)

58. Plaintiffs herein incorporate by reference all prior and subsequent allegations consistent herewith.

59. Pursuant to SCRCP 65, Plaintiffs move for Relief as follows:

1) For an Order enjoining Defendants from making any transfers of funds during

the pendency of this action;

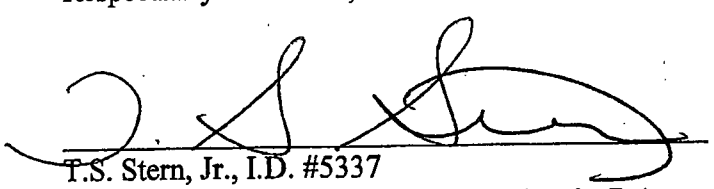
2) In altering or destroying any business records, including without limitation, records of payments, invoices, and all electronically stored information.

WHEREFORE, Plaintiffs pray for relief as follows:

1) For judgment against Defendants Landmarc and Dunn for actual and punitive damages;
2) For an accounting of all monies paid to Landmarc which were unlawfully and fraudulently misapplied, diverted, siphoned, and misappropriated by Landmarc and/or Dunn;
3) For actual damages, trebled pursuant to SCUTPA;
4) For the order *pendente lite*, restraining Defendants Landmarc and Dunn from using project funds;
5) For attorneys fees, expert fees, interest, and costs;
6) For such other relief as the Court deems just and proper.

PLAINTIFFS DEMAND A TRIAL BY JURY.

Respectfully submitted,



T.S. Stern, Jr., I.D. #5337
Covington, Patrick, Hagins, Stern & Lewis, P.A.
P.O. Box 2343
Greenville, SC 29602
(864) 242-9000 ext. 516

Attorneys for Plaintiffs

January 22, 2010
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) CASE NO. 2010-CP-23-0564

2010 JAN 22 PM 2:01
FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENSIMER

Bill J. Vernon, Jr. and Sandra Vernon,

Plaintiffs,

v.

Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes, Marcus Dunn and Yoder's Building Supply, Inc.,

Defendants.

VERIFICATION

PERSONALLY APPEARED before me Bill J. Vernon, Jr. and Sandra Vernon, who being first duly sworn, deposes and says that they are the Plaintiffs in this matter; that they have read the foregoing Complaint; that the information set forth therein are true of their own knowledge, except those matters and things therein alleged on information and belief, and as to those they believe them to be true.

Bill J. Vernon, Jr.

Sandra Vernon

SWORN TO AND SUBSCRIBED before me this 22nd day of January, 2010.

Notary Public, State of SC

My Commission expires: MY COMMISSION EXPIRES SEPT. 23, 2014

EXHIBIT A

PARTIAL LIEN WAIVER

Date: October 23, 2008

Owner: Bill and Sandy Vernon

Affiant: Landmarc Custom Homes

Affiant's Address: P. O. Box 4782
Greenville, SC 29608

Property: The Cliffs at Mountain Park, Lot 44, 470 Highridge Parkway

Cutoff Date: October 25, 2008

Payment Amount: $ 40,911.74

Affiant swears individually and on behalf of **Landmarc Custom Homes** that the following statements are true and within the personal knowledge of Affiant:

1. All charges, except retainage, for labor performed and material furnished by Affiant through the Cutoff Date will be paid in full upon receipt and subsequent funding of a check in the amount stated above by a financial institution doing business with the public in the States of North or South Carolina.
2. Upon funding of check for the Payment Amount, Affiant waives all claims against Owner or the Property that Affiant may have from furnishing labor or material through the Cutoff Date.
3. All other persons who have furnished labor or material to Affiant for the Work, through the Cutoff Date, will be paid all amounts to which they are entitled.
4. Affiant agrees to indemnify and hold Owner harmless against all liability, cost, or expense, including attorney's fees and court and other costs, from any claim or action by Affiant or any person claiming by, through, or under Affiant with respect to the representations and waivers in this document.
5. Affiant is authorized to sign this Affidavit on behalf of and can legally bind **Landmarc Custom Homes.**
6. All labor performed and materials supplied by **Landmarc Custom Homes** on the project were in accordance with the plans and specifications. All labor was performed in a good and workmanlike manner.
7. The Contractor has complied with all laws in performing its duties on the project.

Mark Dunn
LANDMARC CUSTOM HOMES

SUBSCRIBED AND SWORN TO before me on 10/23/08 by Landmarc Custom Homes.

Betty Dunn
Notary Public, State of South Carolina

My Commission Expires: 5/10/2010

PARTIAL LIEN WAIVER

Date: December 30, 2008

Owner: Bill and Sandy Vernon

Affiant: Landmarc Custom Homes

Affiant's Address: P. O. Box 4782
Greenville, SC 29608

Property: The Cliffs at Mountain Park, Lot 44, 470 Highridge Parkway

Cutoff Date: December 30, 2008

Payment Amount: $ 123,524.47

Affiant swears individually and on behalf of **Landmarc Custom Homes** that the following statements are true and within the personal knowledge of Affiant:

1. All charges, except retainage, for labor performed and material furnished by Affiant through the Cutoff Date will be paid in full upon receipt and subsequent funding of a check in the amount stated above by a financial institution doing business with the public in the States of North or South Carolina.
2. Upon funding of check for the Payment Amount, Affiant waives all claims against Owner or the Property that Affiant may have from furnishing labor or material through the Cutoff Date.
3. All other persons who have furnished labor or material to Affiant for the Work, through the Cutoff Date, will be paid all amounts to which they are entitled.
4. Affiant agrees to indemnify and hold Owner harmless against all liability, cost, or expense, including attorney's fees and court and other costs, from any claim or action by Affiant or any person claiming by, through, or under Affiant with respect to the representations and waivers in this document.
5. Affiant is authorized to sign this Affidavit on behalf of and can legally bind **Landmarc Custom Homes.**
6. All labor performed and materials supplied by **Landmarc Custom Homes** on the project were in accordance with the plans and specifications. All labor was performed in a good and workmanlike manner.
7. The Contractor has complied with all laws in performing its duties on the project.

Mary Dunn
LANDMARC CUSTOM HOMES

SUBSCRIBED AND SWORN TO before me on 12/30/08 by Landmarc Custom Homes.

Betty Dunn
Notary Public, State of South Carolina

My Commission Expires: 5/10/2010
(Notary Seal must accompany signature.)

PARTIAL LIEN WAIVER

1/30/09

Date: **January 30, 2009**

Owner: **Bill and Sandy Vernon**

Affiant: **Landmarc Custom Homes**

Affiant's Address: **P. O. Box 4782**
Greenville, SC 29608

Property: **The Cliffs at Mountain Park, Lot 44, 470 Highridge Parkway**

Cutoff Date: **January 30, 2009**

Payment Amount: **$ 86,636.26**

Affiant swears individually and on behalf of **Landmarc Custom Homes** that the following statements are true and within the personal knowledge of Affiant:

1. All charges, except retainage, for labor performed and material furnished by Affiant through the Cutoff Date will be paid in full upon receipt and subsequent funding of a check in the amount stated above by a financial institution doing business with the public in the States of North or South Carolina.
2. Upon funding of check for the Payment Amount, Affiant waives all claims against Owner or the Property that Affiant may have from furnishing labor or material through the Cutoff Date.
3. All other persons who have furnished labor or material to Affiant for the Work, through the Cutoff Date, will be paid all amounts to which they are entitled.
4. Affiant agrees to indemnify and hold Owner harmless against all liability, cost, or expense, including attorney's fees and court and other costs, from any claim or action by Affiant or any person claiming by, through, or under Affiant with respect to the representations and waivers in this document.
5. Affiant is authorized to sign this Affidavit on behalf of and can legally bind **Landmarc Custom Homes**.
6. All labor performed and materials supplied by **Landmarc Custom Homes** on the project were in accordance with the plans and specifications. All labor was performed in a good and workmanlike manner.
7. The Contractor has complied with all laws in performing its duties on the project.

Mark Dunn
LANDMARC CUSTOM HOMES

SUBSCRIBED AND SWORN TO before me on 1/30/09 by Landmarc Custom Homes.

Betty Dunn
Notary Public, State of South Carolina

My Commission Expires: 5/10/2010

PARTIAL LIEN WAIVER

Date: **March 3, 2009**

Owner: **Bill and Sandy Vernon**

Affiant: **Landmarc Custom Homes**

Affiant's Address: **P. O. Box 4782**
Greenville, SC 29608

Property: **The Cliffs at Mountain Park, Lot 44, 470 Highridge Parkway**

Cutoff Date: **February 28, 2009**

Payment Amount: **$ 143,002.35**

Affiant swears individually and on behalf of **Landmarc Custom Homes** that the following statements are true and within the personal knowledge of Affiant:

1. All charges, except retainage, for labor performed and material furnished by Affiant through the Cutoff Date will be paid in full upon receipt and subsequent funding of a check in the amount stated above by a financial institution doing business with the public in the States of North or South Carolina.
2. Upon funding of check for the Payment Amount, Affiant waives all claims against Owner or the Property that Affiant may have from furnishing labor or material through the Cutoff Date.
3. All other persons who have furnished labor or material to Affiant for the Work, through the Cutoff Date, will be paid all amounts to which they are entitled.
4. Affiant agrees to indemnify and hold Owner harmless against all liability, cost, or expense, including attorney's fees and court and other costs, from any claim or action by Affiant or any person claiming by, through, or under Affiant with respect to the representations and waivers in this document.
5. Affiant is authorized to sign this Affidavit on behalf of and can legally bind **Landmarc Custom Homes.**
6. All labor performed and materials supplied by **Landmarc Custom Homes** on the project were in accordance with the plans and specifications. All labor was performed in a good and workmanlike manner.
7. The Contractor has complied with all laws in performing its duties on the project.

Warren Dunn
LANDMARC CUSTOM HOMES

SUBSCRIBED AND SWORN TO before me on 3/10/09 by Landmarc Custom Homes.

Betty Dunn
Notary Public, State of South Carolina

My Commission Expires: 5/10/2010

PARTIAL LIEN WAIVER

4/15/09

Date: **April 17, 2009**

Owner: **Bill and Sandy Vernon**

Affiant: **Landmarc Custom Homes**

Affiant's Address: **P. O. Box 4782**
Greenville, SC 29608

Property: **The Cliffs at Mountain Park, Lot 44, 470 Highridge Parkway**

Cutoff Date: **April 15, 2009**

Payment Amount: **$ 82,244.76**

Affiant swears individually and on behalf of **Landmarc Custom Homes** that the following statements are true and within the personal knowledge of Affiant:

1. All charges, except retainage, for labor performed and material furnished by Affiant through the Cutoff Date will be paid in full upon receipt and subsequent funding of a check in the amount stated above by a financial institution doing business with the public in the States of North or South Carolina.
2. Upon funding of check for the Payment Amount, Affiant waives all claims against Owner or the Property that Affiant may have from furnishing labor or material through the Cutoff Date.
3. All other persons who have furnished labor or material to Affiant for the Work, through the Cutoff Date, will be paid all amounts to which they are entitled.
4. Affiant agrees to indemnify and hold Owner harmless against all liability, cost, or expense, including attorney's fees and court and other costs, from any claim or action by Affiant or any person claiming by, through, or under Affiant with respect to the representations and waivers in this document.
5. Affiant is authorized to sign this Affidavit on behalf of and can legally bind **Landmarc Custom Homes.**
6. All labor performed and materials supplied by **Landmarc Custom Homes** on the project were in accordance with the plans and specifications. All labor was performed in a good and workmanlike manner.
7. The Contractor has complied with all laws in performing its duties on the project.

Mary Dunn
LANDMARC CUSTOM HOMES

SUBSCRIBED AND SWORN TO before me on 4/17/09 by Landmarc Custom Homes.

Betty Dunn
Notary Public, State of South Carolina

My Commission Expires: 5/10/2010

PARTIAL LIEN WAIVER

5/15/09

Date: **May 18, 2009**

Owner: **Bill and Sandy Vernon**

Affiant: **Landmarc Custom Homes**

Affiant's Address: **P. O. Box 4782**
Greenville, SC 29608

Property: **The Cliffs at Mountain Park, Lot 44, 470 Highridge Parkway**

Cutoff Date: **May 15, 2009**

Payment Amount: **$ 123,934.26**

Affiant swears individually and on behalf of **Landmarc Custom Homes** that the following statements are true and within the personal knowledge of Affiant:

1. All charges, except retainage, for labor performed and material furnished by Affiant through the Cutoff Date will be paid in full upon receipt and subsequent funding of a check in the amount stated above by a financial institution doing business with the public in the States of North or South Carolina.
2. Upon funding of check for the Payment Amount, Affiant waives all claims against Owner or the Property that Affiant may have from furnishing labor or material through the Cutoff Date.
3. All other persons who have furnished labor or material to Affiant for the Work, through the Cutoff Date, will be paid all amounts to which they are entitled.
4. Affiant agrees to indemnify and hold Owner harmless against all liability, cost, or expense, including attorney's fees and court and other costs, from any claim or action by Affiant or any person claiming by, through, or under Affiant with respect to the representations and waivers in this document.
5. Affiant is authorized to sign this Affidavit on behalf of and can legally bind **Landmarc Custom Homes**.
6. All labor performed and materials supplied by **Landmarc Custom Homes** on the project were in accordance with the plans and specifications. All labor was performed in a good and workmanlike manner.
7. The Contractor has complied with all laws in performing its duties on the project.

LANDMARC CUSTOM HOMES

SUBSCRIBED AND SWORN TO before me on 5/18/09 by Landmarc Custom Homes.

Notary Public, State of South Carolina

My Commission Expires: 5/10/2010

PARTIAL LIEN WAIVER

6/30/09

Date: June 30, 2009

Owner: Bill and Sandy Vernon

Affiant: Landmarc Custom Homes

Affiant's Address: P. O. Box 4782
Greenville, SC 29608

Property: The Cliffs at Mountain Park, Lot 44, 470 Highridge Parkway

Cutoff Date: June 30, 2009

Payment Amount: $ 77,503.92

Affiant swears individually and on behalf of **Landmarc Custom Homes** that the following statements are true and within the personal knowledge of Affiant:

1. All charges, except retainage, for labor performed and material furnished by Affiant through the Cutoff Date will be paid in full upon receipt and subsequent funding of a check in the amount stated above by a financial institution doing business with the public in the States of North or South Carolina.
2. Upon funding of check for the Payment Amount, Affiant waives all claims against Owner or the Property that Affiant may have from furnishing labor or material through the Cutoff Date.
3. All other persons who have furnished labor or material to Affiant for the Work, through the Cutoff Date, will be paid all amounts to which they are entitled.
4. Affiant agrees to indemnify and hold Owner harmless against all liability, cost, or expense, including attorney's fees and court and other costs, from any claim or action by Affiant or any person claiming by, through, or under Affiant with respect to the representations and waivers in this document.
5. Affiant is authorized to sign this Affidavit on behalf of and can legally bind **Landmarc Custom Homes.**
6. All labor performed and materials supplied by **Landmarc Custom Homes** on the project were in accordance with the plans and specifications. All labor was performed in a good and workmanlike manner.
7. The Contractor has complied with all laws in performing its duties on the project.

LANDMARC CUSTOM HOMES

SUBSCRIBED AND SWORN TO before me on 6/30/09 by Landmarc Custom Homes.

Notary Public, State of South Carolina

My Commission Expires: 5/10/2010

PARTIAL LIEN WAIVER

7/31/09

Date: **August 5, 2009**

Owner: **Bill and Sandy Vernon**

Affiant: **Landmarc Custom Homes**

Affiant's Address: **P. O. Box 4782**
Greenville, SC 29608

Property: **The Cliffs at Mountain Park, Lot 44, 470 Highridge Parkway**

Cutoff Date: **July 31, 2009**

Payment Amount: **$ 52,312.47**

Affiant swears individually and on behalf of **Landmarc Custom Homes** that the following statements are true and within the personal knowledge of Affiant:

1. All charges, except retainage, for labor performed and material furnished by Affiant through the Cutoff Date will be paid in full upon receipt and subsequent funding of a check in the amount stated above by a financial institution doing business with the public in the States of North or South Carolina.
2. Upon funding of check for the Payment Amount, Affiant waives all claims against Owner or the Property that Affiant may have from furnishing labor or material through the Cutoff Date.
3. All other persons who have furnished labor or material to Affiant for the Work, through the Cutoff Date, will be paid all amounts to which they are entitled.
4. Affiant agrees to indemnify and hold Owner harmless against all liability, cost, or expense, including attorney's fees and court and other costs, from any claim or action by Affiant or any person claiming by, through, or under Affiant with respect to the representations and waivers in this document.
5. Affiant is authorized to sign this Affidavit on behalf of and can legally bind **Landmarc Custom Homes.**
6. All labor performed and materials supplied by **Landmarc Custom Homes** on the project were in accordance with the plans and specifications. All labor was performed in a good and workmanlike manner.
7. The Contractor has complied with all laws in performing its duties on the project.

LANDMARC CUSTOM HOMES

SUBSCRIBED AND SWORN TO before me on 8/5/09 by Landmarc Custom Homes.

Notary Public, State of South Carolina

My Commission Expires: 5/10/2010

PARTIAL LIEN WAIVER

9/25/09

June + Judy

Date: **September 25, 2009**

Owner: **Bill and Sandy Vernon**

Affiant: **Landmarc Custom Homes**

Affiant's Address: **P. O. Box 4782**
Greenville, SC 29608

Property: **The Cliffs at Mountain Park, Lot 44, 470 Highridge Parkway**

Cutoff Date: **September 25, 2009**

Payment Amount: **$ 91,104.31**

Affiant swears individually and on behalf of **Landmarc Custom Homes** that the following statements are true and within the personal knowledge of Affiant:

1. All charges, except retainage, for labor performed and material furnished by Affiant through the Cutoff Date will be paid in full upon receipt and subsequent funding of a check in the amount stated above by a financial institution doing business with the public in the States of North or South Carolina.
2. Upon funding of check for the Payment Amount, Affiant waives all claims against Owner or the Property that Affiant may have from furnishing labor or material through the Cutoff Date.
3. All other persons who have furnished labor or material to Affiant for the Work, through the Cutoff Date, will be paid all amounts to which they are entitled.
4. Affiant agrees to indemnify and hold Owner harmless against all liability, cost, or expense, including attorney's fees and court and other costs, from any claim or action by Affiant or any person claiming by, through, or under Affiant with respect to the representations and waivers in this document.
5. Affiant is authorized to sign this Affidavit on behalf of and can legally bind **Landmarc Custom Homes**.
6. All labor performed and materials supplied by **Landmarc Custom Homes** on the project were in accordance with the plans and specifications. All labor was performed in a good and workmanlike manner.
7. The Contractor has complied with all laws in performing its duties on the project.

LANDMARC CUSTOM HOMES

SUBSCRIBED AND SWORN TO before me on 9/25/09 by Landmarc Custom Homes.

Notary Public, State of South Carolina

My Commission Expires: 5/10/2010

PARTIAL LIEN WAIVER

Date: **December 4, 2009**

Owner: **Bill and Sandy Vernon**

Affiant: **Landmarc Custom Homes**

Affiant's Address: **P. O. Box 4782**
Greenville, SC 29608

Property: **The Cliffs at Mountain Park, Lot 44, 470 Highridge Parkway**

Cutoff Date: **December 5, 2009**

Payment Amount: **$ 67,797.99**

Received on 8th & 18th

Affiant swears individually and on behalf of **Landmarc Custom Homes** that the following statements are true and within the personal knowledge of Affiant:

1. All charges, except retainage, for labor performed and material furnished by Affiant through the Cutoff Date will be paid in full upon receipt and subsequent funding of a check in the amount stated above by a financial institution doing business with the public in the States of North or South Carolina.
2. Upon funding of check for the Payment Amount, Affiant waives all claims against Owner or the Property that Affiant may have from furnishing labor or material through the Cutoff Date.
3. All other persons who have furnished labor or material to Affiant for the Work, through the Cutoff Date, will be paid all amounts to which they are entitled.
4. Affiant agrees to indemnify and hold Owner harmless against all liability, cost, or expense, including attorney's fees and court and other costs, from any claim or action by Affiant or any person claiming by, through, or under Affiant with respect to the representations and waivers in this document.
5. Affiant is authorized to sign this Affidavit on behalf of and can legally bind **Landmarc Custom Homes.**
6. All labor performed and materials supplied by **Landmarc Custom Homes** on the project were in accordance with the plans and specifications. All labor was performed in a good and workmanlike manner.
7. The Contractor has complied with all laws in performing its duties on the project.

Mary Dunn
LANDMARC CUSTOM HOMES

SUBSCRIBED AND SWORN TO before me on 12/4/09 by Landmarc Custom Homes.

Betty Dunn
Notary Public, State of South Carolina

My Commission Expires: 5/10/2010

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

Bill J. Vernon, Jr. and Sandra Vernon,) C.A. No.: 2010-CP-23-0564
Plaintiffs,)
) **THIRD PARTY SUMMONS**
vs.)
)
Landmarc Constructors, Inc. d/b/a)
Landmarc Custom Homes, Marcus)
Dunn and Yoder's Building Supply, Inc.,)
Defendants.)
)
Yoder's Building Supply, Inc.,)
Third-Party Plaintiff,)
vs.)
)
Sandra Ann Vernon and Billie James)
Vernon, Jr., Trustees, or their)
Successors In Trust, Under the Sandra)
Ann Vernon Living Trust, Dated June)
12, 2000, and as Thereafter Amended,)
Gary Dunn, individually and Kerri Dunn,)
individually,)
Third-Party Defendants.)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
2010 FEB 25 A 8:48

GREENVILLE COUNTY
SOUTH CAROLINA
CLERK'S OFFICE
FILED
2010 FEB -8 P 3:25

TO THE THIRD PARTY DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY summoned and required to answer the Third Party Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Third Party Complaint on the subscribers at their offices located at 704 East McBee Avenue, Greenville, South Carolina, 29601, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Third Party Complaint within the time aforesaid, the Third Party Plaintiffs in this action will apply to the Court and judgment by default will be rendered against you for the relief demanded in the Third Party Complaint.

Respectfully submitted,

Thomas E. Dudley, III (SC Bar #66154)
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
(864) 242-4899

Attorney for Defendant/3rd Party Plaintiff
Yoder's Building Supply, Inc.

February 23, 2010
Greenville, SC

STATE OF SOUTH CAROLINA) COUNTY OF GREENVILLE 2010 FEB 25 A 8:49)	IN THE COURT OF COMMON PLEAS
Bill J. Vernon, Jr. and Sandra Vernon,) Plaintiffs,)	C.A. No.: 2010-CP-23-0564
vs.)	**ANSWER TO COMPLAINT, COUNTERCLAIM, CROSSCLAIM and 3RD PARTY COMPLAINT OF YODER'S BUILDING SUPPLY, INC.**
Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes, Marcus Dunn and Yoder's Building Supply, Inc.,) Defendants.)	
Yoder's Building Supply, Inc.,) Third-Party Plaintiff,)	
vs.)	
Sandra Ann Vernon and Billie James Vernon, Jr., Trustees, or their Successors In Trust, Under the Sandra Ann Vernon Living Trust, Dated June 12, 2000, and as Thereafter Amended, Gary Dunn, individually and Kerri Dunn, individually,) Third-Party Defendants.)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL R. WICKENSIMER

TO: T.S. STERN, JR., ATTORNEY FOR PLAINTIFFS:

Defendant/Third-Party Plaintiff, Yoder's Building Supply, Inc. ("Yoder's") hereby answers the Complaint of Plaintiffs Bill J. Vernon, Jr. and Sandra Vernon (collectively "Plaintiffs") as follows.

Each and every allegation not specifically admitted, modified, or explained is denied and strict proof demanded thereof.

Yoder's incorporates herein by reference its Mechanic's Lien, filed with the Office of the Register of Deeds for Greenville County on December 18, 2009.

FOR A FIRST DEFENSE

1. Yoder's admits, upon information and belief, the allegations contained in paragraphs 1, 2, and 3 of Plaintiffs' Complaint.

2. Yoder's admits the allegations contained in paragraph 4, 5, 15, and 56 of Plaintiffs' Complaint.

3. Yoder's is without knowledge or information sufficient to admit or deny the allegations contained in paragraphs 6, 7, 8, 9, 10, 11, 13, 14, 16, 17, 19, 20, 22, 23, 24, 25, 27, 28, 29, 30, 31, 33, 34, 35, 36, 38, 39, 40, 41, 43, 44, 45, 46, 47, 48, 50, and 52 of Plaintiffs' Complaint, and therefore denies same.

4. Yoder's admits only so much of the allegations contained in paragraph 12 of Plaintiffs' Complaint in that Yoder's has not been paid by Defendant Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes ("Landmarc") for the materials supplied for the construction of Plaintiffs' residence. Yoders is without knowledge or information as to the remaining allegations contained in paragraph 12 of Plaintiffs' Complaint and therefore denies those allegations.

5. Paragraphs 18, 26, 32, 37, 42, 49, 51, 53, 55, 58 and 59 of Plaintiffs' Complaint do not require a response of Yoder's.

6. Yoder's admits only so much of the allegations contained in paragraph 21 of Plaintiffs' Complaint in that it has received partial payment for the materials supplied on the project and that is it still owed the sum of $139,047.30 from Defendant Landmarc. Yoder's is without knowledge or information as to the remaining allegations contained in paragraph 21 and therefore denies same.

7. Yoder's admits only so much of the allegations contained in paragraph 54

of Plaintiffs' Complaint in that it has filed a claim. Yoder's is without knowledge or information as to the remaining allegations contained in paragraph 54 and therefore denies same.

8. Yoder's denies the allegations contained in paragraph 57 of Plaintiffs' Complaint and demands strict proof thereof.

FOR A SECOND DEFENSE

9. Yoder's incorporates by reference the allegations of the preceding paragraphs consistent herewith.

10. Yoder's alleges that Plaintiffs' action fails to state a claim against Yoder's for which relief can be granted.

FOR A THIRD DEFENSE

11. Yoder's incorporates by reference the allegations of the preceding paragraphs consistent herewith.

12. Yoder's asserts that to the extent Plaintiffs have been damaged, if at all, it was the sole responsibility of Defendants Landmarc and M. Dunn. Therefore, if any award is adjudged against Yoder's, it is entitled to complete equitable indemnification against Defendants Landmarc and M. Dunn, including attorney's fees and costs.

FOR A FOURTH DEFENSE

13. Yoder's incorporates by reference the allegations of the preceding paragraphs consistent herewith

14. Yoder's requests the Court determine the priority of the liens against the property and direct the proceeds of the foreclosure accordingly.

AS AND FOR A FIFTH DEFENSE BY WAY OF YODER'S BUILDING SUPPLY, INC.'S COUNTERCLAIM AGAINST BILL J. VERNON, JR. AND SANDRA VERNON; CROSSCLAIM AGAINST LANDMARC CONSTRUCTORS, INC. d/b/a LANDMARC CUSTOM HOMES and MARCUS DUNN; AND THIRD PARTY COMPLAINT AGAINST SANDRA ANN VERNON AND BILLIE JAMES VERNON, JR., TRUSTEES, OR THEIR SUCCESSORS IN TRUST, UNDER THE SANDRA ANN VERNON LIVING TRUST DATED JUNE 12, 2000, AND AS THEREAFTER AMENDED, GARY DUNN, INDIVIDUALLY, AND KERRI DUNN, INDIVIDUALLY

In support of its Counterclaim against Plaintiffs, Crossclaim against Defendants Landmarc and Marcus Dunn ("M. Dunn"), and Third-Party Complaint against Sandra Ann Vernon and Billie James Vernon, Jr., Trustees, or their Successors in Trust, Under the Sandra Ann Vernon Living Trust, dated June 12, 2000, and as Thereafter Amended ("Vernon Living Trust"), Gary Dunn, individually, and Kerri Dunn, individually (collectively "Dunn"), Yoder's would respectfully show the Court as follows.

15. Yoder's is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina. At all times mentioned herein, Yoder's was transacting business in Greenville County, South Carolina.

16. Upon information and belief, Plaintiffs are citizens and residents of State other than South Carolina and are the Trustees of Third Party Defendants Vernon Living Trust, and are the beneficiaries of said Trust, and as such, are the record owners of the real property located in Greenville County which is the subject of this litigation.

17. Upon information and belief, Defendant Landmarc is a corporation duly licensed, organized and existing under the laws of the State of South Carolina, doing business as Landmarc Custom Homes, and, at all times mentioned herein, was transacting business in Greenville County, South Carolina.

18. Upon information and belief, Defendant M. Dunn is a citizen and resident of Greenville County and is one of the owners, officers and/or principals of Defendant Landmarc.

19. Upon information and belief, 3rd Party Defendants Dunn are both citizens and residents of Greenville County and are the owners, officers and/or principals of Defendant Landmarc.

20. This Court has jurisdiction and venue is proper in Greenville County.

STATEMENT OF FACTS

21. Yoder's entered into an agreement with Defendant Landmarc whereby Yoder's would supply labor and materials on account in connection with the construction of the Plaintiffs'/Vernon Living Trust property located in Greenville County (the "Project") and Defendant Landmarc is obligated under said agreement to pay for the materials supplied by Yoder's.

22. Yoder's supplied labor and materials to Defendant Landmarc on the project, the last of which were furnished within six months of the date hereof and were actually incorporated into the project at the Plaintiffs'/Vernon Living Trust property.

23. There is a currently balance due and owing to Yoder's in the principal amount of One Hundred Twenty-Seven Thousand Four Hundred Sixty-Six and 70/100 ($127,466.70) Dollars, plus finance charges in the sum of Eleven Thousand Five Hundred Eighty and 60/100 ($11,580.60) Dollars, for a total amount due of One Hundred Thirty-Nine Thousand Forty-Seven and 30/100 ($139,047.30) Dollars.

24. Yoder's has made demand for the sum due and owing of One Hundred Thirty-Nine Thousand Forty-Seven and 30/100 ($139,047.30) Dollars, but has not been

paid to date.

25. Yoder's is informed and believes that Plaintiffs/Vernon Living Trust have not paid Defendant Landmarc for the work on the project.

AS AND FOR A SIXTH DEFENSE BY WAY OF CROSSCLAIM AGAINST LANDMARC (Breach of Contract)

26. The allegations of the preceding paragraphs are incorporated herein by reference.

27. Yoder's fully performed its obligations under the agreement with Defendant Landmarc. There are no outstanding conditions precedent to Yoder's entitlement to payment in full.

28. Defendant Landmarc has failed to make payment in full for the materials furnished to it by Yoder's, and the principal sum of One Hundred Twenty-Seven Thousand Four Hundred Sixty-Six and 70/100 ($127,466.70) Dollars, plus finance charges in the sum of Eleven Thousand Five Hundred Eighty and 60/100 ($11,580.60) Dollars, for a total amount due of One Hundred Thirty-Nine Thousand Forty-Seven and 30/100 ($139,047.30) Dollars, exclusive of interest, costs and attorneys' fees is due and owing by Defendant Landmarc to Yoder's.

29. Pursuant to S.C. Code Ann. § 29-6-230, Defendant Landmarc's receipt of payment from Plaintiffs and/or Vernon Living Trust is not a pre-requisite to Defendant Landmarc's obligation to pay Yoder's.

30. Yoder's is entitled to judgment against Defendant Landmarc in the amount of at least One Hundred Thirty-Nine Thousand Forty-Seven and 30/100 ($139,047.30) Dollars, together with interest, attorneys' fees and costs.

**AS AND FOR A SEVENTH DEFENSE
BY WAY OF COUNTERCLAIM AGAINST PLAINTIFFS AND
THIRD PARTY COMPLAINT AGAINST VERNON LIVING TRUST
(Foreclosure of Mechanic's Lien)**

31. The allegations of the preceding paragraphs are incorporated herein by reference.

32. The real property hereinafter described in **Exhibit "A"**, which is the subject of this cause, is situated and located in Greenville County, South Carolina.

33. At the time Yoder's furnished materials for improvements to the real property herein described, Plaintiffs and/or Vernon Living Trust were, and upon information and belief still are, the record owners of the subject real property.

34. Defendant Landmarc has failed and neglected to pay Yoder's the balance due in the sum of One Hundred Thirty-Nine Thousand Forty-Seven and 30/100 ($139,047.30) Dollars for materials supplied by Yoder's on the project and there is, as of the filing of this Complaint, still due and owing Yoder's from Defendant Landmarc the sum of One Hundred Thirty-Nine Thousand Forty-Seven and 30/100 ($139,047.30) Dollars as set forth above.

35. Within ninety (90) days after Yoder's last furnished materials for the project, Yoder's filed for record in the Register of Deed's Office for Greenville County, its Notice of Mechanic's Lien and Verified Statement of Account. A copy of said Notice of Mechanic's Lien and Verified Statement of Account is attached hereto as **Exhibit "B"**.

36. Upon information and belief, by virtue of its duly perfected mechanic's lien and the unpaid indebtedness for materials supplied for the improvement of the property, Yoder's is entitled to foreclose on the subject property more fully described in **Exhibit "A"**, and have its lien, along with interest and attorney's fees, satisfied from the proceeds

thereof.

37. This action is brought subject to such mortgages or other claims in or to the property that may be determined to be superior to Yoder's lien, if any.

AS AND FOR AN EIGHTH DEFENSE BY WAY OF COUNTERCLAIM AGAINST PLAINTIFFS, CROSSCLAIM AGAINST LANDMARC AND THIRD PARTY COMPLAINT AGAINST VERNON LIVING TRUST (Quantum Meruit)

38. The allegations of the previous paragraphs are incorporated herein by reference.

39. At the specific request and direct knowledge of Defendant Landmarc, and with the express consent of the Plaintiffs/Vernon Living Trust, as the owners, Yoder's furnished certain materials to Defendant Landmarc, for the specific use and benefit of Plaintiffs/ Vernon Living Trust, and Yoder's submitted invoices for the materials.

40. During and since the furnishing of materials by Yoder's, Defendant Landmarc has failed and refused to make full payment to Yoder's and there remains due and owing to Yoder's from Defendant Landmarc an amount to be determined.

41. Despite Yoder's having made demand upon Defendant Landmarc for the above-stated payment, Defendant Landmarc has failed and refused to pay the same or any part thereof.

42. As a result of Defendant Landmarc's failure and refusal to pay Yoder's for the materials supplied, Defendant Landmarc and Plaintiffs/Vernon Living Trust have become unjustly enriched in an amount to be determined.

AS AND FOR A NINTH DEFENSE BY WAY OF CROSSCLAIM AGAINST DEFENDANT LANDMARC (Violation of S.C. Code § 27-1-15)

43. Yoder's incorporates by reference the allegations of the preceding paragraphs consistent herewith.

47. By notice sent by certified mail dated December 14, 2009, Yoder's sent notice to Defendant Landmarc pursuant to S.C. Code Ann. §27-1-15

48. Defendant Landmarc failed to make a fair and reasonable investigation of the merits contained in such claim and/or unreasonably refused to pay claims of the Yoder's set forth in letter of December 14, 2009.

49. As a result of Defendant Landmarc's failure to comply with its obligations under S.C. Code Ann. §27-1-15, Defendant Landmar is liable to Yoder's for interest at the judgment rate, together with attorney's fees.

FOR A TENTH DEFENSE BY WAY OF CROSSCLAIM AGAINST DEFENDANT M. DUNN AND BY WAY OF THIRD PARTY COMPLAINT AGAINST GARY DUNN and KERRI DUNN (Violation of S.C. Code §29-7-10, et seq.)

50 Yoder's incorporates by reference the allegations of the preceding paragraphs consistent herewith.

51. Defendant Marcus Dunn's actions, and the actions of Third-Party Defendants Gary Dunn and Kerri Dunn, on behalf of Defendant Landmarc in making decisions about the use of draws by Plaintiffs, and his/their failure to pay subcontractors and/or suppliers, like Yoder's, constitute violation of S.C. Code § 29-7-10, et seq. Violation of this statue constitutes negligence per se and breach of fiduciary duty on the part of Defendant Marcus Dunn and Third Party Defendants Gary Dunn and Kerri Dunn, and subject Marcus Dunn, Gary Dunn and Kerri Dunn to individual liability.

52. As a result of Defendant M. Dunn's and Third Party Defendants Dunn's violation of S.C. Code § 29-7-10, Yoder's has been damaged in an amount to be determined, to include, but not limited to, special damages and punitive damages.

WHEREFORE, having fully answered the complaint of Plaintiffs, and having pled its third party complaint, Defendant Yoder's prays for the following relief:

1. That Plaintiffs' Complaint be dismissed in its entirety;

2. That judgment be rendered in favor of Defendant Yoder's against Plaintiffs, Co-Defendants, and Third-Party Defendants;

3. That the relief sought in Yoder's Counterclaim be granted against Plaintiffs, including actual, consequential, and punitive damages;

4. That the relief sought in Yoder's Crossclaim be granted against Co-Defendants, including actual, consequential, and punitive damages;

5. That the relief sought in Yoder's Third Party Complaint be granted against Third-Party Defendants, including consequential, special, and punitive damages; and

6. For such other and further relief as the court deems just and proper.

Respectfully submitted,

Thomas E. Dudley, III (SC Bar #66154)
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
(864) 242-4899

Attorney for Defendant/3rd Party Plaintiff
Yoder's Building Supply, Inc.

February _____, 2010
Greenville, SC

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, with all improvements thereon or hereafter constructed thereon, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as Lot 44, Cliffs at Mountain Park, Phase I, containing 2.16 acres, more or less, as shown on that certain plat entitled "The Cliffs at Mountain Park, Phase I, Lot 29, Lots 31 thru 42, and 44," as recorded in the Register of Deeds Office for Greenville County, South Carolina, in Plat Book 1023 at Page 46, reference being hereby made to said plat for a more complete and accurate metes and bounds description thereof.

This being the same property conveyed to Sandra Ann Vernon and Billie James Vernon, Jr., Trustees, or Their Successors in Trust, Under the Sandra Ann Vernon Living Trust, Dated June 12, 2000, and As Thereafter Amended, by deed of The Cliffs at Mountain Park, recorded in the Office of the Register of Deeds for Greenville County, South Carolina, in Deed Book 2242 at Page 995 on December 18, 2006.

Property Address: 470 Highridge Parkway, Travelers Rest, SC 29690

Tax Map No. 0666050104200

1580 /8

STATE OF SOUTH CAROLINA	)	IN THE OFFICE OF THE
	)	REGISTER OF DEEDS
COUNTY OF GREENVILLE	)	
Yoder's Building Supply, Inc.,	)	
Petitioner,	)	
vs.	)	**NOTICE AND CERTIFICATE OF MECHANIC'S LIEN**
Sandra Ann Vernon and Billie James Vernon, Jr., Trustees, or their Successors In Trust, Under the Sandra Ann Vernon Living Trust, Dated June 12, 2000, and As Thereafter Amended; Sandra Ann Vernon, individually; Billie James Vernon, individually; Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes; and Bank of Travelers Rest,	)	
Respondents.	)	

TO: THE RESPONDENTS ABOVE NAMED:

PLEASE TAKE NOTICE that the Petitioner, Yoder's Building Supply, Inc., by virtue of the attached Affidavit and Statement of Account, hereby claims and holds a Mechanic's Lien upon the building and structures and upon the interest of the owners, as well as any leasehold or other interest thereof, in the real property hereinafter described by virtue of its contract with Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes, by and with the express consent of the owners, Sandra Ann Vernon and Billie James Vernon, Jr., Trustees, or their Successors in Trust, Under the Sandra Ann Vernon Living Trust, Dated June 12, 2000, and As Thereafter Amended. This lien is in the amount of One Hundred Thirty-Nine Thousand Forty-Seven and 30/100ths ($139,047.30) Dollars, for materials furnished and used in the construction of the improvements situated on the real estate commonly known as 470 Highridge Parkway, Travelers

EXHIBIT B

Rest, Greenville County, South Carolina 29690. Said real estate is also further described in **Exhibit "A"** which is attached hereto and incorporated herein by reference.

FURTHER NOTICE IS HEREBY GIVEN that the materials were last furnished within ninety (90) days of the date hereof; that Petitioner has and claims a lien on the stated premises, structures, buildings and tract of land, pursuant to § 29-5-10, et seq. of the Code of Laws of South Carolina, 1976, as amended, to secure the payment of the debt, an itemized and verified statement of which is attached hereto and incorporated herein by reference; that the said Petitioner has a claim on said premises, structures, buildings and said tract of land to secure payments of an additional sum to cover the costs and disbursements of any action to foreclose the aforementioned lien, including reasonable attorneys' fees, all pursuant to the provisions of the statutes applicable to such cases.

YODER'S BUILDING SUPPLY, INC.

By: _____

Thomas E. Dudley, III (SC Bar # 66154)
Townes B. Johnson, III (SC Bar # 75412)
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, South Carolina 29601
(864) 242-4899 Ofc
(864) 242-4844 Fax

Attorney for Petitioner, Yoder's Building Supply, Inc.

Sworn to before me this
15 day of December, 2009.

_____
Notary Public, State of SC
My Commission Expires: 6/8/15

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

IN THE OFFICE OF THE
REGISTER OF DEEDS

Yoder's Building Supply, Inc.,)
)
Petitioner,)
)
vs.)
)
Sandra Ann Vernon and Billie James)
Vernon, Jr., Trustees, or their Successors)
In Trust, Under the Sandra Ann Vernon)
Living Trust, Dated June 12, 2000, and)
As Thereafter Amended; Sandra Ann)
Vernon, individually; Billie James Vernon,)
individually; Landmarc Constructors, Inc.)
d/b/a Landmarc Custom Homes; and Bank)
of Travelers Rest,)
)
Respondents.)

STATEMENT OF ACCOUNT

PERSONALLY APPEARED before me, Wiley McLane, who, after first being duly sworn, deposes and says:

1. That I am the Credit Manager of Yoder's Building Supply, Inc.

2. That the sum of One Hundred Thirty-Nine Thousand Forty-Seven and 30/100ths ($139,047.30) Dollars is past due and owed to Yoder's Building Supply, Inc.

3. That the same sum is past due for labor and materials supplied by Yoder's Building Supply, Inc., in connection with the certain improvements on the property located and described in Exhibit "A," which is attached hereto and incorporated herein, which is owned by Respondents Sandra Ann Vernon and Billie James Vernon, Jr., Trustees, or Their Successors in Trust, Under the Sandra Ann Vernon Living Trust, Dated June 12, 2000, and As Thereafter Amended.

FURTHER AFFIANT SAYETH NAUGHT.

Wiley McLane, Credit Manager

Sworn to and subscribed before
me this 15 day of December, 2009.

Notary Public, State of South Carolina
My Commission Expires: 7-26-2017

Anderson County, South Carolina
Diane Dixon
Notary Public
Expires 07-26-2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

IN THE OFFICE OF THE
REGISTER OF DEEDS

Yoder's Building Supply, Inc.,)
)
Petitioner,)
)
vs.)
)
Sandra Ann Vernon and Billie James)
Vernon, Jr., Trustees, or their Successors)
In Trust, Under the Sandra Ann Vernon)
Living Trust, Dated June 12, 2000, and)
As Thereafter Amended; Sandra Ann)
Vernon, individually; Billie James Vernon,)
individually; Landmarc Constructors, Inc.)
d/b/a Landmarc Custom Homes; and Bank)
of Travelers Rest,)
)
Respondents.)

VERIFICATION

PERSONALLY APPEARED before me, Wiley McLane, who first being duly sworn, deposes and says that he is the Credit Manager of Yoder's Building Supply, Inc.; that he has read the foregoing Notice and Certificate of Mechanic's Lien and Statement of Account; that the labor and materials set forth herein are true of his own knowledge, except those matters and things therein alleged on information and belief, and as to those, he believes them to be true.

Further, Yoder's Building Supply, Inc. is properly licensed for the work performed on this project, and a copy of their license is attached hereto and made a part hereof.

Wiley McLane, Credit Manager

Sworn to and subscribed before me
this 15 day of December, 2009.

Notary Public, State of South Carolina
My Commission Expires: 7-26-2017

Diane Dixon Anderson Notary Public Expires 07-26-2017 County, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
Bill J. Vernon, Jr. and Sandra Vernon, Plaintiffs, vs. Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes, Marcus Dunn and Yoder's Building Supply, Inc., Defendants.	C.A. No.: 2010-CP-23-0564 **CERTIFICATE OF SERVICE**
Yoder's Building Supply, Inc., Third-Party Plaintiff, vs. Sandra Ann Vernon and Billie James Vernon, Jr., Trustees, or their Successors In Trust, Under the Sandra Ann Vernon Living Trust, Dated June 12, 2000, and as Thereafter Amended, Gary Dunn, individually and Kerri Dunn, individually, Third-Party Defendants.	

This is to certify that I have served a true copy of the foregoing Answer to Complaint, Counterclaim, Crossclaim and Third Party Complaint, Lis Pendens, and Summones of Yoder's Building Supply, Inc. on all counsel of record on this 23 day of February, 2010, by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

T.S. Stern, Jr.
Covington, Patrick, Hagins, Stern & Lewis
P.O. Box 2343
Greenville, SC 29602
Attorney for Plaintiffs

Helen C. Cotrone

Helen C. Cotrone
Legal Assistant

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

Bill J. Vernon, Jr. and Sandra Vernon,) C.A. No.: 2010-CP-23-0564

Plaintiffs,)

vs.)

Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes, Marcus Dunn and Yoder's Building Supply, Inc.,)

Defendants.)

LIS PENDENS OF DEFENDANT/ THIRD PARTY PLAINTIFF YODER'S BUILDING SUPPLY, INC.

Yoder's Building Supply, Inc.,)

Third-Party Plaintiff,)

vs.)

Sandra Ann Vernon and Billie James Vernon, Jr., Trustees, or their Successors In Trust, Under the Sandra Ann Vernon Living Trust, Dated June 12, 2000, and as Thereafter Amended, Gary Dunn, individually and Kerri Dunn, individually,)

Third-Party Defendants.)

2010 FEB 25 A 8:59
FILED-CLERK OF COURT
GREENVILLE CO. S.C.

TO: THE PLAINTIFFS, DEFENDANTS & THIRD PARTY DEFENDANTS ABOVE NAMED:

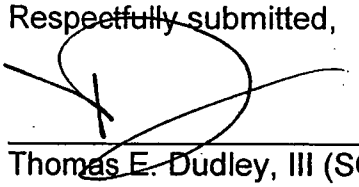
NOTICE IS HEREBY GIVEN, pursuant to S.C. Code Ann. §15-11-10, that not more than 20 days from the filing of this Notice of Lis Pendens, an action will be commenced by the above-named Defendant/Third Party Plaintiff against the above-named Plaintiffs, Defendants and Third-Party Defendants for the purpose of foreclosing the Mechanics Lien filed on December 18, 2009, in Book MI 45 at Page 1580 in the RMC Office for Greenville County against the property more fully described in Exhibit

RECORDED IN BOOK CC 3 PAGE 026

"A" attached hereto and incorporated by reference.

Respectfully submitted this 23 day of February, 2010.

Respectfully submitted,



Thomas E. Dudley, III (SC Bar # 66154)
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
(864) 242-4899

Attorney for Defendant/Third Party Plaintiff
Yoder's Building Supply, Inc.

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, with all improvements thereon or hereafter constructed thereon, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as Lot 44, Cliffs at Mountain Park, Phase I, containing 2.16 acres, more or less, as shown on that certain plat entitled "The Cliffs at Mountain Park, Phase I, Lot 29, Lots 31 thru 42, and 44," as recorded in the Register of Deeds Office for Greenville County, South Carolina, in Plat Book 1023 at Page 46, reference being hereby made to said plat for a more complete and accurate metes and bounds description thereof.

This being the same property conveyed to Sandra Ann Vernon and Billie James Vernon, Jr., Trustees, or Their Successors in Trust, Under the Sandra Ann Vernon Living Trust, Dated June 12, 2000, and As Thereafter Amended, by deed of The Cliffs at Mountain Park, recorded in the Office of the Register of Deeds for Greenville County, South Carolina, in Deed Book 2242 at Page 995 on December 18, 2006.

Property Address: 470 Highridge Parkway, Travelers Rest, SC 29690

Tax Map No. 0666050104200

EXHIBIT A-1

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

Bill J. Vernon, Jr. and Sandra Vernon,) C.A. No.: 2010-CP-23-0564
Plaintiffs,)
) **SUMMONS ON COUNTERCLAIM**
vs.)

2010 FEB 25 A 8:48
FILED-CLERK OF COURT
GREENVILLE CO. S.C.

Landmarc Constructors, Inc. d/b/a)
Landmarc Custom Homes, Marcus)
Dunn and Yoder's Building Supply, Inc.,)
Defendants.)
)
Yoder's Building Supply, Inc.,)
Third-Party Plaintiff,)
vs.)
)
Sandra Ann Vernon and Billie James)
Vernon, Jr., Trustees, or their)
Successors In Trust, Under the Sandra)
Ann Vernon Living Trust, Dated June)
12, 2000, and as Thereafter Amended,)
Gary Dunn, individually and Kerri Dunn,)
individually,)
Third-Party Defendants.)

TO THE PLAINTIFFS ABOVE NAMED:

YOU ARE HEREBY summoned and required to answer the Counterclaim in this action, of which a copy is herewith served upon you, and to serve a copy of your Reply to the said Counterclaim on the subscribers at their offices, 704 East McBee Avenue, Greenville, South Carolina, 29601, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to Reply to the Counterclaim within the time aforesaid, the Defendant/Third Party Plaintiff in this action will apply to the Court and judgment by default will be rendered against you for the relief demanded in the Counterclaim.

Respectfully submitted,

Thomas E. Dudley, III (SC Bar #66154)
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
(864) 242-4899
Attorney for Defendant/3rd Party Plaintiff
Yoder's Building Supply, Inc.

February 23, 2010
Greenville, SC

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

Bill J. Vernon, Jr. and Sandra Vernon, 2010 FEB 25 AM 8:48 C.A. No.: 2010-CP-23-0564
Plaintiffs,

vs.

SUMMONS ON CROSSCLAIM

FILED-CLERK OF COURT
GREENVILLE CO. S.C.

Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes, Marcus Dunn and Yoder's Building Supply, Inc.,
Defendants.

Yoder's Building Supply, Inc.,
Third-Party Plaintiff,

vs.

Sandra Ann Vernon and Billie James Vernon, Jr., Trustees, or their Successors In Trust, Under the Sandra Ann Vernon Living Trust, Dated June 12, 2000, and as Thereafter Amended, Gary Dunn, individually and Kerri Dunn, individually,
Third-Party Defendants.

TO THE DEFENDANT, LANDMARC CONSTRUCTORS, INC. d/b/a LANDMARC CUSTOM HOMES:

YOU ARE HEREBY summoned and required to answer the Crossclaim in this action, of which a copy is herewith served upon you, and to serve a copy of your Reply to the said Crossclaim on the subscribers at their offices, 704 East McBee Avenue, Greenville, South Carolina, 29601, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to Reply to the Counterclaim within the time aforesaid, the Defendant in this action will apply to the Court and judgment by default will be rendered against you for the relief demanded in the Crossclaim.

Respectfully submitted,

Thomas E. Dudley, III (SC Bar #66154)
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
(864) 242-4899
Attorney for Defendant/3rd Party Plaintiff
Yoder's Building Supply, Inc.

February 23, 2010
Greenville, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C/A: 2010-CP-23-0564
	)	
Bill J. Vernon, Jr. and Sandra Vernon	)	
Plaintiffs	)	
	)	**ANSWER AND COUNTERCLAIM**
v.	)	
	)	
	)	
Landmarc Constructors, Inc. d/b/a	)	
Landmarc Custom Homes, and	)	
Yoder's Building Supply, Inc.,	)	
Defendants.	)	
	)	

2010 MAR 23 A 9:59
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAIGE J. WICKENSIMER

Defendants Marcus Dunn and Landmarc Constructors, Inc., (the Defendants) answer the Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE

1. The allegations of Paragraph One of the Complaint are admitted.
2. The allegations of Paragraph Two of the Complaint are admitted.
3. The allegations of Paragraph Three of the Complaint are admitted.
4. The allegations of Paragraph Four of the Complaint are admitted, upon information and belief.
5. The allegations of Paragraph Five of the Complaint are admitted.
6. The allegations of Paragraph Six of the Complaint are denied, except that the Defendant admits that certain payment has not been paid to Yoder's because of the failure of the Plaintiffs to pay the full amount due to Defendant Landmarc.
7. The allegations of Paragraph Seven of the Complaint are admitted regarding the original agreement between the parties before the Plaintiff's initiated modifications of the original agreement. The Plaintiffs authorized nineteen separate change orders whose costs totaled $230, 510.02. The Defendants deny that there is are any

additional duties beyond those duties provided in the Contract and those duties normally found between two contracting parties in South Carolina.

8. The allegations of Paragraph 8 of the Complaint are denied. Additionally, work on the site had progressed beyond 85% complete, and would have been completed fully but for the unilateral material breach of the Plaintiffs.

9. The allegations of Paragraph 9 of the Complaint are denied. Monies were released only to those entities entitled to those monies. All the material used was on site, and all of the labor provided was on site. Additionally, the Plaintiffs misrepresent the circumstances surrounding the use of the partial lien waivers.

10. The allegations of Paragraph 10 of the Complaint are denied in that all of the partial lien waivers have not been included, and those listed have not been fully paid by the Plaintiffs.

11. The allegations of Paragraph 11 are denied. The Defendants have provided all the information as requested in twelve billing statements, ten of which were paid without any additional requests for documentation.

12. The allegations of Paragraph 12 are denied in that the Plaintiffs misrepresent the circumstances surrounding the use of partial lien waivers, and misrepresent the nature of the agreements between those parties listed and the Defendants and the Plaintiffs. The failure of the Plaintiffs to abide by their duties under the agreement between the parties has caused the financial issues regarding some of those parties listed in this paragraph.

13. The allegations of Paragraph 13 are denied.

14. The allegations of Paragraph 14 are denied.

15. The Defendants are without sufficient information to answer this allegation, and therefore deny it.

16. The Defendants are without sufficient information to answer this allegation, and therefore deny it.

17. The Defendants are without sufficient information to answer this allegation, and therefore deny it.

18. The allegations of Paragraph 18 are denied.

19. The allegations of Paragraph 19 are admitted in that the subcontractors and vendors would be paid if their performance was sufficient.

20. The allegations of Paragraph 20 are denied. Funds were paid to those parties who had performed their duties and/or provided the proper materials in the proper amounts.

21. The allegations of Paragraph 21 are denied.

22. The allegations of Paragraph 22 are denied in that the Defendants deny the previous allegations regarding alleged representations and alleged acts. Additionally, the Defendants deny the allegations regarding alleged representations regarding financial institutions.

23. The Defendants deny the allegations of Paragraph 23.

24. The Defendants deny the allegations of Paragraph 24.

25. The Defendants deny the allegations of Paragraph 25.

26. The Defendants deny the allegations of Paragraph 26.

27. The Defendants admit the allegations of Paragraph 27.

28. The Defendants deny the allegations of Paragraph 28.

29. The Defendants deny the allegations of Paragraph 29.

30. The Defendants deny the allegations of Paragraph 30.

31. The Defendants deny the allegations of Paragraph 31.

32. The Defendants deny the allegations of Paragraph 32.

33. The Defendants deny the allegations of Paragraph 33.

34. The Defendants deny the allegations of Paragraph 34.

35. The Defendants deny the allegations of Paragraph 35.

36. The Defendants deny the allegations of Paragraph 36.

37. The Defendants deny the allegations of Paragraph 37.

38. The Defendants deny the allegations of Paragraph 38.

39. The Defendants deny the allegations of Paragraph 39.

40. The Defendants deny the allegations of Paragraph 40.

41. The Defendants deny the allegations of Paragraph 41.

42. The Defendants deny the allegations of Paragraph 42.

43. The Defendants admit the allegations of Paragraph 24.

44. The Defendants deny the allegations of Paragraph 44.

45. The Defendants deny the allegations of Paragraph 45.

46. The Defendants deny the allegations of Paragraph 46.

47. The Defendants deny the allegations of Paragraph 47.

48. The Defendants deny the allegations of Paragraph 48.

49. The Defendants deny the allegations of Paragraph 49.

50. The Defendants deny the allegations of Paragraph 50.

51. The Defendants deny the allegations of Paragraph 51.

52. The Defendants deny the allegations of Paragraph 52.

53. The Defendants deny the allegations of Paragraph 53.

54. The Defendants deny the allegations of Paragraph 54.

55. The Defendants deny the allegations of Paragraph 55.

56. The Defendants deny the allegations of Paragraph 56.

57. The Defendants deny the allegations of Paragraph 57.

58. The Defendants deny the allegations of Paragraph 58.

59. The Defendants deny the allegations of Paragraph 59.

For a Second Defense and by Way of Counterclaim

(Foreclosure of Mechanic's Lien)

60. The Plaintiff incorporates the relevant and consistent portions of the preceding paragraphs.

61. The Defendant Landmarc provided labor and supplies to the Plaintiffs for the improvement of property described in Exhibit A, attached, and said labor and supplies were provided by the Defendants and its subcontractors with the consent and approval of the Plaintiffs, owners of the property described in the Plaintiffs Complaint as Lot 44 Cliffs at Mountain Park, 470 Highridge Parkway, Travelers Rest, SC.

62. The Defendant Landmarc filed with Greenville County Register of Deeds a Notice and Certificate of Mechanic's Lien within ninety days of the Defendant last furnishing labor and supplies to the Defendant for the property at 470 Highridge Parkway Travelers Rest, S.C. A copy of the Notice and Certificate of Mechanic's Lien is attached hereto as Exhibit B.

63. The Plaintiffs have willfully avoided service of the Mechanic's Lien in this matter by hiding behind the security personnel at the Cliffs and it is believed that the Plaintiffs have intended to avoid service until the ninety day time limit has passed. Therefore, the Defendant Landmarc has been forced to serve the mechanic's lien on the attorney for the Plaintiffs with this Answer and Counterclaim. The Notice and Certificate of Mechanic's Lien was served on the Plaintiffs within ninety days of the Defendant last furnishing

labor and supplies to the Plaintiff for the property at 470 Highridge Parkway Travelers Rest, S.C.

64. There is now due and owing to Defendant Landmarc for labor and supplies provided to the Plaintiffs for the improvement of the property at 470 Highridge Parkway Travelers Rest, S.C., and more particularly described in Exhibit A the amount of $139,510.49 shown more specifically on the Verified Statement of Account, which is incorporated herein by reference and which is attached to the Notice and Certificate of Mechanic's Lien attached hereto as Exhibit B, together with interest and attorney's fees.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM

(Breach of Contract)

65. The Defendant incorporates the relevant and consistent portions of the preceding paragraphs.

66. Pursuant to the agreement between the Defendant and Plaintiffs, the Defendant supplied labor and supplies to the Plaintiffs.

67. The Plaintiffs were aware that the Defendant was using the payment of the costs by Plaintiff to pay subcontractors and for supplies.

68. The Plaintiffs failure to pay the full amount of costs caused their breach of the agreement.

69. The Defendant was forced to allow at least one vendor to go without payment because of the Plaintiff's breach.

70. The Plaintiff's breach of the agreement was the direct and proximate cause of the Plaintiff having to secure a loan to cover the costs.

71. Despite repeated demands for payment, the Plaintiffs have failed to pay the amounts due and owed to the Defendant.

72. The Plaintiffs failure to pay the amounts due and owing to the Defendant is a breach of the agreement between the Plaintiffs and the Defendant.

73. The Defendant is entitled to judgment in the amount of $139,510.49, plus interest, and the consequential damages due to the Defendants' breach of the agreement.

FOR A FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM

(Unjust Enrichment)

74. The Defendant incorporates the relevant and consistent portions of the preceding paragraphs.

75. The Defendant provided labor and supplies at the request of the Plaintiffs with a reasonable expectation that the Defendant would be paid for such labor and supplies.

76. The Plaintiffs received this labor and these supplies that the Defendant provided, and the Plaintiffs converted the same to their own use and benefit.

77. The Plaintiffs have failed to pay for the full value of the labor and supplies the Defendant provided.

78. The Plaintiffs have been unjustly enriched by their actions in receiving and converting the supplies and the fruits of the labor of the Defendant and Equity requires that the Plaintiffs make payment for the reasonable value of the labor and supplies provided by the Defendant.

WHEREFORE, having answered and counterclaimed of the Plaintiffs herein listed, the Defendant respectfully requests that this Court grant judgment in Plaintiff's favor against the Defendants in the amount of $139,510.49, and the attendant consequential and direct damages caused by the Plaintiff's breach of the agreement, and that it grant judgment in Defendant's favor against the Plaintiffs for Defendant's costs, interest at the judgment rate, and reasonable attorney's fees. The Defendant further requests that the Court grant judgment for foreclosure against the owners of the above referenced property, ordering that the property be sold and the proceeds of the sale be applied to discharge the amount owed the Defendant as set forth in its Notice and Certificate of Mechanic's Lien together with Defendant's costs, interest, and reasonable attorney's fees, and for consequential damages and that it grant such other and further relief as this Court deems just and proper.

BRANDT RUCKER, S.C. I.D. #69403
ATTORNEY FOR LANDMARC AND MARCUS DUNN
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P.O. BOX 949
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FACSIMILE: (864) 286-9069
EMAIL: BRANDTRUCKER@EARTHLINK.NET

MAULDIN, SOUTH CAROLINA

March 11, 2010

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	C/A: 2010-CP-23-0564
)	
Bill J. Vernon, Jr. and Sandra Vernon)	
Plaintiffs)	
)	**ANSWER AND COUNTERCLAIM**
v.)	**TO DEFENDANT YODER'S THIRD**
)	**PARTY COMPLAINT AND**
)	**CROSS CLAIM**
Landmarc Constructors, Inc. d/b/a)	
Landmarc Custom Homes, and)	
Yoder's Building Supply, Inc.,)	
Defendants.)	
)	
)	
Yoder's Building Supply, Inc.)	
)	
Third Party Plaintiff,)	
vs.)	
)	
Sandra Ann Vernon and Billie James)	
Vernon, Jr. Trustees, or their)	
Successors in Trust, Under the Sandra)	
Ann Vernon Living Trust, Dated)	
June 12, 2000, and as Thereafter)	
Amended, Gary Dunn, Individually,)	
and Kerri Dunn, Individually,)	
)	
Third Party Defendants)	

Defendants Marcus Dunn, Gary Dunn, and Kerri Dunn and Landmarc Constructors, Inc., (the Defendants) answer the Cross Claim and Third Party Complaint of the Defendant/ Third Party Plaintiff as follows:

FOR A FIRST DEFENSE

1. Paragraphs 1 through 14 of the Defendant /Third Party Plaintiff's Answer, Counterclaim, Cross Claim, and Third Party Complaint are Defenses it has asserted against the original Plaintiffs in this action. Defendant Landmarc Constructors has previously answered this portion of the original Plaintiff's Complaint, and believes

that no answer is required to the Answer portion of the Defendants responsive pleading, Marcus Dunn, Gary Dunn, and Kerri Dunn, hereinafter the "individual defendants" deny any personal liability to any degree, but in the event the Court should find they are proper parties, the individual defendants adopt the positions of the Defendant Landmarc Constructor's Answer to the Amended Complaint and Counterclaim of the Plaintiffs. Defendant Landmarc and Marcus Dunn deny any liability asserted in Paragraph 4, 6 and 12 whatsoever.

15. The allegations of Paragraph 15 are admitted upon information and belief.

16. The allegations of Paragraph 16 are admitted upon information and belief.

17. The allegations of Paragraph 17 are admitted.

18. The allegations of Paragraph 18 are admitted.

19. The allegations of Paragraph 19 are admitted.

20. The allegations of Paragraph 20 are admitted.

21. The allegations of Paragraph 21 are admitted upon information and belief.

22. The allegations of Paragraph 22 are admitted upon information and belief.

23. The allegations of Paragraph 23 are denied.

24. The allegations in Paragraph 24 that a demand has been made are admitted, but the Defendants deny that they are responsible for the amounts listed.

25. The allegations of Paragraph 25 are admitted.

26. No responsive pleading is necessary regarding Paragraph 26.

27. The allegations of Paragraph 27 are denied.

28. The allegations of Paragraph 28 are denied.

29. The allegations of Paragraph 29 are denied.

30. The allegations of Paragraph 30 are denied.

31. No responsive pleading is necessary regarding Paragraph 31.

32. The allegations of Paragraph 32 are admitted, upon information and belief.

33. The allegations of Paragraph 33 are admitted, upon information and belief.

34. The allegations of Paragraph 34 are denied.

35. The allegations of Paragraph 35 are admitted, upon information and belief.

36. The allegations of Paragraph 36are admitted, upon information and belief, except that Defendant Landmarc is entitled to a superior position in the foreclosure.

37. The allegations of Paragraph 37 are admitted.

38. No responsive pleading is necessary regarding Paragraph 38.

39. The Allegations of Paragraphs 39 through 49 are denied.

50. No responsive pleading is necessary regarding Paragraph 50.

51. The Allegations of Paragraphs 51 and 52 are denied.

FOR A SECOND DEFENSE (Unclean Hands)

52. The Defendants assert the Doctrine of Unclean Hands based on the actions of Yoders as a complete defense to the allegations made against them.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM (SC Court Rules Rule 12 (b)(6))

53. The individual Defendants assert that the Third Party Complaint should be dismissed for failing to state a cause of action upon which relief can be granted as to them individually, and rely on the corporate protections of the State of South Carolina.

FOR A FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM (Breach of Contract)

54. As alleged by the Third Party Complainant, Yoders and Landmarc entered into a contract regarding the underlying construction and materials on the project that is the focus of this litigation. Yoders has breached its duties under the agreement by failing to properly account for the amounts to be credited to the Vernon account, and has misapplied numerous other amounts related to the Vernon contract. Yoders also provided defective material to the site in breach of its agreement with Landmarc.

55. Any amounts that may be due to the Vernon's are properly attributed to the breach by Yoders.

56. This breach has proximately caused damages to Landmarc. The damages include actual costs as well as finance charges applied to Landmarc by Yoders. The damages are in excess of fifty thousand dollars.

WHEREFORE, having answered the Complaint of the Plaintiffs, and counterclaimed, Defendant Landmarc and Marcus Dunn, Kerri Dunn, and Gary Dunn pray for the following relief:

1. For the Yoder's Complaint to be dismissed;
2. That judgment be rendered in favor of Landmarc against all parties;
3. That the relief sought in Landmarc's Counterclaim be granted including all potential damages under South Carolina law, including actual, and consequential damages;
4. For such other and further relief as the Court deems just and proper.

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MAULDIN, SOUTH CAROLINA

May 5, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CASE NO. 2010-CP-23-0564
Bill J. Vernon, Jr. and Sandra Vernon.,	)	
	)	
Plaintiff,	)	**REPLY AND ANSWER OF PLAINTIFF AND THIRD-PARTY DEFENDANTS SANDRA ANN VERNON AND BILLIE JAMES VERNON, JR., TRUSTEES OR THEIR SUCCESSORS IN TRUST, UNDER THE SANDRA ANN VERNON LIVING TRUST, DATED JUNE 12, 2000, AND AS THEREAFTER AMENDED TO COUNTERCLAIM AND THIRD PARTY COMPLAINT OF YODER'S BUILDING SUPPLY (JURY TRIAL DEMANDED)**
v.	)	
	)	
Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes, Marcus Dunn and Yoder's Building Supply, Inc.,	)	
	)	
Defendants.	)	
Yoder's Building Supply, Inc.,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
Sandra Ann Vernon and Billie James Vernon, Jr., Trustees, or their successors In trust, under the Sandra Ann Vernon Living Trust, Dated June 12, 2000, and as Thereafter amended, Gary Dunn, Individually and Kerri Dunn, individually.	)	

TO: THOMAS E. DUDLEY, III, ATTORNEY FOR DEFENDANT AND THIRD PARTY PLAINTIFF YODER'S BUILDING SUPPLY, INC.

Plaintiffs and Third-Party Defendants ("Vernon") respectfully reply to Defendant Yoder's Building Supply, Inc. ("Yoder's") counterclaim and answer the complaint of Third-Party Plaintiff Yoder's as follows.

FOR A FIRST DEFENSE

1. Plaintiff and Third-Party Defendant herein realleges all prior allegations of the Complaint.

FOR A SECOND DEFENSE
(Admissions and Denials)

2. Each and every allegation of the Complaint not hereinbelow specifically admitted, modified, or explained is denied and strict proof demanded thereof.

3. Plaintiffs and Third-Party Defendants Vernon admit to the allegations contained in Third-Party Plaintiff's Counterclaim Paragraph 15.

4. Plaintiffs and Third-Party Defendants Vernon admit to the allegations contained in Third-Party Plaintiff's Counterclaim Paragraph 16.

5. Plaintiffs and Third-Party Defendants Vernon are without information as to the allegations contained in Third-Party Plaintiff's Counterclaim Paragraph 17.

6. Plaintiffs and Third-Party Defendants Vernon are without information as to the allegations contained in Third-Party Plaintiff's Counterclaim Paragraph 18.

7. Plaintiffs and Third-Party Defendants Vernon are without information as to the allegations contained in Third-Party Plaintiff's Counterclaim Paragraph 19 and deny same.

8. Plaintiffs and Third-Party Defendants Vernon admit to the allegations contained in Third-Party Plaintiff's Counterclaim Paragraph 20.

9. As to the allegations contained in Counterclaim Paragraph 21, Plaintiffs and Third-Party
10. Defendants Vernon admit only so much of the paragraph that Defendant Landmarc is obligated to pay for the materials. As for the rest of the allegations in this paragraph, 11.

11. Plaintiffs and Third-Party Defendants are without knowledge of these allegations and deny same.

12. Plaintiffs and Third-Party Defendants Vernon admit to the allegations contained in Third-Party Plaintiff's Counterclaim Paragraph 22.

13. Plaintiffs and Third-Party Defendants Vernon are without information as to the allegations contained in Third-Party Plaintiff's Counterclaim Paragraph 23 and deny same.

14. Plaintiffs and Third-Party Defendants Vernon are without information as to the allegations contained in Third-Party Plaintiff's Counterclaim Paragraph 24 and deny same.

15. Plaintiffs and Third-Party Defendants Vernon deny the allegations contained in Third-Party Plaintiff's Counterclaim Paragraph 25 and state that they have paid Defendant Landmarc in full.

16. The allegations contained in Third-party Plaintiff's Counterclaim Paragraphs 26-30 are directed towards Defendant Landmarc and so do not require any response from Plaintiffs and Third-Party Defendants Vernon.

17. Plaintiffs and Third-Party Defendants Vernon admit to the allegations contained in Counterclaim Paragraph 32.

18. Plaintiffs and Third-Party Defendants Vernon admit to the allegations contained in Counterclaim Paragraph 33.

19. As to the allegations contained in Counterclaim paragraph 34, Plaintiffs and Third-Party Defendants Vernon admit only so much of the allegation that asserts that Defendant Landmarc owes money to the Third-Party Plaintiff. As to the rest of the allegations contained in this paragraph, Plaintiffs and Third-Party Defendants Vernon are without information and deny same.

20. Plaintiffs and Third-Party Defendants Vernon admit to the allegations contained in Third-Plaintiff's Counterclaim Paragraph 35.

21. Plaintiffs and Third-Party Defendants Vernon deny the allegations contained in Third-Party Plaintiff's Counterclaim Paragraph 36.

22. As to the allegations contained in Counterclaim Paragraph 37, Plaintiffs and Third-Party Defendants Vernon are without knowledge and deny same.

23. As to the allegations contained in Counterclaim Paragraph 39, Plaintiffs and Third-Party Defendants Vernon admit only so much of the allegations as states that Yoder's furnished materials to Defendant Landmarc. Plaintiffs and Third-Party Defendants Vernon are without knowledge as to the rest of the allegations in this paragraph and deny same.

24. As to the allegations contained in Counterclaim Paragraph 40, Plaintiffs and Third-Party Defendants Vernon admit that Defendant Landmarc has failed to make full payment to Yoder's, but as to the rest of the allegations, Plaintiffs and Third-Party Defendants Vernon are without knowledge and deny same.

25. As to the allegations contained in Counterclaim Paragraph 41, Plaintiffs and Third-Party Defendants Vernon admit that Defendant Landmarc has failed to make full payment to Yoder's, but as to the rest of the allegations, Plaintiffs and Third-Party Defendants Vernon are without knowledge and deny same.

26. As to the allegations contained in Counterclaim Paragraph 42, Plaintiffs and Third-Party Defendants Vernon deny that they have been unjustly enriched, but as to the rest of the allegations, Plaintiffs and Third-Party Defendants Vernon are without knowledge and deny same.

27. The allegations contained in Third-party Plaintiff's Counterclaim Paragraphs 43-49 are

directed towards Defendant Landmarc and so do not require any response from Plaintiffs and Third-Party Defendants Vernon.

28. The allegations contained in Third-party Plaintiff's Counterclaim Paragraphs 50-52 are directed towards Defendants M. Dunn, Gary Dunn, and Kerri Dunn and so do not require any response from Plaintiffs and Third-Party Defendants Vernon.

FOR A SECOND DEFENSE
(Failure to State a Claim)

29. Plaintiff and Third-Party Defendant herein incorporates by reference all prior and subsequent allegations consistent herewith.

30. Pursuant to Rule 12(b)(6), SCRCP, the counterclaim fails to state a cause of action for which relief can be granted.

FOR A THIRD DEFENSE
(Lack of Privity)

31. Plaintiff and Third-Party Defendant herein incorporates by reference all prior and subsequent allegations consistent herewith.

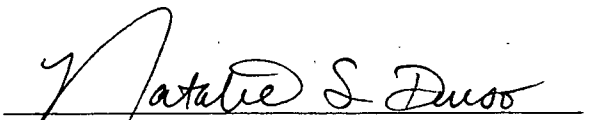
32. Plaintiffs and Third-Party Defendants Vernon lack privity in the contract between Yoder's and Defendant Landmarc and so cannot be held to terms of the contract by the Third-Party Plaintiff.

WHEREFORE, having fully replied to the Counterclaim and fully answered the Third-Party Complaint, Plaintiffs and Third-Party Defendants Vernon pray as follows:

1. That the Counterclaim be dismissed with costs;

2. That the Plaintiff and Third-Party Defendant be awarded interest costs and attorney's fees.

3. And for other and further relief and this Honorable Court deems just and proper.



Natalie Durso, Legal Assistant to
T.S. Stern, Jr. (S.C. Bar #5337)
Covington, Patrick, Hagins,
Stern & Lewis, P.A.
P.O. Box 2343
Greenville, SC 29602

March 23, 2010
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action Number: 2010-CP-23-0564
	)	
Bill J. Vernon, Jr. and Sandra Vernon,	)	
	)	**REPLY AND ANSWER TO**
Plaintiffs,	)	**COUNTERCLAIM OF DEFENDANT**
	)	**LANDMARC CONSTRUCTORS, INC.**
Vs.	)	
	)	
Landmarc Constructors, Inc. d/b/a	)	
Landmarc Custom Homes and	)	
Yoder's Building Supply, Inc.,	)	
	)	
Defendants.	)	
	)	
_____	)	

Plaintiffs replying to the Answer and Counterclaim of Defendant Landmarc Constructors, Inc. (Landmarc) would respectfully show as follows:

FOR A FIRST DEFENSE

1. Plaintiff realleges all allegations of its complaint as a complete defense to the claims of Defendant Landmarc.

FOR A SECOND DEFENSE
(Admissions and Denials)

2. That all allegations not hereinafter specifically admitted are denied.

3. As to the allegations contained in Counterclaim Paragraph 61, Plaintiffs admit only that Landmarc did provide labor and supplies to the project which is the subject of the Complaint of this action, but deny the rest of the allegations contained in said paragraph.

4. As to the allegations contained in Counterclaim Paragraph 62, said paragraph states mere conclusions of law requiring no answer from the Plaintiffs. To the extent an answer is required, Plaintiffs deny the allegations.

5. As to the allegations contained in Counterclaim Paragraph 63, Plaintiffs deny that they "willfully" avoided service of the mechanic's lien, but admit that said mechanic's lien was included in the Answer of Defendant Landmarc.

6. As to the allegations contained in Counterclaim Paragraph 64, Plaintiffs deny the allegations and reallege the amount owed to them by Landmarc which is contained in the Complaint of this action.

7. Answering Paragraph 65, Plaintiff herein incorporates its prior admissions and denials

8. Plaintiffs herein incorporate by reference all prior and subsequent allegations consistent herewith.

9. As to the allegations contained in Counterclaim Paragraph 66, Plaintiffs admit that there was an agreement between them and Landmarc, but reiterate the allegations in their Complaint concerning Landmarc's breach of contract.

10. Plaintiffs deny the allegations contained in Counterclaim Paragraph 67.

11. Plaintiffs deny the allegations contained in Counterclaim Paragraph 68 and demand strict proof thereof.

12. Plaintiffs deny the allegations contained in Counterclaim Paragraph 69 and demand strict proof thereof.

13. Plaintiffs deny the allegations contained in Counterclaim Paragraph 70 and demand strict proof thereof.

14. Plaintiffs deny the allegations contained in Counterclaim Paragraph 71 and reiterate their allegations concerning breach of contract stated in their Complaint.

15. Plaintiffs deny the allegations contained in Counterclaim Paragraph 72 and reiterate their allegations concerning breach of contract stated in their Complaint.

16. Plaintiffs deny the allegations contained in Counterclaim Paragraph 73 and demand strict proof thereof.

FOR A THIRD DEFENSE
(Unclean Hands)

17. Plaintiffs herein incorporate by reference all prior and subsequent allegations consistent herewith.

18. As to the allegations contained in Counterclaim Paragraph 75, Plaintiffs admit only so much of the counterclaim in that Landmarc did provide some labor and supplies to the subject project, but deny that Landmarc has not received payment.

19. As to the allegations contained in Counterclaim Paragraph 76, Plaintiffs deny the allegations and reiterate their allegations found in the Complaint.

20. Plaintiffs deny the allegations contained in Counterclaim Paragraph 77.

21. Plaintiffs deny the allegations contained in Counterclaim Paragraph 78.

22. Plaintiffs reiterate the allegations contained in the Complaint and assert that Landmarc's actions deny it the equitable defense of unjust enrichment under the equitable defense of unclean hands.

WHEREFORE, having fully answered Defendant Landmarc's Answer and Counterclaim, Plaintiffs pray for the following relief:

1) That the counterclaim be dismissed with costs and attorney's fees.

2) For judgment against Defendants Landmarc and Dunn for actual and punitive damages;

3) For an accounting of all monies paid to Landmarc which were unlawfully and fraudulently misapplied, diverted, siphoned, and misappropriated by Landmarc and/or Dunn;

4) For actual damages, trebled pursuant to SCUTPA;

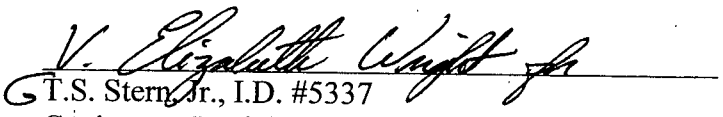
5) For the order *pendente lite*, restraining Defendants Landmarc and Dunn from using project funds;

6) For attorneys fees, expert fees, interest, and costs;

7) For such other relief as the Court deems just and proper.

PLAINTIFFS DEMAND A TRIAL BY JURY.

Respectfully submitted,



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Attorneys for Plaintiffs

April 5, 2010

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action Number: 2010-CP-23-0564
	)	
Bill J. Vernon, Jr. and Sandra Vernon,	)	
	)	
Plaintiffs,	)	
	)	**CERTIFICATE OF SERVICE**
Vs.	)	
	)	
Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes and Yoder's Building Supply, Inc.,	)	
	)	
Defendants.	)	
	)	

I, V. Elizabeth Wright, an employee of the law firm of Covington, Patrick, Hagins, Stern & Lewis, P.A., do hereby certify that on the 5th day of April, 2010, I deposited into the United States Mail, first class postage prepaid, the Plaintiffs' Reply and Answer to Counterclaim of Defendant Landmarc Constructors, Inc. to the parties listed below.

Brant Rucker, Esq.
P.O. Box 949
Mauldin, SC 29662
Attorney for Defendant
Landmarc Constructors

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Greenville, SC 29601
Attorney for Yoder's Building Supply

V. Elizabeth Wright

Greenville, South Carolina
April 5, 2010

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP2300564

FILED-CLERK OF COURT
GREENVILLE, SC
PAUL D. BRASWELL
2011 JUL -6 PM 12:20

Bill J Vernon Jr *vs.* Landmarc Constructors Inc

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other:

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by the Court:

CASE REFERRED TO THE MASTER IN EQUITY PER WRIGHT 5-18-11

Dated at Greenville, South Carolina, this 30 June 2011.

Court Reporter:

PRESIDING JUDGE - ROBIN B. STILWELL

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

T. S. Stern Jr. Covington Patrick Hagins Stern & Lewis P.O. Box 2343 Greenville, SC 29602

Thomas Elihue Dudley Kenison, Dudley & Crawford, Llc 704 E. McBee Ave. Greenville, SC 29601

ENTERED COMPUTER

John Brandt Rucker P.O. Box 949 Mauldin, SC 29662
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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2010-CP-23-564

Bill J. Vernon, Jr. and Sandra Vernon,

Plaintiff,

vs.

Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes, Marcus Dunn and Yoder's Building Supply, Inc.,

Defendants.

Yoder's Building Supply, Inc.,

Third-Party Plaintiff,

vs.

Sandra Ann Vernon and Billie James Vernon, Jr., Trustees, or their Successors in trust, under the Sandra Ann Vernon Living Trust, Dated June 12, 2000, and as Thereafter amended, Gary Dunn, Individually and Kerri Dunn, Individually,

---

TRANSCRIPT OF TESTIMONY

November 15, 2011
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

A P P E A R A N C E S:

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Court Reporter

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(PER JUDGE SIMMONS' INSTRUCTIONS, ALL EXHIBITS WERE MARKED PRIOR TO THE COMMENCEMENT OF THE TRIAL, UNLESS OTHERWISE NOTED)

BY THE COURT: ARE WE READY TO GO ON RECORD?

MR. STERN: YES, SIR.

MR. RUCKER: YES, SIR.

MR. DUDLEY: YES, SIR.

BY THE COURT: ALL RIGHT. LET ME, JUST FOR THE RECORD, MS. WRIGHT, LET ME START WITH YOU, IF YOU COULD STATE YOUR NAME AND WHO YOU'RE HERE ON BEHALF OF.

MS. WRIGHT: ELIZABETH WRIGHT, YOUR HONOR, AND T.S. STERN, JR. WE APPEAR FOR THE PLAINTIFF, MR. AND MRS. VERNON.

BY THE COURT: ALL RIGHT.

MR. DUDLEY: TOM DUDLEY, YODER'S BUILDING SUPPLY. LEE PRICKETT IS WITH ME ALSO OF MY FIRM.

BY THE COURT: ALL RIGHT.

MR. RUCKER: BRANDT RUCKER FOR LANDMARC AND THE DUNNS INDIVIDUALLY, I BELIEVE.

BY THE COURT: IS IT OR IS IT NOT?

MR. RUCKER: IT IS.

BY THE COURT: OKAY. ALL RIGHT. CALL YOUR FIRST WITNESS.

MS. WRIGHT: THANK YOU. THE PLAINTIFF CALLS MR. BILL VERNON TO THE STAND.

BILL J. VERNON, JR., BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

BY THE COURT: THANK YOU. IF YOU WOULD COME AROUND AND

HAVE A SEAT, PLEASE. (COMPLIES)

IF YOU WOULD STATE YOUR FULL NAME FOR THE RECORD, PLEASE, SIR.

THE WITNESS: BILL J. VERNON, JR.

MS. WRIGHT: FOR THE RECORD, YOUR HONOR, THE PLAINTIFF HAS ALREADY ENTERED THEIR EXHIBITS 1 THROUGH 14 AND HAVE BEEN MARKED BY THE COURT REPORTER. MR. VERNON HAS IN FRONT OF HIM A BOOK THAT WILL HELP HIM TO REFRESH HIS MEMORY, AND THAT WOULD INCLUDE EXHIBITS 1 THROUGH 7, NOT INCLUDING EXHIBIT 6. THAT'S FOR OUR SECOND WITNESS. THAT'S GOING TO BE EXHIBIT 1 THROUGH 14, NOT INCLUDING EXHIBIT 6.

BY THE COURT: LET ME JUST STATE FOR ALL COUNSEL, IF THERE'S AN OBJECTION, MAKE IT AT THE TIME OF THE ATTEMPTED INTRODUCTION TO THE DOCUMENT.

MR. DUDLEY: JUDGE, WE HAVE A NOTEBOOK THAT THE COURT REPORTER HAS. YOU HAVE A COPY OF IT. EVERYBODY -- ALL OF THE LAWYERS HAVE IT TOO. I'VE LOOKED THROUGH BETH AND SANDY'S. I HAVE NO OBJECTION TO ANY OF THOSE, BETWEEN US, BUT BRANDT HAS NOT HAD AN OPPORTUNITY TO LOOK AT OURS YET. BUT WE'RE GOOD.

BY THE COURT: ALL RIGHT. THANK YOU.

DIRECT EXAMINATION BY MS. WRIGHT:

Q GOOD MORNING, MR. VERNON.

A GOOD MORNING.

Q WOULD YOU PLEASE TELL THE COURT HOW OLD YOU ARE?

A I'M 69.

Q ARE YOU TAKING ANY MEDICATIONS TODAY, SIR?

A YES.

Q WHAT ARE THEY FOR?

A BLOOD PRESSURE, CHOLESTEROL AND SPINAL STENOSIS.

Q WOULD THOSE MEDICATIONS INTERFERE WITH YOUR ABILITY TO GIVE TESTIMONY?

A NO.

Q WHERE DO YOU LIVE, MR. VERNON?

A 470 HIGH RIDGE PARKWAY, MARIETTA, SOUTH CAROLINA.

Q HOW LONG HAVE YOU LIVED IN SOUTH CAROLINA?

A ABOUT THREE YEARS.

Q WHY DID YOU MOVE TO SOUTH CAROLINA?

A WEATHER. I'M FROM CHICAGO.

Q WHAT WAS YOUR PROFESSION BEFORE YOU RETIRED?

A I WAS EDUCATED AS A PHARMACIST, BUT SINCE 1989 I'VE BEEN OPERATIONAL VICE-PRESIDENT FOR WALGREEN DRUG COMPANY.

Q HAVE YOU EVER HAD A HOME BUILT FOR YOU BEFORE?

A YES.

Q HAVE YOU HAD ANY PROBLEMS BUILDING THAT HOME?

A NONE.

Q WOULD YOU TURN TO TAB NO. 1 IN YOUR BOOK, PLEASE, MR. VERNON.

MS. WRIGHT: FOR THE RECORD, THAT'S PLAINTIFFS' EXHIBIT NO. 1.

A I'M UPSIDE DOWN HERE.

Q WOULD YOU PLEASE TELL THE COURT WHAT THAT DOCUMENT IS?
A IT'S A CONSTRUCTION AGREEMENT SIGNED BY MYSELF, MY WIFE AND MARCUS DUNN.
Q WHEN DID YOU ENTER INTO THAT CONTRACT?
A I BELIEVE THE DATE WAS AUGUST OF '08.
Q WHEN YOU ENTERED THIS AGREEMENT, DID YOU UNDERSTAND IT TO BE A COST-PLUS AGREEMENT?
A YES.
Q WHAT DOES COST-PLUS MEAN TO YOU?
A IT MEANS WHEN THE BUILDER WOULD SPEND A DOLLAR'S WORTH OF MATERIAL AND A DOLLAR'S WORTH OF LABOR, THEY WOULD SEND THAT BILL TO ME AND THEN ADD A CERTAIN PERCENT WE WOULD NEGOTIATE ON TOP OF THAT FOR THEIR PROFIT, OVERHEAD.
Q IF YOU WOULD TURN TO THE PAGE IN THAT EXHIBIT MARKED DEF 00015.
A YES.
Q DOES THIS PAGE AND THE PAGES AFTER THAT SET OUT THE SCOPE OF THE WORK?
A YES, IT DOES.
Q WHY DID YOU INVOLVE BRYAN JOHNSON WITH THE PROJECT?
A WHEN WE WERE SIGNING THE CONTRACT WITH THE DUNNS AT THEIR OFFICE, I REQUESTED THAT A COPY OF ALL BILLS THAT THEY WERE SENDING ME GO TO BRYAN JOHNSON FOR HIS REVIEW AS WELL AS MINE.
Q HOW IS MR. JOHNSON RELATED TO YOU?
A IT'S MY SON-IN-LAW.

Q DID YOU PAY MR. JOHNSON FOR HIS SERVICES?
A NO, NOT AT THAT TIME.
Q DID MR. JOHNSON SERVE AS YOUR CONTRACTOR?
A NO.
Q DID MR. JOHNSON ENTER INTO CONTRACTS WITH SUPPLIERS AND SUBCONTRACTORS ON YOUR BEHALF?
A NO.
Q WHAT WAS THE REACTION OF THE DUNNS WHEN YOU INVOLVED MR. JOHNSON?
A VERY LITTLE BECAUSE THERE WAS THAT AGREEMENT UPFRONT THAT ALL OF THE BILLS AND EVERYTHING LIKE THAT GO TO HIM FOR HIS REVIEW AS WELL AS MINE AND MY WIFE'S.
Q WHO WERE YOUR MAIN CONTACTS AT LANDMARC CONSTRUCTORS?
A MY FIRST CONTACT WITH LANDMARC WAS WITH GARY DUNN. THEN AFTER A SHORT PERIOD OF TIME, GARY HAD SOME PROBLEMS OR SOMETHING. HE COULD NO LONGER FUNCTION ON THE SITE. SO, THEN IT WAS MARCUS DUNN AND KERRI DUNN.
Q HOW WELL DID YOU GET ALONG WITH THE DUNNS?
A I WOULD SAY REALLY WELL FOR ABOUT SIX MONTHS, EVEN WENT FISHING WITH MARCUS AND HIS SON ON ONE OF THEIR LAKES. SO, ABOUT SIX, SEVEN MONTHS IT WAS VERY GOOD.
Q DID YOU EVER HAVE ANY PROBLEMS GETTING YOUR QUESTIONS ANSWERED BY THE DUNNS?
A THAT SAME SIX-MONTH TIMEFRAME, YES, IT GOT SO BAD THAT I HAD TO HAVE A MEETING WITH MARCUS AND KERRI AND REQUEST THAT WE

FURNISH QUESTIONS IN WRITING AND THAT THEY MEET WITH US EVERY FRIDAY AFTERNOON ON THE JOB SITE TO ANSWER THE QUESTIONS.

Q HOW OFTEN WERE YOU AT THE JOB SITE?

A SINCE I LIVED ABOUT FOUR OR FIVE MILES AWAY, I WAS THERE -- MY WIFE AND I WERE PROBABLY THERE AT LEAST EVERY OTHER DAY FOR A YEAR-AND-A-HALF IF WE WERE IN TOWN.

Q HOW OFTEN WAS GARY DUNN AT THE JOB SITE?

A GARY?

Q YES.

A QUITE OFTEN BECAUSE WE LIVE IN A GATED COMMUNITY AND WHEN I WENT THROUGH THE GATE, YOU KNOW, I WOULD ASK, "ARE ANY OF THE DUNNS HERE?" AND THEY WOULD REPLY, "YES---

MR. RUCKER: OBJECTION.

A "GARY IS HERE AND HE"---

BY THE COURT: HOLD ON, PLEASE, SIR.

MR. RUCKER: OBJECTION TO HEARSAY, THE STATEMENT OF THE SECURITY GUARD.

MS. WRIGHT: THE SECURITY GUARD HAS NOT OFFERED ANY EVIDENCE THAT IS GOING TO ADD OR REFUTE---

MR. RUCKER: THE QUESTION WAS WHETHER GARY DUNN WAS ON THE SITE. THE ANSWER WAS THE SECURITY GUARD TOLD ME---

BY THE COURT: ALL RIGHT. IT'S A TECHNICAL OBJECTION. TECHNICALLY, I SUSTAIN THE OBJECTION.

MS. WRIGHT: THANK YOU, YOUR HONOR.

Q SO, NO REFERENCES TO WHAT THE SECURITY GUARD SAID, MR.

VERNON.

A OKAY. WHEN I WOULD GO TO THE SITE OR MY WIFE WOULD GO TO THE SITE, ON MULTIPLE OCCASIONS GARY WOULD BE THERE FOR ABOUT THE FIRST MONTH OR TWO MONTHS.

Q HOW OFTEN WAS KERRI DUNN AT THE JOB SITE?

A SELDOM.

Q HOW OFTEN WAS MARCUS DUNN AT THE JOB SITE?

A SELDOM PLUS A LITTLE.

Q NOW, IF YOU WOULD TURN TO TAB NO. 2 IN YOUR BOOK, PLEASE, MR. VERNON.

MS. WRIGHT: THAT'S PLAINTIFFS' EXHIBIT NO. 2, YOUR HONOR.

Q WOULD YOU PLEASE TELL THE COURT WHAT'S AT THAT TAB?

A IT'S A LISTING OF CHANGE ORDERS FOR OUR HOUSE.

Q ARE YOU DISPUTING THE AMOUNT OF THOSE CHANGE ORDERS, MR. VERNON?

A NO.

Q WHY NOT?

A BECAUSE OF THE COST-PLUS AGREEMENT, ONCE THE CHANGE ORDER WAS PRODUCED THERE WOULD BE NO REASON FOR ME TO QUESTION IT.

Q WHEN THE WORK BEGAN, WERE YOU PLEASED WITH WHAT WAS DONE?

A FOR FIVE OR SIX MONTHS, OR FIVE MONTHS.

Q ABOUT WHEN WERE YOU AWARE OF PROBLEMS ON THE SITE?

A WHEN I STARTED NOT GETTING ANSWERS TO SOME OF THE QUESTIONS, AND THEN PROBLEMS STARTED TO DEVELOP LIKE, OH, THE SIDING WAS PUT ON THE HOUSE AND THEN IT WASN'T STAINED FOR MONTHS AND IT WARPED.

I TRIED TO GET THAT CORRECTED WITH THE DUNNS, SOME ELECTRICAL PROBLEMS THAT I TRIED TO GET CORRECTED. THE CHIMNEY GOT INSTALLED WITHOUT ARB APPROVAL, AND THEN THERE WAS THE PROCESS TO CORRECT THAT. FOR SOME REASON A DECK WAS INSTALLED IMPROPERLY, AN IPE DECK AND IT WARPED. SO, ALL OF THOSE PROBLEMS JUST STARTED HAPPENING. I JUST KEPT QUESTIONING WHY AND HOW ARE WE GOING TO GET IT CORRECTED.

Q WHO WERE YOU QUESTIONING, MR. VERNON?

A SOMETIMES KERRI DUNN AND SOMETIMES MARCUS DUNN.

Q COULD YOU TELL US ABOUT THE ISSUE INVOLVING THE CHIMNEY?

A PER THE ORIGINAL PLANS ON THE HOME, THERE WAS TO BE A STONE-CAPPED CHIMNEY. THE REASON WE COULD DO THAT ON THE ORIGINAL PLANS IS THAT THE FIREPLACES, ONE UPSTAIRS AND ONE DOWNSTAIRS, WERE ON TOP OF EACH OTHER. SO, IT TOOK BUILDING A FRAMEWORK AND ONCE THAT FRAMEWORK WAS IN PLACE, YOU COULD BUILD A STONE CHIMNEY.

WELL, WHAT HAPPENED IN DISCUSSION WITH THE DUNNS, WE MOVED THE LOWER LEVEL FIREPLACE TO THE OTHER SIDE OF THE ROOM. WHEN THAT WAS DONE, THEN NO FRAMEWORK WAS BUILT FROM THE FOUNDATION UP TO THE ROOF. SO, WHEN THE STONE PEOPLE CAME TO PUT THE STONEWORK ON THE FIREPLACE, THEY REALIZED THEY COULDN'T DO IT BECAUSE THERE WAS NOTHING TO SUPPORT THE WEIGHT. SO THEN, FOR SOME REASON, THEY DIDN'T PUT THE STONE ON; THEY PUT THE SIDING ON, THE SAME SIDING I HAVE ON THE HOUSE. OUR ARB ORGANIZATION DIDN'T WANT THAT AND ORDERED US TO TAKE THAT DOWN.

DURING THE NEGOTIATIONS -- THIS WENT ON FOR QUITE A WHILE. WE FINALLY AGREED TO TAKE THE FIREPLACE DOWN. AND WHEN WE DID, WE HAD TO REPAIR THE ROOF BECAUSE THERE WERE LEAKS AROUND THE FOUNDATION OF THE FIREPLACE, AND SOME OF THE WOOD WAS ROTTED AND WARPED. SO, WE HAD TO REPLACE THAT BEFORE WE COULD REPLACE SOME OF THE ROOFING MATERIALS.

Q WERE YOU EVER INFORMED THAT LANDMARC WOULD BE PURCHASING INSURANCE FOR ANY SUPPLIER AND SUBCONTRACTOR WHO DID NOT HAVE INSURANCE?

A NO.

Q DID YOU AUTHORIZE LANDMARC TO PURCHASE THIS SORT OF INSURANCE?

A NO.

Q TELL US ABOUT ISSUES WITH THE DECK, MR. VERNON.

A WE HAD SELECTED AN IPE DECK FOR ONE OF THE EXTERIOR DECKS THAT REQUIRED SOME SLANTING TO IT SO THE WATER WOULD RUN THROUGH IT AND DRAIN OFF. WHEN THE DECK WAS INSTALLED, WE NOTICED THAT THE LONGER IT SAT THERE -- BY THE WAY, IT WAS UNSTAINED; IT WAS SUPPOSED TO BE STAINED RIGHT AWAY, AND IT WASN'T STAINED. SO, THE DECK KEPT WARPING, AND WARPING, AND WARPING, AND IT REALLY GOT BAD. SO, I MET WITH THE DUNNS TO FIGURE OUT HOW WE COULD CORRECT THIS. THEY CAME TO THE CONCLUSION THEN THAT THE DECK SHOULD BE TORN OUT AND REPLACED.

IN THE MEANTIME, I HAD WITHHELD $15,000 IN PAYMENT ONE MONTH JUST TO SEE IF WE COULD GET THAT DECK CORRECTED. ONCE THAT DECK

WAS CORRECTED, THEN I RELEASED THOSE FUNDS, THAT $15,000. TODAY, THE DECK IS STILL STARTING TO WARP AGAIN.

Q WILL YOU TURN TO TAB NO. 3, PLEASE, MR. VERNON WHICH IS PLAINTIFFS' EXHIBIT NO. 3.

A YES.

Q WOULD YOU PLEASE TELL THE COURT WHAT THOSE ARE?

A PARTIAL LIEN WAIVERS.

Q WHY WERE PARTIAL LIEN WAIVERS PART OF THE CONTRACT?

A BOTH OF US, WHEN WE DID THIS, AGREED THAT A PARTIAL LIEN WAIVER SHOULD EXIST IN THE CONTRACT.

Q BY "US" YOU MEAN---

A THE DUNNS AND THE VERNONS.

Q OKAY. NOW, WOULD YOU PLEASE READ FROM THAT FIRST PAGE STARTING AT ITEM NO. 1?

A ITEM NO. 1, "ALL CHARGES, EXCEPT RETAINAGE, FOR LABOR PERFORMED AND MATERIAL FURNISHED BY AFFIANT THROUGH THE CUTOFF DATE WILL BE PAID IN FULL UPON RECEIPT AND SUBSEQUENT FUNDING OF A CHECK IN THE AMOUNT STATED ABOVE BY THE FINANCIAL INSTITUTION DOING BUSINESS WITH THE PUBLIC IN THE STATES OF NORTH AND SOUTH CAROLINA."

Q WHAT DOES THAT MEAN TO YOU, MR. VERNON?

A IT KIND OF MEANS THAT THERE SHOULD BE SOME MONITORING OF FUNDS COMING IN AND FUNDS GOING OUT AND ALL PARTIES PAID PROPERLY SO THAT THERE WAS SOME ACCOUNTING AND SOME FLOW OF THE FUNDS.

Q NOW, THIS PARTIAL LIEN WAIVER THAT'S IN FRONT OF YOU, WAS

THAT PART OF THE BILL THAT LANDMARC WOULD SEND YOU?

A YES.

Q WHAT ELSE CAME WITH THE BILL?

A THE PARTIAL LIEN WAIVER WAS THE COVERSHEET. THE NEXT SHEET WAS A LIST OF BILLINGS FOR THAT BILLING PERIOD. THEN THERE WAS THE SUPPORTING INVOICES FOR THOSE BILLINGS. THEN THERE WAS A SPREADSHEET THAT MONITORED COSTS UP TO THAT POINT AND THEN PROJECTED COSTS TO FINISH THE JOB. THEN THE LAST ONE WAS A SUBCONTRACTOR'S REQUEST FOR FUNDS IF I REMEMBER THE NAME OF IT RIGHT.

Q WERE THESE SENT TO YOU ON A MONTHLY BASIS, MR. VERNON?

A THERE WERE TIMES WHEN THEY WEREN'T BUT PRETTY MUCH MONTHLY.

Q WERE ANY OF THESE BILLS OVERDUE FROM LANDMARC CONSTRUCTORS?

A WERE ANY OF THE BILLS---

Q THE BILLS THAT CAME WITH THE PARTIAL LIEN WAIVERS.

A NOT THAT I'M AWARE OF.

Q WHEN YOU RECEIVED A BILL FROM LANDMARC, HOW DID YOU REVIEW IT?

A THE FIRST THING, MY WIFE AND I SAT DOWN AT THE KITCHEN TABLE AND, YOU KNOW, WENT THROUGH ALL OF THE DOCUMENTS THAT YOU'VE JUST -- THAT I'VE JUST DESCRIBED AND THEN LOOKED AT ALL OF THE SUPPORTING MATERIAL AND HAD A DISCUSSION, YOU KNOW, DID IN FACT, YOU KNOW, THIS HAPPEN IN THESE INVOICES AND DID WE SEE THOSE PEOPLE THERE, JUST THAT PROCESS. THEN MR. JOHNSON HAD A COPY BECAUSE A COPY WAS MAILED TO HIM. SO, THEN IF THERE WAS ANYTHING

HE WANTED TO DISCUSS ABOUT THE BILL, HE WOULD CALL ME. THEN HE WOULD APPROVE THAT BILL. THEN I WOULD PROCEED IN PAYMENT BY SEVERAL DIFFERENT METHODS.

Q SO, HOW DID YOU MAKE YOUR PAYMENTS, MR. VERNON?

A BY CHECK AND BY WIRE.

Q DID YOUR BANK EVER HOLD UP PAYMENTS TO LANDMARC?

A NO.

Q WERE ANY OF YOUR PAYMENTS TO LANDMARC EVER LATE?

A NO.

Q DID YOU EVER FAIL TO PAY A BILL FROM LANDMARC?

A YES.

Q WHEN WAS THAT?

A NOVEMBER -- DECEMBER OF '09.

Q WHY IS THAT?

A MR. JOHNSON WANTED ME NOT TO PAY THAT MONTH'S BILL UNTIL HE COULD COME OUT AND TAKE A LOOK AT THE SITE AND GO THROUGH THE BILL.

Q AND THEN WHAT HAPPENED?

A IT WAS UP TO MR. JOHNSON AND WE DETERMINED TO, I BELIEVE, PAY SOME OF THE BILLS AND TALK TO SOME OF THE VENDORS AND SUBCONTRACTORS.

Q DID LANDMARC EVER INFORM YOU ABOUT A BANK ACCOUNT THEY HAD FOR YOUR PROJECT AND HOW IT WORKED?

A NO.

Q DID ANYONE AT LANDMARC EVER INFORM YOU OF A SUPPLIER OR

SUBCONTRACTOR WHO WAS NOT ENTITLED TO BE PAID?

A NO.

Q WOULD YOU EXPECT TO BE INFORMED OF THAT?

A YES.

Q WHY IS THAT?

A WELL, BECAUSE IF THEY WERE HAVING A PROBLEM WITH A SUBCONTRACTOR AND IT WAS MY MONEY GOING TO THEM, I WOULD KIND OF EXPECT THEM TO, YOU KNOW, INFORM ME OF IT BECAUSE WE HAD A PARTNERSHIP TO BUILD THE HOUSE.

Q WHEN WERE YOU FIRST AWARE THAT LANDMARC WAS HAVING PROBLEMS WITH YODER'S?

A NOVEMBER OF '09.

Q WAS THAT YOUR FIRST NOTICE OF SUBCONTRACTORS OR SUPPLIERS BEHIND ON PAYMENT FROM LANDMARC?

A IT WAS THE FIRST TIME I KNEW ABOUT IT. I HAD -- SOME SUBCONTRACTORS HAD COME TO ME WHILE I WAS ON THE SITE AND MADE REMARKS THAT THEY WERE WAY BEHIND AND NOT BEING PAID. THAT'S WHAT PRECIPITATED MY DISCUSSION WITH YODER'S.

Q WOULD YOU TURN TO TAB 4, PLEASE, MR. VERNON WHICH IS PLAINTIFFS' EXHIBIT NO. 4.

A YES.

Q WOULD YOU PLEASE TELL THE COURT WHAT YOU HAVE AT TAB 4?

A WHEN WE WERE HAVING THESE DISCUSSION PROBLEMS WITH THE DUNNS, AND SOME INFERIOR WORKMANSHIP, AND YODER'S NOT BEING PAID, AND FERGUSON'S NOT BEING PAID, I CONTACTED JEFFREY GRAY. HE'S AN

ATTORNEY IN LANDRUM. HE HAD HELPED ME CLOSE ON THE LOT THAT I HAD PURCHASED AT MOUNTAIN PARK. SO, I KNEW HIM. SO, I CALLED HIM AND I WENT IN AND TALKED TO HIM ABOUT, YOU KNOW, WE WERE HAVING PROBLEMS AND HOW COULD WE GET THESE PROBLEMS RESOLVED. SO, JEFFREY AND I SAT DOWN AND COMPOSED THIS LETTER TO THE DUNNS STATING THE ISSUES THAT YOU SEE HERE AND ALSO STATING THAT THERE WOULD BE A FINALITY TO THE CONTRACT IF THESE TYPES OF ISSUES WEREN'T SOLVED.

Q SO, WHAT CAUSED YOU TO FIRE LANDMARC?

A IT TURNED OUT TO BE JUST A DECISION THAT THEY WERE IN DEFAULT OF THE AGREEMENT.

Q AFTER YOU TERMINATED LANDMARC, DID YOU ALLOW LANDMARC TO REMAIN ON THE BUILDING PERMIT?

A NO.

Q DID YOU CHANGE THE NAME ON THE BUILDING PERMIT?

A YES.

Q TO WHAT NAME?

A BILL J. VERNON, JR.

Q DID YOU CONTRACT WITH ANYONE TO COMPLETE YOUR HOUSE?

A NO.

Q ARE YOU AWARE OF ANY PROBLEMS WITH THE WARRANTY ON THE HOUSE?

A THERE HAVE BEEN SOME PROBLEMS WITH WARRANTY WORK. YES.

Q HOW ARE YOU HANDLING THE WARRANTY ISSUES?

A BASICALLY, THERE HAVE BEEN A COUPLE OF ISSUES. IF IT'S AN

APPLIANCE OR SOMETHING THAT WE CAN GET A HOLD OF THE MANUFACTURER, WE GET A HOLD OF THE MANUFACTURER AND THEN -- YOU KNOW, THEY CAME IN -- I.E., A GARBAGE DISPOSAL WENT OUT, SO WE GOT A HOLD OF THE MANUFACTURER. IT TOOK THREE OF FOUR WEEKS AND THEY CAME AND REPLACED IT. THEN THE OTHER METHOD WAS WE JUST PAID CASH TO CORRECT THINGS.

Q IF I COULD GET YOU TO TURN TO TAB 5, PLEASE, MR. VERNON, WHICH IS PLAINTIFFS' EXHIBIT NO. 5. WOULD YOU PLEASE TELL THE COURT WHAT THAT IS?

A IT SAYS COUNTY OF GREENVILLE, INSPECTION CARD.

Q AND WHOSE NAME IS ON THE INSPECTION CARD?

A IT JUST SAYS OWNER.

Q WHO IS THE OWNER?

A BILL J. VERNON, JR.

Q IS YOUR HOUSE FINISHED, MR. VERNON?

A NO.

Q HAVE YOU HAD TO PAY OTHERS TO COMPLETE YOUR HOUSE?

A YES.

Q WHO?

A WELL, ONCE THE CONTRACT WAS TERMINATED, BRYAN JOHNSON, MY SON-IN-LAW, CAME AND HELPED ME FINISH BUILDING THE HOME. EVERY MONTH HE GAVE ME A BILL FOR HIS SERVICES, AND I PAID THAT. THAT WOULD BE THE MAIN PERSON THAT I PAID.

Q DID YOU HAVE A CONTRACT WITH MR. JOHNSON?

A NO.

Q WAS MR. JOHNSON WORKING UNDER YOUR DIRECTION?
A COMPLETELY.
Q HAVE YOU HAD TO PAY OTHERS TO REPAIR LANDMARC'S DEFECTIVE WORK?
A YES.
Q WAS MR. JOHNSON THE SUPERINTENDENT OF YOUR PROJECT?
A NO.
Q DID YOU EVER TRY TO CONTACT YODER'S TO INQUIRE ABOUT YOUR BILL?
A YES.
Q WHEN WAS THIS?
A NOVEMBER OF '09.
Q WHO DID YOU TALK TO?
A I DON'T KNOW THE GENTLEMAN'S NAME. I CAN'T REMEMBER. BUT THEY DIRECTED ME TO THE -- I THINK, ACCOUNTS RECEIVABLE DEPARTMENT OR FINANCE DEPARTMENT.
Q AND WHAT HAPPENED?
A THE PERSON ON THE -- I DISCUSSED -- MY QUESTION WAS: ARE THE DUNNS CURRENT IN THEIR BILLS? THE ANSWER WAS "NO, THEY'RE NOT BY THE TUNE OF $100,000 OR MORE."
Q WERE YOU SURPRISED TO HEAR THAT?
A ABSOLUTELY.
Q WHY IS THAT?
A BECAUSE NOBODY HAD EVER -- YODER'S NEVER CALLED ME AND ASKED ME FOR ANY PAYMENT, NOR THEIR VENDOR, OR SUBCONTRACTOR EVER

CALLED AND ASKED ME TO PAY ANY MONEY. SO, YEAH, I WAS SHOCKED BECAUSE THEN FROM THAT POINT, I DIDN'T KNOW WHAT TO DO. IT KIND OF FLOORED ME.

Q NOW, DID YOU TRY TO AVOID BEING SERVED WITH LANDMARC'S MECHANIC'S LIEN?

A NO.

Q DID LANDMARC DO THE JOB AS YOU CONTRACTED?

A NO.

Q WHAT DO YOU WANT FROM LANDMARC?

A I WANT ALL OF THEIR SUBCONTRACTORS PAID. I WANT THE LIENS RELEASED, AND I WANT ANY MONIES DUE TO ME THAT I HAVE PAID TO CORRECT THE JOB THAT LANDMARC SHOULD HAVE DONE.

Q WHAT DO YOU WANT FROM YODER'S?

A LIEN RELEASE.

Q THANK YOU, MR. VERNON. MR. VERNON, IF WE COULD BACK UP, YOU HAD MENTIONED A BILL THAT YOU HAD PAID TO MR. JOHNSON.

A IT WAS AN AGREEMENT. BRYAN SENT ME A BILL ATTACHED TO SOME INVOICES THAT HE WAS STILL REVIEWING, YOU KNOW, LIKE HE DID BEFORE.

Q THESE INVOICES, WHAT WERE THESE INVOICES FOR?

A THERE WERE INVOICES THAT WE WERE PAYING BECAUSE THE DUNNS DIDN'T.

Q SO, THESE WERE NOT FROM MR. JOHNSON?

A NO.

Q THEY WERE FROM OTHER SUPPLIERS AND SUBCONTRACTORS?

A YES.
Q THE QUESTION IS, MR. VERNON, WHAT WERE YOU PAYING MR. JOHNSON FOR?
A TO LOOK AT ALL OF THE INVOICES AND MONITOR AND TO CORRECT THINGS ON THE HOUSE. HE WAS ACTUALLY DOING SOME WORK HIMSELF. SO, RATHER THAN HIRE PEOPLE, HE -- BECAUSE HE'S PRETTY GOOD. HE WAS ACTUALLY DOING MOST OF THE PUNCH LIST WORK HIMSELF. SO, YOU KNOW, HE WAS THERE FOR, I DON'T KNOW, THREE OR FOUR MONTHS, AND HE WAS DOING, YOU KNOW, FINISHING THE JOB, DOING WORK HIMSELF, DOING THE PUNCH LIST.
Q WAS HE WORKING UNDER YOUR SUPERVISION?
A YES. I WAS THERE ALMOST EVERY DAY. HE WOULD ALWAYS ASK ME, YOU KNOW, IN THE MORNING, HE WOULD SAY, "WHAT DO YOU THINK WE OUGHT TO DO TODAY?" HE SAID, SHOULD I CONTACT SOMEBODY? SHOULD I DO THIS? SHOULD I DO THAT? SO, WE HAD THAT DISCUSSION EVERY DAY AND THEN I WOULD BE AT THE -- BECAUSE I WAS THE BUILDER NOW, I WAS AT THE HOME ALMOST EVERY DAY AND BRYAN WAS THERE.
Q SO, YOU WERE THE BUILDER?
A YES.
Q THIS IS WORK BEING DONE ON YOUR RESIDENTIAL HOME, CORRECT?
A THAT IS CORRECT.
Q IS YOUR HOME -- WERE YOU BUILDING THIS HOME TO SELL?
A NO.
Q THANK YOU, MR. VERNON.
BY THE COURT: MR. RUCKER.

CROSS-EXAMINATION BY MR. RUCKER:

Q MR. VERNON, WHEN DID BRYAN JOHNSON TELL YOU TO DELAY PAYING A BILL TO LANDMARC, PAYING ANY OF THE BILLS?

A IT WAS SOMETIME IN THE FIRST TWO WEEKS OF DECEMBER OF '09.

Q IT'S YOUR TESTIMONY THERE WAS ONLY ONE BILL UNPAID OR WAS THERE, IN FACT, TWO?

A NO. IT'S NOT MY TESTIMONY THERE WAS ONLY ONE BILL.

Q UNPAID?

A THERE MAY HAVE BEEN TWO.

Q THERE MAY HAVE BEEN TWO?

A UH-HUH (AFFIRMATIVE).

Q YOU DON'T RECALL WHETHER IT WAS ONE OR TWO THEN?

A NO.

Q IF TWO WERE INTRODUCED INTO EVIDENCE, YOU WOULDN'T BE ABLE TO ARGUE THE SECOND ONE WAS NOT AN ACTIVE BILL?

A NO.

Q I WANT TO TURN YOUR ATTENTION TO EXHIBIT 2 THAT WAS INTRODUCED BY YOUR COUNSEL. I'M SORRY, EXHIBIT 4, A LETTER FROM JEFFREY GRAY. MR. GRAY WAS YOUR ATTORNEY; IS THAT RIGHT?

A THAT IS CORRECT.

Q YOU TESTIFIED THAT YOU HAD USED HIM TO CLOSE THE PROPERTY; IS THAT RIGHT?

A NOT -- YES. I THINK IT WAS. I USED HIM TO CLOSE ON OUR PROPERTY. I'M NOT SURE IT WAS THIS CLOSING.

Q YES, SIR. I UNDERSTAND. DID HE -- HE DID, IN FACT, DRAFT

THIS CONSTRUCTION AGREEMENT, DIDN'T HE? WHEN HE'S CALLED TO TESTIFY LATER, HE WOULD TESTIFY THAT HE DID DRAFT THE ACTUAL AGREEMENT; IS THAT RIGHT?

A THAT'S NOT CORRECT.

Q WHO DRAFTED THE CONSTRUCTION AGREEMENT?

A THE DUNNS.

Q DID YOU HAVE TIME TO REVIEW THE AGREEMENT WHEN YOU SIGNED IT?

A NO.

Q SO, IT'S YOUR TESTIMONY THAT YOU WEREN'T PROPERLY PREPARED AT THE TIME YOU ENTERED INTO THE CONTRACT?

A I WAS PREPARED BUT IT WAS PART OF A CHECK, AND I SIGNED PROBABLY WITHOUT READING THE WHOLE THING. I KNEW WHAT IT WAS.

Q BUT YOU UNDERSTAND THAT YOU ARE BOUND BY THE AGREEMENT YOU SIGNED, CORRECT?

A ABSOLUTELY.

Q I BELIEVE YOUR TESTIMONY WAS YOU ASSISTED JEFFREY GRAY IN WRITING EXHIBIT NO. 4?

A YES. HE ASKED ME QUESTIONS AND -- BECAUSE I HAD TO PRESENT THE CASE AND ALL. HE'S THE LAWYER. I COULDN'T WRITE IT.

Q I TURN YOU TO PAGE 3 OF THAT LETTER THAT BEGINS WITH "IN ADDITION." WAS IT YOUR IDEA OR MR. GRAY'S IDEA TO THREATEN MY CLIENT WITH CRIMINAL PROSECUTION?

MS. WRIGHT: OBJECTION, YOUR HONOR. THAT CALLS FOR SPECULATION.

MR. RUCKER: HE KNOWS IF HE DID IT OR NOT.

BY THE COURT: OVERRULED. REPEAT THE QUESTION.

Q WHOSE IDEA WAS IT, YOURS OR JEFFREY GRAY'S, TO THREATEN MY CLIENT WITH PROSECUTION?

MS. WRIGHT: YOUR HONOR, THERE'S NO EVIDENCE OF THREAT.

A I---

BY THE COURT: HOLD ON, PLEASE.

MR. RUCKER: THIS IS CROSS-EXAMINATION. I THINK THE LETTER SPEAKS FOR ITSELF.

BY THE COURT: GO AHEAD.

Q WAS IT YOUR IDEA OR WAS IT JEFFREY GRAY'S IDEA TO THREATEN MY CLIENT WITH CRIMINAL PROSECUTION?

A ONE, I DON'T THINK IT WAS A THREAT. I THINK IT WAS A STATEMENT OF FACT.

Q DID YOU---

A THEY HAD STOLE SO MUCH MONEY FROM ME THAT I WAS INTERESTED IN HOW I WAS GOING TO BE ABLE TO RECOVER.

Q SO, IT'S YOUR CONTENTION THEY DID, IN FACT, STEAL MONEY FROM YOU?

A ABSOLUTELY.

Q DID YOU CALL THE POLICE ON MY CLIENTS?

A NO BECAUSE -- GO AHEAD. NO.

Q FEEL FREE TO FINISH.

A NO. I WAS ADVISED NOT TO CALL THE POLICE AT THIS TIME.

Q OKAY. ARE YOU AWARE THAT THE POLICE DID, IN FACT, CONTACT

THE DUNNS?

A YES.

Q HOW DO YOU KNOW THAT?

A BECAUSE I WENT TO THE CITY TO ASK THE PROCESS IN HOW TO FILE CHARGES AGAINST THE DUNNS FOR STEALING.

Q NOW, I BELIEVE YOU TESTIFIED EARLIER THAT THE PARTIAL LIEN WAIVER DOCUMENTS WERE NOT INCLUDED -- THAT LANGUAGE AT LEAST -- WAS NOT INCLUDED IN THE ORIGINAL CONSTRUCTION AGREEMENT; IS THAT RIGHT?

A I CAN'T ANSWER THAT. I DON'T KNOW WHETHER IT WAS OR NOT.

Q WELL, IF YOU DON'T RECALL, I UNDERSTAND. WHEN WAS THE FIRST PARTIAL LIEN WAIVER THAT YOU RECEIVED, APPROXIMATELY?

A I BELIEVE IT WAS THE ONE THAT WAS -- WHERE SOME FEES AND CHARGES AND A DEPOSIT OCCURRED.

Q WHOSE IDEA WAS IT TO USE PARTIAL LIEN WAIVERS?

A I THINK THERE WAS A DISCUSSION BETWEEN THE DUNNS AND I COMING UP WITH AN AGREEMENT.

Q WAS YOUR -- I BELIEVE YOUR TESTIMONY WAS THAT BRYAN JOHNSON WAS INVOLVED IN THIS PROJECT, AT LEAST, LOOKING AT YOUR PAPERWORK FROM THE BEGINNING; IS THAT RIGHT?

A HE WASN'T INVOLVED IN THE ORIGINAL DRAWING OF THE AGREEMENT, BUT ALL BILLS WERE SENT TO HIM. YES.

Q SO, INITIALLY, WHEN THE FIRST BILL CAME IN, YOU SENT THAT TO BRYAN JOHNSON TO REVIEW?

A THE FIRST ONE, NO.

Q OKAY. WHICH---

A BECAUSE IT WASN'T ANYTHING TO DO WITH CONSTRUCTION.

Q OKAY. THEN IF IT WAS A CONSTRUCTION BILL, YOU WOULD SEND THAT TO HIM BUT---

A ANYTHING AFTER THAT FIRST ONE WENT TO BRYAN JOHNSON.

Q WHERE DOES BRYAN JOHNSON LIVE?

A EDWARDS, COLORADO.

Q TO YOUR KNOWLEDGE, IS HE OPERATING A BUSINESS -- ACTUALLY OPERATING -- A BUSINESS IN SOUTH CAROLINA?

A NO.

MS. WRIGHT: YOUR HONOR, HOW IS THIS RELEVANT?

MR. RUCKER: IT'S IN ANTICIPATION OF THEIR NEXT WITNESS. I'M JUST FINDING OUT THE BACKGROUND AND WHAT WAS GOING ON.

BY THE COURT: ALL RIGHT. I'LL GIVE YOU A LITTLE MORE LEEWAY, BUT MOVE ON WITH IT.

Q WHEN DID BRYAN JOHNSON FIRST COME ON SITE TO LOOK AT THE MATERIALS FOR THE BUILDING?

A I'M NOT SURE BUT I WOULD SAY SOMETIME IN PROBABLY THE SECOND OR THIRD BILLING PROCESS. BRYAN CAME TO VISIT US AND WE WENT UP TO LOOK AT THE SITE WITH SOME OF THE BILLINGS THAT WE ALREADY HAD, TO JUST WALK AROUND THE SITE. WE ALSO TOOK SOME PICTURES AT THAT TIME AND, YOU KNOW, THINGS LIKE THAT.

Q WOULD THAT BE IN THE FIRST FEW MONTHS OF THE CONTRACT?

A YES.

Q I'M JUST TRYING TO UNDERSTAND THE TIMELINE.

A YES, IT IS.
Q DID BRYAN JOHNSON AT THAT POINT TELL YOU THERE WAS SOMETHING WRONG WITH THE PROPERTY?
A NO.
Q WHEN DID HE FIRST MENTION TO YOU HE BELIEVED SOMETHING WAS WRONG?
A WHEN I STARTED ASKING ABOUT THE DECK, AND THE SIDING, AND THE DOORS THAT WERE IN THE BASEMENT NOT TREATED RIGHT AND THEY WERE WARPING. SO, I DON'T HAVE THE KNOWLEDGE OF WHAT'S CAUSING ALL OF THAT. SO, THEN I STARTED ASKING BRYAN ABOUT ALL OF THE DEFECTIVE WORKMANSHIP.
Q YOU HAD TO ASK HIM BECAUSE YOU REALLY DIDN'T KNOW HOW TO BUILD A HOUSE YOURSELF; IS THAT RIGHT?
A I DIDN'T KNOW.
Q DID HE GIVE YOU ADVICE AT THAT TIME ON HOW TO HANDLE THE ISSUES?
A NOT AT THAT TIME, NO.
Q WHEN DID HE FIRST ADVISE YOU ABOUT HOW TO HANDLE THE ISSUES?
A AFTER I RELEASED THE DUNNS.
Q SO, BRYAN JOHNSON -- YOUR TESTIMONY NOW IS THAT BRYAN JOHNSON NEVER TALKED TO YOU ABOUT NOT MAKING A PAYMENT BECAUSE SOMETHING HADN'T BEEN DONE CORRECTLY?
A NOT PRIOR TO RELEASING THE DUNNS.
Q ALL OF THAT WAS AFTER YOU RELEASED THEM, CORRECT?
A CORRECT.

Q DID YOU USE ANYBODY ELSE TO REVIEW THE BILLS TO SEE IF IT WAS BEING DONE PROPERLY?

A MY WIFE.

Q IS YOUR WIFE A RESIDENTIAL BUILDER?

A NO.

Q ARE YOU, IN FACT, A RESIDENTIAL BUILDER?

A YES.

Q ARE YOU LICENSED IN SOUTH CAROLINA TO BE A RESIDENTIAL BUILDER?

A AS AN OWNER/BUILDER.

Q DID YOU PRODUCE A COPY OF THAT LICENSE IN DISCOVERY TO YOUR KNOWLEDGE?

A I BELIEVE SO BUT NOT TO MY KNOWLEDGE.

Q WHAT IS YOUR BACKGROUND -- FIRST OF ALL, DID YOU HAVE TO TAKE ANY KIND OF TEST OR ANYTHING TO BE LICENSED?

A WHERE?

Q IN SOUTH CAROLINA?

A AS WHAT?

Q AS BUILDING, ANY KIND OF BACKGROUND, ACADEMIC BACKGROUND, ANYTHING TO NOTE, "I BUILD A---

A AS AN OWNER/BUILDER?

Q YEAH.

A NO.

Q ARE YOU -- DID YOU -- WHY DID YOU HIRE LANDMARC IN THE FIRST PLACE? WAS IT BECAUSE THEY HAD EXPERTISE IN THIS?

A NO. I TRUSTED GARY DUNN. I DIDN'T KNOW WHETHER THEY HAD ANY EXPERTISE.

Q BUT YOU ASSUMED THEY WERE A LICENSED CONTRACTOR, CORRECT?

A THEY HAD THEIR LICENSE IN SOUTH CAROLINA. THAT'S CORRECT.

Q IT WAS YOUR BELIEF THAT THEY HAD TO HAVE A LICENSE TO ACTUALLY PRACTICE IN SOUTH CAROLINA, CORRECT?

A YES.

Q THAT'S JUST COMMON SENSE, RIGHT?

A NO. IT'S THE LAW.

Q NOW, TURN YOUR ATTENTION BACK TO NO. 4, THE JEFFREY GRAY LETTER, DID YOU EVER NOTIFY THE DUNNS OF ANY ERRORS, ANY OR PERCEIVED ERRORS, IN WRITING BEFORE THIS DATE?

A ERRORS FOR WHAT?

Q TO THE BUILDING OR BUILDING PRACTICES?

A YOU MEAN TO--

Q TO THE GROUND---

A YOU MEAN ACCEPTABLE WORK OR TO THE BILLING PRACTICES?

Q NO. I'M JUST ASKING, DID YOU EVER IN WRITING COMPLAIN ABOUT ANYTHING ABOUT THE BUILDING PROCESS, THE MATERIALS, THE SUBCONTRACTORS, THE INSURANCE, ANY OF IT?

A YES. THERE ARE EMAILS EXISTING WHERE -- WHEN I HAD TO HAVE MEETINGS WITH THE DUNNS, I WAS VERY SPECIFIC ABOUT SOME OF THE ISSUES: THE DECK, THE SIDING, THE CHIMNEY.

Q TO YOU KNOWLEDGE, DID Y'ALL PRODUCE THOSE EMAILS IN DISCOVERY?

A I DO NOT KNOW THAT.
Q ARE YOU AWARE THAT A MECHANIC'S LIEN WAS PLACED ON THIS PROPERTY?
A YES.
Q ARE YOU AWARE OF WHEN THAT WAS?
A NO. I DON'T HAVE THE DATE.
Q WERE YOU EVER ADVISED TO AVOID PROCESS SERVICE?
A NO.
Q DID YOU EVER TELL THE GUARDS AT THE GATE NOT TO LET ANYBODY IN TO SERVE YOU PAPERS?
A NO, BUT THAT'S STANDARD PROCEDURE. THEY DON'T LET ANYBODY IN. IT DOESN'T MAKE ANY DIFFERENCE WHETHER THEY'RE SERVING PAPERS OR NOT.
Q I UNDERSTAND. HOW MUCH DO YOU BELIEVE YOU ARE OWED FROM THE DUNNS? JUST AN ACTUAL NUMBER.
A JUST THROW A NUMBER OUT?
Q NOT THROW A NUMBER OUT. THIS IS YOUR LAWSUIT. Y'ALL ARE---
A I THINK I AM GOING TO DEFER TO MR. JOHNSON ON THAT BECAUSE I WOULD JUST BE GUESSING ON THE ACTUAL NUMBER.
Q I UNDERSTAND. DO YOU KNOW, IN LOOKING AT THE CONTRACT -- PLEASE REFRESH YOUR MEMORY, IF NECESSARY -- WHEN THE CONTRACT WAS TO BE COMPLETED BY?
A LOOKING AT THE CONTRACT?
Q SIR, I WANT YOU TO REMEMBER INDEPENDENTLY. I'M JUST GIVING YOU A CHANCE TO REFRESH YOUR MEMORY.

A I THINK IT SAID ONE YEAR.
Q NOW, DID YOU GRANT ANY EXTENSIONS TO PERFORM BECAUSE OF MODIFICATIONS TO THE ORIGINAL PLAN?
A NO.
Q LET'S TALK ABOUT THE FIREPLACE. I BELIEVE YOUR TESTIMONY WAS THAT MY CLIENTS HAD YOU MOVE THE FIREPLACE; IS THAT RIGHT?
A NO.
Q WHOSE DECISION WAS IT TO MOVE THE FIREPLACE?
A MINE.
Q OKAY. WAS THAT PART OF THE ORIGINAL ARCHITECTURAL PLANS OR WAS IT YOUR DECISION JUST BASED ON AESTHETICS?
A IT WAS OUR DECISION TO MOVE THE FIREPLACE ALONG WITH OUR DIRECTion AND THE DUNNS. GARY DUNN STOOD RIGHT THERE WHEN WE AGREED TO DO IT.
Q BUT IT'S YOUR HOUSE. IT WAS YOUR DECISION; IS THAT RIGHT?
A THAT'S CORRECT.
Q DID YOU KNOW WHAT CAUSED THE PROBLEMS WITH THE DECK? ARE YOU FAMILIAR WITH THAT?
A I QUITE OFTEN SPECULATED AS TO WHAT THE PROBLEMS WERE, BUT TO BE VERY HONEST, NO. I CAN'T TELL YOU WHETHER IT WAS WORKMANSHIP OR MATERIALS, BUT IT HAD TO BE ONE OF THE TWO.
Q OKAY. THAT WAS FAIR. WAS THIS CORRECTED LATER DURING THE CONSTRUCTION PROJECT, THE ISSUE WITH THE DECK?
A YES, IT WAS CORRECTED BUT IT'S NOT CORRECTED FULLY.
Q YOUR TESTIMONY iS THERE'S STILL PROBLEMS WITH IT?

A THAT IS CORRECT.

Q COMPLAINTS WERE ADDRESSED AT LEAST AT THAT TIME?

A THE INITIAL COMPLAINTS WERE ADDRESSED.

Q NOW---

A AFTER I WITHHELD $15,000.

Q WHERE IN YOUR CONSTRUCTION CONTRACT DOES IT ALLOW YOU TO WITHHOLD MONEY DURING THIS PROCESS?

A I DON'T KNOW.

Q DID YOU DO THAT UNILATERALLY? WAS THIS YOUR DECISION?

A I TOLD THE DUNNS I WAS GOING TO DO IT.

Q DID YOU CONFER WITH BRYAN JOHNSON BEFORE YOU DID THAT OR WAS THAT YOUR---

A THAT WAS MY DECISION.

Q DID YOU WITHHOLD ANY OTHER MONEY BECAUSE YOU BELIEVED THEY DIDN'T DO WHAT THEY WERE SUPPOSED TO?

A NO.

Q WASN'T IT TRUE THAT WE -- I'M SURE YOU UNDERSTAND THE CASE -- THAT WE HAVE BROUGHT A MECHANIC'S LIEN ALLEGING THERE ARE OUTSTANDING SUBCONTRACTORS TO BE PAID; IS THAT RIGHT? DO YOU UNDERSTAND THAT?

A I UNDERSTAND THAT.

Q YOU, IN FACT, TESTIFIED YOU WANT THE SUBCONTRACTORS TO BE PAID?

A YEAH, FROM THE DUNNS, NOT ME.

Q I UNDERSTAND BUT YOU WANT THEM TO BE PAID THE EXACT -- RIGHT

AMOUNT OF MONEY, NO MORE, JUST WHAT THEY'RE OWED?

A I'M NOT TESTIFYING TO THAT. I JUST SAID PAID.

Q ANY AMOUNT OF MONEY---

A WHATEVER THE AGREEMENT IS, WHOEVER DECIDES, YOU KNOW.

Q NOW, AS FAR AS RETAINAGE, AS YOU UNDERSTOOD IT -- YOU WERE GOING THROUGH SOME OF THE TERMS WITH YOUR ATTORNEY EARLIER IN THE TESTIMONY -- WHAT DO YOU BELIEVE RETAINAGE IS?

A IN SIMPLE TERMS, IT'S AN AMOUNT OF MONEY THAT'S WITHHELD FROM THE MONTHLY BILLINGS TO, I WOULD SAY, RESOLVE ANY PROBLEMS OR CHALLENGES BUT THEN WHEN THE JOB SITE IS FINISHED, THEN THAT'S DONE AWAY WITH. I MEAN, IT'S ALL SETTLED.

Q IT'S YOUR UNDERSTANDING THAT IF YOU TERMINATE THEM YOU DON'T HAVE TO PAY THEM ANY RETAINAGE?

A I DON'T KNOW THAT FOR A FACT.

Q WAS IT YOUR BELIEF AT THE TIME YOU TERMINATED THEM?

A I DIDN'T KNOW THAT FOR A FACT. I DIDN'T EVEN THINK ABOUT THAT.

Q YOU DID, IN FACT, WITHHOLD MONEY THEY WERE REQUESTING AT THE TIME THOUGH, CORRECT?

A I DON'T UNDERSTAND THE QUESTION.

Q DID YOU PAY ALL OF THE BILLS THAT WERE SENT TO YOU BY THE DUNNS?

A EVERY ONE OF THEM EXCEPT THE ONES IN DECEMBER.

Q DO YOU BELIEVE IT COULD HAVE BEEN TWO OF THOSE?

A IT COULD HAVE BEEN.

Q WHY, IN FACT, DID YOU NOT PAY THOSE?
A BECAUSE MR. JOHNSON ADVISED ME NOT TO UNTIL HE COULD COME AND LOOK AT EVERYTHING.
Q THEN AFTER THAT MEETING WITH BRYAN JOHNSON IS THAT WHEN YOU WENT TO MR. GRAY TO SEND A LETTER TO MY CLIENTS?
A IT WAS IN THE SAME TIMEFRAME. I CAN'T REMEMBER WHETHER IT WAS THE EXACT TIME, YOU KNOW, THE SAME DAY OR TWO DAYS LATER. I CAN'T -- I DON'T KNOW THAT.
Q YOU WERE CONVINCED THAT THERE WAS -- THAT ALL OF THE WORK WAS NOT DONE PROPERLY AT THAT TIME?
A ABSOLUTELY.
Q DID YOU HIRE AN ACCOUNTANT TO GO OVER THE RECORDS?
A NO.
Q I'M GOING TO TURN YOU TO THE CONSTRUCTION AGREEMENT, PARAGRAPH 8, DEFENDANTS' NO. 9.
A YOU MEAN DEF 00009?
Q YES, PAGE 4. I'M JUST TRYING TO USE THE CORRECT PROCEDURE.
A OKAY.
Q DOES IT SAY, "CONTRACTOR SHALL, AT OWNER'S SOLE COST AND EXPENSE, FURNISH THE NECESSARY BUILDER'S RISK INSURANCE POLICY PROTECTING THE INTERESTS OF THE PARTIES"?
A YES.
BY THE COURT: I'M SORRY. WHICH EXHIBIT ARE YOU REFERRING TO?
MR. RUCKER: I'M SORRY. IT'S EXHIBIT -- PLAINTIFFS' EXHIBIT NO. 1, THE ACTUAL CONSTRUCTION AGREEMENT.

BY THE COURT: I'M SORRY. I THOUGHT I HEARD DEFENDANTS' 9. SO, IT'S PLAINTIFFS' 1?

MR. RUCKER: YES, SIR. IT'S PAGE 4. THE CONFUSION IS IT'S MARKED -- IT WAS ONE OF OUR DISCOVERY EXHIBITS. IT WAS MARKED AS DEFENDANTS' NO. 9.

BY THE COURT: WHICH PARAGRAPH?

MR. RUCKER: PARAGRAPH 8.

BY THE COURT: ALL RIGHT. THANK YOU.

Q I'M GOING TO REFER YOU TO THE PREVIOUS PARAGRAPH, DOES IT SAY, "UPON COMPLETION OF PERFORMANCE AS SET FORTH HEREIN, CONTRACTOR SHALL BE PAID THE FULL ACTUAL PRICE, SUBJECT TO ANY ADDITIONS OR DEDUCTIONS AGREED TO BY AND BETWEEN THE PARTIES IN WRITING"?

A I UNDERSTAND THAT.

Q BUT YOU UNDERSTAND YOU SIGNED IT AND YOU'RE HELD ACCOUNTABLE FOR ANYTHING---

A I UNDERSTAND. YES. THAT IS PART OF THE CONTRACT.

Q AND YOU TESTIFIED THAT YOU HAVE ACTED AS THE OWNER/RESIDENTIAL BUILDER. HAVE YOU ENTERED INTO CONTRACTS WITH SUBCONTRACTORS TO PERFORM---

A NO.

Q YOU JUST PAID THEM IN CASH?

A I NEVER ENTERED INTO ANY CONTRACTS. I BILLED ONE FOR MR. JOHNSON AND HE PAID THE BILLS.

Q OKAY. DID YOU HAVE---

A THERE WAS NO CONTRACT INVOLVED. IF I ORDERED---

Q I'M SORRY. I'M NOT BEING VERY CLEAR. DID YOU HAVE AGREEMENTS WITH THEM THAT THERE WAS AN AMOUNT OF MONEY THEY COULD EXPECT TO BE PAID UPON COMPLETION OF THEIR WORK?

A NO. WHAT THAT WAS IS THEY DID THE WORK AND JUST TOLD ME WHAT THE BILL WAS. THERE WAS NEVER A DISCUSSION UPFRONT WITH MOST OF THOSE PEOPLE -- WITH ALL OF THOSE PEOPLE -- AS TO WHAT THEY WERE GOING TO GET PAID. THEY JUST SENT ME A BILL.

MR. RUCKER: NO FURTHER QUESTIONS.

BY THE COURT: MR. DUDLEY, ANY QUESTIONS?

THE WITNESS: I'M STILL HERE?

BY THE COURT: SIR?

THE WITNESS: I STAY?

BY THE COURT: YES, SIR.

CROSS-EXAMINATION BY MR. DUDLEY:

Q SORRY. YOU'RE NOT GETTING OFF THAT EASY.

BY THE COURT: WE'LL LET YOU KNOW WHEN.

A OKAY.

Q MR. VERNON, I HAVE MY OWN SPECIAL LITTLE NOTEBOOK.

A I CAN PUT THIS ONE AWAY?

Q YOU PUT IT TO THE SIDE. I DON'T THINK I'M GOING TO REFER TO IT. MR. RUCKER DID AN OUTSTANDING JOB CROSS EXAMINING YOU. HERE IS THE BIZARRE THING. I REPRESENT YODER'S. I'M GOING TO BE ASKING YOU SOME POIGNANT QUESTIONS ABOUT YOUR CONTRACT AND WHAT YOU DID WITH LANDMARC.

NOW, MR. JOHNSON, WHO IS SITTING HERE IN THE COURTROOM WITH YOU, HE'S YOUR SON-IN-LAW?

A YES.

Q HE'S GOT CONSTRUCTION EXPERIENCE? HE RUNS A CONTRACTING COMPANY IN COLORADO, DOESN'T HE?

A YES.

Q IN YOUR BUSINESS EXPERIENCE -- AND YOU DEALT WITH CONTRACTS ALL OF YOUR LIFE IN YOUR BUSINESS AFTER YOU WERE A PHARMACIST? WHEN YOU WERE IN OPERATIONS, YOU DEALT WITH CONTRACTS, DIDN'T YOU?

A RARELY BUT SOME.

Q AND YOU MADE A BUSINESS DECISION TO ENTER INTO A COST-PLUS CONTRACT WITH LANDMARC, DIDN'T YOU?

A YES. IT ISN'T WHAT I WANTED BUT WE DETERMINED THAT'S WHAT---

Q WELL, YOU KNOW---

MR. STERN: LET HIM FINISH.

Q THAT'S A GOOD POINT.

MR. DUDLEY: SORRY ABOUT THAT, SANDY.

Q IT WASN'T WHAT YOU WANTED BUT YOU COULD HAVE SAID NO AND CHOSEN SOME OTHER---

A IT WAS PART OF AN AGREEMENT WITH THE DUNNS THAT THAT'S WHAT WE END UP WITH.

Q ALL RIGHT. YOU COULD HAVE NEGOTIATED A LUMP-SUM CONTRACT, COULDN'T YOU?

A THEY WOULDN'T DO IT.

Q YOU MADE THE DECISION -- YOU COULD HAVE HIRED SOME OTHER CONTRACTOR TO BUILD YOUR HOUSE. YOU WERE UNDER NO OBLIGATION TO USE LANDMARC, WERE YOU?

A NO.

Q YOU OWNED THAT PROPERTY, DIDN'T YOU?

A I OWNED THE LOT.

Q AND THERE WAS NO RESTRICTIONS ON YOUR ABILITY TO HIRE WHATEVER GENERAL CONTRACTOR YOU WANTED AS LONG AS THEY WERE LICENSED TO BUILD YOUR HOUSE?

A THAT'S NOT TRUE.

Q SO, WHERE WERE---

A THERE WERE SOME RESTRICTIONS.

Q OKAY. I'M GOING TO LET YOU ANSWER AND I'M GOING TO -- SO, THERE WAS A RESTRICTION THAT SAID YOU COULD ONLY USE LANDMARC TO BUILD YOUR HOUSE?

A NO.

Q THERE WERE OTHERS, LIKE EXCLUSIVE BUILDERS OR RECOGNIZED BUILDERS THAT YOU COULD HAVE USED?

A YES.

Q YOU COULD HAVE DONE -- YOU CHOSE NOT TO?

A YES.

Q THE SAME WAY WITH -- YOU COULD HAVE CHOSEN OR YOU COULD HAVE -- A COST-PLUS CONTRACT WITH A GUARANTEED MATCH, YOU COULD HAVE USED THAT AS A MECHANISM, COULDN'T YOU?

A YES.
Q BUT YOU MADE THE DECISION TO GO WITH A COST-PLUS CONTRACT WITH LANDMARC?
A YES.
Q AND YOU HAD THE ADVICE OF YOUR SON-IN-LAW, A CONTRACTOR IN COLORADO?
A NO.
Q YOU DIDN'T TALK WITH HIM AT ALL?
A HE WAS NOT INVOLVED WITH THE ORIGINAL CONTRACT, COST-PLUS OR---
Q NEVER HAD ANY DISCUSSIONS WITH HIM?
A IF I DID, IT WOULD HAVE BEEN REMOTE BECAUSE HE WASN'T INVOLVED TOO MUCH THEN.
Q SO, YOU DIDN'T HAVE A DISCUSSION WITH HIM ABOUT THE TYPE OF CONTRACT THAT YOU WERE ENTERING INTO TO BUILD A MILLION DOLLAR HOUSE?
A NOT UNTIL AFTER I HAD SIGNED THE CONTRACT.
Q THEN AFTER YOU SIGNED THE CONTRACT, THEN YOU WANTED HIM INVOLVED IN THE PROCESS OF EVERY MONTH THAT THEY SENT YOU INVOICES FOR WORK THAT WAS BEING BILLED FOR YOUR HOUSE, THEY HAD TO SEND THEM TO MR. JOHNSON?
A THEY AGREED TO SEND THEM---
Q THEY AGREED AT THAT---
A THEY DIDN'T HAVE TO; THEY AGREED.
Q SO, YOU HAD -- NOT A LICENSED BUILDER IN SOUTH CAROLINA

BECAUSE HE WASN'T LICENSED AS A BUILDER IN SOUTH CAROLINA AT THAT TIME, WAS HE?

A NO.

Q BUT YOU HAVE A CONTRACTOR, IN ADDITION TO YOU AND YOUR WIFE, YOU HAD A CONTRACTOR REVIEWING THE BILLINGS OF LANDMARC THROUGHOUT THE ENTIRE LIFE OF THE CONTRACT WITH LANDMARC, DIDN'T YOU?

A WHO WOULD BE THAT CONTRACTOR?

Q MR. JOHNSON.

A NO. HE WASN'T A CONTRACTOR.

Q BUT HE IS A CONTRACTOR IN COLORADO?

A YES, HE IS.

Q HE'S NOT A PHARMACIST IN COLORADO?

A NO.

Q HE HAS SOME EXPERTISE IN THE CONSTRUCTION INDUSTRY AND EVERY MONTH YOU HAD HIM, NOT HIRED HIM, BUT YOU HAD HIM REVIEW ALL OF THE BILLINGS ON THIS PROJECT?

A THAT'S CORRECT.

Q AND YOU SAT DOWN WITH YOUR WIFE AND YOU WOULD KIND OF GO OVER THOSE THINGS YOURSELF?

A YES.

Q YOU WERE LOOKING AT IT TOO. I WANT TO SEE IF THIS GUY WAS HERE OR NOT. YOU WERE ANALYZING THEM AS THEY CAME THROUGH?

A ABSOLUTELY.

Q AND MR. JOHNSON, A LICENSED CONTRACTOR, WAS ANALYZING THEM

TOO?
A REMOTE FROM THE LOCATION---
Q HE WANTED TO MAKE SURE THE COSTS THAT YOU WERE PAYING WAS ACTUALLY BEING INCURRED ON YOUR PROPERTY, RIGHT?
A AND THE BILLS WERE BEING PAID; YOU KNOW, ALL OF THE THINGS IT SAYS IN THE CONTRACT.
Q EVERYTHING THAT LANDMARC SENT YOU WAS -- YOU TALKED ABOUT THE PACKET THAT YOU RECEIVED. YOU HAD THE LIEN WAIVER, PARTIAL LIEN WAIVER FORM, YOU HAD THE BILLING STATEMENT, THERE'S A COMPILATION. THEN YOU HAD THE ACTUAL INVOICING, WHETHER IT WAS FROM YODER'S, OR MATT-LYNN CARPENTRY OR SOMEBODY -- YOU HAD SOME -- WELL, IT DOESN'T MATTER FOR THEM. I'M GOING TO ASK YOU ABOUT YODER'S. YOU HAD EVERY MONTH FOR EVERY INVOICE THAT LANDMARC WAS SEEKING TO BE PAID FROM YOU THAT WAS ATTRIBUTED TO WORK THAT WAS EITHER SUPPLIED OR PERFORMED BY YODER'S, YOU HAD THE ACTUAL INVOICE, DIDN'T YOU?
A I HAD THE ONLY INVOICES THAT LANDMARC SENT ME, NOT THAT YODER'S SENT ME.
Q THAT'S RIGHT. AND I'M GOING TO SHOW YOU -- IN EXHIBIT 29 IN THIS NOTEBOOK IN FRONT OF YOU, IF YOU CAN TURN TO THAT. IT'S ONLY IN YOUR NOTEBOOK. I HAVE A RECAP IN EVERYBODY ELSE'S. SAVE THE TREES AND ALL OF THAT OTHER STUFF.
BY THE COURT: I'M SORRY. WHICH---
MR. DUDLEY: IT'S EXHIBIT 29.
BY THE COURT: OF?

MR. DUDLEY: OF YODER'S NOTEBOOK, THE BLACK NOTEBOOK.

BY THE COURT: YES, SIR.

Q NOW -- YOU WERE -- IN PART OF THIS LITIGATION Y'ALL PRODUCED DOCUMENTS, RIGHT?

A I WOULD ASSUME SO. I DIDN'T PRODUCE THEM BUT---

Q THROUGH THE ATTORNEYS. WE MARKED---

MS. WRIGHT: LET HIM FINISH.

MR. DUDLEY: DO WHAT?

MS. WRIGHT: LET HIM FINISH, PLEASE.

Q I'M SORRY. I THOUGHT YOU WERE FINISHED. YOU ASSUMED---

A I DIDN'T PRODUCE ANY OF THE DOCUMENTS. I DIDN'T ASSUME ANYTHING. I HAD THE LAWYERS PRODUCE DOCUMENTS ALONG WITH BRYAN JOHNSON.

Q WHAT YOU DID IS YOU GAVE TO YOUR LAWYERS COPIES OF THE BILLING STATEMENTS AND THE BACKUP THAT LANDMARC HAD SENT YOU?

A I DON'T THINK---

Q THAT'S ALL YOU HAD.

A NO. I THINK THEY GOT THOSE FROM SOME OTHER SOURCE. THEY DIDN'T REQUEST MY COPY OF THOSE BILLS. THE LAWYERS DIDN'T.

Q OF THE BILLING---

A BRYAN JOHNSON REQUESTED THAT, BUT THE LAWYERS DIDN'T.

Q BUT YOU -- YOU KNOW THAT YOUR LAWYERS GOT COPIES OF THE BILLING STATEMENTS THAT LANDMARC SENT YOU?

A VIA SOME MECHANISM.

Q OKAY.

A BUT THEY ALSO GOT BILLS THAT YODER'S SENT.
Q RIGHT. AND THERE COULD HAVE BEEN BILLS THAT YODER'S SENT TO LANDMARC THAT NEVER SHOWED UP ON A BILLING STATEMENT, AND THAT'S NOT ANY---
A IN FACT---
Q YOU LEARNED THAT AFTER THE FACT?
A RIGHT.
Q WHAT I WANT TO REPRESENT TO YOU IS EXHIBIT 29 -- AND MR. MCLANE CAN TESTIFY TO THIS LATER. ALL I TRIED TO DO WAS TO HAVE ALL OF THE YODER'S INVOICES THAT LANDMARC SENT TO YOU ON A MONTHLY BASIS THAT YOU AND YOUR WIFE REVIEWED, AND MR. JOHNSON REVIEWED, THAT THOSE ARE -- EXHIBIT 29, I TOOK THOSE FROM WHAT YOUR LAWYER PRODUCED TO ME SO THAT THERE WAS NO QUESTION THAT WAS AT LEAST SOMETHING THAT LANDMARC HAD SUBMITTED TO YOU FOR PAYMENT.
A OKAY.
Q WE CAN TALK ABOUT WHAT THOSE ADD UP TO---
A I CAN'T AGREE BECAUSE I DON'T KNOW THAT BUT IF THIS IS WHERE IT COMES FROM, THEN I HAVE TO BELIEVE IT.
Q YOU DON'T EVER REMEMBER A TIME WHEN YOU GOT -- AND IF YOU WANT TO LOOK AT ONE OF THE COPIES OF THE YODER'S INVOICES, WHAT THEY KIND OF LOOK LIKE. THEY'VE GOT KIND OF AN EMBLEM ON THE SIDE.
A RIGHT.
Q YOU DON'T EVER REMEMBER GETTING A BILL OR GETTING THIS

ATTACHMENT? IT'S A YODER'S INVOICE FOR MATERIALS THAT HAS -- IT JUST SAID LIKE A QUICKBOOKS, YODER'S, YOU KNOW, SOME MATERIALS? THEY LOOKED LIKE THAT, DIDN'T THEY?

A I THINK MAYBE -- BUT RARELY. I THINK ONCE ON A REPLACEMENT ORDER.

MR. DUDLEY: YOUR HONOR, FROM OUR STANDPOINT, THE INVOICES THAT ARE THERE THAT ARE IN EXHIBIT 29, THAT'S THE INVOICES THAT WERE SUBMITTED AS A PART OF THE BILLING STATEMENT THAT'S OUR RECAP OF WHAT WE'RE SAYING IS A PART OF OUR ACCOUNTING.

MR. STERN: NOT TRUE.

Q ALL RIGHT. HERE'S MY QUESTION, MR. VERNON. ON A MONTHLY BASIS, YOU WERE REVIEWING THE INVOICES THAT WERE SUBMITTED BY LANDMARC TO YOU. YOU NEVER QUESTIONED, YOU NEVER HAD A CONCERN ABOUT THE YODER'S INVOICES, DID YOU?

A ON RARE OCCASIONS. FOR THE MOST PART, I DID NOT.

Q EXCEPT FOR THE DECK, YOU DIDN'T WITHHOLD PAYMENT UNTIL DECEMBER, RIGHT?

A THAT IS CORRECT.

Q SO, YOU DIDN'T GET A YODER'S INVOICE AND SAID, "WAIT A MINUTE. THIS IS FOR A FRONT DOOR THAT DIDN'T GO ON OUR HOUSE."

A YES, I DID GET THAT.

Q A FRONT DOOR THAT DIDN'T---

A YES, I DID. I GOT -- YES.

Q IS THAT ONE YOU NEVER PAID---

A YOU SENT THE WRONG FRONT DOOR TO OUR HOUSE. YOU SENT THE

WRONG MAN DOOR TO OUR HOUSE ALSO. SO, TO ANSWER YOUR QUESTION, YES.

Q THAT WAS A BAD EXAMPLE.

A THAT'S OKAY.

Q THAT'S THE ONLY THING THAT YOU HAD -- THE FRONT DOOR WAS REPLACED, WASN'T IT?

A AFTER NEGOTIATIONS, YES.

Q THE MAN DOOR, THAT'S AN ISSUE THAT WE'VE GOT WITH LANDMARC. BUT I MEAN--

A WHATEVER.

Q --YOU NEVER CONTESTED WHAT YOU WERE BEING BILLED FOR BY YODER'S DURING THE PROJECT UNTIL DECEMBER WHEN BRYAN JOHNSON SAID, "DON'T PAY LANDMARC"?

A THAT'S NOT TRUE. I DID QUESTION SOME OF THE BILLS. I LIKE THE STATEMENT. IT'S BEAUTIFUL. BUT SOMETIMES I WOULD QUESTION, YOU KNOW, HERE IS ALL OF THIS OAK. WHERE DID ALL OF THIS OAK GO? SO, I WOULD BE OUT ON THE SITE AND I WOULD SEE THE INVOICE AND THERE WOULD BE LINES ON HERE, YOU KNOW, 15 PIECES OF OAK "X" FOOTAGE. SO, I WOULD QUESTION THAT.

Q DID YOU EMAIL LANDMARC ABOUT THAT? IS THAT A DISCUSSION YOU HAD WITH LANDMARC?

A SOMETIMES I ASKED THEM ABOUT IT. I NEVER EMAILED THEM.

Q BUT THAT'S NOT -- OTHER THAN THE $15,000 ON THE DECK, THAT'S NOT ANYTHING THAT YOU WITHHELD PAYMENT FROM LANDMARC THOUGH, WAS IT?

A THAT'S CORRECT.

Q NOW, I WANT TO -- BRIEFLY ABOUT WHAT YOUR AGREEMENT WAS WITH LANDMARC. THERE WAS AN ESTIMATE OF $900,000, PLUS OR MINUS, FOR THE CONSTRUCTION OF YOUR HOUSE AND THE SCOPE OF WORK, RIGHT?

A YES. IT WAS ACTUALLY $780,000 FOR THE SCOPE OF THE WORK.

Q BUT HAD OKAYED THAT 15 PERCENT OVERHEAD?

A BUT YOU DIDN'T ASK THAT QUESTION, SIR.

Q YOU WERE GOING TO PAY YOUR CONTRACTOR TO BUILD YOUR HOUSE, RIGHT?

A CORRECT.

Q SO, WHAT YOU WERE GOING TO PAY YOUR CONTRACTOR WAS GOING TO BE THE COSTS YOU WOULD HAVE INCURRED TO BUILD YOUR HOUSE, RIGHT?

A YES, BUT I WASN'T -- THAT DIDN'T ENTER MY DISCUSSION. MY DISCUSSION WAS I KNEW THAT WAS A FIXED FEE. I DIDN'T KNOW THAT THE OTHER ONE WAS FIXED.

Q IT WASN'T A FIXED FEE. IT WAS A PERCENTAGE MARKUP OF THE ACTUAL COSTS, RIGHT?

A YEAH. THAT'S RIGHT.

Q SO, YOU WERE GOING TO PAY TO LANDMARC WHATEVER IT COST TO BUILD THE HOUSE PLUS 15 PERCENT?

A THAT'S CORRECT.

Q OKAY. THE HOUSE IS -- YOU HAVE A CERTIFICATE OF OCCUPANCY FOR THAT HOUSE, AND YOU'RE LIVING IN IT, RIGHT?

A YES.

Q YOU'VE BEEN LIVING IN IT SINCE JANUARY 2009 -- 2010?

A YES.
Q I GOT THE YEAR WRONG. ALL RIGHT. YOU, IN DIRECT EXAMINATION, EXHIBIT 2, MS. WRIGHT ASKED YOU, ON ALL OF THOSE CHANGE ORDERS, YOU AGREE THAT THOSE ARE VALID CHANGE ORDERS? EXHIBIT 2 TO YOUR NOTEBOOK.
A I AGREE THAT THE AMOUNT WAS CORRECT.
Q ALL RIGHT. SO, WE ADD---
A I DIDN'T AGREE THAT THEY WERE VALID CHANGE ORDERS.
Q WE ADD ALL OF THE CHANGE ORDERS, AND WE ADD THE ESTIMATE OF WHAT IT COSTS TO BILL LANDMARC (SIC) AND ADD 15 PERCENT OF THAT, IF THAT'S NOT A PART OF THAT CHANGE ORDER, AND THAT'S -- HAD LANDMARC COMPLETED THE HOUSE, THAT'S WHAT YOU WERE GOING TO OWE LANDMARC, RIGHT, THE COST OF CONSTRUCTION PLUS 15 PERCENT?
A YEAH.
Q THE ISSUE WITH THE CHIMNEY, THAT ALL GOT RESOLVED KIND OF LIKE THE DECK; THAT GOT RESOLVED BEFORE LANDMARC WAS TERMINATED, RIGHT, ANY COSTS ASSOCIATED WITH REPAIRING THE CHIMNEY?
A IT GOT RESOLVED. I DON'T REMEMBER WHETHER IT WAS BEFORE LANDMARC GOT TERMINATED.
Q AFTER YOU HAD -- IT WAS YOU THAT INITIATED THE CALL TO YODER'S, RIGHT, THAT YOU HAD IN NOVEMBER?
A I PERSONALLY CALLED YODER'S IN NOVEMBER.
Q AFTER THAT PHONE CALL, YOU NEVER PAID LANDMARC AGAIN, DID YOU? YOUR LAST PAYMENT WAS NOVEMBER 5TH OF 2009 TO LANDMARC?
A THAT COULD BE TRUE.

Q SO, WHATEVER THAT DISCUSSION -- I MEAN, THAT -- YODER'S DIDN'T GIVE YOU INFORMATION, YOU NEVER PAID LANDMARC AGAIN. SO, THAT DIDN'T NECESSARILY HELP YODER'S GET PAID, DID IT?

A I DON'T UNDERSTAND THAT. THAT WAS A FUNNY QUESTION.

Q HORRIBLE QUESTION. YOU'RE EXACTLY RIGHT. AND I'M GOING TO MOVE ON BECAUSE IT REALLY IS IRRELEVANT. THERE'S A LIEN WAIVER, YOUR LAST LIEN WAIVER THAT -- I THINK IT'S EXHIBIT 3. LOOK AT EXHIBIT 3 IN YOUR NOTEBOOK OVER THERE.

A MINE?

Q YES, SIR. VERY LAST PAGE OF EXHIBIT 3--

A OKAY.

Q --IT'S A PARTIAL LIEN WAIVER DATED DECEMBER 4, 2009?

A YES.

Q BUT YOU WOULD AGREE THAT THAT PARTIAL LIEN WAIVER IS TIED TO THE PAYMENT THAT YOU MADE? DO YOU AGREE?

A I DON'T KNOW WHETHER I MADE THE PAYMENT OR NOT.

Q I'M GOING TO HELP YOU WITH THAT BECAUSE I'VE GOT SOME DOCUMENTS HERE THAT SAYS WHEN YOUR LAST PAYMENT WAS.

A YOU WOULD HAVE TO SHOW ME THE CHECK THAT---

Q WHY DON'T WE DO THAT FIRST. LOOK AT EXHIBIT 20 OF YOUR -- MY NOTEBOOK. EXCUSE ME, SIR. LOOK AT EXHIBIT 20 IN MY NOTEBOOK.

A OKAY.

Q THIS IS SOMETHING THAT MR. JOHNSON GENERATED?

A I DON'T KNOW THAT.

Q FLIP FORWARD.

A HOW FAR?
Q I'M SORRY. IT'S NOT IN THIS. LOOK AT EXHIBIT 22 -- 21, EXCUSE ME.
A SHOULD I WAIT?
Q NO. EXHIBIT 21. IN NOVEMBER -- WHILE YOU'RE LOOKING, I'M GOING TO ASK YOU SOMETHING.
A I'M NOT AT 21 YET.
Q KEEP GOING. YOU DON'T NEED TO HAVE -- IN NOVEMBER, NOT ONLY DID YOU MAKE A PAYMENT TO LANDMARC, YOU GOT A LOAN THROUGH THE BANK OF TRAVELERS REST AS A WIRE TRANSFER THAT SAME MONTH. DO YOU REMEMBER THAT?
A I DON'T REMEMBER BUT IT COULD HAVE BEEN. I DON'T REMEMBER WHETHER I WROTE A CHECK OR IF IT WAS A WIRE TRANSFER.
Q EXHIBIT 21, THIS IS SOMETHING THAT THE DUNNS STATE THAT THEY CREATED, AND THE FIRST PART WAS THE OWNER PAYMENTS. WHAT THEY HAVE DOWN THERE ON THEIR RECAP IS ON NOVEMBER 16TH THERE WERE TWO PAYMENTS. THERE'S AN EIGHTY-SEVEN AND THEN A SIXTY. DO YOU REMEMBER -- YOU KNOW YOU DIDN'T PAY THEM IN DECEMBER, RIGHT?
A I DIDN'T PAY THE DECEMBER BILL. I DON'T KNOW WHETHER I PAID THEM FOR SOMETHING IN DECEMBER.
Q DO YOU HAVE ANY EVIDENCE THAT YOU MADE ANY PAYMENTS AFTER NOVEMBER 16TH WHEN YOU DID THE WIRE TRANSFER OR THE CHECK PAYMENT?
A NOT WITH ME. I DON'T HAVE ANY EVIDENCE.
Q WE'VE SEEN SOME DOCUMENTS TO SHOW THE WIRE TRANSFERS AND THE CHECKS. THERE WERE NO CASH PAYMENTS, WERE THERE?

A PARDON?
Q THERE WERE NO CASH PAYMENTS TO LANDMARC, WERE THERE?
A NO.
Q BUT YOU AGREE THAT THE LIEN WAIVER THAT YOU WERE ASKING LANDMARC TO SIGN WAS TIED WITH WHEN YOU ACTUALLY PAID IT? YOU WEREN'T ASKING THE DUNNS TO PAY THINGS BEFORE YOU PAID THEM, WERE YOU?
A REPEAT THAT.
Q YOU WEREN'T ASKING THE DUNNS TO PAY BILLS BEFORE YOU PAID THEM, WERE YOU?
A I DON'T THINK SO BUT THEY DID THE OPPOSITE TO ME.
Q WE'RE GOING TO GET INTO THAT.
A YOU KNOW THAT ONE, RIGHT?
Q YOU'RE EXACTLY RIGHT. BUT WITH REGARDS TO YOUR ASKING THEM TO -- AND IN THE LIEN WAIVER LANGUAGE THAT YOUR ATTORNEY REFERRED TO YOU IN DIRECT EXAMINATION, THE RELEASE OF THE LIEN IS TIED TO YOU ACTUALLY PAYING THEM, RIGHT?
A THE RELEASE OF THE YODER'S LIEN?
Q YOU WERE GOING TO ASK THEM TO RELEASE THE LIEN WHEN YOU PAID THEM?
A NO. I'M ASKING THEM TO RELEASE THEIR LIEN, NOT YOURS.
Q I'M NOT USING THE RIGHT PRONOUN. YOU ARE ASKING LANDMARC TO RELEASE LANDMARC'S LIEN WHEN YOU PAY THEM, RIGHT?
A IF I PAID THEM.
Q I'M SORRY. YOU PAID THEM IN NOVEMBER?

A RIGHT.
Q IT LOOKS LIKE THE LIEN RELEASE FOR THAT PAYMENT WASN'T DATED UNTIL DECEMBER. BUT YOU AGREE THAT THE RELEASE OF THAT COINCIDES TO WHEN YOU ACTUALLY PAID THEM?
A I DON'T KNOW.
Q FAIR ENOUGH. WE'LL MOVE ON. I DON'T KNOW WHY I'M GOING TO ASK YOU ABOUT THIS, BUT I'M GOING TO ASK YOU. LOOK IN MY NOTEBOOK AGAIN. WHEN YOU HIRED MR. GRAY -- IN THAT LETTER -- IT STARTS AT EXHIBIT 11 IN MY NOTEBOOK. ARE YOU LOOKING AT EXHIBIT 11?
A YEAH.
Q IT'S A LETTER FROM MR. GRAY TO MR. DUNN. IF YOU LOOK AT THE TOP, THERE'S A FAX TRAILER ALONG THE TOP OF IT. DO YOU SEE THAT?
A I DON'T KNOW WHAT THAT IS BUT I GUESS.
Q 12/11/2009.
A RIGHT.
Q AT 17:11, MILITARY TIME. THAT'S TEN AFTER 5:00.
A OKAY.
Q DECEMBER 11TH. DO YOU REMEMBER HAVING THAT MEETING WITH MR. GRAY AND HIM WRITING THAT LETTER ON A -- SENDING IT ON A FRIDAY AND Y'ALL WERE ANTICIPATING A MEETING ON THE 14TH, ON THAT MONDAY, IN THE FIRST PARAGRAPH? DECEMBER 14TH WAS A MONDAY. YOU WERE GOING TO MEET WITH THE DUNNS.
A WHAT I'M LOOKING AT ISN'T WHAT YOU'RE TALKING ABOUT.
Q ARE YOU LOOKING AT EXHIBIT 11?

A YEAH.

Q THERE'S A FAX TRAILER AT THE TOP.

A THIS IS NOT WHAT YOU'RE ASKING ME ABOUT.

Q IF YOU LOOK IN THE FIRST PARAGRAPH IT TALKS ABOUT A MEETING. RIGHT THERE, "PREPARED TO MEET AND REVIEW YOUR DELIVERIES AT MY OFFICE ON MONDAY, DECEMBER 14TH." DO YOU SEE THAT? THAT'S WHAT I WAS ASKING ABOUT.

A I DON'T KNOW WHETHER I KNOW ABOUT THIS LETTER OR NOT BUT I SEE THAT.

Q HE'S YOUR LAWYER. YOU HIRED HIM TO SEND A LETTER, RIGHT?

A UH-HUH (AFFIRMATIVE).

Q LOOK AT EXHIBIT 12. FLIP FORWARD. THAT'S ANOTHER LETTER DATED DECEMBER 11TH WHICH I THINK IS ERRONEOUS.

A YES.

Q THE SECOND LETTER, EXHIBIT 12, THAT'S WHEN YOU TERMINATED THEM, RIGHT?

A NO.

Q NO. THIS ISN'T THE LETTER?

A THIS IS NOT WHEN I TERMINATED THEM.

Q WHEN DID YOU TERMINATE THEM?

A IT WAS SOME POINT AFTER THIS WHEN -- AFTER THE DATE THAT THEY WERE SUPPOSED TO APPEAR TO GO OVER ALL OF THESE PROBLEMS AND QUESTIONS. THIS WAS NOT -- THIS SAID WE COULD TERMINATE THEM, BUT THIS DIDN'T TERMINATE THEM.

Q LET'S LOOK AT EXHIBIT 2. FLIP FORWARD TO EXHIBIT 2 BECAUSE

MAYBE THIS WILL HELP YOU. WE'RE IN DECEMBER OF 2009, AREN'T WE? THAT'S WHEN YOU TERMINATED THEM, RIGHT?

A YES.

Q LOOK AT EXHIBIT 2. YOU CAN FLIP FORWARD. I'VE GOT THE INSPECTION CARD WHEN LANDMARC HAD IT. THE SECOND PAGE IS---

BY THE COURT: AGAIN, FOR THE RECORD, YOU'RE REFERRING TO YODER'S NUMBER 2?

MR. DUDLEY: YES, SIR. YODER'S 2. I'LL REFER TO THAT NUMBER.

A THAT'S THE ONE I GOT? THE BIGGER BOOK?

Q YES, SIR. FLIP FORWARD TO THE SECOND PAGE. DO YOU SEE THAT? IT'S A LETTER---

A COUNTY ATTORNEY'S OFFICE?

Q IT'S A LETTER TO ME FROM GREENVILLE COUNTY.

A OKAY.

Q I SENT A FOIA REQUEST TO GREENVILLE COUNTY BUILDING CODES. IT'S WHAT I GOT BACK YESTERDAY, ACTUALLY. AND IF YOU'LL FLIP FORWARD A COUPLE OF PAGES -- WELL, IF YOU LOOK AT THE SECOND PAGE, IT'S THE BUILDING PERMIT APPLICATION FOR YOUR HOUSE BACK IN '08.

A OKAY.

Q FLIP TO THE SECOND PAGE.

A THE SECOND PAGE THAT SAYS THOMAS E. DUDLEY?

Q GO AGAIN. FLIP AGAIN. I'M NOT BEING VERY GOOD WITH THIS. THAT'S THE PERMIT APPLICATION FOR YOUR HOUSE WHEN LANDMARC WAS THE CONTRACTOR IN '08, RIGHT?

A I DON'T KNOW THAT BUT---

Q WELL, LOOK AT IT.

A IT SAYS NAME, LANDMARC CUSTOM HOMES. OKAY.

Q IS THAT THE RIGHT PROPERTY? LOOK WHERE THEY'VE GOT THE PROPERTY ADDRESS, 470 HIGH RIDGE.

A THAT'S THE PROPERTY.

Q IS THAT YOU?

A YES.

Q FLIP ONE MORE PAGE. IS THAT YOUR HANDWRITTEN NOTE?

A YES.

Q UP IN THE RIGHT-HAND CORNER IT SAYS DECEMBER 16th.

A IT SAYS 12/16/09.

Q THIS IS YOUR -- YOU'RE TELLING GREENVILLE COUNTY -- THEY MADE YOU DO THIS SO THAT YOU WOULD TAKE THE BUILDING PERMIT OUT ON YOUR OWN?

A I THINK THAT'S CORRECT.

Q PUT IT INTO YOUR NAME?

A YES.

Q YOU DIDN'T PUT THE BUILDING PERMIT INTO YOUR NAME UNTIL AFTER YOU TERMINATED LANDMARC, RIGHT?

A CORRECT.

Q SO, ON DECEMBER 16TH, YOU HAD TERMINATED LANDMARC AND YOU WERE PUTTING THE BUILDING PERMIT IN YOUR NAME, RIGHT?

A I THINK THAT WAS THE SAME DAY, YEAH. I MIGHT BE GUESSING BUT I THINK IT WAS THE SAME DAY.

Q ALL RIGHT. THAT'S PRETTY CLOSE. LOOK AT THE BOTTOM OF YOUR HANDWRITTEN STATEMENT. "ALL WORK IS READY FOR FINAL INSPECTION AT THIS TIME." DID I READ THAT CORRECTLY?
A UH-HUH (AFFIRMATIVE).
Q YES? THAT'S A YES?
A THAT'S WHAT IT SAYS.
Q THAT'S YOUR HANDWRITING, RIGHT?
A I AGREE. YES.
Q IN FACT, IF YOU FLIP FORWARD A COUPLE OF PAGES TO THE END -- I BELIEVE IT'S THE LAST PAGE IN EXHIBIT 2, YODER'S EXHIBIT 2. YOU GOT YOUR CERTIFICATE OF OCCUPANCY FROM GREENVILLE COUNTY DATED JANUARY 20, 2010, RIGHT?
A I DON'T KNOW. I GOT WHATEVER YOU SAY.
Q WELL, YOU GOT A C.O.O. FOR YOUR HOUSE, DIDN'T YOU?
A YEAH.
Q AND YOU GOT -- THERE WAS SOME RIGMAROLE BACK AND FORTH. IT GOT SENT TO THE DUNNS, AND THEN THEY HAD TO REISSUE IT AND PUT IT IN YOUR NAME?
A RIGHT.
Q AND YOU'VE BEEN LIVING IN THE HOUSE SINCE THEN?
A YES.
Q ALL RIGHT. YOU GOT FINAL BILLS, TWO BILLS, FROM LANDMARC IN DECEMBER AND YOU DIDN'T PAY THOSE, DID YOU?
A THAT'S CORRECT.
Q THE LAST TIME YOU PAID THEM WAS IN NOVEMBER?

A THAT COULD BE.

Q BUT FROM NOVEMBER UNTIL THE MIDDLE OF DECEMBER, LANDMARC AND THEIR SUBS WERE WORKING ON YOUR HOUSE, RIGHT?

A YES.

Q AND ON DECEMBER 16TH YOUR HOUSE WAS DONE. YOU'RE CALLING FOR A FINAL INSPECTION?

A NO, I DIDN'T. IT SAYS ALL WORK. IT DOESN'T SAY EVERYTHING. IT SAYS ALL WORK. WHAT IT MEANS IS ALL WORK UP TO THIS POINT.

Q "ALL WORK IS READY FOR A FINAL INSPECTION AT THIS TIME."

A IT SAYS ALL WORK. THERE COULD BE MORE WORK.

Q GOOD POINT. LANDMARC NEVER DID THE DRIVEWAY, DID THEY?

A NO.

Q THAT'S A CHANGE -- THAT'S NOT IN THE CHANGE ORDER. THE DRIVEWAY---

A NO. THAT'S NOT TRUE. THEY DID -- THE ORIGINAL -- THERE WAS AN ORIGINAL CHANGE ORDER.

Q BUT THEY DIDN'T DO IT, DID THEY?

A THEY WEREN'T PRESENT WHEN IT WAS DONE.

Q THEY'RE NOT SEEKING TO BE PAID FOR THAT DRIVEWAY, ARE THEY?

A I DON'T KNOW THAT.

Q WELL, YOU'VE--

A I WOULD ASSUME---

Q --LOOKED AT ENOUGH OF THIS THAT THEY'RE NOT SEEKING THAT, ARE THEY?

A I WOULD ASSUME SO, BUT I DON'T KNOW THAT.

Q LANDSCAPING, SOME OF THE LANDSCAPING HAD NOT BEEN DONE?
A THAT'S CORRECT.
Q AND THEY'RE NOT SEEKING TO BE PAID FOR LANDSCAPING, ARE THEY?
A I DON'T KNOW THAT.
Q IN FACT, THE WAY YOU WROTE THIS COST-PLUS CONTRACT, WHATEVER IT COST YOU TO COMPLETE THAT JOB AFTER YOU TERMINATED THEM DECEMBER 16TH, THAT'S A COST YOU WOULD HAVE OWED LANDMARC AND THAT'S A COST -- YOU DON'T GET TO BACK CHARGE---
A IF THEY WOULD HAVE BEEN AROUND, THEY WOULD HAVE---
Q THEY WOULD HAVE BEEN PAID FOR THAT, RIGHT? AND MR. JOHNSON DID ALL OF THE PUNCH LIST WORK, RIGHT?
A A LOT OF IT.
Q AND YOU COULD HAVE GONE TO THE SUBS AND ASKED THEM TO DO THE PUNCH LIST OR WARRANTY WORK---
A YOU DON'T ASK SUBS TO PUNCH---
Q THE PUNCH LIST OF WORK -- WHO DO YOU THINK DID THE PUNCH LIST OR WARRANTY WORK FOR LANDMARC?
A I DON'T KNOW.
Q ALL RIGHT. IF YOU DON'T KNOW---
A THAT'S UP FOR DISCUSSION. THAT'S WHY WE'RE HERE.
Q SO, AS OF DECEMBER 16TH, YOU HAD BEEN PRESENTED TWO BILLS FROM LANDMARC FOR APPROXIMATELY $139,000 -- YOU REMEMBER THAT, DON'T YOU -- IN DECEMBER?
A I KNOW TWO BILLS I DIDN'T PAY. I DON'T REMEMBER IF IT WAS

$139,000.

Q YOU FIRED THEM ON DECEMBER 16TH AND YOU CALLED FOR FINAL INSPECTION -- YOU SAID YOUR HOUSE WAS READY FOR FINAL INSPECTION TO GET A CERTIFICATE OF OCCUPANCY?

A IT DOESN'T SAY FINAL INSPECTION, SIR.

Q IT DOESN'T SAY FINAL INSPECTION?

A NO. IT SAYS ALL WORK.

Q I'M SORRY, SIR. I'M GOING TO READ THIS AND I'M GOING TO MOVE ON BECAUSE THE JUDGE CAN READ IT. "ALL WORK IS READY FOR A FINAL INSPECTION AT THIS TIME."

MR. STERN: READ THE PARAGRAPH IMMEDIATELY BEFORE TOO, MR. DUDLEY.

A BEFORE THAT.

Q "I WILL COMPLETE THE BUILDING, PLUMBING, ELECTRICAL & MECHANICAL SCOPES OF WORK. ALL WORK IS READY FOR A FINAL INSPECTION AT THIS TIME." YOU MAY HAVE OTHER WORK TO DO, BUT IT'S READY FOR A FINAL INSPECTION. YOU'VE GOT TO PUT A TUB IN, AND YOU MAY HAVE TO DO SOME FINISH PAINTING, BUT YOUR HOUSE WAS DONE, WASN'T IT? WITHIN A MONTH, YOU HAD YOUR CERTIFICATE OF OCCUPANCY FOR YOUR HOUSE?

A YES.

Q ALL RIGHT. ONE THING I WANTED TO ASK ABOUT, YOU SAID YOU HIRED MR. JOHNSON TO DO SOME OF THIS FINISH WORK. YOU HIRED MR. JOHNSON TO HAVE THAT---

A I DIDN'T SAY I HIRED MR. JOHNSON.

Q YOU PAID HIM TO DO THAT, THOUGH, DIDN'T YOU?
A MR. JOHNSON, I PAID HIM FOR HIS TIME.
Q FOR FINISHING YOUR HOUSE, WORKING ON YOUR HOUSE?
A DOING SOME PUNCH LIST WORK AND THINGS LIKE THAT.
Q IF HE HIRED ANYBODY ELSE TO DO IT, IF THOSE BILLS GOT SENT TO MR. JOHNSON---
A HE NEVER HIRED ANYBODY.
Q HE NEVER HIRED ANYBODY?
A I HIRED THEM.
Q THEN I'M COMPLETELY MISSING YOUR DIRECT EXAMINATION, BUT THE JUDGE GOT IT AND WE'LL MOVE ON.
A OKAY.
Q HE DID WORK ON YOUR HOUSE, AND YOU PAID HIM FOR IT?
A YES.
Q THAT WAS IN JANUARY OF 2010, RIGHT?
A PART OF DECEMBER AND JANUARY, PART OF JANUARY.
Q ALL RIGHT. WHEN ASKED WHAT YOU WANTED TODAY, YOU SAID YOU WANTED ALL OF THOSE SUBCONTRACTORS PAID?
A IN REGARDS TO YODER'S OR---
Q YODER'S ESPECIALLY BUT I'M JUST -- YOUR QUOTE IS YOU WANT THE SUBCONTRACTORS PAID, BUT YOU WANT LANDMARC TO PAY THEM?
A YES BECAUSE I'VE ALREADY PAID LANDMARC. THEY STOLE MY MONEY.
Q WELL, YOU'VE DONE THE ACCOUNTING. YOU'VE PAID THEM ABOUT $979,000, HAVEN'T YOU?
A I DON'T KNOW THAT BUT I GUESS MR. JOHNSON WILL BE ABLE TO---

Q THE ORIGINAL ESTIMATE WAS $908,000, RIGHT? AND THERE WAS ABOUT -- THAT'S THE ESTIMATE PLUS THE FEE, RIGHT?

A I THINK I REMEMBER THAT NUMBER.

Q THERE WAS ABOUT $200,000 IN CHANGE ORDERS.

A YES.

Q WE CAN ADD UP---

A NO. THAT'S NOT ALL OF THE CHANGE ORDERS BUT YES. THAT WAS JUST---

Q YOU FEEL LIKE YOU'VE PAID LANDMARC IN FULL?

A I KNOW I HAVE PAID LANDMARC IN FULL.

Q YOU WERE RELYING ON MR. JOHNSON FOR THE ANALYSIS OF HOW MUCH YOU PAID AND WHAT THE BILLS SHOW FROM LANDMARC, AND YODER'S, ET CETERA. YOU'RE RELYING ON HIM TO TESTIFY TO THAT?

A ABSOLUTELY.

Q I'M GOING TO ASK HIM THOSE QUESTIONS.

A VERY GOOD.

Q AND I'M GOING TO SIT DOWN.

A THANK YOU.

BY THE COURT: ANY OTHER BRIEF QUESTIONS, MS. WRIGHT?

MS. WRIGHT: IF IT PLEASE THE COURT, YOUR HONOR.

REDIRECT EXAMINATION BY MS. WRIGHT:

Q I HAVE A FEW QUESTIONS, MR. VERNON, TO STRAIGHTEN THINGS UP.

A OKAY.

Q ONE THING I KNOW YOU HAVE IN FRONT OF YOU IS AN AWFUL LOT OF NOTEBOOKS. CAN YOU TAKE THAT LITTLE NOTEBOOK AND PUT THAT IN

FRONT OF YOU, PLEASE.

A THIS ONE.

Q IF YOU TURN BACK TO TAB NO. 4, PLAINTIFFS' EXHIBIT 4.

A OKAY.

Q THAT'S THE LETTER THAT MR. GRAY WROTE ON YOUR BEHALF?

A YES.

Q DID YOU INTEND THAT LETTER TO BE A THREAT, MR. VERNON?

A NO.

Q HAVE YOU EVER THREATENED THE DUNNS, MR. VERNON?

A NO.

Q THE NEXT QUESTION FOR YOU, MR. VERNON, YOU TESTIFIED, DID YOU NOT, THAT YOU HELD BACK $15,000 ON THE DECK, CORRECT?

A YES.

Q WHEN YOU DID THAT, WERE YOU AWARE THE DUNNS WERE HOLDING BACK $36,000?

A I DIDN'T KNOW FOR A FACT, BUT I LEARNED THAT LATER.

Q NOW, IF YOU COULD TURN IN THAT BOOK TO EXHIBIT NO. 1, PLAINTIFFS' EXHIBIT 1. I'M GOING TO ASK YOU TO FIND PARAGRAPH 8, IF YOU WOULD, PLEASE. YOU MAY NEED TO TURN A PAGE OR TWO.

A OH, IT'S NUMBERED.

Q YES. IT'S NUMBERED.

A OKAY. "CONTRACTOR SHALL," OKAY.

Q DOES THAT PARAGRAPH SAY ANYTHING ABOUT GENERAL LIABILITY INSURANCE?

A NO.

Q NOW, MR. VERNON, BACK TO MR. JOHNSON, WAS MR. JOHNSON EVER YOUR CONTRACTOR?

A NO, NEVER. MR. JOHNSON IS A FAMILY MEMBER. I WOULD LIKE TO -- MR. JOHNSON IS A FAMILY MEMBER. YOU KNOW, I DON'T KNOW WHETHER YOU HIRE FAMILY MEMBERS. I MEAN, A LOT OF FAMILY MEMBERS JUST DO THINGS, YOU KNOW, BECAUSE THEY'RE PART OF THE FAMILY. THIS IS THE RELATIONSHIP THAT I HAVE WITH MR. JOHNSON.

Q NOW, WHAT I'M GOING TO ASK YOU TO DO, MR. VERNON, YOU'VE GOT THAT GREAT BIG NOTEBOOK THERE IN FRONT OF YOUR ARM.

MS. WRIGHT: MAY I HAVE PERMISSION TO APPROACH THE WITNESS, YOUR HONOR?

BY THE COURT: CERTAINLY.

Q LET'S MAKE SURE WE HAVE THE RIGHT NOTEBOOK HERE. NO, WE DO NOT. LET ME GET YOU THE CORRECT NOTEBOOK.

MS. WRIGHT: THIS GREAT BIG NOTEBOOK, YOUR HONOR, IS PLAINTIFFS' EXHIBIT NO. 6.

BY THE COURT: DOES IT START ON THE INDEX PAGE, "YODER'S BUILDING SUPPLY"?

MS. WRIGHT: YES, SIR. NOW, WHERE I'M AT, YOUR HONOR, IS THE ONES THAT LOOK LIKE THIS.

BY THE COURT: SINCE THERE ARE ABOUT 1,000 PAGES, CAN YOU HELP ME OUT WITH THE PAGE?

MS. WRIGHT: OKAY. SURE. LET ME SEE. WE'RE ON TAB 1, WHICH WOULD BE FOR YODER'S, AND WE ARE -- DOES YOURS HAVE A YELLOW TAB THAT HAS "STONE" ON IT?

BY THE COURT: YES, IT DOES.

MS. WRIGHT: ALL RIGHT. IF YOU'LL TURN TO THAT AND TURN ONE MORE PAGE.

BY THE COURT: ALL RIGHT. IT'S LANDMARC, DATED 2/27/09?

MS. WRIGHT: THAT'S CORRECT.

Q OKAY. MR. VERNON, IS THIS WHAT YOU RECEIVED FROM LANDMARC CONCERNING YODER'S BILLING?

A YES.

Q NOW, LET'S FLIP AHEAD, IF YOU GO ALL OF THE WAY -- LET'S SEE HERE -- 7 PAGES. DO YOU RECALL RECEIVING INVOICES THAT LOOKED LIKE THAT WITH THE BILLS YOU GOT FROM LANDMARC?

A YES.

Q THEY DID LOOK LIKE THIS?

A I THINK SO.

BY THE COURT: IS THAT AN INVOICE DATED 3/25/09?

MS. WRIGHT: YES, IT IS, YOUR HONOR.

Q ALL RIGHT. LET'S GET THIS BIG NOTEBOOK OUT OF YOUR WAY.

MS. WRIGHT: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

BY THE COURT: MR. BRANDT (SIC), ANY BRIEF QUESTIONS?

MR. RUCKER: NO, SIR.

MR. DUDLEY: NO, SIR.

BY THE COURT: THANK YOU, SIR. YOU CAN STEP DOWN.

THE WITNESS: THANK YOU.

(WITNESS EXCUSED)

BY THE COURT: WHO'S YOUR NEXT WITNESS?

MS. WRIGHT: THE NEXT WITNESS, YOUR HONOR, IS MR. BRYAN JOHNSON.

BY THE COURT: HOW LONG DO YOU ANTICIPATE HIS TESTIMONY?

MS. WRIGHT: QUITE A WHILE, YOUR HONOR. THAT GREAT BIG NOTEBOOK I JUST SHOWED YOU, WE'LL BE GOING THROUGH THAT.

BY THE COURT: LIKE EVERY DOCUMENT GOING THROUGH IT?

MS. WRIGHT: NO. WE WILL BE TAKING HIM THROUGH IT, BUT HE WON'T BE READING EVERY SINGLE DOCUMENT.

BY THE COURT: ALL RIGHT. TAKE A 15-MINUTE BREAK. START BACK AT 10:45.

(WHEREUPON, A RECESS WAS TAKEN AT 10:32 A.M.)

(WHEREUPON, THE TRIAL RESUMED AT 10:45 A.M.)

MS. WRIGHT: WE WOULD CALL MR. BRYAN JOHNSON TO THE STAND.

BRYAN JOHNSON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

BY THE COURT: THANK YOU. COME AROUND AND HAVE A SEAT, PLEASE. (COMPLIES) IF YOU'LL STATE YOUR FULL NAME.

THE WITNESS: BRYAN JOHNSON.

BY THE COURT: COULD YOU SPELL BRYAN?

THE WITNESS: B-R-Y-A-N.

BY THE COURT: ALL RIGHT.

DIRECT EXAMINATION BY MS. WRIGHT:

Q WHAT'S YOUR ADDRESS, MR. JOHNSON?

A 252 HACKAMORE, EDWARDS, COLORADO.

Q WHAT IS YOUR PROFESSION?

A GENERAL CONTRACTOR.

Q HOW DID YOU COME TO BE INVOLVED IN THE VERNON PROJECT?
A MY FATHER-IN-LAW REQUESTED I REVIEW THE BILLINGS OF LANDMARC AS THEY WERE PRODUCING.
Q I NEED YOU TO SPEAK UP JUST A LITTLE BIT TOO, PLEASE.
A OKAY.
Q USUALLY PEOPLE TELL ME THAT. WHEN WERE YOU INVOLVED IN THE VERNON PROJECT?
A I BELIEVE THE FIRST BILL I RECEIVED FROM LANDMARC WAS THE SECOND OR THIRD BILL.
Q WERE THE DUNNS AWARE OF YOUR INVOLVEMENT?
A YES, THEY WERE.
Q WAS THIS A PROBLEM FOR THE DUNNS?
A NOT THAT I WAS AWARE OF.
Q DID YOU CONSTRUCT THE VERNON'S HOME?
A I DID NOT.
Q DID YOU SUPERINTEND THE BUILDING OF THE HOME?
A I DID NOT.
Q DID YOU OFFER TO CONSTRUCT OR SUPERINTEND THE BUILDING OF THE HOME?
A I DID NOT.
Q WERE YOU EVER PAID TO ASSIST THE PLAINTIFFS?
A NO, NOT PERSONALLY.
Q WHEN MR. VERNON REFERS TO PAYMENT IN HIS TESTIMONY, WHAT WOULD YOU SAY HE WAS TALKING ABOUT?
A WE WERE HAVING THE ACCOUNTING FOR THE REST OF THE BILLING

THROUGH MY COMPANY BECAUSE I WAS SET UP TO TRACK THE PAYMENTS AND EVERYTHING ELSE FOR MR. VERNON. WE HAD THOUGHT IT WAS EASIER FOR ME TO DO IT INSTEAD OF HIM TRYING TO WRITE TWENTY CHECKS OUT OF HIS CHECKING ACCOUNT.

Q EXPLAIN A LITTLE BIT TO THE COURT WHAT IT WAS YOU DID.

A ME PERSONALLY OR AS FAR AS THE BILLING?

Q ALL RIGHT. THE BILLING, PLEASE.

A WE RECEIVED INVOICES FROM THE SUBCONTRACTORS AND THE VENDORS THAT WERE COMPLETING THE HOUSE. I GOT THOSE. I COMPILED THEM. THEN WE WENT THROUGH THEM. HE PAID ME A SINGLE CHECK, AND THEN I THEN DISBURSED THE CHECKS OUT TO THE SUBCONTRACTORS.

Q SO "HE" WAS THEN MR. VERNON?

A YES, HE WAS.

Q THIS CHECK THAT WAS PAID TO YOU, IT WAS ACTUALLY TO PAY SUBCONTRACTORS AND SUPPLIERS?

A YES, IT WAS.

Q DID YOU KEEP ANY OF THAT MONEY FOR YOURSELF?

A NO, I DID NOT.

Q DID YOU EVER ENTER INTO CONTRACTS ON BEHALF OF THE VERNONS?

A I DID NOT.

Q DID YOU EVER SUPERINTEND SUBCONTRACTORS OR VENDORS ON BEHALF OF THE VERNONS?

A I DID NOT.

Q THAT BIG NOTEBOOK THERE OFF TO ONE SIDE, IF YOU WOULD PUT THAT IN FRONT OF YOU. WOULD YOU PLEASE TELL THE COURT WHAT THAT

CONTAINS?
A IT CONTAINS MY REVIEW OF THE ACCOUNTING OF THE LANDMARC BILLINGS TO MR. VERNON.
Q TO THE BEST OF YOUR KNOWLEDGE, HAVE THESE DOCUMENTS BEEN MADE AVAILABLE TO OPPOSING COUNSEL?
A TO THE BEST OF MY KNOWLEDGE, YES.
Q THE DOCUMENTS YOU HAVE USED IN YOUR REVIEW, ARE THEY PRESENT IN THIS COURTROOM?
A THEY ARE.
Q HOW DID YOU OBTAIN THE DOCUMENTS THAT ARE IN THAT NOTEBOOK?
A I OBTAINED THEM FROM THE ORIGINAL LANDMARC BILLINGS TO MY FATHER-IN-LAW, BILL VERNON. I ALSO OBTAINED SOME STUFF THROUGH DISCOVERY AND SOME INFORMATION FROM SUBCONTRACTORS AND SUPPLIERS AFTER THE DUNNS WERE REMOVED FROM THE PROJECT.
Q TO THE BEST OF YOUR KNOWLEDGE, ARE THESE RECORDS COMPLETE?
A THEY ARE.
Q LET'S TAKE A LOOK AT TAB NO. 1. COULD YOU TELL THE COURT BRIEFLY WHAT YOU HAVE AT THAT TAB?
A IT IS MY REVIEW OF THE -- YODER'S BUILDING SUPPLY MATERIAL, AND DRYWALL, STONE AND INSULATION.
Q DOES YOUR REVIEW SHOW THAT YODER'S HAS BEEN PAID IN FULL BY THE VERNONS?
A IT ACTUALLY SHOWS -- YES -- YODER'S HAS BEEN PAID IN FULL FOR THOSE INVOICES.
Q DID THE VERNONS PAY LANDMARC IN FULL FOR EVERY YODER'S

INVOICE THEY RECEIVED?

A NO.

Q COULD YOU EXPLAIN THAT, PLEASE?

A THERE WERE, I BELIEVE, ABOUT $5,000 IN INVOICES IN THE LAST TWO INVOICES FROM LANDMARC TO THE VERNONS THAT WERE NOT PAID.

Q WHAT WAS THE DATE OF THOSE?

A DECEMBER 4TH AND DECEMBER 15TH, I BELIEVE.

Q WERE THOSE INVOICES, AS MR. VERNON TESTIFIED, THAT YOU HAD ADVISED HIM NOT TO PAY?

A THOSE INVOICES CAME IN AFTER, YES, AND I ADVISED HIM NOT TO.

Q WHY DID YOU ADVISE HIM NOT TO PAY THAT?

A BECAUSE IT WAS BECOMING APPARENT THAT LANDMARC HAD PROVIDED SOME FALSE INFORMATION IN THEIR BILLINGS TO THE VERNONS.

Q WHAT DID YOUR REVIEW OF LANDMARC'S PAYMENTS TO YODER'S REVEAL?

A IT REVEALED THAT THE BUILDING MATERIAL WAS BILLED DIRECTLY TO THE VERNONS. THE STONE VENEER, THE INSULATION, AND THE DRYWALL, THE VERNONS ACTUALLY NEVER RECEIVED THE ACTUAL INVOICE FROM YODER'S. IN THEIR BILLING WAS A FORM THAT WAS PRODUCED WHICH WAS INFLATED FROM THE ORIGINAL INVOICE FROM YODER'S TO THE VERNONS.

Q WHAT WERE THE CONSEQUENCES OF LANDMARC'S FAILURE TO PAY YODER'S?

A CURRENTLY, THERE'S A LIEN ON THE PROJECT.

Q WHAT SPECIFICALLY DID THESE DOCUMENTS SHOW YOU CONCERNING

THE YODER ACCOUNT FROM THE VERNON PROJECT?

A IF YOU FLIP TO THE TAB THAT HAS "STONE" ON IT, ONE PAGE BACK, THE NEXT EIGHT PAGES ARE THE INVOICES THAT LANDMARC INCLUDED IN THE BILLINGS TO THE VERNONS FOR THE STONE VENEER. THE FOLLOWING FIVE PAGES ARE THE INVOICES THAT LANDMARC RECEIVED FROM YODER'S FOR THE SAME SCOPE OF WORK. YODER'S BILLED LANDMARC A TOTAL OF $5,400. PER THE PRIOR PAGES, LANDMARC BILLED THE VERNONS FOR $7,800.

IT'S THE SAME THING WITH INSULATION. THERE'S AN INSULATION TAB. GO ONE PAGE BACK. THE NEXT TWO ARE THE BACKUP THAT LANDMARC INCLUDED IN THE BILLINGS TO THE VERNONS. THE FIRST PAGE AFTER THAT IS ACTUALLY THE INSULATION QUOTE THAT YODER'S PROVIDED TO THE VERNON'S. THE NEXT TWO---

BY THE COURT: COULD YOU HELP ME OUT BY REFERRING TO SPECIFIC INVOICE OR DATE NUMBERS?

THE WITNESS: SURE. YODER'S IS ACTUALLY -- THE INSULATION WAS EASY. SO, IF YOU GO ONE PAGE BEHIND THE TAB "INSULATION"--

BY THE COURT: OKAY.

THE WITNESS: --IT'S THE YODER'S INSULATION FROM LANDMARC TO THE VERNONS FOR 3/27/09.

MR. DUDLEY: CAN YOU SAY THAT AGAIN?

BY THE COURT: WHICH SET? THE DRYWALL SET?

THE WITNESS: NO, SIR. INSULATION---

MS. WRIGHT: THE TAB WITH INSULATION ON IT, JUDGE. PAYMENT REQUEST NUMBER 1 FOR THE PERIOD DATED 3/27/09.

BY THE COURT: OKAY.

MS. WRIGHT: IT'S FROM LANDMARC CUSTOM HOMES FOR THE YODER'S INSULATION.

A SO, LANDMARC PROVIDED THIS IN THE BILLINGS FOR THE VERNONS FOR THE YODER'S INSULATION WORK. LANDMARC ALSO PROVIDED THE SECOND ONE WHICH IS DATED 4/16 IN THE BILLINGS TO THE VERNONS FOR INSULATION WORK. THE NEXT PAGE IS ACTUALLY INSULATION, THE QUOTE FROM YODER'S TO DO THE INSULATION. THE PAGE AFTER THAT---

BY THE COURT: GIVE ME AN INVOICE NUMBER OR A DATE NUMBER, PLEASE, SIR.

THE WITNESS: IT SAYS INSULATION QUOTE. TOP RIGHT CORNER SAYS QUOTE DATE 2/3/09.

BY THE COURT: OKAY.

A THEN THE ONE FOLLOWING THAT IS AN INVOICE FROM YODER'S DATED 3/9/09 FOR THE INSULATION. AND THE ONE AFTER THAT IS ANOTHER INSULATION INVOICE FROM YODER'S FOR 4/16/09. THEN THE ONE AFTER THAT IS AN INSULATION INVOICE FROM YODER'S FOR 8/24/09. SO, IF YOU ADD UP THE FORMS THAT THE VERNONS WERE BILLED BY LANDMARC AS BACKUP, IT IS $7,800. IF YOU ADD UP THE INSULATION INVOICES, IT IS $5,400. THE QUOTE WHICH WAS DATED 2/3/09 IS FOR $5,400. SO, PRIOR TO THE FIRST INVOICE FROM LANDMARC TO THE VERNONS, THEY WERE AWARE OF THE AMOUNT OF THE INSULATION COST.

Q WHAT DID THE DOCUMENTS REVEAL TO YOU CONCERNING YODER DRYWALL?

A PRETTY MUCH THE SAME THING. IF YOU GO TO THE DRYWALL TAB,

THE FIRST INVOICE IS FROM LANDMARC TO THE VERNONS FOR $19,323 DATED 4/29/09.

Q ALL RIGHT.

A THE PAGE AFTER THAT IS, AGAIN, THE DRYWALL QUOTE FROM YODER'S DATED 2/4/09 FOR $13,323. THE PAGE AFTER THAT IS THE INVOICE FROM YODER'S FOR THE DRYWALL DATED 4/29/09 FOR $13,323. SO, AGAIN, THE MATH ON THAT IS YODER'S BILLED LANDMARC $13,300 (SIC). LANDMARC, IN TURN, BILLED THE VERNONS $19,300.

Q NOW, MR. JOHNSON, DID THE VERNONS EVER SUSPECT THAT LANDMARC WAS OVERBILLING THEM WITH THE YODER'S ACCOUNT?

A NO. WE HAD NO WAY TO KNOW THAT.

Q WHEN WERE YOUR SUSPICIONS FIRST RAISED CONCERNING THIS?

A WHEN WE FOUND OUT LANDMARC -- OR YODER'S HADN'T BEEN PAID IN FULL, WE STARTED REQUESTING DOCUMENTS, AND THAT'S WHEN I RECEIVED THESE DOCUMENTS FROM YODER'S BUILDING SUPPLY.

Q ABOUT WHEN WAS THAT, MR. JOHNSON?

A I THINK WE GOT THESE PROBABLY MID TO LATE NOVEMBER.

Q NOW, WHEN YOU RECEIVED THOSE, WHAT DID YOU DO?

A I STARTED DOING A REVIEW OF THE ACCOUNTING, JUST MATCHING UP INVOICES FROM YODER'S WITH INVOICES FROM LANDMARC.

Q DID YOU GIVE YOUR FATHER-IN-LAW ANY SUGGESTIONS WHAT HE SHOULD DO?

A I SUGGESTED HE SEEK COUNSEL.

Q NOW, YOU MENTIONED EARLIER YOU HAD CONTACTED YODER'S YOURSELF. IS THAT TRUE?

A THAT IS.
Q WHEN YOU CONTACTED YODER'S, WITH WHOM DID YOU SPEAK?
A I THINK MY FIRST CONTACT WAS WITH PATRICK WHO WAS THE SALES REP IN THE FIELD. AFTER THAT POINT, I DEALT WITH SOME PEOPLE IN THE OFFICE, BUT I DID MEET WITH HARLEY YODER AT ONE TIME TO KIND OF REVIEW THE ACCOUNTING.
Q DO YOU RECALL WHEN THAT MEETING TOOK PLACE?
A 1/20/2010.
Q WHAT DID YOU DISCUSS AT THE MEETING?
A WE DISCUSSED THE ACCOUNT FOR YODER'S ON THE VERNON RESIDENCE.
Q WHAT WAS MR. YODER'S RESPONSE?
A WE WENT THROUGH THE ACCOUNTING. I KIND OF SHOWED HIM WHAT WAS GOING ON AS FAR AS THE INVOICES WE RECEIVED AND THE INVOICE HE HAD GIVEN LANDMARC. HE THANKED ME FOR THE INFORMATION AND WE PARTED WAYS.
Q IS IT YOUR TESTIMONY THAT THE DOCUMENTS WE JUST SHOWED THE COURT WOULD SHOW THAT THE VERNONS WERE OVERCHARGED BY LANDMARC FOR THE YODER'S ACCOUNT?
A YES, IT DOES.
Q IS THERE ANYTHING ELSE IN YOUR REVIEW OF THE YODER ACCOUNT THAT CAME TO YOUR ATTENTION?
A NO, IT DID NOT.
Q WHAT ARE THE IMPLICATIONS OF WHAT YOU LEARNED FOR THE VERNONS?

A THEY INCURRED CONSIDERABLE COSTS DUE TO THE BONDING AROUND THE LIEN AND, OBVIOUSLY, THIS COURT CASE.

Q WHEN YOU REVIEWED THE YODER'S ACCOUNT, DID YOU ENCOUNTER ANY FINANCE CHARGES?

A YES. THERE IS, I BELIEVE, $10,000 IN FINANCE CHARGES.

Q WHAT DO YOU THINK -- WHY DO YOU THINK THE VERNONS WERE CHARGED FINANCE CHARGES?

A THEY SHOULDN'T HAVE BEEN BUT FINANCE CHARGES ARE USUALLY BECAUSE AN ACCOUNT IS PAST DUE.

Q AND WHY DO YOU SAY THEY SHOULDN'T HAVE BEEN?

A BECAUSE THEY PAID THEIR BILLS ON TIME.

Q THANK YOU, MR. JOHNSON. LET'S GO TO TAB 2. BEFORE WE GET STARTED ON TAB 2, MR. JOHNSON, IF I COULD TAKE YOU BACK TO TAB 1 TO THE LANDMARC INVOICE DATED MARCH 27, '09.

A IS THAT FOR STONE? WHICH ONE IS THAT?

Q THAT'S YODER'S INSULATION.

A INSULATION, OKAY.

BY THE COURT: WHAT'S THE DATE AGAIN, PLEASE?

MS. WRIGHT: THE DATE IS MARCH 27, '09, YOUR HONOR.

BY THE COURT: ALL RIGHT.

Q IF YOU WOULD LOOK THERE AT THE SIGNATURE, DID YOU INVESTIGATE SIGNATURES AS PART OF YOUR REVIEW?

A I DID NOT.

Q IS THERE ANYTHING UNUSUAL ABOUT THIS AUTHORIZED SIGNATURE?

A IT'S TYPED INSTEAD OF A HANDWRITTEN SIGNATURE.

Q WHAT DID THAT TELL YOU?
A IT AROSE SUSPICION. OBVIOUSLY, WE WERE DEPENDING ON THOSE WHEN WE RECEIVED THE BILLS FROM LANDMARC BUT NOW WE'VE GONE THROUGH AND QUITE A FEW OF THESE ARE TYPEWRITTEN.
Q SO, IF YOU TURN TO THE NEXT PAGE TO THE INVOICE FOR APRIL 16, '09 FOR YODER'S INSULATION, DID THAT SIGNATURE ALSO RAISE YOUR SUSPICIONS?
A YES, IT DID.
Q WHY IS THAT?
A BECAUSE, ONCE AGAIN, THE TYPED SIGNATURE OF DAVID POWELL.
Q NOW, IF WE COULD MOVE AHEAD TO TAB NO. 2. WOULD YOU PLEASE TELL THE COURT WHAT YOU HAVE AT TAB NO. 2?
A THE ACCOUNTING FOR FERGUSON ENTERPRISES WHO PROVIDED PLUMBING FIXTURES AND SUPPLIES FOR THE JOB.
Q WHAT DID YOUR REVIEW OF THE FERGUSON ACCOUNT SHOW?
A THAT ALL OF THE BILLS FOR FERGUSON HAD NOT BEEN PAID IN FULL.
Q WHAT IS THE RESULT OF LANDMARC NOT PAYING FERGUSON?
A THERE IS CURRENTLY A LIEN ON THE PROJECT FROM FERGUSON.
Q IS THAT LIEN PART OF ANOTHER FORECLOSURE ACTION ON THIS PROPERTY?
A I BELIEVE IT IS.
Q WHAT ELSE DID YOUR REVIEW SHOW?
A THE FIRST AND SECOND PAGE ARE AN INVOICE FROM FERGUSON THAT WE RECEIVED FROM LANDMARC AND THE BACKUP CHECK TO PAY THAT.

Q WOULD YOU GIVE THE NUMBER OR THE DATE FOR THE JUDGE, PLEASE?
A OH, YES. THE FIRST PAGE, FERGUSON ENTERPRISES DATE -- INVOICE NUMBER. WHERE IS THE DATE? -- INVOICE DATE 2/23/09 AND A CHECK FROM LANDMARC MATCHING THE AMOUNT. THAT'S PAGE -- CHECK NUMBER 1292.

THE FOLLOWING THIRD PAGE IS AN INVOICE FROM FERGUSON DATED 10/26/09 WHICH IS FOR $20,000, $20,104. THIS INVOICE WAS INCLUDED FROM LANDMARC TO VERNON IN THE LAST BILLING THAT WAS PAID IN FULL BY THE VERNONS.

Q WHAT WAS THE DATE OF THE LAST BILLING THAT WAS PAID IN FULL?
A THE NOVEMBER BILLING.
Q OKAY.
A THIS INVOICE IS PART OF THE LIEN THAT FERGUSON HAS FILED ON THE HOUSE.

THE LAST PAGE IS ANOTHER FERGUSON INVOICE FOR 10/26/09 IN THE AMOUNT OF $1,300. THIS WAS ALSO INCLUDED IN THE LAST BILLING TO THE VERNONS THAT WAS PAID IN FULL AND REMAINS OPEN WITH FERGUSON.

Q WHAT DO THESE DOCUMENTS TELL YOU?
A THAT LANDMARC HAS NOT PAID OUT ALL OF THE MONEY RECEIVED FROM THE VERNONS FOR VENDORS.
Q ALL RIGHT. MOVE DOWN TO TAB NO. 3, PLEASE. WOULD YOU PLEASE TELL THE COURT WHAT YOU HAVE AT TAB NO. 3?
A TAB NO. 3 IS A REVIEW OF THE ELECTRICAL COSTS FOR THE VERNON RESIDENCE.

Q WHAT COMPANIES WERE INVOLVED IN THE ELECTRICAL WORK ON THE RESIDENCE?

A RAPID ELECTRIC, SC STONEWORKS, MARATHON LIGHTING, HOLDER ELECTRIC AND LIGHTING WAREHOUSE, I BELIEVE IT IS.

Q DID ANY OF THE COMPANIES FILE A LIEN ON THE PROPERTY?

A MARATHON LIGHTING DID.

Q WHAT DID YOUR REVIEW SHOW CONCERNING PAYMENT FROM THE VERNONS TO LANDMARC?

A THE VERNONS PAID LANDMARC EVERYTHING IN FULL THAT THEY WERE BILLED FOR INCLUDING THE INVOICE FROM MARATHON LIGHTING THAT THE LIEN IS NOW CURRENTLY ON -- I BELIEVE THAT LIEN HAS ACTUALLY BEEN EXPIRED.

Q WHAT ELSE DID YOUR REVIEW OF THESE DOCUMENTS SHOW, MR. JOHNSON?

A THERE WAS STILL SOME WORK AND ALSO SOME MATERIAL THAT WERE BILLED TWICE BY LANDMARC TO THE VERNONS.

Q WHAT WAS THE THINGS THEY WERE BILLED TWICE FOR?

A A SIMPLE ONE IS THE BATH FANS. ORIGINALLY HIRED RAPID ELECTRIC TO COMPLETE THE WORK. THEY HAD A CONTRACT WITH RAPID ELECTRIC WHICH INCLUDED ALL OF THE FIXTURES OTHER THAN, I BELIEVE, THE SCONCES AND THE CAN TRIM FOR THE LIGHTS. IT ALSO INCLUDED THE BATH FANS. THOSE BATH FANS WERE BOUGHT AND PAID FOR BY RAPID. THE ROUGHINGS WERE INSTALLED IN THE HOUSE. AT SOME POINT RAPID WOULD NOT RETURN BACK TO THE JOB AND COMPLETE THEIR WORK. SO, LANDMARC WAS REQUIRED TO GO OUT AND REPURCHASE THOSE

BATH FANS AND HAVE, I BELIEVE, SC STONEWORKS INSTALL THE TRIM WORK ON THEM.

Q DO YOU KNOW WHY RAPID DID NOT WANT TO RETURN TO THE JOB?

A I'M NOT AWARE OF THE -- MY UNDERSTANDING IS DUE TO PAYMENT.

Q DID LANDMARC EVER GIVE THE VERNONS A CREDIT FOR THINGS THAT THEY WERE CHARGED TWICE ON?

A NOT THAT I'M AWARE OF.

Q IS THERE ANYTHING ELSE HERE THAT YOUR DOCUMENTS REVEALED TO YOU CONCERNING THE ELECTRICAL WORK?

A NO, MA'AM.

Q TURN TO TAB 4, PLEASE. WOULD YOU PLEASE TELL THE COURT WHAT YOU HAVE AT TAB 4?

A THIS IS MY REVIEW OF GLENCO FIREPLACES FOR THEIR WORK CONTAINMENT ON THE VERNON RESIDENCE.

Q WHAT SERVICES DID GLENCO PROVIDE?

A THEY INSTALLED THE FIREPLACE.

Q WAS GLENCO INVOLVED WITH THE CHIMNEY WORK THAT MR. VERNON REFERRED TO IN HIS TESTIMONY?

A NOT ON THIS HOUSE, NO.

Q WHAT DID YOUR REVIEW OF THESE DOCUMENTS SHOW YOU?

A IT SHOWED THAT THE INVOICES PROVIDED AS BACKUP FROM LANDMARC TO THE VERNONS WERE INCORRECT FOR THE BILLINGS, THE BILLINGS AND CHECKS THAT WERE SENT OUT FROM LANDMARC.

Q OKAY. I'M LOOKING AT THE INVOICE THAT'S DATED MARCH 13, '09. IT'S TO LANDMARC CONSTRUCTORS FROM GLENCO FIREPLACES. DO

YOU SEE THAT?

A I DO.

Q WOULD YOU PLEASE LOOK AT THE SIGNATURE?

A IT IS, AGAIN, TYPED BY ANDY LEPIN.

Q HAVE YOU ACTUALLY MET THAT PERSON?

A I HAVE NOT.

Q WHAT DID YOUR REVIEW OF THESE DOCUMENTS CONCERNING GLENCO FIREPLACES TELL YOU?

A THEY TOLD ME THAT THE VERNONS HAD BEEN OVERBILLED BY $1,900 FOR THE FIREPLACES.

Q CAN YOU GIVE ME AN EXAMPLE OF WHAT YOU MEAN?

A THE FIRST PAGE IN THERE IS AN INVOICE FROM GLENCO FIREPLACES TO LANDMARC DATED 3/13/09 FOR $3,795. BEHIND THAT IS THE INVOICE FROM GLENCO TO LANDMARC, INVOICE DATED 3/5/09, FOR $1,810. BEHIND THAT IS THE CHECK THAT LANDMARC SENT TO GLENCO FOR THAT INVOICE, PAYING THAT INVOICE IN FULL. SO, THE MATH FOR THAT IS BASICALLY OFF BY $1,900.

Q IS THERE ANYTHING ELSE YOUR DOCUMENTS CONCERNING GLENCO FIREPLACES REVEAL?

A NO.

Q WOULD YOU TURN TO TAB 5, PLEASE. WOULD YOU PLEASE TELL THE COURT WHAT YOU HAVE AT TAB 5?

A THIS IS MY ACCOUNTING RECONCILIATION OF MATT-LYNN CUSTOM CARPENTRY.

Q WHAT DO THESE DOCUMENTS SHOW?

A THAT LANDMARC BILLED THE VERNONS MORE THAN THEY PAID OUT FOR THIS WORK.

Q I'M LOOKING AT AN INVOICE DATED 12/28/08. DO YOU SEE THAT?

A I DO.

Q THE TOTAL IS FOR WHAT?

A $15,000.

Q I SEE A NOTE THERE CHECK NO. 1265. DID YOU WRITE THAT?

A I DID.

Q WHAT DOES THAT SAY?

A THE NEXT PAGE IS ACTUALLY CHECK 12- -- I WAS OFF WITH MY NUMBERS -- 1261 FOR $7,500 PAYING THAT INVOICE.

Q WHAT DID THAT TELL YOU?

A ACTUALLY, IF YOU LOOK BACK, THERE'S A FIRST INVOICE OF $15,000. IF YOU LOOK AT THE THIRD PAGE, IT'S AN INVOICE DATED 12/21/08. THAT'S ALSO FOR $15,000. BEHIND THAT IS A CHECK FOR $22,500, BASICALLY TO SHOW THAT LANDMARC PAID BILLS TWO $15,000 CHECKS -- OR INVOICES IN FULL.

Q LANDMARC DID PAY THOSE IN FULL?

A THEY DID PAY THOSE TWO IN FULL. YES.

Q OKAY. WHAT ELSE HAVE YOU DOCUMENTED CONCERNING MATT-LYNN CARPENTRY'S BILLING?

A FOLLOWING THOSE FIRST FOUR PAGES ON THE FIFTH PAGE, IT STARTS WITH INVOICE DATED 1/9/09 FROM LANDMARC, IT SAYS FROM MATT-LYNN TO LANDMARC BUT THAT'S THE BACKUP THAT WAS PROVIDED IN THE BILLINGS FROM LANDMARC TO THE VERNONS. THE FOLLOWING NUMBER

OF PAGES -- I CAN COUNT THEM IF WE NEED TO BUT IF YOU FLIP THROUGH THEM, THERE'S ACTUALLY A COPY OF ALL OF THE CHECKS THAT LANDMARC PAID MATT-LYNN. THE SUM OF ALL OF THE CHECKS ARE $79,000. THE SUM OF ALL OF THE INVOICES PROVIDED WITH THE BILLING IS $136,000.

Q WHAT DOES THAT TELL YOU?

A THERE'S A DIFFERENCE OF $57,000 OF MONEY THAT WAS PAID TO LANDMARC THAT WAS NOT PAID TO MATT-LYNN.

Q IF YOU WOULD TURN TO TAB 6, PLEASE. PLEASE TELL THE COURT WHAT YOU HAVE AT TAB 6.

A THIS IS A COPY OF THE LIEN THAT LANDMARC HAS FILED ON THE HOUSE.

Q WHAT DID YOUR REVIEW OF THE LANDMARC LIEN REVEAL?

A THE MATH THEY USED TO CREATE IT WAS BASICALLY THE SUM OF THE LAST TWO INVOICES PLUS THEIR OUTSTANDING RETAINAGE THAT WAS WITHHELD.

Q OKAY. SO, WHAT'S WRONG WITH THAT?

A THE LAST TWO INVOICES THAT WE RECEIVED, BILL VERNON AND MYSELF ACTUALLY WENT THROUGH THOSE, CONTACTED ALL OF THE SUBS AND SUPPLIERS AND MADE ARRANGEMENTS TO MAKE PAYMENTS THAT WE COULD.

Q WHAT ELSE DO THE DOCUMENTS REVEAL TO YOU?

A THE LIEN AMOUNT FROM YODER'S -- SORRY -- FROM LANDMARC IS $139,510; HOWEVER, THROUGH CONTACTING SUBSEQUENT SUPPLIERS, WE ACTUALLY PAID A TOTAL OF $69,900 TO SUPPLIERS INCLUDED IN THOSE LAST TWO INVOICES FROM LANDMARC. SO, TAKING THAT $69,900 PLUS

THEIR FEE ON THAT, IT APPEARS THEIR LIEN WAIVER IS INFLATED.
Q I BELIEVE YOU TESTIFIED EARLIER THAT THE WAY YOU ASSISTED YOUR FATHER-IN-LAW WAS THAT HE WOULD SEND YOU A CHECK TO BE PAID TO VARIOUS SUPPLIERS AND SUBCONTRACTORS; IS THAT CORRECT?
A THAT'S CORRECT.
Q I BELIEVE YOU TESTIFIED THAT YOU DID NOT RECEIVE A FEE FOR THIS SERVICE; IS THAT CORRECT?
A THAT'S CORRECT.
Q WAS THAT JUST PART OF YOUR REVIEW OF THE VERNON PROJECT?
A IT WAS PART OF ME HELPING HIM OUT, YES.
Q IF YOU WOULD TURN NOW TO TAB 7, PLEASE. PLEASE TELL THE COURT WHAT YOU HAVE AT TAB 7.
A THIS IS THE ACCOUNTING REVIEW OF SOUTHERN GUTTER & SIDING FOR THEIR WORK AND PAYMENT ON THE VERNON RESIDENCE.
Q WHAT DID THE DOCUMENTS CONCERNING SOUTHERN GUTTER & SIDING REVEAL TO YOU?
A ONCE AGAIN, IT APPEARS THAT THEY WERE -- THE VERNONS WERE OVERBILLED BY $1,000 BY LANDMARC.
Q WHAT DO YOU HAVE TO SUPPORT THAT?
A THE FIRST PAGE IS AN INVOICE FROM SOUTHERN GUTTERS TO LANDMARC DATED 10/29 OF '09 FOR $2,890. BEHIND THAT IS THE INVOICE FROM SOUTHERN GUTTER & SIDING DATED 10/29/09 AGAIN SHOWING PAID IN THE AMOUNT OF $1,800 -- $1,890. AND BEHIND THAT IS A CHECK FROM LANDMARC TO SOUTHERN GUTTERS FOR $1,890.
Q SO, WHAT DO YOU DERIVE -- WHAT CAN YOU TELL FROM THESE

DOCUMENTS?

A FROM THESE DOCUMENTS IT APPEARS THAT LANDMARC OVERBILLED THE VERNONS BY $1,000.

Q IF YOU WOULD TURN TO TAB 8, PLEASE. PLEASE TELL THE COURT WHAT YOU HAVE THERE.

A THIS IS MY REVIEW OF THE TILE, MATERIAL AND SUBCONTRACTOR FOR THE VERNON RESIDENCE.

Q NOW, WAS THIS ANOTHER MECHANIC'S LIEN FILED ON THE PROPERTY?

A YES, IT WAS.

Q WHAT DID YOU FIND WHEN YOU REVIEWED THE MATERIAL ON THE TILE, LABOR AND MATERIAL?

A LANDMARC HAD HIRED, I BELIEVE, THE SONS OF B & B TILE TO INSTALL THE TILE AT THE VERNON RESIDENCE. THEY PAID THEM IN FULL INCLUDING A DEPOSIT CHECK FOR MATERIAL FOR THE FIREPLACE TILE. THEY DID NOT RETURN TO THE JOB SITE, DID NOT RETURN THAT CHECK BACK TO LANDMARC. IN TURN, LANDMARC HAD TO GO OUT AND PURCHASE THE TILE AND MATERIAL A SECOND TIME, AND THEY DID BILL THE VERNONS FOR THAT TILE AND MATERIAL.

Q IF I UNDERSTAND YOU CORRECTLY, THE VERNONS WERE BILLED THE FIRST TIME THE MATERIAL WAS ORDERED AND AGAIN A SECOND TIME?

A YES, MA'AM.

Q DID THEY EVER RECEIVE A CREDIT FOR ONE OF THOSE?

A NOT THAT I'M AWARE OF.

Q WHAT ELSE DID THE DOCUMENTS REVEAL TO YOU? IS THERE ANYTHING ELSE?

A NO, MA'AM.
Q OKAY, IF YOU WOULD TURN TO TAB 9, PLEASE. PLEASE TELL THE COURT WHAT YOU HAVE AT TAB 9.
A THIS IS MY PAINTING REVIEW FOR THE VERNON PROJECT.
Q WHAT DID YOU FIND WHEN YOU REVIEWED THE PAINTING?
A IT APPEARS, ONCE AGAIN, THE VERNONS WERE OVERBILLED FOR THE PAINTING CONTRACT.
Q WHAT DO YOU HAVE TO SUPPORT THAT?
A THE FIRST PAGE THERE IS THE QUOTE DATED 5/24 OF '09 FROM DEER WHO WAS THE ORIGINAL PAINTING SUBCONTRACTOR ON THE JOB. BEHIND THAT IS AN INVOICE WHICH APPEARS FROM DEER PAINTING TO LANDMARC CUSTOM HOMES FOR $10,312.50.
Q IS THAT THE ONE DATED 6/26/09?
A JUNE 26th OF '09.
Q OKAY.
A AND BEHIND THAT IS, I BELIEVE -- IS TWO CHECKS FROM LANDMARC TO DEER PAINTING: ONE DATED 7/9 FOR $4,000 AND THE OTHER ONE DATED 9/1 FOR $3,000. BEHIND THAT IS ANOTHER DEER PAINTING INVOICE TO LANDMARC FOR 9/15 -- SORRY -- DATED 9/15 OF '09 FOR $11,840, AND BEHIND THAT IS A CHECK FROM LANDMARC TO DEER PAINTING DATED 11/19 OF '09 FOR $2,500 AND A SECOND CHECK DATED 11/19 FOR ANOTHER $2,500.
Q WHAT DID THOSE DOCUMENTS REVEAL TO YOU, MR. JOHNSON?
A THE ORIGINAL QUOTE WAS DATED 5/24 OF '09 STATING A TOTAL EXTERIOR CONTRACT OF $6,850---

BY THE COURT: I'M SORRY. COULD YOU REPEAT THAT NUMBER AGAIN?

THE WITNESS: $6,850, THE FIRST NUMBER ON THE RIGHT HAND SIDE OF THE QUOTE THERE.

A DOWN TOWARD THE BOTTOM IT DOES SAY, "TERMS: ALL PRICES INCLUDE LABOR & MATERIAL." THE DUNNS PROVIDED IN THEIR BILLINGS TO THE VERNONS THE SECOND PAGE OF THAT INVOICE FROM LANDMARC DATED 6/26 OF '09, IT WOULD APPEAR, AS FAR AS I CAN TELL, IS $13,750 THEY'RE CLAIMING IS THE CONTRACT FOR THE EXTERIOR PAINTING.

Q NOW, I'M LOOKING AT AN INVOICE THAT'S DATED NOVEMBER 30, '09 FROM DEER PAINTING. DO YOU SEE WHAT I'M REFERRING TO?

A YES.

Q DID YOU MAKE THE NOTES ON THAT, SIR?

A ALL OF THE NOTES ON THE RIGHT HAND SIDE I DID NOT. BUT THE POSTIE THAT'S ON THERE "NOT PAID", I DID.

Q IS THERE ANYTHING ELSE THAT YOUR DOCUMENTS CONCERNING DEER PAINTING REVEAL TO YOU?

A NO.

Q TURN TO TAB 10, PLEASE. PLEASE TELL THE COURT WHAT YOU HAVE AT TAB 10.

A THIS IS THE RECONCILIATION OF THE BUILDING PERMIT FOR THE VERNON RESIDENCE THAT LANDMARC ORIGINALLY OBTAINED.

Q ALL RIGHT. SO, LOOKING AT THE FIRST PAGE, IT APPEARS TO BE A RECEIPT, AND THE AMOUNT PAID IS $370.50. I TAKE THAT BACK. THAT'S ACTUALLY A TYPO. THAT SHOULD BE $870.50, SHOULD IT NOT?

A IT IS.
Q WHAT DOES THIS SHOW US?
A THIS WAS ACTUALLY THE RECEIPT PROVIDED BY LANDMARC IN THE BILLINGS TO THE VERNONS SHOWING A PERMIT NUMBER 2106 IN THE AMOUNT OF $870.50 WAS OBTAINED.
Q ON THE NEXT PAGE, WHAT IS THAT, SIR?
A THAT IS ACTUALLY THE BUILDING PERMIT THAT LANDMARC OBTAINED FOR THIS RESIDENCE.
Q WHAT IS THE PERMIT NUMBER ON THAT?
A 08 -- THEY ACTUALLY OMIT FOUR ZEROS -- BUT THEN IT'S 5883.
Q DOES THAT NUMBER CORRESPOND WITH THE RECEIPT THAT WE JUST LOOKED AT?
A IT DOES NOT.
Q WHAT DOES THAT TELL YOU, SIR?
A THEY BILLED US FOR THE WRONG PERMIT.
Q IS THERE ANYTHING ELSE IN YOUR REVIEW OF THE BUILDING PERMIT DOCUMENTS THAT CAME TO YOUR ATTENTION?
A IF YOU DO THE MATH ON THE ACTUAL BUILDING PERMIT, THE PERMIT FEE WAS $723 AND THE VERNONS WERE BILLED $870, RESULTING IN A $147 DIFFERENCE.
Q I BELIEVE WE HAD SOME TESTIMONY EARLIER CONCERNING THE CERTIFICATE OF OCCUPANCY. IN WHOSE NAME IS THAT CERTIFICATE?
A THE VERY LAST PAGE OF TAB 10 IS THE C.O. AND IT IS IN SANDI VERNON'S NAME.
Q THE VERY LAST PAGE OF TAB 10?

A YES.

Q OKAY. NOW, MOVING AHEAD TO A LETTER FROM THE COUNTY OF GREENVILLE TO MRS. SANDRA ANN VERNON DATED FEBRUARY 11, 2010. DID YOU REVIEW THIS FOR THE VERNONS?

A I RECEIVED A COPY FROM THEM, YES.

Q WHAT DOES THIS LETTER STATE?

A IT STATES THAT GREENVILLE COUNTY ACCIDENTALLY SENT THE C.O. TO LANDMARC, AND THIS LETTER IS ACTUALLY CORRECTING THAT.

Q SO, THE C.O. IS NOW CURRENTLY IN WHOSE NAME?

A SANDI VERNON.

Q IF YOU WOULD TURN TO TAB 11, PLEASE. PLEASE TELL THE COURT WHAT YOU HAVE AT TAB 11.

A THIS IS MY ACCOUNTING FOR GREEN HEATING AND COOLING WHO PROVIDED WORK ON THE VERNON RESIDENCE.

Q WHAT DID YOU DISCOVER IN YOUR REVIEW OF THE DOCUMENTS CONCERNING GREEN HEATING AND COOLING?

A IT APPEARS THAT AMOUNTS THAT WERE BILLED THE VERNONS, NOT ALL OF IT WAS PAID OUT TO GREEN HEATING.

Q WHAT DO YOU HAVE TO SUPPORT THAT?

A THE FIRST PAGE IS AN INVOICE FROM GREEN HEATING TO LANDMARC DATED 2/28 OF '09 FOR $13,650. THE PAGE BEHIND THAT IS A CHECK FROM LANDMARC TO GREEN HEATING FOR $11,511. BEHIND THAT IS ANOTHER INVOICE FROM LANDMARC TO THE VERNONS THAT WAS INCLUDED IN THEIR BILLING STATEMENTS FOR $5,850. BEHIND THAT IS A CHECK FROM LANDMARC TO GREEN HEATING FOR $4,933 DATED 12/7. THE FOLLOWING

FOUR PAGES ARE TWO OTHER INVOICES THAT ARE ACTUALLY PAID IN FULL BY LANDMARC TO GREEN HEATING.

Q WHAT HAS YOUR REVIEW OF THESE DOCUMENTS SHOWN YOU?

A THERE IS A DIFFERENCE FROM WHAT WAS BILLED TO THE VERNONS AS OPPOSED TO WHAT WAS PAID OUT TO GREEN HEATING AND COOLING OF, I BELIEVE, ABOUT $3,000.

Q WOULD YOU TURN TO TAB 12, PLEASE. PLEASE TELL THE COURT WHAT YOU HAVE AT TAB 12.

A THIS IS A REVIEW OF THE TRANSFERS IN AND OUT OF THE ACCOUNT THAT WAS SUPPOSED TO BE -- THAT WE WERE TOLD THAT WAS SET UP TO HANDLE THE MONEY FOR THE VERNONS.

Q WHO TOLD YOU?

A LANDMARC.

Q WHAT WAS THE PURPOSE OF THIS ACCOUNT?

A OUR UNDERSTANDING WAS TO HANDLE THE MONEY RECEIVED FROM THE VERNONS AND PAID SUBCONTRACTORS FROM THAT ACCOUNT.

Q WHAT DID YOU FIND WHEN YOU REVIEWED THIS ACCOUNT?

A IN GOING THROUGH THE ACCOUNT, I DID FIND CHECKS GOING OUT TO SUBCONTRACTORS, BUT THERE WERE ALSO FIVE ACCOUNTS THAT FUNDS WERE BEING TRANSFERRED IN AND OUT OF.

Q WHAT WERE THOSE ACCOUNTS?

A THE LAST FOUR NUMBERS OF THE ACCOUNT IS 1672, 7165, 8269, 8418 AND 8320.

Q WHO POSSESSED THIS LIST OF ACCOUNTS?

A THE ONLY ONE WE WERE AWARE OF IS THE 8412 WHICH IS

LANDMARC'S MAIN ACCOUNT, AND I BELIEVE THE 1672 IS THE TOLLESON ACCOUNT THAT THEY HAD.

Q WHO ARE THE TOLLESONS?

A MY UNDERSTANDING IS THEY WERE THE PROJECT PRIOR TO OURS.

Q SO, WHAT HAVE YOU CONCLUDED IN YOUR REVIEW OF THIS ACCOUNT?

A TAKING ALL OF THE INS AND OUTS OF ALL OF THE ACCOUNTS, THERE WAS A TOTAL OF $12,800 TRANSFERRED FROM THE VERNON ACCOUNT TO THE TOLLESON ACCOUNT. THERE WAS A TOTAL OF $19,800 FROM THE VERNON ACCOUNT TO THE UNKNOWN ACCOUNT, 7165. THERE WAS A TOTAL OF $42,000 FROM THE VERNON ACCOUNT TO ACCOUNT 8269. THERE WERE A NUMBER OF -- $92,199 FROM THE VERNON ACCOUNT TO ACCOUNT 8418. THERE WAS A TOTAL OF $61,477 FROM THE VERNON ACCOUNT TO 8320. THE TOTAL OF THAT -- EVERYTHING EXCEPT FOR THE LANDMARC MAIN ACCOUNT IS $136,600 TRANSFERRED OUT OF THE VERNON ACCOUNT INTO ANOTHER ACCOUNT.

Q DO YOU HAVE ANY REASON TO BELIEVE THAT ANY OF THESE TRANSFERS YOU DESCRIBED WERE TRANSFERS MADE TO SUPPLIERS OR SUBCONTRACTORS FOR THE VERNON PROJECT?

A NO.

Q DO YOU HAVE ANY EVIDENCE THAT WOULD SHOW THAT?

A NO.

Q IF YOU WOULD TURN TO TAB 13, PLEASE. WOULD YOU PLEASE TELL THE COURT WHAT YOU HAVE AT TAB 13?

A A CHECK WRITTEN TO BRANDT RUCKER OUT OF, MY UNDERSTANDING IS, THE VERNON CONSTRUCTION ACCOUNT THAT LANDMARC SET UP.

Q WHAT IS THAT ACCOUNT NUMBER?
A ENDING IN 8447.
Q AGAIN, WHAT WAS THE ACCOUNT 8447 SUPPOSED TO BE FOR?
A CONSTRUCTION -- RECEIVING MONEY FOR CONSTRUCTION DRAWS FROM THE VERNONS AND PAYING OUT SUBCONTRACTORS.
Q IS THERE ANY REASON WHY THE VERNON PROJECT WOULD REQUIRE THE SERVICES OF MR. RUCKER?
A NOT THAT I'M AWARE OF.
Q WOULD YOU TURN TO TAB 14, PLEASE. PLEASE DESCRIBE FOR THE COURT WHAT YOU HAVE AT TAB 14.
A THESE ARE COPIES OF ALL OF THE CHECKS THAT WERE WRITTEN OUT OF ACCOUNT 8447 TO GARY AND MARCUS DUNN PERSONALLY.
Q NOW, 8447, AGAIN, THAT'S THE CONSTRUCTION ACCOUNT FOR THE VERNON PROJECT?
A AS FAR AS I'M AWARE, YES.
Q NOW, DID KERRI DUNN, AND GARY DUNN AND MARCUS DUNN WORK ON THE VERNON PROJECT?
A THEY DID.
Q SO, WHY WOULDN'T IT BE PROPER TO USE CHECKS FROM THIS ACCOUNT TO PAY THE DUNNS?
A DURING THE CONSTRUCTION AND THE STATEMENTS WE RECEIVED SHOW THAT THE OVERHEAD AND PROFIT OF 15 PERCENT WAS ACTUALLY TRANSFERRED OUT OF THE 8447 ACCOUNT INTO THEIR MAIN ACCOUNT. SO, THERE ACTUALLY SHOULD BE NO OTHER MONEY IN THERE BECAUSE THEY WERE NOT BILLED.

Q NOW, WHAT ELSE DID THESE DOCUMENTS TELL YOU, MR. JOHNSON?

A NOTHING.

Q LET'S MOVE ON TO TAB 15. PLEASE TELL THE COURT WHAT YOU HAVE HERE.

A THESE WERE CHECKS DRAWN ON THE SAME ACCOUNT, 8447, FOR ITEMS THAT WERE NOT -- MY UNDERSTANDING -- WERE NOT USED ON THE VERNON RESIDENCE.

Q GIVE US AN EXAMPLE, PLEASE.

A WELL, THE FIRST -- I THINK THE FIRST TWO CHECKS -- THE FIRST CHECK IS ACTUALLY AMERICAN EXPRESS. TO MY KNOWLEDGE, AMERICAN EXPRESS WASN'T ON SITE. THEN THERE ARE A NUMBER OF CHECKS TO WACHOVIA.

Q WACHOVIA?

A AND IN LOOKING IT UP ON THE INTERNET, THAT'S SOME KIND OF A LOAN COMPANY.

Q TO THE BEST OF YOUR KNOWLEDGE, THE PARTIES TO WHOM THESE CHECKS WERE WRITTEN WERE NOT INVOLVED IN THE VERNON PROJECT?

A NO.

Q BUT THIS IS THE ACCOUNT THAT WAS USED FOR THE VERNON PROJECT?

A CORRECT.

Q IF YOU WOULD TURN NOW TO TAB 16, PLEASE. PLEASE TELL THE COURT WHAT YOU HAVE AT TAB 16.

A IT'S THE ACCOUNT RECONCILIATION OF CASCADE FINE CABINETRY.

Q WHAT DID YOUR REVIEW OF THESE DOCUMENTS SHOW?
A ADDING UP ALL OF THE BACKUP AND INVOICES THAT WERE BROUGHT INTO THE VERNONS BY LANDMARC AND THE CHECKS THAT LANDMARC PAID CASCADE, THERE'S A DIFFERENCE OF $1,900.
Q WERE THERE SOME CHECKS THAT DID NOT MATCH THE CASCADE INVOICES?
A PLEASE EXPLAIN.
Q DO ALL OF THE CHECKS THAT ARE WRITTEN LINE UP WITH THE CASCADE INVOICES?
A NO. THERE ARE CHECKS THAT -- LANDMARC MIGHT HAVE BEEN BILLED FROM CASCADE FOR, SAY, $6,000. THERE MIGHT BE TWO OR THREE CHECKS THAT INCLUDE THAT INVOICE PLUS A COUPLE OTHERS, BUT---
Q COULD YOU SHOW THE COURT AN EXAMPLE?
A SURE. THE FIRST ONE WHICH IS AN INVOICE FOR $6,000 FROM CASCADE, IF WE WANT TO GO THROUGH IT, YOU FLIP BACK TO WHERE WE HAVE THE CHECKS---
Q HOW MANY PAGES ARE WE FLIPPING BACK, MR. JOHNSON?
A SIX PAGES.
Q THAT WOULD BE CHECK NUMBER 1354?
A 1354 DATED 9/8 OF '09.
Q WHAT DID YOU LEARN?
A WELL, IF YOU GO THROUGH THE REST OF THESE CHECKS, THERE'S ACTUALLY NO CHECK FOR THE AMOUNT OF $6,000.
Q I SEE. IS THERE ANYTHING ELSE YOU LEARNED IN YOUR REVIEW OF

THE DOCUMENTS CONCERNING CASCADE CABINETRY?

A NO, MA'AM.

Q OKAY. NOW, IF WE COULD GO BACK TO TAB 12--

MS. WRIGHT: IF YOU'LL JUST INDULGE ME HERE FOR A MINUTE, YOUR HONOR.

Q --CONCERNING THE ACCOUNTS WITH NUMBERS ENDING, WE HAVE YODER'S EXHIBIT 22 WHICH LISTS LANDMARC ACCOUNTS. SO, IF YOU COULD FIND THOSE NUMBERS YOU JUST MENTIONED IN YOUR TESTIMONY. JUST IN YOUR NOTEBOOK, MR. JOHNSON.

A FIND WHAT? I'M SORRY.

Q THE YODER'S BOOK HAS EXHIBIT 22, THE YODER'S BOOK.

A OKAY.

Q OKAY. NOW, REFERRING TO YODER'S EXHIBIT 22, THE VERNON ACCOUNT IS 8447. DO YOU AGREE?

A I DO.

Q OKAY. WHAT WOULD THE OHD ACCOUNT BE?

A MY SPECULATION WOULD BE AN OVERHEAD ACCOUNT.

Q WERE ANY OF VERNONS' FUNDS FROM 8447 TRANSFERRED TO THAT ACCOUNT?

A THERE WERE. THERE WAS A NET OF $92,199.

Q ON YODER'S EXHIBIT 22, WE HAVE TOLLESON/SMITH ACCOUNT NUMBER 1672. DO YOU SEE THAT?

A I DO.

Q WERE ANY OF THE VERNON FUNDS TRANSFERRED TO THAT ACCOUNT?

A 1672, A NET TOTAL OF $12,828 WAS TRANSFERRED.

Q THEN WE HAVE THE MARSHALL ACCOUNT, 8269. DO YOU SEE THAT?
A I DO.
Q WERE ANY OF THE VERNON FUNDS FROM 8447 TRANSFERRED TO THAT ACCOUNT?
A A TOTAL OF $42,441 WERE TRANSFERRED TO THAT ACCOUNT.
Q THE FINAL LISTING ON YODER'S EXHIBIT 22 IS YBI PROJECT CONTROL SOLUTIONS, ACCOUNT 7165. DO YOU SEE THAT?
A I DO.
Q WERE THERE ANY OF THE VERNONS' FUNDS TRANSFERRED TO THAT ACCOUNT?
A THE NET TRANSFERRED OUT OF THE VERNON ACCOUNT IS $19,881.
Q NOW, WITH THE EXCEPTION OF THE VERNON ACCOUNT 8447 WHICH IS OBVIOUSLY THE VERNONS' ACCOUNT, THE OTHER REMAINING FOUR ACCOUNTS THERE, DO THEY HAVE ANYTHING TO DO WITH THE VERNON PROJECT?
A THEY DO NOT.
Q THANK YOU, MR. JOHNSON. NOW, LET'S MOVE ON AHEAD TO TAB NO. 17. WHAT DO YOU HAVE AT TAB NO. 17?
A THIS IS A RECONCILIATION OF THE AMOUNTS PAID OUT TO UTILITY COMPANIES FOR THE VERNON RESIDENCE.
Q WHAT DOES YOUR REVIEW SHOW?
A THE INVOICES INCLUDED FROM LANDMARC TO THE VERNONS FOR UTILITIES WERE $5,305. GOING THROUGH AND ADDING UP ALL OF THE TRANSFERS OUT OF 8447 AND ALL OF THE CHECKS WRITTEN OUT OF THAT ACCOUNT, A TOTAL OF $7,581 WAS PAID OUT FOR UTILITIES.
Q NOW, DO YOU HAVE AN EXAMPLE IN HERE THAT YOU COULD SHOW THE

COURT?

A WITHOUT GOING THROUGH EVERY PAGE, BASICALLY, IT'S ALL OF THE INVOICES WE RECEIVED FROM LANDMARC FOR UTILITIES AND BEHIND THAT ARE ALL OF THE CHECKS FROM 8447 PAYING THOSE UTILITIES. THEN THERE WERE SOME TRANSFERS OUT OF THE ACCOUNT THAT WOULDN'T HAVE A CHECK BACKUP BUT THEY WERE INCLUDED IN THE STATEMENTS WE RECEIVED TO MAKE UP THAT NUMBER.

Q SO, WHAT DID YOU FIND WHEN YOU REVIEWED THE UTILITIES ACCOUNT?

A IT APPEARS THERE WAS $2,200 THAT WERE FUNDS OF THE VERNON ACCOUNT THAT WAS USED FOR UTILITIES.

Q IF YOU WOULD TURN TO TAB 18, PLEASE. WHAT DO YOU HAVE AT TAB 18? PLEASE DESCRIBE THAT FOR THE COURT.

A I PUT THIS TAB TOGETHER BASICALLY KIND OF JUST OF A LIST OF OTHER ISSUES THAT HAVE ARISEN THAT ARE APPARENT WITH THE HOUSE.

Q GIVE ME AN EXAMPLE OF ONE OF THE ISSUES.

A THE EXTERIOR SIDING, THE INTERIOR DOORS ARE WARPING, THE WARRANTY ON THE GARAGE DOOR IS VOIDED.

Q WHAT VOIDED THE WARRANTY ON THE GARAGE DOORS?

A IT WAS INSTALLED AND IT TOOK THEM, I BELIEVE, ABOUT A MONTH-AND-A HALF OR A MONTH TO GET STAINED AND SEALED, AND PER THE INSTALLER IT WAS SUPPOSED TO HAVE BEEN STAINED AND SEALED WITHIN A COUPLE OF DAYS.

Q WHO DID THE INSTALLING?

A OVERHEAD DOOR COMPANY. I'M NOT SURE WHO IT WAS OFFHAND.

Q UNDER WHOSE SUPERVISION?
A LANDMARC CONSTRUCTION.
Q WAS THE WARRANTY FOR THOSE GARAGE DOORS FOUND IN A PROMINENT PLACE ON THE GARAGE DOORS IN A PACKAGE?
A NOT THAT I'M AWARE OF.
Q WHAT OTHER ISSUES DID YOU COME ACROSS?
A THERE WERE A NUMBER OF BASIC BILLING ISSUES AS FAR AS -- OR CONSTRUCTION ISSUES. THE WINDOWS FOR THE HOUSE SHOWED UP WERE FOUR EXTENSION JAMS INCLUDING THE SEAL. AT LANDMARC'S DIRECTION, THE TRIM CARPENTER INSTALLED A SECOND SEAL ON TOP OF THAT SEAL. EVERY TIME YOU OPEN THE WINDOW, THE WINDOW CRANK DOESN'T -- IT HITS THE WOOD ON THE SEAL AND SOME OF THEM ACTUALLY DON'T OPEN VERY WELL.

THE SIDING WHICH WAS INSTALLED IN ONE DAY WASN'T ACTUALLY STAINED OR FINISHED FOR, I BELIEVE, FOUR OR FIVE MONTHS AFTER THAT. ON THE EASTERN SIDE, ON THE SOUTHERN SIDE, IT'S ALL STARTING TO WARP AND CURL AND WILL NEED TO BE REPLACED.

Q DID YOU EVER BRING ANY OF THESE ISSUES YOU JUST TESTIFIED TO TO THE ATTENTION OF LANDMARC?
A I REALLY WASN'T AWARE OF IT UNTIL I CAME OUT AFTER THEY HAD BEEN FIRED.

THE COURT REPORTER: EXCUSE ME. AFTER WHAT?

THE WITNESS: THEY HAD BEEN FIRED.

Q NOW, I NOTICE IN HERE AT TAB 18 WE HAVE SOME INVOICES FROM YODER'S, MR. JOHNSON. I SEE THE FIRST ONE IS DATED MARCH 31ST,

'09.

A YES.

Q WHAT DID THAT PERTAIN TO?

A THAT IS THE CEDAR SIDING -- APPEARS TO BE THE CEDAR SIDING THAT WAS DELIVERED TO THE JOB SITE.

Q ARE THERE ANY OTHER DOCUMENTS HERE YOU WOULD LIKE TO BRING TO THE COURT'S ATTENTION?

A THERE'S ACTUALLY AN EMAIL HERE I WOULD, AND I APOLOGIZE FOR THE LOCATION OF IT.

Q WHERE DO YOU FIND THAT EMAIL?

A IF YOU GO TO THE BACK---

Q TO THE VERY BACK?

A YES.

Q OKAY. WOULD THAT BE THE ONE THAT'S FROM LEANNE SARGENT?

A IT'S 34 PAGES BACK -- FROM THE BACK. I APOLOGIZE.

MR. DUDLEY: WHAT DOES IT LOOK LIKE?

Q YES. WHAT'S THE DATE ON THAT?

A IT'S ACTUALLY AN EMAIL FROM ME.

MR. DUDLEY: WHAT'S THE DATE?

THE WITNESS: SENT SATURDAY, DECEMBER 5TH.

MR. DUDLEY: ANY OF THIS IN CHRONOLOGICAL ORDER?

THE WITNESS: UNFORTUNATELY NOT. SORRY.

Q WHAT DOES THAT EMAIL SAY, MR. JOHNSON?

MR. RUCKER: YOUR HONOR, I WOULD LIKE TO BE ABLE TO LOOK AT IT BEFORE SHE QUESTIONS.

BY THE COURT: I UNDERSTAND. YOU'RE ENTITLED TO.

WHAT'S THE DATE AGAIN, PLEASE?

MS. WRIGHT: THE DATE, YOUR HONOR, IS DECEMBER 5TH, 2009. IT'S FROM BRYAN JOHNSON AND IT'S TO LANDMARC.

MR. DUDLEY: DECEMBER 5TH?

MS. WRIGHT: DECEMBER 5TH.

Q WHAT WOULD YOU LIKE TO BRING TO THE COURT'S ATTENTION CONCERNING THIS EMAIL?

A THIS WAS AN EMAIL I SENT OFF AFTER KERRI, MARCUS AND I MET ON SITE TO GO THROUGH AND DO THE FINAL PUNCH WALK. ONCE AGAIN, THIS IS WHERE WE WERE REQUESTING BACKUP OF ALL OF THE ACCOUNTING AND EVERYTHING ELSE THAT WE DID NOT RECEIVE.

Q SO, IS IT YOUR TESTIMONY ON DECEMBER 5TH YOU WERE REQUESTING BACKUP FROM LANDMARC?

A YES.

Q WAS THIS THE FIRST TIME YOU ASKED FOR IT?

A NO.

Q SO, YOU HAD ASKED FOR IT PREVIOUSLY?

A YES.

Q DO YOU RECALL WHEN?

A THROUGHOUT THE BILLING PROCESS, I BELIEVE, THERE WAS AN EARLIER EMAIL FROM ME BACK IN THE BEGINNING LOOKING FOR CERTAIN BACKUP FROM THE FIRST BILLING, AND THEN THROUGHOUT THE PROJECT, I THINK, WE WERE ASKING FOR BACKUP.

Q DID YOU EVER RECEIVE THAT BACKUP?

A WE RECEIVED SOME BUT WE NEVER RECEIVED ALL.

Q WHY IS THAT?

A I'M NOT AWARE OF WHY.

Q WERE YOU EVER GIVEN AN EXPLANATION?

A NO.

Q MR. JOHNSON, WE'VE HEARD A LOT ABOUT THE DECK, THE INSTALLATION OF THE DECK. WHAT DID YOUR REVIEW FIND?

A MY REVIEW OF THE DECK, MY UNDERSTANDING OF THE DECK IS IT WAS INSTALLED WITH DEFECTIVE MATERIAL THE FIRST TIME. LANDMARC DID PULL THAT DECK UP. THEY DID REPLACE THE MATERIAL DOWN BELOW IT. SUPPOSEDLY, THAT TOOK CARE OF THE PROBLEM BUT TO DATE IT IS STILL CUPPING AND IT'S STILL HOLDING WATER AT THE EDGE OF IT.

Q WHO PROVIDED THE ALLEGEDLY DEFECTIVE MATERIAL?

A YODER'S BUILDING SUPPLY.

Q WHAT ALLEGEDLY WAS DEFECTIVE ABOUT IT?

A ACTUALLY, WAS NEVER GIVEN THAT ANSWER.

Q NOW, I UNDERSTAND FROM MR. VERNON'S TESTIMONY HE WITHHELD $1,500; IS THAT CORRECT? $15,000--

A $15,000.

Q --UNTIL THAT WAS REPAIRED. HOW MUCH DID LANDMARC WITHHOLD CONCERNING THAT?

A I UNDERSTAND THEY'RE CLAIMING DAMAGES OF $36,000.

Q WE'VE ALSO HEARD TESTIMONY FROM MR. VERNON CONCERNING THE CHIMNEY. WHAT DID YOUR REVIEW SHOW?

A THE ORIGINAL PLANS SHOWED A STONE CHIMNEY ON THE RESIDENCE.

THE ROOFING AND THE FRAMING FOR THE ROOF WAS BUILT AND SUPPLIED WITHOUT SUPPORT FOR STONE. SO, ONCE THE CHIMNEY WAS ACTUALLY FRAMED AND THEY REALIZED THEY DIDN'T HAVE SUPPORT, THEY DECIDED TO GO TO -- LANDMARC DECIDED TO GO TO SIDING WHICH WAS CLEARLY NOT APPROVED BY ARB AND THAT CHIMNEY HAD TO BE REMOVED COMPLETELY.

Q WHO IS THE ARB?

A THE ARCHITECTURAL REVIEW BOARD FOR THE CLIFFS.

Q DID YOU DO ANY WORK ON THE CHIMNEY?

A I WAS ACTUALLY INVOLVED WITH TAKING IT OFF.

Q ALL RIGHT, IF WE COULD MOVE NOW TO TAB 19. IS THIS A SUMMARY THAT YOU PREPARED, MR. JOHNSON?

A IT IS.

Q DID YOU PREPARE THAT USING THE DOCUMENTS FROM THIS NOTEBOOK?

A I DID.

Q AND FROM THE PROOF NOTEBOOK WE HAVE HERE IN THE COURTROOM TODAY?

A I DID.

Q WERE THE DOCUMENTS YOU USED TO PREPARE THIS, WERE THEY SUPPLIED TO COUNSEL IN DISCOVERY?

A YES.

Q WHAT DO YOU HAVE IN YOUR SUMMARY?

A THE FIRST COLUMN IS AMOUNTS THAT, PER THE RECONCILIATION THAT I DID, IS THE AMOUNTS THAT LANDMARC RECEIVED FROM THE VERNONS BUT DIDN'T PAY OUT. THE ONLY ONES THAT ARE NOT IS THE

VERY LAST ONE WHICH IS $79,000. THAT IS TO COVER THE COSTS THAT ARE BEING INCURRED DUE TO TAB 18, AND THOSE ARE ACTUALLY MY NUMBERS AS FAR AS COST DOCUMENTS. THE SECOND COLUMN IS AMOUNTS THAT LANDMARC RECEIVED FROM THE VERNONS IN FULL BUT DID NOT PAY OUT TO THEIR SUBCONTRACTORS. THE VERY LAST COLUMN, THE THIRD COLUMN THERE, IS ACTUALLY IF YOU DO THE MATH ON THEIR LIEN LESS THE AMOUNTS THAT WERE PAID OUT FROM THOSE LAST TWO INVOICES BY US, THE LIEN AMOUNT IS $69,000.

Q LOOKING DOWN HERE AT THE BOTTOM, WHAT DO YOU HAVE THAT LANDMARC OWES THE VERNONS?

A $583,893.

Q HOW DID YOU ARRIVE AT THAT NUMBER?

A ADDING UP THE OVERBILLING, ADDING UP THE MONEY NOT PAID OUT, AND ADDING UP THE 15 PERCENT FEE THAT WAS BILLED ON THOSE AMOUNTS EQUAL UP TO $583,000.

Q WHAT DO WE HAVE AT TAB 20, MR. JOHNSON?

A THIS IS ACTUALLY JUST SOME MISCELLANEOUS PICTURES THAT I HAD WITH DATE STAMPS ON THEM JUST FOR SOME OF THE ISSUES WE WERE HAVING.

Q MR. JOHNSON,--

A YES, MA'AM.

Q --IN YOUR EXPERIENCE, HAVE YOU EVER HEARD OF SUPPLIERS OR SUBCONTRACTORS BEING REQUIRED TO OBTAIN BUILDERS RISK INSURANCE?

A NO, MA'AM.

Q WHAT IS THE AMOUNT THAT THE VERNONS ARE SEEKING TODAY FROM

THIS COURT IN DAMAGES?

A MY UNDERSTANDING--

Q WOULD THAT BE THE AMOUNT THAT YOU REFERRED TO IN YOUR SUMMARY?

A YES. I BELIEVE THAT'S THE FIRST TIME WE'VE ACTUALLY COME UP WITH AN AMOUNT.

Q NOW, YOU HAD TESTIFIED PREVIOUSLY ON A NUMBER OF OCCASIONS TO LANDMARC OVERBILLED THE VERNONS. WAS IT ANYTHING THAT OVERBILLING INCLUDED BESIDES PAYMENTS ALLEGEDLY TO SUPPLIERS AND SUBCONTRACTORS?

A CAN YOU CLARIFY THAT?

Q WAS THERE ANYTHING IN THE OVERBILLING THAT YOU FELT WAS IMPROPER?

A THERE WAS NO REASON FOR OVERBILLING. IT'S A COST-PLUS CONTRACT AND THEY WERE ADDING THEIR FEE AT THE BOTTOM OF THE INVOICE OF THE COVER PAGE INVOICE.

Q SO, THE LAST RETAINAGE BILL THAT WE WOULD HAVE FROM LANDMARC WOULD INCLUDE THE OVERBILLING THAT YOU JUST TESTIFIED TO? COULD YOU HELP US OUT WITH THAT?

A THE LAST?

Q THE LAST BILL THAT WE RECEIVED FROM LANDMARC IN DECEMBER, WHAT DID THAT INCLUDE?

A IT INCLUDED RECONCILIATION OF ALL OF THE PAST DUE AMOUNT OR THE AMOUNT THAT WAS NOT PAID IN DECEMBER. IT ALSO INCLUDED ALL OF THE RETAINAGE THAT WAS BILLED FOR THE PROJECT.

Q WAS THAT IN ACCORDANCE WITH THE CONSTRUCTION AGREEMENT?

A YES. THE CONSTRUCTION AGREEMENT ALLOWED FOR MR. VERNON TO HOLD BACK 3 PERCENT OF THE OVERHEAD AND PROFIT OF THE 15 PERCENT, NOTHING TO DO WITH SUBCONTRACTORS. IT SAYS STRICTLY THE 15 PERCENT -- THE 3 PERCENT WE HELD BACK WAS RETAINAGE.

MS. WRIGHT: I HAVE NO FURTHER QUESTIONS.

BY THE COURT: YOUR WITNESS, MR. RUCKER.

CROSS-EXAMINATION BY MR. RUCKER:

Q MR. JOHNSON, GOOD MORNING.

A HOW ARE YOU DOING, SIR?

Q LET'S START WITH THE $583,893.62 YOU ARE CLAIMING IN DAMAGES. WHAT'S THE LINE 14, $126,791.61?

A THAT'S THE TRANSFERS OUT OF THE VERNON 8447 ACCOUNT INTO ACCOUNTS OTHER THAN THE MAIN ACCOUNT.

Q WHEN YOU SAY THE VERNON'S ACCOUNT, IT WENT OUT OF THEIR ACCOUNT OR IT WENT OUT OF AN OPERATING ACCOUNT OF LANDMARC?

A THE 8447 ACCOUNT, SO IT WOULD BE AN ACCOUNT SET UP, MY UNDERSTANDING, FOR THE VERNON RESIDENCE.

Q OKAY. YOUR UNDERSTANDING. YOU ARE A LICENSED -- YOU HAVE DONE RESIDENTIAL HOME BUILDING YOURSELF, CORRECT?

A I HAVE.

Q ARE YOU FAMILIAR WITH THE CONSTRUCTION AGREEMENT IN THIS CASE?

A I AM.

Q I'M GOING TO SHOW YOU WHAT WAS PREVIOUSLY ENTERED AS

PLAINTIFFS' EXHIBIT NO. 1. THIS IS A COPY. IT'S UP THERE.
A I CAN FIND IT.
Q HAVE YOU GOT IT?
A I DO.
Q ARE YOU AWARE OF WHO DRAFTED THIS CONSTRUCTION AGREEMENT?
A MY UNDERSTANDING IT WAS DRAFTED BY LANDMARC.
Q DO YOU KNOW THAT PERSONALLY THOUGH?
A I DO NOT. NO.
Q I WANT YOU TO SCAN THROUGH BRIEFLY AND FIND THE SENTENCE OR THE CLAUSE THAT SAYS THERE WILL BE AN INDIVIDUAL CHECKING ACCOUNT THAT IS KEPT SEPARATE FOR THE VERNONS.
A THERE IS NOT ONE.
Q DO YOU HAVE AN EMAIL THAT WAS WRITTEN AFTER THE CONSTRUCTION AGREEMENT THAT SAYS THERE WILL BE A SEPARATE ACCOUNT 8447 MAINTAINED SOLELY FOR THE VERNON ACCOUNT?
A NOT THAT I'M AWARE OF.
Q YOU HAVE TESTIFIED PREVIOUSLY THAT LANDMARC TOLD YOU THAT THERE WOULD BE A SEPARATE ACCOUNT. WHO FROM LANDMARC SPECIFICALLY TOLD YOU?
A I BELIEVE KERRI AND MARCUS SAID SO IN THEIR DEPOSITIONS.
Q DID THEY TELL YOU THAT YOURSELF AT THE BEGINNING OF THIS CONTRACT, AT THE BEGINNING OF THIS CONSTRUCTION?
A NO.
Q YOUR TESTIMONY IS THAT IT'S NOT IN THE ACTUAL CONTRACT, CORRECT?

A CORRECT.

Q NOW, LOOKING AT -- WE'RE GOING TO GO THROUGH THIS A LITTLE BIT FASTER. I'M NOT GOING TO SPEND A LOT OF TIME ON THIS. I WANT TO DRAW YOUR ATTENTION -- AND I APOLOGIZE, THIS IS KIND OF CLUNKY JUST WITH THE SIZE OF THIS. I WANT YOU TO LOOK AT -- I'M GOING TO TRY TO GET THE SIMPLEST TO FIND FOR THIS EXAMPLE. I THINK YOU COMPILED MOST OF THIS INFORMATION. SO, YOU MAY BE ABLE TO FIND IT -- EARLIER. FIND ME THE FIRST CHECK THAT WAS ISSUED BY CONTRACT ONE TO COVER ALLEGED FAILURES OF LANDMARC.

A IT WOULD BE UNDER TAB---

Q IT'S PROBABLY UNDER TAB "STONE" I'M ASSUMING.

A AT TAB 6, IF YOU FLIP BACK, THE FIRST INVOICE THAT WAS PAID BY CONTRACT ONE IS AN INVOICE FROM MATT-LYNN CUSTOM CARPENTRY DATED 11/22 OF '09.

BY THE COURT: I'M SORRY, WHICH TAB, PLEASE?

THE WITNESS: TAB 6. IF YOU'LL FLIP INTO IT PROBABLY ABOUT A DOZEN PAGES OR SO UNTIL YOU SEE---

Q DOES IT SAY PAGE 1 OF 1 AT THE TOP, AND THEN IT'S GOT A---

A RIGHT BEFORE THAT IS THE INVOICE BUT, YES, RIGHT BEHIND THAT IS THE CHECK.

Q I'M MORE INTERESTED IN THE CHECK ITSELF.

A YES. THAT ONE RIGHT THERE, SIR.

Q DID YOU SUPPLY ORIGINALS OF THIS CHECK TO---

BY THE COURT: FOR THE RECORD--

MR. RUCKER: I'M SORRY.

BY THE COURT: --I DON'T THINK THERE'S ANY EVIDENCE OR TESTIMONY WHO CONTRACT ONE IS.

MR. RUCKER: I APOLOGIZE.

BY THE COURT: I DON'T KNOW BUT ON APPEAL---

MR. RUCKER: YES, SIR.

Q WHO IS CONTRACT ONE, BRYAN?

A IT IS MY CURRENT COMPANY.

Q THAT IS A COLORADO BUSINESS?

A IT IS.

Q THAT'S THE ADDRESS: AVON, COLORADO?

A YEAH.

Q IN LOOKING AT THAT CHECK, DID YOU SUPPLY ORIGINALS OF THESE CHECKS TO COVINGTON PATRICK LAW FIRM?

A IT WAS NEVER REQUESTED THAT I'M AWARE OF.

Q WHERE DOES IT SAY ON THIS -- I BELIEVE THERE IS A PORTION ON THE LEFT OF THE CHECK THAT MAY BE SOME KIND OF BANK INDICATOR BUT IT'S UNCLEAR FROM THIS COPY. WHERE DOES IT SAY ON THE CHECK THAT IT WAS ACTUALLY DEPOSITED BY MATT-LYNN CUSTOM CARPENTRY?

A DOWN AT THE VERY BOTTOM. REALLY, THE ONLY EVIDENCE IS AT THE BOTTOM. IT SAYS FIRSTBANK WHICH IS THE BANK.

Q TO YOUR KNOWLEDGE, HAVE Y'ALL CALLED MATT-LYNN TO TESTIFY IN THIS CASE?

A NO.

Q WOULD THAT BE TRUE OF ALL OF THE CHECKS, THAT THERE ARE NO ENDORSEMENTS BY THE PERSON IN THE MATERIAL PROVIDED?

A THERE ARE NO ENDORSEMENTS BUT BEHIND THE CHECKS ARE LIEN WAIVERS.

Q OKAY. BUT I'M SIMPLY ASKING, ON CONTRACT ONE'S CHECKING, THAT ACCOUNT, WERE ALL OF THESE CHECKS DONE THAT WAY THAT YOU PROVIDED TO COVINGTON PATRICK, PROVIDED TO US AND PROVIDED TO YODER'S?

A THEY ARE WRITTEN OUT THE SAME WAY, YES.

Q OKAY. I JUST -- I'M TRYING TO SPEED IT UP.

A THAT'S FINE.

Q SO, WE WON'T HAVE TO GO THROUGH EACH CHECK. THERE IS NOTHING INDICATING THESE CHECKS BEING DEPOSITED, CORRECT?

A NOT ON WHAT WE HAVE, NO.

Q NOW, HELP ME OUT, I'M GOING TO GO BACK TO TAB 19, AS FAR AS I CAN, BACK TO WHERE WE WERE, THE VERY FIRST PAGE OF TAB 19, THE SUMMARY OF DAMAGES. HOW MUCH OF THAT AMOUNT IS REPRESENTED BY THESE CHECKS?

A NONE OF THAT.

Q SO, IS IT YOUR TESTIMONY THAT LANDMARC IS NOT RESPONSIBLE FOR ANYTHING PAID FOR BY ANY OF THOSE CHECKS THEN?

A CORRECT.

Q I WANT TO TALK TO YOU ABOUT LINE 20, $79,090.33. HOW DID YOU GET THAT NUMBER OUT OF THE WARRANTY? IS THAT PAID OUT AMOUNTS?

A NO. AS I EXPLAINED, MOST OF THAT IS ACTUALLY -- COME OFF OF -- ESTIMATES OF WHAT IT'S GOING TO COST TO TAKE CARE OF THE

ISSUES.
Q THAT'S NOT BASED ON BILLS. THAT'S BASED SOLELY ON YOUR BELIEF?
A CORRECT.
Q HOW INVOLVED WITH THIS PROJECT WERE YOU?
A AT THE VERY BEGINNING, NOT MUCH. I WAS JUST REVIEWING BILLING.
Q IS IT FAIR TO SAY -- I'M SORRY IF I CUT YOU OFF.
A NO, GO AHEAD.
Q IS IT FAIR TO SAY MR. VERNON CAME TO YOU BECAUSE YOU DO THIS KIND OF BUSINESS IN COLORADO?
A YES.
Q DO YOU HAVE YOUR LICENSE TO DO THIS BUSINESS IN COLORADO?
A NO.
Q WHAT IS -- AND I UNDERSTAND YOU ACTUALLY CAME OUT TO THE SITE AT SOME POINT BEFORE THE END OF THE CONTRACT; IS THAT RIGHT?
A YES.
Q WHEN WOULD YOU ESTIMATE THAT WAS?
A I BELIEVE I CAME OUT ONCE DURING THE FRAMING STAGE AND ANOTHER TIME IT WOULD HAVE BEEN PROBABLY EARLY NOVEMBER.
Q TELL ME WHAT A GENERAL -- BECAUSE IT HADN'T BEEN TESTIFIED TO, WHAT DOES A GENERAL CONTRACTOR DO?
A IT'S A PERSON WHO IS HIRED TO BUILD ITEMS AS FAR AS A BUILDING, COMMERCIAL OR RESIDENTIAL.
Q IS PART OF YOUR RESPONSIBILITY AS A RESIDENTIAL BUILDING

GENERAL CONTRACTOR TO KEEP AN ACCOUNT OF WHERE THE MONEY IS GOING?

A YES.

Q DID YOU PROVIDE THAT -- AND I'M NOT ASKING IF YOU WERE CONTRACTED TO DO THIS JOB. DID YOU PROVIDE A BACKUP SERVICE FOR THE VERNONS TO SEE IF THE MONEY WAS GOING WHERE IT WAS SUPPOSED TO?

A YES.

Q WERE YOU COMPENSATED IN ANY WAY OR YOUR COMPANY IN ANY WAY FOR THAT WORK?

A NO.

Q DO YOU HAVE ANY AGREEMENT THAT SHOULD YOU PREVAIL OR SHOULD THE VERNONS PREVAIL THAT YOU WILL BE COMPENSATED IN SOME WAY?

A NO.

Q DID YOU EVER ISSUE CHECKS ON BEHALF OF THE JOHNSONS -- I MEAN, THE VERNONS -- I'M SORRY -- BEFORE DECEMBER OF 2009?

A I DID NOT.

Q DID YOU ADVISE MR. VERNON TO -- HOW OFTEN WERE THE VERNONS IN CONTACT WITH YOU? I'M GOING TO JUST SKIP THROUGH. HOW OFTEN DID THEY TALK TO YOU ABOUT THIS CASE?

A THEY WOULD TALK TO ME AT LEAST LIKE ONCE A MONTH WHEN BILLINGS CAME OUT. EVERY ONCE IN A WHILE, MAYBE A LITTLE BIT DURING THE MONTH, NOT MUCH.

Q YOU WERE RELYING ON YOUR EXPERTISE AT THE TIME TO GO THROUGH THE MATERIALS?

A I WENT THROUGH THE BILLING THAT I RECEIVED, YES, BUT I WAS NOT ON SITE TO COMPARE IT TO THE MATERIALS. NO.

Q IT'S YOUR UNDERSTANDING FOR AT LEAST SIX MONTHS EVERYTHING WAS GOING OKAY?

A PER THE BACKUP WE RECEIVED, YES.

Q I'M JUST CURIOUS, OBVIOUSLY, WITH THE ECONOMIC ENVIRONMENT, HOW IS CAPITAL ONE DOING RIGHT NOW?

A CAPITAL ONE? NOT VERY---

Q I MEAN, CONTRACT ONE.

A WE'RE ACTUALLY -- WE'RE DOING GOOD.

Q WHAT WERE YOUR SALES IN 2007? DO YOU KNOW OFF THE TOP OF YOUR HEAD?

MS. WRIGHT: YOUR HONOR, HOW IS THIS RELEVANT?

MR. RUCKER: I'M GETTING TO IT.

BY THE COURT: I THINK I KNOW WHERE HE'S HEADING. GO AHEAD.

A 2007, I WANT TO SAY, 3 MILLION, MAYBE 4.

Q IS IT YOUR -- YOU ACTUALLY HAVE A WEBSITE FOR THIS COMPANY, CORRECT?

A I DO.

Q YOU LIST PRIOR BUSINESS YOU'VE DONE?

A YES.

Q WHEN WAS THE LAST TIME YOU UPDATED SHOWING THE LAST WORK YOU HAD DONE? WE CAN CHECK IT RIGHT NOW.

A WE ACTUALLY HAVE SOMEBODY IN THE OFFICE THAT DOES IT. I HAVEN'T LOOKED AT IT, AND I HAVEN'T UPDATED IT IN A LONG TIME.

Q DO YOU UNDERSTAND THE LAST EXAMPLE OF WORK YOU DID WAS FOR AROUND $50,000, A RENOVATION OF SOME KIND?

A POSSIBLE.

Q AND THE ONE PREVIOUS TO THAT WAS FOR MILLIONS OF DOLLARS?

A YEP.

Q WHEN WERE YOU LICENSED TO BUILD HOUSES IN SOUTH CAROLINA?

A I BELIEVE IT'S BEEN ABOUT A YEAR, MAYBE JUST OVER A YEAR AGO.

Q WERE YOU LICENSED AT THE TIME THIS CONSTRUCTION PROJECT WAS GOING FORWARD?

A NO, I WAS NOT.

Q IS IT YOUR TESTIMONY THAT YOU HAVE NOT REQUIRED OR IN YOUR BUSINESS PRACTICE YOU HAVE NOT HAD TO INSURE OR TO PURCHASE INSURANCE ON BEHALF OF HOMEOWNERS WHEN YOU HAD TROUBLE FINDING A SUBCONTRACTOR WHO HAD THEIR OWN INSURANCE BECAUSE OF THE ECONOMY?

A NO. WE DO NOT PROVIDE INSURANCE FOR SUBCONTRACTORS.

Q I'M NOT SAYING WRITING THE INSURANCE. I MEAN, MAKING SURE THE INSURANCE IS FUNDED.

A YES. WE ENSURE WE HAVE INSURANCE CERTIFICATES FROM OUR VENDORS AND OUR SUPPLIERS.

Q HAVE YOU USED A SUPPLIER THAT HAD ISSUES WITH INSURANCE AND YOU MADE SURE THEY WERE COVERED SPECIFICALLY FOR WORKER'S COMPENSATION?

A NO. ONCE AGAIN, WE DO NOT PAY FOR SUBCONTRACTOR'S INSURANCE. THAT IS THEIR RESPONSIBILITY.

Q HOW MUCH WORK DO YOU DO IN SOUTH CAROLINA?
A CURRENTLY, I HAVEN'T DONE ANY.
Q YOU HAVEN'T DONE ANY AT THIS POINT?
A I HAVEN'T.
MR. RUCKER: NO FURTHER QUESTIONS.
BY THE COURT: MR. DUDLEY.
CROSS-EXAMINATION BY MR. DUDLEY:
Q I'M GOING TO TRY TO SCOPE THIS DOWN A LITTLE BIT. I'M GOING TO SIT RIGHT HERE IF THAT'S ALL RIGHT.
MR. JOHNSON, IF YOU WOULD, PLEASE, CAN YOU GET MY -- THIS NOTEBOOK RIGHT HERE, THE YODER'S NOTEBOOK. AND IF YOU WOULD, GO TO TAB 13. ALL RIGHT. IF YOU LOOK AT TAB 13, IF YOU FLIP BACK -- WELL, THE VERNONS ALSO RECEIVED A COPY OF THE DEMAND LETTER. THIS ONE IS ADDRESSED TO LANDMARC, BUT THEY GOT ONE, DIDN'T THEY? YOU'VE SEEN THAT?
A YES.
Q ATTACHED TO THIS DEMAND LETTER IS A COPY OF THE MECHANIC'S LIEN. DO YOU SEE THAT?
A YES, SIR.
Q I'M GOING TO FLIP BACK, THERE'S THE DATE OF THE MECHANIC'S LIEN AND THEN THERE'S THE ACCEPTANCE OF SERVICE?
A YES, SIR.
Q AND THAT'S THE 17TH OF DECEMBER 2009?
A YES.
Q THE VERNONS HAD NOTICE OF THE MECHANIC'S LIEN, BECAUSE THIS

IS THE ACCEPTANCE OF SERVICE ON BEHALF OF THE VERNONS, ON DECEMBER 17, 2009, OF YODER'S MECHANIC'S LIEN?

A YES.

Q IF YOU COULD NOW GO BACK TO YOUR NOTEBOOK. IT'S TAB 6 WHERE WE WERE A FEW MINUTES AGO. DO YOU HAVE THIS BACK CHART?

A YEP. THAT SECOND PAGE THERE.

Q PAID OUT DIRECT IS $59,337.96?

A OKAY. I'M ON THE WRONG PAGE. I'M SORRY.

Q THE LANDMARC LIEN, MECHANIC'S LIEN. THAT'S IT. THERE'S A LINE ITEM THAT SAYS PAID OUT DIRECT, $59,337.96?

A YES.

Q IT SAYS BEFORE 1/29, MOST WERE BEFORE 1/1?

A CORRECT.

Q NOW, IF YOU LOOK -- THE MECHANIC'S LIEN OF LANDMARC WAS SOMETIME IN FEBRUARY 2010?

A YES.

Q ALL RIGHT. BUT IN ALL OF THIS BEHIND HERE, BEHIND THIS RECAP SHEET, WE'VE GOT, IF YOU'LL FLIP FORWARD, WE'VE GOT CHECKS FROM CONTRACT ONE PAYING MATT-LYNN CARPENTRY $5,456 ON DECEMBER 31ST?

A CORRECT.

Q AND THAT WAS ACTUALLY FOR WORK THAT WAS DONE WHEN LANDMARC WAS STILL ON THE JOB?

A CORRECT.

Q THE $59,337.96, ALL OF THAT WAS PAID BY THE VERNONS FOR WORK

THAT WAS PERFORMED BY SUBCONTRACTORS UNDER LANDMARC BEFORE LANDMARC WAS TERMINATED, RIGHT?

A YES, BASED ON MY RECONCILIATION.

Q ALL RIGHT. I'VE LOOKED THROUGH HERE AND A LOT OF THE -- THE CHECKS START GETTING WRITTEN ON DECEMBER 18TH.

A I BELIEVE SO.

Q THERE WERE SOME -- THERE WAS A BUNCH ON THE 18TH, AND THERE WAS A BUNCH ON THE 31ST. BUT ALL OF THAT $59,337.96, ALL OF THOSE CHECKS WERE PAID AFTER DECEMBER 17, 2009 WHICH WAS THE DATE OF THE YODER'S MECHANIC'S LIEN AND NOTICE GOING TO THE VERNONS, WASN'T IT?

A CORRECT.

Q ONE HUNDRED PERCENT OF IT?

A YES, SIR.

Q AND THAT IS ESSENTIALLY -- I WANT TO MAKE SURE I GET THIS FOR THE RECORD. UNDER TAB 6, WE LOOK AT THE LANDMARC LIEN MATH RECAP SHEET, EVERYTHING AFTER THIS RECAP SHEET IS THE INVOICES AND THE CHECKS FROM CONTRACT ONE AND THE LIEN WAIVERS THAT BACK UP THAT $59,337.96, ISN'T THAT RIGHT?

A YES, SIR.

Q YOU CAN PUT THAT ASIDE. ALL RIGHT. I'M GOING TO TAKE -- DURING DIRECT EXAMINATION, MS. WRIGHT ASKED YOU ABOUT THE YODER'S INVOICE IN TAB 2 -- I'M SORRY -- TAB 1, THE STONE, INSULATION AND THE DRYWALL. THOSE AREN'T ACTUALLY INVOICES, ARE THEY? CAN YOU FLIP TO THE FIRST ONE UNDER THE STONE? IT'S UNDER YOUR

VERNON TAB, IT'S UNDER EXHIBIT 1 AND IT'S UNDER THE STONE TAB. ARE YOU WITH ME ON THAT?

A I AM, SIR.

Q THIS IS THE ONE OF JANUARY 30, 2009. THIS IS ON A LANDMARC -- THIS IS A LANDMARC RESIDENTIAL SUBCONTRACTOR'S APPLICATION FOR PAYMENT, ISN'T IT?

A YES, SIR.

Q THIS IS NOT A YODER'S INVOICE?

A NO.

Q IT'S CLEARLY -- IT'S GOT A LANDMARC ADDRESS AT THE BOTTOM WITH FAX NUMBERS AND ALL. THIS IS JUST A PAY REQUEST, NOT AN INVOICE?

A A PAY REQUEST THAT WE WERE LED TO BELIEVE WAS PROVIDED BY YODER.

Q RIGHT. NOW, YOU DON'T HAVE ANY EVIDENCE WHATSOEVER THAT YODER'S WAS INVOLVED IN LANDMARC MISREPRESENTING WHAT YODER'S ACTUAL BILLINGS WERE FOR THE STONE, INSULATION AND THE DRYWALL, DO YOU?

A NOT THAT I'M AWARE OF.

Q IN FACT, YOU LOOKED AT THE BILLING, ALL OF THE BILLING, WHEN YOU MET WITH HARLEY YODER, THAT'S HOW YOU DISCOVERED THAT THESE PAY REQUESTS, THE NUMBERS DIDN'T MATCH UP WITH WHAT YODER'S WAS BILLING LANDMARC?

A I THINK I FIGURED OUT PRIOR TO THAT BUT, YES, YODER AND I -- HARLEY AND I DID GO THROUGH THAT AND REACHED THAT CONCLUSION.

Q WHEN YOU GOT INFORMATION FROM MR. YODER, THAT'S WHEN YOU CONFIRMED THAT THESE DIDN'T ADD UP?
A YES, SIR.
Q THESE DOCUMENTS MAY BE WHAT LANDMARC WAS SEEKING PAYMENT FROM THE VERNONS FOR, BUT YOU KNOW, BECAUSE YOU LOOKED AT THE INVOICES, THAT'S NOT WHAT YODER'S WAS SEEKING FROM LANDMARC?
A I DON'T KNOW IF I CAN SAY THAT.
Q YOU'VE LOOKED AT THE YODER'S INVOICES FOR THE INSULATION, DRYWALL AND THE STONE?
A YES, SIR.
Q THAT'S WHAT YODER'S BILLED LANDMARC FOR?
A THAT'S CORRECT.
Q THEN WHAT THE VERNONS RECEIVED WERE THESE PAY APPLICATIONS THAT HAD DIFFERENT NUMBERS ON THEM?
A CORRECT.
Q BUT YOU'VE LOOKED AT THE YODER'S -- YOU HAVEN'T SEEN ANYTHING THAT MATCHES UP TO WHAT LANDMARC WAS BILLING TO THE VERNONS?
A NOT THAT I'VE RECEIVED, NO.
Q AND I WANT -- THIS IS -- MS. WRIGHT ASKED YOU, SO IN YOUR REVIEW THE VERNONS HAVE PAID YODER'S IN FULL. ALL RIGHT. BUT IN YOUR ANALYSIS YOU'RE JUST LOOKING AT WHAT DID YODER'S -- WHAT DID LANDMARC SEND TO THE VERNONS FOR PAYMENT AND WHAT DID THE VERNONS PAY LANDMARC?
A LANDMARC HAS BEEN PAID IN FULL FOR WHAT THEY BILLED US BASED

ON THE BACKUP FROM YODER'S THAT WE RECEIVED. PER THE LIEN, I DO NOT BELIEVE LANDMARC HAS PAID YODER'S IN FULL.

Q OKAY. NOW, WITH REGARDS TO -- GO BACK TO YOUR, I GUESS IT'S 19, LET'S FLIP ALL OF THE WAY TO THE BACK ON THAT, THE RECAP SHEET ON THIS ONE. I MAY HAVE MISSED THIS BECAUSE I WAS BUSY DOING OTHER STUFF, BUT UNDER TAB 19, THE $79,000 FIGURE, THERE'S NO BACKUP FOR THAT IN THIS NOTEBOOK, IS THERE?

A NO, THERE IS NOT.

Q ALL RIGHT. OKAY. LET'S LOOK AT WHAT I REALLY WANTED TO GET TO ABOUT THE -- IN THE FAR RIGHT COLUMN, THERE'S A $69,546.84, AND THAT'S AN ANALYSIS YOU DID BASED ON THE PAYMENTS MADE BY THE VERNONS AFTER LANDMARC WAS TERMINATED. YOU PAID THAT MONEY OFF OF THE $139,000.00 THAT LANDMARC SAYS IS THEIR LIEN. THAT'S THE $69,546.84?

A IT IS.

Q NOW, I KNOW YOU HAVE YOUR WAY OF DOING -- ARRIVING AT YOUR ANSWERS. I WANT TO ASK YOU THIS. THERE'S ANOTHER WAY TO LOOK AT THIS -- DID YOU DO THIS ANALYSIS? DID YOU TAKE ALL OF LANDMARC BILLINGS AND ADD THEM UP, DID YOU SUBTRACT OUT OF THAT ALL OF THE TIMES WHERE YOU CONTEND THAT LANDMARC OVERBILLED THE VERNONS AND ARRIVE AT A NUMBER THAT IS THE GROSS AMOUNT BILLED BY LANDMARC LESS THE OVERPAYMENT, THE OVERBILLED? DID YOU DO THAT?

A I DID DO THAT.

Q THAT NUMBER WAS LESS THAN $979,000.00 THAT THE VERNONS ACTUALLY PAID LANDMARC, WASN'T IT?

A YES.
Q TAKE NOW -- LET'S BE STRAIGHT. I'M NOT GOING TO LEAVE THIS POINT. THAT'S THE NUMBER THAT LANDMARC IS OWED? IF YOU DON'T TAKE WARRANTY ISSUES AND OTHER THINGS LIKE THAT, IT'S THE GROSS AMOUNT THAT LANDMARC BILLED AND YOU SUBTRACT OUT THE OVERBILLINGS WHICH THEY SHOULD NOT HAVE BILLED AND THE VERNONS HAVE NOT PAID, THAT NET NUMBER IS WHAT, ABSENT YOUR WARRANTY ISSUES, WHAT THE VERNONS OWE LANDMARC, ISN'T IT?
A WHICH IS ACTUALLY UNDER WHAT THEY'VE BEEN PAID SO FAR.
Q HOW MUCH? BECAUSE I HAVEN'T SEEN WHERE YOU'VE DONE THAT CALCULATION.
A IT'S ACTUALLY, THIS NUMBER, THE $380,000, THE FIRST COLUMN---
Q ALL RIGHT. LET'S -- THAT'S HOW YOU DID IT? BECAUSE I WANT TO ASK ABOUT THAT.
A OKAY.
MR. STERN: WHAT PAGE? I'M SORRY, TOM.
MR. DUDLEY: UNDER 19, IT'S THAT RECAP SHEET.
Q AND MAYBE WE NEED TO -- LET'S GO BACK AND CHECK THESE THINGS OFF, AND I'LL DO THE MATH OVER LUNCH. THE $20,021.41, THAT'S WHAT YOU CONTEND WAS AN OVERBILLING BY LANDMARC ON YODER BILLS?
A CORRECT.
Q THE $14,399.54, IS THAT ALSO OVERBILLING?
A THAT'S OVERBILLING AND MATERIAL LIEN THAT LANDMARC DID NOT PAY OUT THAT THEY WERE PAID FOR.

Q OKAY. THE $1,985 IS THAT OVERBILLING?
A THAT'S AN OVERBILLING, YES.
Q ALL RIGHT. THE $57,450.35, WHAT IS THAT? THAT'S NOT AN OVERBILLING, IS IT?
A THAT IS AN OVERBILLING PER THE INFORMATION I HAVE.
Q YOU'RE CLAIMING THAT'S AN OVERBILLING. THE $1,000 TO SOUTHERN GUTTER IS THAT AN OVERBILLING?
A THAT IS AN OVERBILLING.
Q THE $8,263.96, THAT'S AN OVERBILLING? THAT'S FOR B&B?
A WHEN YOU'RE SAYING OVERBILLING, UNDERSTAND THAT THIS IS ALSO -- THE $8,000 IS THE SAME AS THE ELECTRICAL. IT'S MONEY THAT WE PAID LANDMARC BUT THEY DIDN'T, IN TURN, PAY THE SUBS OR SUPPLIERS.
Q WHAT I NEED YOUR HELP ON, YOU SHOWED SPECIFICALLY ON THE YODER'S STONE, INSULATION AND DRYWALL, YOU SHOWED, YOU STEPPED US THROUGH WHERE YOU HAD THE PAY APPLICATION FROM LANDMARC FOR A DOLLAR FIGURE THAT THEY WERE SEEKING FOR YODER'S STONE, AND THEN YOU SHOW WHAT YODER'S STONE ACTUALLY BILLED LANDMARC FOR?
A CORRECT.
Q YOU CONSIDERED THAT TO BE -- THEY WERE SUPPOSED TO ONLY PAY -- THE VERNONS WERE ONLY SUPPOSED TO PAY WHAT YODER'S BILLED LANDMARC FOR?
A CORRECT.
Q THAT'S THE NUMBER I WANT TO KNOW. DID YOU SEPARATELY CALCULATE THAT OUT?

A I MIGHT HAVE AT ONE TIME, BUT I DON'T HAVE THAT FIGURE WITH ME.

Q THE $20- IS THE ONLY THING -- THAT $20,000 -- $20,021.41, THAT'S AN ACTUAL NUMBER THAT IS A DISCREPANCY BETWEEN THE PAY APPLICATIONS THAT LANDMARC SUBMITTED FOR PAYMENT AND WHAT YODER'S -- THAT'S WHAT THAT IS? THAT HAS NOTHING TO DO WITH WHAT LANDMARC DIDN'T PAY YODER'S?

A CORRECT.

Q THAT'S A PURE NUMBER?

A THAT'S A PURE NUMBER.

Q ARE ANY OF THESE OTHER ONES PURELY AN OVERBILLING?

A THE MATT-LYNN ONE IS, THE $57,000; THE FIREPLACE IS---

Q WAIT, WAIT, WAIT. I WANT TO -- NOW, I'M NOT SAYING WHAT LANDMARC GOT PAID FOR BY THE VERNONS AND DIDN'T PAY. I'M NOT ASKING -- YOU CONTEND THAT TO BE AN OVERBILLING. I WANT TO JUST SEGREGATE OUT WHAT IS BILLING THAT LANDMARC SUBMITTED THAT WERE NOT -- WHAT THE VENDORS ACTUALLY BILLED LANDMARC FOR, WHEN LANDMARC BILLED FOR A COST THAT WAS NOT A TRUE COST.

A WELL---

Q RIGHT NOW, I'M -- HOLD ON, OKAY. THE $20,000, $20,021.41 IS THE ONLY ONE THAT I UNDERSTAND RIGHT NOW THAT'S -- THAT ONLY NUMBER?

A THAT'S NOT TRUE.

Q WHERE ARE THE OTHER ONES?

A WELL, PER THE INFORMATION I HAVE, I HAVE BILLINGS FROM

LANDMARC TO THE VERNONS FOR MATT-LYNN CARPENTRY AND I HAVE CHECKS GOING OUT TO MATT-LYNN, AND THE DIFFERENCE OF THOSE IS $57,000.00.

Q I GOT YOU ON THAT ONE. WHAT I -- BUT -- ALL RIGHT. OKAY. FOR THE MATT-LYNN ONE YOU'RE SAYING THERE WERE INVOICES FROM MATT-LYNN CARPENTRY FOR WHICH LANDMARC GOT PAID AND LANDMARC DIDN'T PAY MATT-LYNN?

A CORRECT.

Q DO YOU HAVE ANYTHING WHERE -- DO YOU HAVE LIKE YODER'S WHERE MATT-LYNN'S INVOICES WERE $15,000 BUT WHEN YOU LOOKED AT WHAT MATT-LYNN ACTUALLY BILLED LANDMARC, IT WAS $10,000 OR SOMETHING LIKE THAT?

A I HAVE BACKUP INVOICES FOR THE SOUTHERN GUTTER FOR $1,000---

Q THAT'S A TRUE -- NOT BILLING -- NOT PASSING THROUGH AN ACTUAL COST. THAT'S WHAT THAT IS. THAT'S ANOTHER ONE WHERE LANDMARC WAS NOT PASSING THROUGH AN ACTUAL COST?

A THAT'S NOT TRUE BECAUSE THEY'RE NOT PASSING THROUGH AN ACTUAL COST OF MATT-LYNN. YOU NEED TO DEFINE THAT A LITTLE BETTER.

Q WELL, I UNDERSTAND. NOT PAYING A SUB AND NOT PASSING THROUGH AN ACCURATE COST, YOU DO DRAW A DISTINCTION BETWEEN THAT, RIGHT?

A NOT VERY WELL, I GUESS.

Q YOU'VE GOT BILLINGS FROM MATT-LYNN AND THOSE ARE ON MATT-LYNN CARPENTRY QUICKBOOK ACCOUNTS. YOU'VE SEEN THOSE IN THERE.

THEY JUST DIDN'T -- LANDMARC JUST DIDN'T PAY THEM. EVEN THOUGH THEY GOT PAID BY THE VERNONS, THEY JUST DIDN'T PAY LANDMARC. BUT YOU DON'T HAVE ANY EVIDENCE THAT THOSE MATT-LYNN CARPENTRY QUICKBOOK NUMBERS AREN'T WHAT MATT-LYNN CARPENTRY SAYS LANDMARC OWES THEM JUST BECAUSE THEY DIDN'T FILE A LIEN?

A YOU'RE GOING BACK AND FORTH. I'M CONFUSED. I'M SORRY.

Q WE'VE LOOKED AT THE YODER'S WHERE THERE'S EVIDENCE THAT YOU'VE SHOWN BY GOING STRAIGHT TO YODER'S AND SAY, WHAT LANDMARC WAS BILLING THE VERNONS FOR WAS NOT THE TRUE COST.

A YOU'RE LOOKING FOR THE NUMBER OF THAT ACTUAL INVOICE BACKUP?

Q THE BACKUP TO SHOW WHAT LANDMARC WAS PASSING ON WAS NOT THE TRUE COST. AND I DRAW A DISTINCTION BETWEEN THAT KIND OF EVIDENCE AND WHERE LANDMARC BILLED FOR THE GUTTERS AND GOT PAID FOR THE GUTTERS AND JUST DIDN'T PAY THE SUB BECAUSE THAT SUBCONTRACTOR STILL THINKS THAT LANDMARC OWES THEM THE MONEY.

A THAT'S JUST IT. NONE OF THESE ARE LIKE THAT. ALL OF THESE, THE SUBCONTRACTORS ARE PAID IN FULL. I TALKED TO---

Q BY WHOM?

A WE EITHER RECONCILED AT THE END OR THEY BILLED THE VERNONS, FOR EXAMPLE, $1,000 BUT THEN TURNED AROUND AND PAID THE INVOICE TO THE VENDOR OF $500 AND THE $500 WOULD DISAPPEAR. SO, THAT IS EXACTLY WHAT MATT-LYNN, THAT IS EXACTLY WHAT SOUTHERN GUTTER---

Q BUT THAT'S THE -- THE $59,000 THAT Y'ALL PAID, YOU'RE SAYING, LOOK, I ALREADY PAID YOU BUT ACTUALLY YOU DIDN'T PAY THEM NOVEMBER -- THE TWO DECEMBER INVOICES NEVER GOT PAID BY THE

VERNONS, RIGHT?

A WHICH NUMBER ARE YOU TALKING ABOUT?

Q THE TWO INVOICES FROM LANDMARC THAT WERE IN DECEMBER, THE DECEMBER 2009 INVOICES THAT YOU TOLD YOUR FATHER-IN-LAW NOT TO PAY, THE VERNONS NEVER PAID THOSE DIRECTLY TO LANDMARC, RIGHT?

A NO. I ADVISED HIM NOT TO.

Q BUT WHAT YOU DID DO IS YOU PAID $59,000 OF IT DIRECTLY TO SUBCONTRACTORS THAT LANDMARC HAD INCLUDED IN THOSE TWO INVOICES IN DECEMBER THAT YOU TOLD YOUR FATHER-IN-LAW NOT TO PAY?

A AFTER MY REVIEW, YES.

Q NOW, THAT'S WHY I'M -- THERE'S A DISTINCTION BETWEEN LANDMARC GETTING PAID MONEY AND NOT PAYING THEIR SUBS AND WHAT THEY DID ON THE YODER'S BILL. DO YOU DRAW A DISTINCTION ON THAT?

A THEY ALSO DID THE SAME THING THEY DID ON THE YODER'S BILL TO OTHER PEOPLE.

Q WHAT'S ANOTHER ONE LIKE THAT WHERE THERE WAS A BILL THAT THE VENDOR -- THAT WAS DIFFERENT FROM WHAT THE VENDOR WAS SEEKING AS OPPOSED TO, I GOT A BILL FROM MATT-LYNN CARPENTRY, THEY PASS IT THROUGH AND THAT'S WHAT MATT-LYNN CARPENTRY THINKS THEY'RE OWED FROM LANDMARC AND THEY JUST NEVER GOT PAID FOR IT AS OPPOSED TO A COMPLETELY FABRICATED BILL THAT MISREPRESENTS THE COST. OTHER THAN THE YODER'S THING, DO YOU HAVE ANY EVIDENCE OF THAT?

A YES. LIKE I SAID AGAIN, WE RECONCILED WITH MATT-LYNN. I TALKED TO HIM PERSONALLY. HE SAID--

Q ALL RIGHT.

A --HE HAD BEEN PAID IN FULL.

MS. WRIGHT: LET HIM FINISH.

A I WENT BACK THROUGH THE ACCOUNTING. I ADDED UP ALL OF THE INVOICES THAT WERE INCLUDED IN THE BILLINGS FROM LANDMARC TO THE VERNONS. I TOOK THE CHECKS THAT WERE WRITTEN OUT OF THE LANDMARC ACCOUNT FOR 8447, DID THE MATH AND THAT DIFFERENCE IS $57,000.

Q IS IT YOUR TESTIMONY -- AND DID YOU LOOK AT ANY OTHER ACCOUNTING FROM LANDMARC THAT SHOWS THAT THERE'S STILL AN OPEN ACCOUNTS PAYABLE TO MATT-LYNN CARPENTRY?

A NO. I TALKED TO MATT-LYNN MYSELF. HE SAID HE HAD BEEN PAID IN FULL.

Q HE HAD -- HE'S SAYING HE'S BEEN PAID?

A YES.

Q SO, THAT'S THE $57,000 ON THAT -- SO, THAT $57,000, $1,000 ON THE GUTTERS AND THE $20,000 FROM THE YODER'S ARE NOT -- LANDMARC'S NOT REPRESENTING THE CORRECT COSTS? ANYBODY ELSE WHERE YOU'VE DONE THIS BACKUP NOT -- WHERE THEY JUST DIDN'T GET PAID?

A NO, I DON'T BELIEVE SO.

Q SO, IF WE TOOK GROSS---

A I'M SORRY, THE FIREPLACE.

Q THE FIREPLACE, WHERE IS THAT ONE?

A THE FOURTH ONE DOWN FOR $1,900.

Q SO, IF WE TAKE GROSS LANDMARC BILLINGS, WE SUBTRACT OUT THE $20,021.41, THE $1,985, THE $57,000, AND THE $1,000, THAT'S

ACTUALLY THE TRUE COSTS THAT LANDMARC INCURRED ON THE VERNON JOB AND THEN WE COMPARE THAT NUMBER TO WHAT THE VERNONS ACTUALLY PAID AND THAT SHOULD TELL US: IS THERE A DELTA BETWEEN WHAT THE VERNONS OWE LANDMARC OR NOT?

A BUT THERE ARE OTHER ISSUES WITHIN THAT THAT DON'T FALL INTO THE CATEGORY YOU'RE ASKING ME TO SEPARATE.

Q OKAY. ALL RIGHT. AT LEAST THERE WAS 15 PERCENT OF THE COSTS THAT LANDMARC, THEY GOT TO USE THAT FOR THEIR OVERHEAD, WHETHER OR NOT THEY PAID IT OUT OF THAT -- THEY HAD 15 PERCENT THEY WERE GETTING -- ACTUALLY, 12 PERCENT THEY WERE PAID ALL ALONG, BUT THEY COULD USE TO PAY THEIR OVERHEAD AND PAY THEIR SALARIES?

A CORRECT.

Q I'M REALLY GOING TO SWEEP THROUGH THIS STUFF. WHEN YOU CAME IN IN DECEMBER, WHEN CONTRACT ONE GOT INVOLVED, YOU HAD TALKED WITH THE SUBS ABOUT WHAT WAS LEFT TO BE DONE?

A CORRECT.

Q AND YOU HIRED OTHER PEOPLE TO DO WORK -- WHEN THE OTHER SUBS WOULDN'T COME BACK AND DO IT, YOU HIRED OTHER SUBS -- YOU TOLD THEM WHAT THE SCOPE NEEDED TO BE DONE AND YOU MET THEM?

A I DID BUT I DID NOT HIRE ANYBODY.

Q YOU COORDINATED THAT, RIGHT? YOU GOT THE SUBS AND TALKED WITH THEM WHAT THE SCOPE OF WORK WAS?

A I ASSISTED MY FATHER-IN-LAW DOING IT.

Q I UNDERSTAND. YOU DIDN'T GET PAID FOR THAT BUT YOU WERE

ACTING AS A CONSTRUCTION MANAGER AT THAT POINT? YOU JUST WEREN'T -- THE CONTRACTS WEREN'T GOING THROUGH YOU. WELL, I TAKE THAT BACK. THE PAYMENTS WERE GOING THROUGH YOU; THE CONTRACTS WERE NOT, RIGHT?

A CORRECT.

Q AND YOU WEREN'T LICENSED AS A SOUTH CAROLINA RESIDENTIAL BUILDER AS OF THAT POINT, WERE YOU?

A AT THAT POINT, NO.

Q LIGHTENING ROUND. YOU DON'T -- YOU WERE NEVER TOLD WHAT LANDMARC ALLEGED WAS THE DEFECTIVE MATERIAL THAT YODER'S ALLEGEDLY INSTALLED ON THE FIRST DECK?

A ALL I KNOW IS THE UNDERLAMENT FROM THE DECK, BUT I AM NOT AWARE OF---

Q YOU'RE NOT MAKING -- ANY PART OF THE DAMAGES CLAIM THAT ANYTHING YODER'S SUPPLIED OR LABOR THEY DID WAS INFERIOR OR INCORRECT, ARE YOU?

A THERE WAS SOME BUT THEY ACTUALLY CAME OUT AND FIXED IT FOR US.

Q YODER'S DID?

A YES, YODER'S DID.

Q CAN YOU LOOK IN MY NOTEBOOK AT ITEM 20. ARE YOU THERE YET?

A I AM, SIR.

Q LOOK UNDER ITEM 20 -- NOW, THIS IS A DOCUMENT YOU GENERATED, CORRECT?

A IT IS.

Q IF YOU LOOK BACK TO, THERE'S PAGE VERNON-605. ACTUALLY, IT'S THE PAGE BEFORE THAT, LOOK AT 604. THE DOCUMENT THAT IS IN YOUR NOTEBOOK WAS GENERATED AFTER YOU GOT STUFF ON THE DRYWALL, AND THE INSULATION AND THE STONE WORK, RIGHT?

A COULD YOU REPEAT THAT?

Q DID YOU HAVE THAT INFORMATION, DRYWALL, INSULATION AND STONEWORK WHEN YOU PREPARED EXHIBIT 20 IN MY NOTEBOOK?

A AT THIS TIME, I DID NOT HAVE THE BACKUP FROM YODER'S.

Q WHEN YOU HAD -- WHEN YOU TYPED IN DECEMBER -- EXCUSE ME -- IN 2010 WHENEVER YOU DID THIS DOCUMENT, IT SAYS, NOT INCLUDED IN ANY DRAW REQUEST FROM LANDMARC, THERE WAS $86,459.94 THAT, BASED ON YOUR ANALYSIS AT THAT TIME, WAS NOT INCLUDED IN ANY BILLINGS FROM LANDMARC TO THE VERNONS. A CHUNK OF THAT YOU NOW -- IS PART OF VERNONS -- THE DRYWALL, STONE AND INSULATION, RIGHT?

A IT IS. ACTUALLY, THIS WORKSHEET, AS YOU KNOW, IS IN HERE UPDATED.

Q THAT'S THE UPDATED VERSION?

A RIGHT.

Q AT LEAST, SOMETIME IN 2010 YOU UNDERSTOOD THAT THERE WAS ABOUT $86,000 THAT YODER'S HAD SUPPLIED TO THE VERNON HOUSE THAT HAD NOT EVEN BEEN BILLED BY LANDMARC?

A THAT DID NOT MATCH UP TO LANDMARC BILLINGS, YES.

Q BUT AT THAT POINT, 606, YOU HAD ANALYZED, AT THE BOTTOM OF PAGE 605, EXCUSE ME -- EXHIBIT 20, THE LINE WAS TOTAL DUE TO THE VERNONS FOR OVERBILLING FROM LANDMARC WAS ONLY $4,982.99 WHEN YOU

DID THIS, RIGHT?

A CORRECT.

MR. DUDLEY: THAT'S ALL I HAVE.

BY THE COURT: MS. WRIGHT.

MS. WRIGHT: THANK YOU, YOUR HONOR.

REDIRECT EXAMINATION BY MS. WRIGHT:

Q MR. JOHNSON, IF YOU WOULD TURN TO TAB 2 OF PLAINTIFFS' EXHIBIT 6.

A I'M SORRY, WHICH TAB?

Q TAB 2 OF PLAINTIFFS' 1.

A 2? IT'S ACTUALLY TAB 1?

Q WE HAVE TOO MANY NOTEBOOKS AROUND HERE.

BY THE COURT: I'M SORRY. WHICH NOTEBOOK?

MS. WRIGHT: TAB 1, PLAINTIFFS' NOTEBOOK EXHIBIT 6.

Q YOU JUST MENTIONED TO MR. DUDLEY YOU HAD UPDATED THE WORKSHEET HE REFERRED TO?

A YES. IT WAS UPDATED AFTER RECEIVING INFORMATION FROM YODER'S.

Q WOULD YOU SHOW THE JUDGE WHERE THAT'S AT, PLEASE.

A IT'S THESE PAGES RIGHT HERE. IT'S JUST A LITTLE BIT IN FRONT OF THE STONE TAB.

MR. DUDLEY: EXHIBIT 1 -- TAB 1.

BY THE COURT: IS IT TAB 1 OR TAB 2?

THE WITNESS: IT'S TAB 1.

MS. WRIGHT: TAB 1.

THE WITNESS: YOU'VE GOT A STONE TAB AT THE BOTTOM RIGHT?

BY THE COURT: YES, SIR.

THE WITNESS: FLIP TO THAT AND THEN GO BACKWARDS AND YOU'LL SEE -- THE OTHER WAY. BACKWARDS, SIR.

BY THE COURT: TOWARDS THE FRONT?

THE WITNESS: YES, TOWARDS THE FRONT. KEEP GOING TOWARDS THE BACK NOW. YOU'RE TOO FAR. JUST BEHIND THAT. KEEP GOING AND YOU'LL RUN INTO THIS PAGE RIGHT HERE, SIR. THERE YOU GO.

Q ALL RIGHT, NOW. WOULD YOU PLEASE SHOW ON THIS PAGE WHERE THIS WORKSHEET HAS BEEN UPDATED FROM THE ONE THAT MR. DUDLEY PRODUCED?

A SO, TAB -- IT'S ACTUALLY ON PAGE 3 OF 4---

Q ON PAGE 3 OF 4, AND THERE IS A DATE OF MARCH 12TH OF '09 AT THE BOTTOM; IS THAT CORRECT?

A THERE IS.

Q OKAY. WHAT IS THE AMOUNT YOU NOW SHOW YOU'VE UPDATED?

A WELL, I UPDATED IT AND MOVED THE YODER'S INVOICES FOR THE DRYWALL, STONE AND INSULATION UP TO THE -- ABOVE WHICH THE AMOUNTS WERE ACTUALLY BILLED TO LANDMARC FROM YODER'S, AND THE ITEMS THAT WERE NOT INCLUDED IN ANY OF THE DRAWS IS NOW $8,704.

Q NOW, IN THIS TAB, AM I CORRECT, IS THERE AN INVOICE FROM LANDMARC CUSTOM HOMES DATED JANUARY 30TH OF '09?

A FOR WHAT?

Q YODER'S STONE DIVISION, STONE VENEER?

A YES, MA'AM.

Q WOULD YOU PLEASE FIND THAT IN YOUR NOTEBOOK?
A WHAT'S THE DATE AGAIN?
Q IT'S GOING TO BE JANUARY 30TH, '09?
A IF YOU GO TO THE STONE TAB ON THE RIGHT, IT WILL BE RIGHT -- GO BACK ONE PAGE, SIR. YOU HAVE IT RIGHT THERE.
Q OKAY. WOULD YOU PLEASE READ WHAT IS IN BOLD PRINT ON THE SECOND PARAGRAPH THAT STARTS WITH "APPLICATIONS FOR PAYMENT"?
A IN BOLD: "ALL WORKMAN'S COMPENSATION AND GENERAL LIABILITY CERTIFICATES MUST BE ON FILE WITH LANDMARC PRIOR TO SENDING ANY REQUEST FOR PAYMENT."
Q WHAT DOES THAT TELL YOU IN YOUR EXPERIENCE AS A CONTRACTOR?
A WE WERE RELYING ON THAT SAYING THAT ALL INSURANCES WERE ALREADY TAKEN CARE OF BY LANDMARC FOR THESE VENDORS.
Q I NOTICE THERE AT THE BOTTOM THERE IS A SIGNATURE. IS THERE ANYTHING THAT CAUSES YOU CONCERN CONCERNING THAT SIGNATURE?
A ONCE AGAIN, IT'S A TYPED SIGNATURE FROM CHIP CHAPMAN.
Q MR. JOHNSON, DOES THE BOOK YOU HAVE IN FRONT OF YOU, PLAINTIFFS' EXHIBIT 6, DOES THAT INCLUDE A CERTIFICATE OF INSURANCE FROM YODER'S?
A IT DOES.
Q WOULD YOU PLEASE SHOW THE COURT WHERE THAT'S AT?
A IF YOU GO TO THE FIRST TAB, THE VERY FIRST PAGE AND GO ONE PAGE PAST IT -- TAB 1, SIR. FLIP ONE MORE PAGE.
BY THE COURT: ALL RIGHT.
A THERE YOU GO. THIS IS THE INSURANCE CERTIFICATE FROM

YODER'S BUILDING SUPPLY.

Q WHAT DO YOU CONCLUDE FROM THAT?

A THIS IS ACTUALLY ONE THAT THEY PROVIDED ME AFTER A REQUEST OF -- BASICALLY SHOWING THEIR INSURANCE COVERAGE FOR 12/31/08 THROUGH 12/31 OF '09. THEY'RE THE CERTIFICATE HOLDER OF TREHEL CORPORATION. IT WAS JUST -- I JUST ASKED FOR BACKUP OF PROOF OF THEIR INSURANCE.

Q NOW, GETTING BACK TO MATT-LYNN CARPENTRY, WHY WOULD MATT-LYNN SIGN A LIEN WAIVER?

A RELEASING ALL RIGHTS SAYING HE'S BEEN PAID.

Q NOW, WAS THE LANDMARC PAY REQUEST FOR YODER'S AUTHORIZED BY YODER'S?

A NOT TO MY KNOWLEDGE.

Q IF AN INVOICE -- IN YOUR EXPERIENCE AS A GENERAL CONTRACTOR, IF AN INVOICE WASN'T PAID TO A SUB, OR SUPPLIER OR VENDOR, IS THAT AN ACTUAL COST?

A NO.

Q IS IT YOUR TESTIMONY THAT WHEN LANDMARC COLLECTED THEIR 15 PERCENT THEY WERE ENTITLED TO, DID THEY COLLECT IT ON THE OVERBILLED AMOUNTS THAT YOU DESCRIBED IN YOUR TESTIMONY?

A ON THE BILLINGS, THEY ACTUALLY PUT THE 12 PERCENT AND, YES, IT WAS ON THE OVERBILLING.

Q THANK YOU, MR. JOHNSON.

MS. WRIGHT: NO FURTHER QUESTIONS, YOUR HONOR.

MR. RUCKER: NO FURTHER QUESTIONS FROM US.

MR. DUDLEY: NONE.

BY THE COURT: ALL RIGHT. THANK YOU, SIR.

MR. DUDLEY: I MEAN, NO, NO QUESTIONS.

BY THE COURT: ALL RIGHT. THANK YOU, SIR.

THE WITNESS: THANK YOU.

(WITNESS EXCUSED)

BY THE COURT: ANY OTHER WITNESSES?

MS. WRIGHT: NO. THAT CONCLUDES OUR CASE, YOUR HONOR.

BY THE COURT: ALL RIGHT. HOW MANY DO YOU ANTICIPATE?

MR. RUCKER: TWO. I DO NOT ANTICIPATE -- I BELIEVE, BASED ON THE TESTIMONY, THERE MAY BE AN ISSUE AS TO WHETHER THEY GOT NOTICE OF THE MECHANIC'S LIEN. I DIDN'T ANTICIPATE THAT BASED ON THE PLEADINGS. I HAVE MY PROCESS SERVER ON THE LINE, WAITING TO TESTIFY, APPARENTLY, ACCORDING TO MY SECRETARY, IF THAT'S NECESSARY. IF NOT, I JUST HAVE TWO.

BY THE COURT: IS THERE AN ISSUE ABOUT SERVICE OF THE MECHANIC'S LIEN?

MS. WRIGHT: THE ONLY THING THAT HAS ARISEN, YOUR HONOR, IS WHETHER OR NOT THE VERNONS WERE TRYING TO AVOID SERVICE OF THE MECHANIC'S LIEN WHICH, TO US, WOULD BE MOOT BECAUSE, OBVIOUSLY, THEY WERE SERVED WITH IT.

BY THE COURT: IS THERE ANY ISSUE ABOUT TIMELINESS AND THINGS OF THAT NATURE?

MR. RUCKER: NO.

BY THE COURT: ALL RIGHT. NOT AN ISSUE, THEN. HOW LONG DO

YOU ANTICIPATE YOUR WITNESSES GOING?

MR. RUCKER: AN HOUR-AND-A-HALF AT THE VERY MOST.

BY THE COURT: MR. DUDLEY?

MR. DUDLEY: MY WITNESSES -- BEFORE I MOVE ON ON THAT, THE WITNESSES, I HAVE A MOTION FOR A DIRECTED VERDICT.

BY THE COURT: WE'LL TAKE -- DO Y'ALL WANT TO TAKE ONE BREAK AND THEN COME BACK AND HEAR THE FINE LAWYERS' OUTSTANDING ARGUMENTS THAT I'M SURE---

MR. DUDLEY: IT WON'T TAKE BUT A MINUTE.

BY THE COURT: SIR?

MR. DUDLEY: SIR, IT WILL NOT TAKE BUT A SECOND.

BY THE COURT: ALL RIGHT, MR. DUDLEY.

MR. DUDLEY: WE JUST HEARD MR. JOHNSON TESTIFY THAT AFTER THE DATE OF THE YODER'S MECHANIC'S LIEN THE VERNONS PAID $59,000, WHATEVER THAT CHANGE WAS FROM TAB 2 OF THEIR EXHIBIT -- NOT TAB 2 -- TAB -- NO, IT WASN'T TAB 2 -- $59,000 -- I HAD BETTER GET THAT RIGHT -- $59,337.96 WAS PAID BY THE VERNONS FOR WORK PERFORMED BY LANDMARC'S SUBCONTRACTORS BEFORE THEY WERE TERMINATED. THAT $59,337.96 WAS PAID AFTER YODER'S MECHANIC'S LIEN WAS FILED AND THEY HAD NOTICE OF IT. THE MECHANIC'S LIEN STATUTE AND ALL OF THE CASE LAW SAYS THAT AT LEAST OUR MECHANIC'S LIEN ATTACHES TO THAT AMOUNT. THAT WAS A PAYMENT THAT THEY PAID THAT THEY SHOULD NOT HAVE PAID. THAT WAS A PREFERENCE. I THINK IT'S ABSOLUTELY UNDISPUTED THAT OUR MECHANIC'S LIEN ATTACHES TO THAT. LANDMARC'S DOESN'T. OF COURSE, OUR MECHANIC'S LIEN IS BASED ON THE STATUTE

THAT OUR MECHANIC'S LIEN IS SUPERIOR TO LANDMARC'S TO THE EXTENT THAT WE'RE SUBCONTRACTOR OWED. BUT OUR MECHANIC'S LIEN PREMES (PHONETIC) THAT $59,337.96 THAT THE VERNONS PAID.

BY THE COURT: WHEN WAS THE YODER MECHANIC LIEN SERVED ON THE VERNONS?

MR. DUDLEY: ACCEPTANCE OF SERVICE WAS DECEMBER 17TH, AND ALL OF THE PAYMENTS OF THAT $59- CAME AFTER THAT.

BY THE COURT: ALL RIGHT, MR. STERN.

MR. STERN: YOUR HONOR, IF I MAY, I DON'T KNOW HOW HE MAKES A DIRECTED VERDICT BEFORE HE PUTS HIS CASE UP.

BY THE COURT: WELL, THAT'S AN INTERESTING QUESTION.

MR. STERN: IT'S A FIRST FOR ME, WITH RESPECT FOR TOM TOO.

MR. DUDLEY: HOLD UP. THE VERNONS ARE THE PLAINTIFFS.

MR. STERN: RIGHT.

MR. DUDLEY: PART OF THE THING IS THAT THEY'RE SORTING OUT THE FACT THAT WE GOT NAMED IN THIS SUIT BECAUSE WE HAVE A MECHANIC'S LIEN. SO, THE ISSUE IS BASED ON THEIR -- AND IT'S UNDISPUTED AT THIS POINT, THAT THEY MADE PAYMENTS AFTER THEY HAD NOTICE OF OUR MECHANIC'S LIEN. THE LAW IS CLEAR -- I MEAN, THE TIMING OF IT -- WE CAN LET YOUR HONOR POSTULATE OVER THAT BUT THE STATUTE IS CLEAR. AND I FEEL LIKE I'VE GOT TO MAKE THE DIRECTED VERDICT BECAUSE---

BY THE COURT: YOU'RE PROTECTED ON THE RECORD. I'M GOING TO TAKE IT UNDER ADVISEMENT SO I CAN POSTULATE.

IS THERE ANYTHING YOU WANT ON THE RECORD AT THIS POINT?

MR. STERN: NO, SIR. WELL, YOUR HONOR, OTHER THAN THE FACT THAT WE DON'T PUT UP OUR DEFENSE UNTIL HE PUTS IN THE AMOUNT AND ESTABLISHES THE REQUIREMENTS WHICH ARE NOT DISPUTED BY TIMELINESS.

BY THE COURT: ALL RIGHT. I HEAR WHAT YOU'RE SAYING, MR. DUDLEY. WE'LL ADDRESS THAT AND MAKE SURE ALL OF THE PIECES ARE PUT INTO PLACE.

HOW MUCH DO Y'ALL WANT, AN HOUR OR AN HOUR AND FIFTEEN MINUTES?

MR. DUDLEY: AN HOUR'S FINE.

MR. RUCKER: I WOULD LIKE AN HOUR AND FIFTEEN MINUTES, ACTUALLY, TO TAKE CARE OF SOME STUFF BUT I CAN PROBABLY SHORTEN IT IF---

BY THE COURT: WE'LL START BACK AT 1:45.

MR. RUCKER: THANK YOU, YOUR HONOR.

BY THE COURT: THE COURTROOM WILL BE LOCKED UNLESS Y'ALL HAVE -- IF Y'ALL HAVE A NEED, JUST COME TO THE SECURITY DOOR AND WE'LL GET YOU ACCESS. BUT WE'LL OPEN THE COURTROOM BACK UP AT 1:30. ALL RIGHT. THANK YOU.

(WHEREUPON, A LUNCHEON RECESS WAS TAKEN AT 12:33 P.M.)

THE UNDERSIGNED, WANDA E. FUDGE, COURT REPORTER, OFFICE OF MASTER IN EQUITY FOR GREENVILLE COUNTY, SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, BEFORE THE HONORABLE CHARLES B. SIMMONS, JR., AS MASTER IN EQUITY FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 15TH DAY OF NOVEMBER 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

OCTOBER 1, 2012

Wanda E. Fudge

WANDA E. FUDGE, CCR

CERTIFIED COURT REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2010-CP-23-564

Bill J. Vernon, Jr. and Sandra Vernon,

Plaintiff,

vs.

Landmarc Constructors, Inc. d/b/a Landmarc Custom Homes, Marcus Dunn and Yoder's Building Supply, Inc.,

Defendants.

Yoder's Building Supply, Inc.,

Third-Party Plaintiff,

vs.

Sandra Ann Vernon and Billie James Vernon, Jr., Trustees, or their Successors in trust, under the Sandra Ann Vernon Living Trust, Dated June 12, 2000, and as Thereafter amended, Gary Dunn, Individually and Kerri Dunn, Individually,

---

TRANSCRIPT OF TESTIMONY

November 15, 2011
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

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(WHEREUPON, A LUNCHEON RECESS WAS TAKEN AT 12:33 P.M.)

(WHEREUPON, THE TRIAL RESUMED AT 1:45 P.M.)

MR. RUCKER: YOUR HONOR, I WOULD LIKE TO CALL MARCUS DUNN TO THE STAND.

BY THE COURT: ALL RIGHT.

MARCUS DUNN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

BY THE COURT: THANK YOU. COME AROUND AND HAVE A SEAT, PLEASE, SIR. (COMPLIES) IF YOU WOULD STATE YOUR FULL NAME, PLEASE, SIR.

THE WITNESS: MARCUS DUNN.

BY THE COURT: ALL RIGHT.

DIRECT EXAMINATION BY MR. RUCKER:

Q MARCUS, FOR CONVENIENCE AND TO EXPEDITE THINGS, WE'RE GOING TO RELY ON SOME OF THE EVIDENCE THAT'S ALREADY BEEN ADMITTED. DO YOU UNDERSTAND?

A OKAY.

Q WE MAY HAVE SOME ADDITIONAL THINGS TO ADD, BUT I'M NOT SO SURE WE WILL HAVE TO DO THAT AT THIS TIME. THIS WAY THERE WON'T BE YET ANOTHER NOTEBOOK COMING IN BECAUSE I THINK THIS WILL DO.

LET'S START WITH THE CONSTRUCTION AGREEMENT THAT WAS TESTIFIED TO PREVIOUSLY AS PLAINTIFFS' EXHIBIT NO. 1. SINCE THAT MATERIAL IS UP THERE, YOU CAN LOOK THROUGH THAT IF YOU WANT TO. IT'S IN THE SKINNY---

A ALL RIGHT.

Q BEFORE WE GET REALLY INTO THE MEAT OF IT, MARCUS, TELL THE

COURT WHAT YOU AT THIS TIME ARE DOING FOR A LIVING.

A I'M A STAY-AT-HOME DAD.

Q NO, AT THE TIME OF THE CONTRACT.

A I WAS A GENERAL CONTRACTOR.

Q WHAT DOES A GENERAL CONTRACTOR DO?

A WE BUILD BUILDINGS, HOMES, SUPERVISE AND OVERSEE SUBCONTRACTORS.

Q ARE YOU LICENSED TO PRACTICE RESIDENTIAL HOMEBUILDING IN SOUTH CAROLINA?

A YES.

Q WHAT DOES IT TAKE TO GET A LICENSE TO BUILD RESIDENTIAL HOMES AS A GENERAL CONTRACTOR?

A YOU HAVE TO TAKE A TEST AND HAVE A CERTAIN NUMBER OF YEARS' EXPERIENCE.

Q OKAY. HOW MANY YEARS' EXPERIENCE DO YOU HAVE?

A EIGHTEEN.

Q NOW, I WANT TO TURN YOUR ATTENTION TO PLAINTIFFS' EXHIBIT NO. 1. DO YOU RECOGNIZE THIS DOCUMENT?

A TAB 1? IT SAYS 38 ON IT.

Q IT'S PLAINTIFFS' -- IT'S EXHIBIT -- THE CONSTRUCTION AGREEMENT.

A OKAY. I'M SORRY.

Q DO YOU RECOGNIZE THAT DOCUMENT?

A YES.

Q WHAT IS THAT?

A A CONSTRUCTION CONTRACT.
Q ALL RIGHT. WHOSE CONSTRUCTION CONTRACT IS IT?
A IT'S THE VERNONS' HOME IN MOUNTAIN PARK.
Q DO YOU RECALL WHERE THIS HOME WAS BUILT?
A CLOSE TO MOUNTAIN PARK.
Q THAT'S IN GREENVILLE COUNTY, SOUTH CAROLINA?
A GREENVILLE COUNTY, YES.
Q HOW DID YOU FIRST COME TO WORK ON THIS JOB?
A THEY HAD VISITED SEVERAL TIMES TO SOME OF THE PROJECTS THAT WE HAD BUILT IN MOUNTAIN PARK---
Q WHO IS "THEY"?
A THE VERNONS.
Q DID THEY APPROACH YOU ABOUT DOING WORK ON THE PROJECT?
A YES.
Q THERE WAS TESTIMONY PREVIOUSLY IN THE PLAINTIFFS' CASE THAT YOU DRAFTED THIS CONSTRUCTION AGREEMENT. IS THAT TRUE?
A NO.
Q WHO DRAFTED THIS CONSTRUCTION AGREEMENT?
A JEFFREY GRAY.
Q TO YOUR KNOWLEDGE, WHO WAS JEFFREY GRAY IN RELATIONSHIP TO THIS CASE?
A THEIR ATTORNEY.
Q WHO IS "THEY"?
A THE VERNONS.
Q NOW, I BELIEVE YOU HEARD PREVIOUSLY THERE WAS A LETTER

ADMITTED INTO EVIDENCE THAT SHOULD BE, I BELIEVE, TAB 4 THAT WAS ADMITTED AS PLAINTIFFS' EXHIBIT NO. 4.

A YES.

Q DO YOU SEE THAT IN FRONT OF YOU?

A YES.

Q WHAT IS IT?

A THIS WAS A LETTER BEFORE WE WERE TERMINATED.

Q OKAY. WHO IS IT SIGNED BY?

A JEFFREY GRAY.

Q ALL RIGHT. DO YOU SEE A COPY LINE ON THIS?

A YES, BILL AND SANDI VERNON.

Q WAS IT YOUR BELIEF AT THIS TIME MR. GRAY WAS REPRESENTING THE VERNONS?

A YES.

Q DID YOU EVER -- WHERE WAS THE CONSTRUCTION AGREEMENT FILLED OUT AND DONE?

A AT JEFFREY GRAY'S OFFICE.

Q DID YOU -- TO YOUR KNOWLEDGE, WAS THERE ANY MODIFICATION OF THIS CONSTRUCTION AGREEMENT OUTSIDE, THEORETICALLY, THE PARTIAL LIEN WAIVERS? DID Y'ALL EVER SIT DOWN AND, FOR AN AMOUNT OF MONEY, ALTER THE ORIGINAL AGREEMENT?

A NO.

Q SO, THIS IS THE FULL AGREEMENT BETWEEN THE PARTIES, PLAINTIFFS' EXHIBIT NO. 1?

A CORRECT.

Q JUST BRIEFLY -- I'M NOT GOING TO MAKE YOU GO THROUGH EVERY PARAGRAPH BECAUSE IT WILL BE IN EVIDENCE FOR THE JUDGE TO REVIEW, BUT WHAT WERE YOUR DUTIES OR YOUR COMPANY'S DUTIES IN THIS CONSTRUCTION AGREEMENT, GENERALLY?

A GENERALLY, JUST TO PERFORM THE COMPLETION OF THE HOME.

Q OKAY. WHAT WOULD BE REQUIRED IN THAT PERFORMANCE?

A OVERSIGHT OF SUBS, VENDORS--

Q WOULD THAT REQUIRE -- I'M SORRY. GO AHEAD.

A --COORDINATION, SCHEDULE.

Q DID YOU BELIEVE IT WAS YOUR DUTY TO KEEP THE VERNONS INFORMED ABOUT WHAT WAS GOING ON ON THE PROJECT?

A YES.

Q DID YOU DO YOUR BEST TO DO THAT?

A YES.

Q DID YOU TELL THEM OF EVERYTHING THAT WAS IMPORTANT?

A YES.

Q HOW MUCH TODAY DO THE VERNONS OWE YOU, YOUR COMPANY, LANDMARC?

A $46,000.

Q YOUR MECHANIC'S LIEN, DO YOU RECALL HOW MUCH THAT WAS FOR?

A $139,000.

Q ARE YOU -- I'M NOT GOING TO MAKE YOU GO THROUGH THE BOOK, BUT IT'S BEEN ADMITTED ALREADY. WHAT WAS THE TOTAL AGAIN?

A $139,000 AND SOME CHANGE.

Q DOES THAT INCLUDE ATTORNEY'S FEES OR COSTS IN CASE -- IF

YOU'RE SUCCESSFUL?

A NO.

Q WHAT DOES THAT $139,000 REPRESENT?

A THE LAST TWO INVOICES OF THE PROJECT.

Q DO YOU RECALL -- I BELIEVE THOSE INVOICES ARE ALREADY IN THE EXHIBITS AS WELL. DO YOU RECALL WHAT WAS ON THOSE INVOICES?

A JUST NUMEROUS VENDORS AND SUBCONTRACTORS.

Q WERE THE TOTALS FOR THOSE VENDORS AND SUBCONTRACTORS, ASIDE FROM THE $46,000, WAS THAT THE REMAINING BALANCE OF THE $139,000?

A CORRECT.

Q HAVE YOU BEEN SUED BY SUBCONTRACTORS IN THIS CASE?

A YES.

Q WHO HAS SUED YOU THAT YOU'VE BEEN SERVED PAPERS WITH?

A YODER'S, FERGUSON, HOLDER ELECTRIC.

Q DO ANY OTHER SUBCONTRACTORS---

A CLAYTON TILE.

Q DID ANY OTHER -- FIRST OF ALL, WERE YOU SENT NOTICES OF THE MECHANIC'S LIENS OR DID THEY ACTUALLY SERVE A SUMMONS AND COMPLAINT ON YOU?

A BOTH.

Q THOSE NUMBERS ARE REPRESENTED WITHIN THE $139,000?

A CORRECT.

Q NOW, YOU HAVE BEEN SUED INDIVIDUALLY IN THIS. DID YOU OPERATE OUTSIDE THE CORPORATE STRUCTURE OF YOUR COMPANY IN ANY WAY?

A NO. I HAD PERSONAL GUARANTIES ON SOME ACCOUNTS.
Q DID YOU HAVE ANY PERSONAL GUARANTIES WITH YODER'S?
A NONE.
Q WHAT IS A PERSONAL GUARANTY, JUST FOR EDIFICATION?
A JUST A CONTRACTUAL TYPE AGREEMENT THAT IF SOMEBODY DOESN'T PAY THAT YOU WILL BE PERSONALLY LIABLE TO PAY IT.
Q DID YODER'S AT SOME POINT APPROACH YOU ABOUT SIGNING A PERSONAL GUARANTY?
A YES.
Q WHEN WAS THAT?
A THIS PAST YEAR.
Q WAS THAT AFTER THE FILING OF THIS LAWSUIT?
A YES.
Q DID YOU, YOURSELF, HAVE INTERACTION WITH BRYAN JOHNSON?
A YES.
Q OKAY. I KNOW HE'S ALREADY TESTIFIED. SO, I'M NOT GOING INTO TOO MUCH DETAIL WITH THIS BUT, TO YOUR KNOWLEDGE, WHO IS BRYAN JOHNSON?
A THE VERNONS' SON-IN-LAW.
Q WHAT WERE YOUR INTERACTIONS ABOUT WHEN YOU SPOKE WITH HIM OR EMAILED IF THERE WERE EMAILS?
A I JUST GAVE HIM A COPY OF THE INVOICES UNTIL THE FINAL MONTH OF THE PROJECT.
Q DID YOU EVER SPEAK WITH HIM AND SAY THAT Y'ALL WOULD USE ONE SINGLE CHECKING ACCOUNT FOR THIS CASE, FOR THIS CONSTRUCTION

PROJECT?

A NO.

Q WAS THERE ANYTHING, TO YOUR KNOWLEDGE, WITHIN THE CONTRACT OR ANY PAPERWORK WHATSOEVER THAT SAYS YOU WERE GOING TO USE ONE ACCOUNT FOR THIS PROJECT?

A NO.

Q ARE YOU REQUIRED UNDER ANY RULES THAT YOU'RE AWARE OF WHERE YOU HAVE TO KEEP ONE SEPARATE ACCOUNT?

A NO.

Q WAS IT PROVIDED IN THE CHECKING ACCOUNT BROUGHT BY -- I MEAN, THE CONSTRUCTION AGREEMENT DRAFTED BY JEFFREY GRAY?

A NO.

Q WHY DID YOU USE SEPARATE CHECKING ACCOUNTS IN THIS CASE?

A WE HAD OPERATING ACCOUNTS FOR OVERHEAD. WE HAD DIFFERENT PROJECT ACCOUNTS TOO.

Q DID YOU EVER HAVE ANY MONEY DELINEATED FROM THE VERNONS TO ONE CHECKING ACCOUNT?

A DEPOSITS MADE.

Q BUT Y'ALL MADE -- WHO MADE THOSE DEPOSITS?

A WE DID.

Q I WANT TO -- LET'S JUST TALK ABOUT GENERALLY THE CONSTRUCTION. THERE WAS TESTIMONY PREVIOUSLY THAT FOR THE FIRST FOUR OR FIVE MONTHS, IF NOT SIX MONTHS, THE PROJECT WAS GOING WELL. IS THAT TRUE?

A CORRECT.

Q WHEN DID YOU FIRST BECOME AWARE OF SOME ISSUES RELATED TO THE PROJECT?

A WHEN I WAS FIRED.

Q WHEN WAS THAT?

A DECEMBER 16TH -- THAT'S NOT IT.

Q ARE YOU LOOKING FOR JEFFREY GRAY'S LETTER?

A YES.

Q PLAINTIFF'S NO. 4 IN THAT BOOK.

A DECEMBER 11TH.

Q WERE YOU THREATENED WITH CRIMINAL PROSECUTION IN THIS CASE?

A YES.

MR. STERN: YOUR HONOR, HE'S LEADING A LITTLE BIT MUCH. IT WOULD BE NICE TO HAVE A QUESTION THAT CALLED FOR SOMETHING OTHER THAN A YES OR NO ANSWER.

MR. RUCKER: THE QUESTION IS: WERE?

MR. STERN: AND THE LETTER DOESN'T INCLUDE A THREAT. IT'S GOT A STATEMENT ABOUT IT. I WOULD ASK THAT HE NOT LEAD SO MUCH.

BY THE COURT: IT'S SUBJECT TO INTERPRETATION. REPHRASE THE QUESTION.

MR. RUCKER: YES, SIR.

Q AT ANY POINT, DID YOU RECEIVE A PHONE CALL FROM AN INVESTIGATOR FOR THE GREENVILLE COUNTY SHERIFF'S OFFICE?

A YES.

Q WERE YOU, IN FACT, ARRESTED AT ANY POINT?

A NO.

Q DID YOU GO AND TALK WITH THEM VOLUNTARILY AND FREELY?

A YES.

Q DID YOU SUPPLY THE INFORMATION THEY REQUESTED?

A YES.

Q ALL RIGHT. WHO -- HOW MANY TOTAL PAYMENTS WERE MISSED IN THIS CASE BY THE VERNONS?

A THE LAST TWO.

Q AGAIN, HOW MUCH DID THAT -- THAT TOTALED UP TO THE MECHANIC'S LIEN?

A CORRECT.

Q I BELIEVE YOUR WIFE IS GOING TO TESTIFY ABOUT THE ACTUAL MECHANICS AND DISTRIBUTION OF THE CHECKS; IS THAT RIGHT?

A CORRECT.

Q THERE WERE COMPLAINTS MADE DURING -- OBVIOUSLY, DURING -- THROUGHOUT THIS CASE AND THE PLAINTIFFS' CASE IN CHIEF THAT YOU HAD INSTALLED FAULTY MATERIALS. DID YOU HEAR ALL OF THAT DURING THE PLAINTIFFS' CASE?

A YES.

Q OKAY. LET'S TALK SPECIFICALLY ABOUT THE FIREPLACE ISSUE. ARE YOU FAMILIAR WITH THE ALLEGATIONS---

BY THE COURT: MR. RUCKER, I HATE TO INTERRUPT, IS THERE A CLAIM FOR DAMAGES RELATED TO THE FIREPLACE?

MR. STERN: IT'S PART OF OUR DAMAGES.

MR. RUCKER: IT IS.

BY THE COURT: OKAY. I'M SORRY. I MISUNDERSTOOD THE EARLIER

TESTIMONY THEN.

Q WHAT HAPPENED WITH THE FIREPLACE, JUST BRIEFLY? WHAT WAS THE SITUATION WITH THE FIREPLACE?

A THE ARCHITECT DESIGNED A STONE CHIMNEY. FROM THE BEGINNING, IT HAD TWO STACKED FIREPLACES. THE VERNONS REQUESTED TO MOVE THE ONE DOWNSTAIRS. THEN THEY REQUESTED TO REMOVE THE STONE FROM IT. SO, WE INSTALLED SIDING TO MAKE IT WEATHERPROOF.

Q WERE YOU---

A LATER, IT WAS DECIDED THAT THE CHIMNEY WOULDN'T BE VENTED. SO, THE CHIMNEY WAS NOT EVEN NECESSARY. SO, THEN IT WAS DECIDED TO REMOVE IT.

Q DID LANDMARC DO ALL OF THE -- SUBCONTRACTOR ON BEHALF OF LANDMARC DO ALL OF THAT?

A WE DIDN'T REMOVE IT.

Q DO YOU KNOW WHO REMOVED IT?

A NO.

Q WERE THE ISSUES AS DESCRIBED IN THE PLAINTIFFS' CASE ACCURATE ABOUT THE DAMAGES THAT WERE ALLEGEDLY DONE?

A THERE WERE NO DAMAGES.

Q DID YOU INSTALL IT AS YOU WERE ASKED TO INSTALL IT PER THE CONTRACT?

A YES.

Q ALL RIGHT. I WANT TO TALK TO YOU ABOUT THE ACCUSATIONS REGARDING THE OVERPAYMENTS OR ALLEGED OVERBILLING THAT'S ALREADY BEEN ADMITTED INTO EVIDENCE.

A OKAY.
Q JUST -- WE CAN TAKE THEM ALL AT ONE TIME, I THINK. IS THERE ANY REASON WHY AN AMOUNT WOULD BE BILLED TO THE VERNONS -- THE WORK WAS DONE AND THEN THE TOTAL CHECK AMOUNT WOULD ACTUALLY -- FOR THE WORK WOULD ACTUALLY BE LESS?
A YES.
Q WHY WOULD THAT BE?
A BECAUSE WE WERE ASKED IN THE BEGINNING NOT TO SUBMIT ACTUAL INVOICES BUT TO USE ESTIMATED TOTALS FOR THE SUBCONTRACTORS' WORK.
Q OKAY. WHO ASKED YOU TO DO THAT?
A BRYAN JOHNSON AND THE VERNONS.
Q DID YOU ASK THEM WHY THEY NEEDED IT THAT WAY?
A BECAUSE THEY WANTED TO SEE THE VALUE OF THE WORK IN THE SUBCONTRACTS, NOT JUST IN THE INVOICE.
Q YOU DID NOT MISLEAD THEM ABOUT THE AMOUNT THAT IT WAS GOING TO COST, CORRECT?
A NO.
Q WAS THE OVERAGE AMOUNT SUBTRACTED FROM THE $139,000 IN THE MECHANIC'S LIEN?
A NO.
Q HOW MUCH DO YOU BELIEVE -- WERE YOU ENTITLED TO THAT OVERAGE?
A WE WERE NEVER ALLOWED TO RECONCILE THE FINAL BILL BECAUSE WE WERE FIRED.

Q DO YOU THINK A LARGE PART OF THE PROBLEM HERE IS THAT THIS GOT TAKEN OUT OF YOUR HANDS BEFORE YOU COULD RESOLVE -- BEFORE YOU COULD GET THE PROJECT FINISHED AND RESOLVE IT?

A TOTALLY.

Q DO YOU BELIEVE THE HOUSE WAS INHABITABLE AT THE TIME YOU WERE FORCED OFF?

A IT HADN'T HAD A FINAL INSPECTION YET, BUT FROM WHAT I THOUGHT IT WAS SUPPOSED TO BE THE NEXT DAY.

Q TO YOUR KNOWLEDGE, BASED ON WHAT YOU'VE HEARD, WAS A FINAL INSPECTION DONE?

A I DO NOT KNOW.

Q WAS A CERTIFICATE OF OCCUPANCY SENT TO YOUR BUSINESS?

A YES.

Q WAS IT PROPER -- IT'S IN THE EVIDENCE AS WELL. WAS THAT SENT IN AND THEY WERE ALLOWED TO MOVE INTO THE PROPERTY?

A CORRECT.

Q MARCUS, WHAT WAS THE RESPONSIBILITY OF YOUR FATHER IN THIS CASE, IN THIS CONSTRUCTION PROJECT?

A HE BEGAN OUT ON THIS PROJECT AND A FEW MONTHS AFTER IT WAS STARTED HE WAS DIAGNOSED WITH THE LATE STAGES OF ALZHEIMER'S.

Q SO, THAT WAS THE LAST HE WORKED ON IT?

A YES. THE DOCTOR MADE HIM RETIRE.

Q BUT THAT WAS DURING THE TIME, AND EVEN SEVERAL MONTHS LATER THOUGH -- THAT WAS DURING THE TIME THEY'RE SAYING EVERYTHING WAS GOING CORRECTLY, RIGHT?

A YES.
Q YOU, IN FACT, WORKED ON -- DIDN'T YOU WORK SEVERAL MONTHS AFTER YOUR DAD RETIRED, AND YOU HAD NO OBJECTIONS TO THE WORK THAT WAS BEING DONE?
A CORRECT.
Q WHAT DO YOU BELIEVE -- KERRI'S, OBVIOUSLY, GOING TO TESTIFY LATER -- WHAT DO YOU BELIEVE IS DUE TO YODER'S AT THIS POINT?
A $27,000.
Q WHERE DOES $27,000 COME FROM?
A THAT WAS AFTER THE ACCOUNTS WERE RECONCILED, AND IT WAS IDENTIFIED THAT SOME FUNDS WERE MISAPPROPRIATED BY YODER'S ON OUR ACCOUNT, AND THERE WERE SOME DISCREPANCIES ON INVOICES MATERIAL DELIVERIES.
Q HAS THAT BEEN RESOLVED, THAT AMOUNT?
A YES.
Q HAVE YOU BEEN SUED ALSO BY YODER'S?
A YES.
Q DO YOU KNOW HOW MUCH THAT WAS FOR?
A $139,000.
Q I WANT TO TURN YOUR ATTENTION TO PLAINTIFFS' EXHIBIT NO. 3, PARTIAL LIEN WAIVER, OCTOBER 23, 2008---
BY THE COURT: WHICH TAB NUMBER AGAIN, PLEASE?
MR. RUCKER: I'M SORRY. THIS IS IN THE SMALL NOTEBOOK. IT'S TAB 3. AND THE DATE IS OCTOBER 23, 2008, OWNER: BILL AND SANDI VERNON, AND AT THE BOTTOM PLAINTIFFS' EXHIBIT NO. 3.

A OKAY.
Q DO YOU HAVE THAT IN FRONT OF YOU?
A YES.
Q WHAT DID A LIEN WAIVER MEAN TO YOU? WHAT WAS THE PURPOSE OF DOING THIS LIEN WAIVER?
A IT WAS FOR THE AMOUNT INCLUDED IN THAT BILLING PERIOD, JUST TO TRY TO RECONCILE THE PAYMENTS THAT WERE BEING MADE WERE GOING TO BE MADE.
Q I'M GOING TO TURN YOUR ATTENTION TO PARAGRAPH 3 OF THAT EXHIBIT.
A OKAY.
Q COULD YOU READ THAT PART OUT LOUD SO WE'RE ON THE SAME PAGE?
A "ALL OTHER PERSONS WHO HAVE FURNISHED LABOR OR MATERIAL TO AFFIANT FOR THE WORK, THROUGH THE CUTOFF DATE, WILL BE PAID ALL AMOUNTS TO WHICH THEY ARE ENTITLED."
Q FIRST OF ALL, WHO DRAFTED THIS PARTIAL LIEN WAVIER?
A WE DID.
Q WHAT WAS MEANT BY THE PHRASE, "WILL BE PAID ALL AMOUNTS TO WHICH THEY ARE ENTITLED"?
A IF JUST MEANS IF THERE IS A DISCREPANCY AT THAT TIME, A PARTIAL PAYMENT MAY BE MADE, A PERCENTAGE MAY BE MADE.
Q WHAT KIND OF DISCREPANCY WOULD THAT BE?
A SOMETIMES WHEN MATERIALS WERE INCLUDED IN THE BILL THAT WEREN'T DELIVERED YET OR BACK ORDERED, OR A FAULTY PRODUCT MAY BE DELIVERED OR THE WRONG ITEM.

Q WOULD THE DECK ISSUE BE INCLUDED IN THAT "INTO WHICH THEY ARE ENTITLED TO" CLAUSE?

A I WOULD SAY, YES.

Q I UNDERSTAND YOU TO SAY IT, BUT IS THAT PART OF WHAT YOU WERE DEALING WITH WHEN YOU PUT THAT CLAUSE IN?

A CORRECT.

Q WAS THAT PART OF YOUR FUNCTION AS A GENERAL CONTRACTOR TO MAKE SURE THAT SUBCONTRACTORS WERE PERFORMING PROPERLY?

A YES.

Q IS IT -- HOW WOULD YOU DECIDE WHEN PEOPLE GOT PAID, HOW SUBCONTRACTORS GOT PAID?

A IF THEY WERE AS FAR ALONG WITH THE WORK AS THEY HAD BILLED FOR OR IF THEY WERE WITHIN OUR PAYMENT TERMS IN OUR SUBCONTRACT.

Q WOULD THEY SEND YOU NOTICE OF SOME SORT TELLING YOU THEY HAD COMPLETED THEIR WORK ON THE PROJECT?

A THEY WOULD JUST BILL 100 PERCENT.

Q WOULD THAT COME IN PAPER FORM?

A TYPICALLY, YES.

Q IF IT DID NOT COME IN PAPER FORM, HOW WOULD IT COME?

A JUST AS A FINAL INVOICE.

Q BUT THAT WOULD BE IN PAPER FORM?

A YES.

Q AND I KNOW -- THE MATERIAL THAT WAS GONE THROUGH IN THE PLAINTIFFS' CASE IN CHIEF, WAS THAT MATERIAL DISCUSSED INCLUDED -- THAT WE JUST DISCUSSED IN THAT MATERIAL?

A I DON'T UNDERSTAND.
Q THAT WAS NOT WELL PHRASED. THE NOTICES FROM MATT-LYNN, FOR EXAMPLE, DID YOU SEE THAT IN THE MATERIAL THAT'S ALREADY BEEN ADMITTED INTO EVIDENCE?
A YES.
Q WERE ALL OF THOSE NOTICES INCLUDED IN THE EVIDENCE THAT'S BEEN ADMITTED EARLIER?
A YES.
Q DESCRIBE FOR THE JUDGE THE LAST DAY ON THE JOB. WHAT WAS STILL OUTSTANDING TO BE DONE?
A THE DRIVEWAY HADN'T BEEN APPROVED FOR US TO PUT IN. WE WERE IN THE PROCESS OF LANDSCAPING, PUNCH LIST WORK, FINAL PAINT, CARPET, TRYING TO GET READY FOR INSPECTION.
Q HOW LONG -- STRIKE THAT. I'M GOING TO TURN YOUR ATTENTION NOW TO THE LARGE GROUP OF DOCUMENTS, AND I AM LOOKING FOR THE TOTAL DONE BY BRYAN JOHNSON AS TO THE DAMAGES.
MR. DUDLEY: 19.
Q TAB 19 IN THE LARGE -- DO YOU HAVE IT IN FRONT OF YOU?
A ALMOST. OKAY.
Q ALL RIGHT. I'M GOING TO WORK THROUGH THIS. I KNOW YOU DIDN'T PUT THIS TOGETHER, BUT WE'RE TALKING ABOUT WHAT'S BEEN ADMITTED ALREADY.
A OKAY.
Q IT LISTS HERE ON LINE 2 ON THE FIRST PAGE OF TAB 19, $20,021.41, VERNONS, AND THEN $139,047.30 AND BESIDE IT HAS YODER

LIEN. DO YOU KNOW WHAT THAT $20,000 REPRESENTS?
A IT APPEARS TO BE THE OUTSTANDING BALANCE.
Q IS THAT THE OUTSTANDING BALANCE TO YODER'S?
A CLOSE.
Q WHAT IS THE OUTSTANDING BALANCE?
A WE HAD ONE AT $27,500, I BELIEVE. I DON'T KNOW WHERE THIS COME FROM.
Q BUT THAT'S WHAT WE'RE WORKING THROUGH, IS THESE NUMBERS.
A RIGHT.
Q FERGUSON LIEN, $21,430.85, IS THAT ACCURATE?
A YES.
Q OKAY. ELECTRICAL, IT SAYS HERE LANDMARC OWES THE VERNONS, $14,399.54. DO YOU OWE THAT MONEY?
A NO.
Q DO YOU KNOW WHAT THAT $14,399.54 REPRESENTS?
A PART OF IT IS FROM HOLDER ELECTRIC AND PART OF IT'S FROM SC STONEWORKS WHICH WAS IN OUR FINAL BILL THAT WASN'T PAID. I DON'T KNOW WHERE $14- COMES FROM.
Q THE FIREPLACE, $1,985, DO YOU KNOW WHAT THAT REPRESENTS?
A THAT'S WHERE AN ESTIMATED TOTAL WAS USED, BUT ONE OF THE FIREPLACES WAS DELETED.
Q I'M GOING TO TAKE YOU THROUGH BECAUSE THESE ARE GOING TO BE BASICALLY THE SAME QUESTION FOR EACH. NOT COUNTING THE LANDMARC LIEN FOR $69,546 BUT THE OTHER NUMBERS STARTING AT THE $57,450.35 TO MATT-LYNN DOWN TO PERMIT $147.50, DO YOU OWE ANY OF THAT TO

THE VERNONS?
A I DON'T OWE ANYTHING TO THE VERNONS.
Q GREEN HEATING AS WELL?
A MATT-LYNN'S PAID IN FULL.
Q $126,791.61, 8447 TRX, DO YOU KNOW WHAT THAT MEANS?
A NO IDEA.
Q DID YOU EXECUTE A WIRE TRANSFER OF $126,791.61 AGAINST THE VERNONS?
A NO.
Q $4,000, DID YOU PAY ME OUT OF AN ACCOUNT THAT WAS DUE TO THE VERNONS?
A NO.
Q DID YOU ISSUE $28,831.65 WORTH OF PERSONAL CHECKS OUT OF ANY ACCOUNT THAT WAS DESIGNATED FOR THE VERNONS?
A NOT DESIGNATED FOR THE VERNONS.
Q DID YOU USE IT OUT OF ANY ACCOUNT THAT WAS RELATED TO THE VERNONS OTHER THAN YOUR OPERATING ACCOUNT?
A THAT'S OUT OF MY OPERATING ACCOUNT, YES.
Q ALL RIGHT. $3,600 FOR UNKNOWN PAYEE, WAS THAT OUT OF ANY ACCOUNT THAT WAS DESIGNATED FOR LANDMARC, I MEAN, FOR THE VERNONS?
A I DON'T KNOW WHO UNKNOWN IS.
Q DID YOU SPEND ANY MONEY OUT OF ANY DESIGNATED VERNONS ACCOUNT FRAUDULENTLY IS WHAT I'M ASKING?
A NO.

Q THE SAME GOES FOR THE FINAL THREE -- WELL, THE FINAL TWO: CASCADE AND UTILITIES. NOTHING WAS DRAWN -- WAS ANYTHING DRAWN OUT OF AN ACCOUNT DESIGNATED FOR THE VERNONS?

A NO.

Q AND THEN $79,090.33, THAT WAS THE TESTIMONY OF BRYAN JOHNSON, HAVE YOU SEEN THAT NUMBER BEFORE?

A NEVER.

Q DO YOU AGREE THAT YOU OWE $380,822.10 TO THE VERNONS?

A NO.

Q JUST TO END IT UP, $583,893.62, DO YOU OWE THAT TO THE VERNONS?

A NO.

Q DO YOU STAND BY THE WORK YOU DID THERE?

A OF COURSE.

Q ARE YOU ASKING FOR ANYTHING IN EXCESS OF WHAT IS OWED?

A NO.

MR. RUCKER: NO FURTHER QUESTIONS.

BY THE COURT: YOUR WITNESS, MR. STERN.

CROSS-EXAMINATION BY MR. STERN:

Q MR. DUNN, DO YOU KNOW THE MEANING OF AN OATH?

A YES.

Q WHAT DOES THAT MEAN TO YOU?

A TELL THE TRUTH.

Q DO YOU HAVE THE SMALLER BOOK OF EXHIBITS IN FRONT OF YOU?

A YES.

Q PLAINTIFF'S EXHIBIT 3, THOSE ARE THE PARTIAL LIEN WAIVERS?
A CORRECT.
Q DO YOU SEE THERE WHERE IT SAYS, "AFFIANT SWEARS INDIVIDUALLY AND ON BEHALF OF LANDMARC CONSTRUCTION THAT THE FOLLOWING STATEMENTS ARE TRUE AND WITHIN THE PERSONAL KNOWLEDGE OF AFFIANT"?
A YES.
Q YOU SIGNED EACH OF THESE, CORRECT?
A CORRECT.
Q THIS WAS THE COVER SHEET ON THE APPLICATION FOR PAYMENT THAT WAS SENT TO THE VERNONS, ISN'T THAT TRUE?
A YES.
Q AND THAT INCLUDED ALSO THE MATERIAL SUBMITTED BY YOU FOR PAYMENT TO SUBCONTRACTORS, CORRECT?
A CORRECT.
Q YOU TRIED TO EXPLAIN THE DISCREPANCIES THAT MR. JOHNSON POINTED OUT BETWEEN -- REGARDING YODER'S, FOR EXAMPLE -- THE DIFFERENCE BETWEEN WHAT WAS BILLED AND WHAT WAS PAID, CORRECT?
A CORRECT.
Q AND YOU SAID THAT THAT'S BASED ON THE FACT THAT THE VERNONS WANTED ESTIMATES OF COSTS RATHER THAN ACTUAL COSTS?
A CORRECT.
Q CAN YOU SHOW ME IN EXHIBIT 1 THE CONTRACT WHERE YOU'RE ALLOWED TO BILL FOR ANYTHING OTHER THAN ACTUAL COST?
A IT'S NOT IN THERE.

Q THIS WAS SOMETHING THAT WAS TOLD TO YOU?
A CORRECT.
Q WHEN?
A BRYAN JOHNSON ASKED ME IN AN EMAIL, AND THE VERNONS ASKED US NUMEROUS TIMES TO SEND THEM COST REPORTS.
Q OKAY. SO, LET'S TURN, IF YOU WOULD, TO THE BIG BOOK AND IF YOU WOULD LOOK AT THE TAB -- THE EMAILS IMMEDIATELY BEFORE TAB 19 IN THAT BOOK. I'M LOOKING AT AN EMAIL THAT IS DATED JANUARY 15, 2009 AT 11:22 A.M.
BY THE COURT: I'M SORRY, MR. STERN. TAB 19?
MR. STERN: YES, SIR. IT'S RIGHT BEFORE TAB 19.
MR. DUDLEY: IT'S AT TAB 18, RIGHT BEFORE---
MR. STERN: YES, TAB 18, RIGHT BEFORE TAB 19. IT BEGINS WITH AN EMAIL---
BY THE COURT: TYPICALLY, THAT HAPPENS---
MR. STERN: SIR?
BY THE COURT: TYPICALLY, THAT HAPPENS.
MR. STERN: IT BEGINS WITH AN EMAIL AT THE TOP THAT SAYS FROM LANDMARC JANUARY 20, 2009.
BY THE COURT: I'M SORRY. WHICH EXHIBIT BOOK ARE WE IN?
MR. STERN: EXHIBIT 6, THE BIG BOOK.
BY THE COURT: ALL RIGHT.
Q DO YOU SEE THAT EMAIL?
A NO, I DON'T.
BY THE COURT: TAB 18?

MR. STERN: IT'S TAB 18 BUT IT'S -- LET ME COUNT, YOUR HONOR.

A WHAT WAS THE DATE?

Q THE DATE AT THE TOP SAYS TUESDAY, JANUARY 20, 2009 AT 8:39 A.M., AND IT'S SIX FROM THE BACK OF TAB 18, RIGHT BEFORE TAB 19.

BY THE COURT: AND THE DATE AGAIN?

MR. STERN: AT THE TOP IT SAYS JANUARY 20, 2009 AT 8:39 A.M.

Q AND DOWN AT THE BOTTOM IS THE EMAIL I WANT TO REFER TO FROM KERRI DUNN. DO YOU SEE THAT?

A I DON'T SEE IT HERE.

Q IT'S AN EMAIL JANUARY 15TH FROM LANDMARC TO BRYAN JOHNSON, IT SAYS, "HEY, BRYAN, WE MET WITH BILL AND SANDI AND WE WERE TALKING ABOUT SUBCONTRACTS AND SUBCONTRACT AMOUNTS. I WANTED TO GO AHEAD AND SEND YOU A COPY OF THE PAY APPLICATION THAT WE RECEIVE FROM OUR SUBCONTRACTS. TYPICALLY, WE RECEIVE THE PAY APPLICATION ALONG WITH THE INVOICE. WE FILE THE PAY APPLICATION WITH THE SUBCONTRACT AND PROVIDE THE INVOICE WITH THE BILLING." DO YOU SEE THAT? DID I READ THAT CORRECTLY?

A YES.

Q IT SAYS PROVIDE THE INVOICE, RIGHT?

A IF YOU SAY.

Q WELL, DID I NOT READ THAT CORRECTLY AND IS THAT NOT WHAT IT SAYS? CAN YOU FIND ANY EMAIL THAT REFERS TO, "DON'T PROVIDE US ACTUAL COSTS, PROVIDE US ESTIMATES"?

A THERE IS ONE.

Q OKAY. LET'S GO BACK TO YODER'S, AND I'M AT THE -- BEGINNING WITH THE STONE. ARE YOU WITH ME? GO TO THE TAB THAT SAYS "STONE" AT THE FRONT.

A OKAY.

Q OKAY. IMMEDIATELY AFTER THAT THERE ARE A SERIES OF LANDMARC CUSTOM HOMES STATEMENTS, CORRECT?

A CORRECT.

Q ON EACH -- THESE WERE PROVIDED AS PART OF THE PAY APPLICATIONS, THE FIRST PAGE OF WHICH WAS YOUR SWORN PARTIAL LIEN WAIVER, CORRECT?

A CORRECT.

Q ON THIS ONE IT SAYS, INVOICE PAY REQUEST NUMBER 1, FEBRUARY 27, 2009, FOR $6,800 -- THERE'S A NOTE OF $8,500, CORRECT? THE FIRST ONE, VERY FIRST ONE.

MR. DUDLEY: THE FIRST ONE SAYS $20,000.

A YES. MINE SAYS $43,640.

MR. DUDLEY: THE FIRST ONE IS JANUARY 30, 2009.

MR. STERN: EXCUSE ME.

Q OKAY. DO YOU SEE THE ONE THAT SAYS FEBRUARY 27, 2009?

A YES.

Q AND IT'S FOR $6,800?

A YES.

Q AND IT SAYS, SUBCONTRACTOR: YODER'S STONE, CHIP CHAPMAN?

A YES.

Q WHO AUTHORIZED YOU TO PUT CHIP CHAPMAN'S NAME ON THERE?

A CHIP CHAPMAN.
Q SO, HE TOLD YOU IT WAS OKAY TO BILL THE VERNONS FOR $6,800?
A CORRECT.
Q AND YOU DID THAT FOR ALL OF THE APPLICATIONS HERE?
A HE WASN'T ON THE PROJECT THE WHOLE TIME.
Q MR. DAVIS ALSO?
A CORRECT.
Q OKAY. CAN WE AGREE THAT IF I TOTAL THOSE UP, ALL OF THOSE INVOICES, YOU CHARGED AND COLLECTED FROM THE VERNONS $65,657 WHICH IS THE TOTAL ON THE INVOICES THAT ARE INCLUDED FOR YODER'S STONE?
A I ASSUME.
Q OKAY. THE TOTAL INVOICES -- AND YODER'S ACTUAL INVOICES ARE ALSO IN HERE, ARE THEY NOT, MR. DUNN?
A IT APPEARS TO BE.
Q AND THE TOTAL OF THOSE IS $58,981.38?
A YES.
Q AND SO YOU COLLECTED FROM THE VERNONS APPROXIMATELY $6,665.62 MORE THAN YODER'S ACTUALLY CHARGED YOU FOR THE STONE, ISN'T THAT TRUE?
A ON THIS INVOICE, YES.
Q ON ALL OF THE INVOICES FOR YODER'S STONE; IS THAT CORRECT?
A THESE, YES.
Q OKAY. IN THIS INSTANCE -- LET'S GO TO THE NEXT ONE, LET'S GO TO INSULATION. ARE YOU WITH ME?

A YES.
Q THIS VERY FIRST INVOICE IS APRIL 29 -- EXCUSE ME -- IT'S MARCH 27, 2009, CORRECT?
A YES.
Q AND IT SAYS, ORIGINAL CONTRACT AMOUNT ON THIS FIRST ONE, $7,814?
A CORRECT.
Q WHERE DID THAT NUMBER COME FROM, MR. DUNN?
A IT WAS AN ESTIMATE.
Q FROM WHO?
A IT WAS EITHER THE BUDGET NUMBER OR FROM YODER'S.
Q FROM YODER'S. OKAY. AND YOU SHOW THAT ORIGINAL CONTRACT AMOUNT, $7,814 AND THE AMOUNT DUE PER THIS REQUEST, $6,251.20, CORRECT?
A YES.
Q SO, YODER'S PROVIDED YOU AN ESTIMATE OF $7,814, CORRECT?
A I DON'T KNOW.
Q THAT'S WHAT YOU SAID EARLIER, I THOUGHT?
A I SAID EITHER WE DID OR YODER'S.
Q LET'S TURN OVER A FEW PAGES. INSULATION QUOTE, WHAT'S THE DATE OF THE QUOTE?
A FEBRUARY 3RD.
Q WHAT'S THE AMOUNT OF THE QUOTE, MR. DUNN?
A $5,451.
Q BUT YOU'RE SHOWING THE $7,814 AS THE AMOUNT OF THE CONTRACT?

A YES, BECAUSE YOU'RE LEAVING OUT ALL OF THE ALTERNATES THAT IS NOT SHOWN HERE.
Q SO, WHAT YOU'RE TELLING ME IS THAT THE CONTRACT AMOUNT WAS NOT $5,451 BUT SOME AMOUNT THAT TOOK IT TO $7,814?
A OR CLOSE TO IT, YES.
Q CLOSE TO IT. WOULD YOU AGREE WITH ME THAT THE TOTAL THAT'S BEEN PAID -- COLLECTED BY LANDMARC FROM THE VERNONS IS $7,814?
A NO. THIS SAYS, $6,251.
Q OKAY. LOOK AT THE NEXT INVOICE, MR. DUNN.
A OKAY.
Q $1,562.80. IF I TOTAL THOSE TWO NUMBERS, $7,814, THE AMOUNT OF THE CONTRACT THAT YOU SHOW ON THE FIRST APPLICATION, CORRECT?
A YES.
Q THE YODER INVOICES FOR INSULATION ARE ALSO INCLUDED IN HERE, ARE THEY NOT?
A CORRECT.
Q I SEE AN INVOICE OF $2,914. DO YOU SEE THAT?
A YES.
Q $1,090.10, CORRECT?
A YES.
Q $1,447.00?
A CORRECT.
Q IF I DID MY MATH CORRECT, THE TOTAL THAT'S SHOWN THAT YODER'S ACTUALLY BILLED YOU FOR WAS $5,451.10. DID I TOTAL THOSE CORRECT?

A YOU'RE LEAVING OUT THE WORKMEN'S COMP.
Q THE WORKMEN'S COMP?
A YES.
Q YOU HAD TO PAY YODER'S WORKER'S COMP?
A I DIDN'T HAVE INSURANCE CERTIFICATES.
Q YOU DIDN'T HAVE INSURANCE CERTIFICATES FROM YODER'S?
A NO.
Q WELL, LET'S GO BACK THEN AND LOOK AT THE VERY FIRST INVOICE FOR $6,251. OKAY?
A AFTER THE $6,251, I'M GOING TO READ THE BOLD TYPE, "ALL WORKERMAN'S COMPENSATION AND GENERAL LIABILITY INSURANCE CERTIFICATES MUST BE ON FILE WITH LANDMARC PRIOR TO SENDING ANY REQUEST FOR PAYMENT." DID I READ THAT CORRECTLY?
A YES.
Q CAN YOU SHOW ME THE AGREEMENT THAT YOU HAD WITH YODER'S TO PAY THEIR WORKER'S COMP?
A NO. THIS IS THEIR ESTIMATED TOTALS FOR THE WHOLE SUBCONTRACT I HAVE TO USE.
Q CAN YOU SHOW ME A BILL FOR THE DIFFERENCE OR A CHARGE FOR THE DIFFERENCE, WHICH I BELIEVE TO BE $2,362.90, BETWEEN WHAT YODER'S SAID THEY WERE DUE AND WHAT YOU COLLECTED FROM THE DUNNS -- EXCUSE ME -- FROM THE VERNONS? SHOW ME THE BILL FOR THE WORKER'S COMP.
A THEY DON'T BILL IT INDIVIDUALLY.
Q WELL, HOW DID YOU DETERMINE THAT THAT AMOUNT SHOULD BE

CHARGED TO THE VERNONS?

A WE HAVE TO ESTIMATE THE TOTAL.

Q OKAY. BUT SOONER OR LATER YOU PAY IT, RIGHT?

A YES.

Q SHOW ME THE BILL THAT YOU GOT FOR $2,362.90 THAT YOU PASSED ON TO THE VERNONS TO PAY BASED ON WORKER'S COMP WHEN YOUR OWN DOCUMENT SAYS THEY HAVE TO SUPPLY THE CERTIFICATE BEFORE THEY CAN BILL.

A OKAY.

Q YOU GOT IT?

A NO. I WASN'T PAID IN FULL. I COULDN'T PAY MY WORKMEN'S COMP.

Q IT'S YOUR TESTIMONY UNDER OATH TODAY THAT THAT DIFFERENCE IS BASED ON WORKER'S COMPENSATION THAT YOU TESTIFIED YODER'S DIDN'T HAVE?

A ON FILE, CORRECT.

Q WELL, DO YOU HAVE ANY CORRESPONDENCE OR ANY DOCUMENT SUGGESTING THAT YOU EVEN ASKED YODER'S FOR WORKER'S COMP?

A I DON'T KNOW.

Q BUT IN THIS CASE -- YOU TESTIFIED EARLIER, "WELL, EVERYTHING IS BASED ON AN ESTIMATE." THAT'S WHY THERE'S THESE DISPARITIES BETWEEN WHAT YOU CHARGED THE VERNONS AND WHAT THE SUBS PAID YOU, RIGHT?

A CORRECT.

Q BUT IN THIS CASE WE'VE GOT AN ESTIMATE DATED MARCH 9TH BEFORE -- THAT'S FOR $5,451, RIGHT?

A CORRECT.
Q DRYWALL, YODER'S DRYWALL, THIS ONE -- I'M AT THE VERY FIRST DOCUMENT AFTER DRYWALL, THIS IS A -- LANDMARC CUSTOM HOMES AND THIS IS A BILL THAT YOU SUBMITTED AND THE VERNONS PAID FOR $19,323; IS THAT CORRECT?
A YES.
BY THE COURT: WHAT'S THE DATE OF THAT, PLEASE?
MR. STERN: I'M SORRY. THE DATE OF THAT WOULD BE APRIL 29TH -- IT'S REQUEST NUMBER 1 -- APRIL 29TH, '09.
BY THE COURT: ALL RIGHT. THANK YOU.
Q HAS THE SAME NOTE ABOUT THE WORKER'S COMP, CORRECT?
A CORRECT.
Q DOWN THERE IT SAYS, "CERTIFICATE OF SUBCONTRACTOR," AND IT'S GOT YODER'S DRYWALL, DAVID POWELL. WHO AUTHORIZED YOU TO EXECUTE THIS ON BEHALF OF MR. POWELL?
A DAVID POWELL.
Q DAVID POWELL DID. DID MR. -- HARLEY YODER KNOW ABOUT THIS AS WELL?
A I DON'T KNOW.
Q DID YOU EVER CALL HIM UP AND ASK HIM TO CERTIFY?
A NEVER HAD ANY CORRESPONDENCE WITH HIM.
Q IT'S HIS COMPANY, RIGHT? HE'S ONE OF THE PRINCIPALS OF THE COMPANY?
A I ASSUME.
Q YOU NEVER HAD A CONVERSATION WITH HIM ABOUT IT?

A NO.
Q OKAY. CAN WE AGREE THAT THAT'S A BILL FOR APRIL 29, '09 FOR $19,323, RIGHT?
A YES.
Q YOU HAVE AN ESTIMATE FROM YODER'S BEFORE THAT DATE, DO YOU NOT, INCLUDED IN HERE?
A CORRECT.
Q THE AMOUNT THAT SAYS "DRYWALL QUOTE," RIGHT?
A YES.
Q $13,323?
A YES.
Q SO, YOU HAD A QUOTE ON MARCH 4TH; YOU HAD A BILLING OF $19,323. WHAT IS THE AMOUNT OF THE ACTUAL INVOICE THAT YODER'S BILLED YOU FOR THE INSULATION WORK?
A I DON'T KNOW.
Q WELL, IT'S IN THERE. TAKE A LOOK.
BY THE COURT: FOR INSULATION OR DRYWALL?
MR. STERN: I'M SORRY, DRYWALL, SIR.
BY THE COURT: ALL RIGHT. THANK YOU.
Q DO YOU SEE THE DRYWALL ESTIMATE?
A YES.
Q APRIL 29, '08 -- '09?
A YES.
Q SAME DATE AS YOUR BILLING TO THE VERNONS?
A ONE IS DATED MARCH 4TH.

Q THE QUOTE OF $13,323--
A IT'S A CONTRACT IN PROGRESS.
Q --BUT IT HAS AN INVOICE DATE---
A YES.
Q BUT YOU ACTUALLY WAS INVOICED $13,323 OR A DIFFERENCE OF $6,000 THAT YOU COLLECTED FROM THE VERNONS WHEN YODER'S ONLY BILLED YOU $13,323, CORRECT?
A YES.
Q WHICH WAS THE EXACT AMOUNT OF THEIR QUOTE?
A YES, ON THIS ONE.
Q IS IT WORKER'S COMP THAT REPRESENTS THE DIFFERENCE BETWEEN WHAT YOU GOT CHARGED AND WHAT YOU COLLECTED FROM THE VERNONS?
A NO.
Q WHAT IS THAT?
A PARTIALLY.
Q HUH?
A WE USED OUR ESTIMATE ON THE CONTRACT VALUE.
Q OKAY. SO, YOU CAN PRODUCE FOR THE COURT AN ESTIMATE SHOWING THAT THE TRUE COST OF THE INSULATION WAS $19,323 RATHER THAN THE $13,323?
BY THE COURT: WE'RE TALKING DRYWALL, CORRECT?
MR. STERN: DRYWALL, I'M SORRY.
A THE NUMBERS ARE IN OUR BUDGETS. WE HAD TO USE ESTIMATED TOTALS.
Q WELL, WHY WOULD YOU USE A DIFFERENT ESTIMATE THAN THE ONE

THAT YOUR SUBCONTRACTOR THAT WAS DOING THAT WORK WOULD CHARGE YOU?

A I COULD HAVE THREE OR FOUR DIFFERENT ESTIMATES. THAT DON'T MEAN THAT'S THE ACTUAL VALUE OF THE WORK.

Q WELL, YES, IT DID--

A NO, IT DON'T.

Q --BECAUSE THE PEOPLE WHO GAVE YOU THE ESTIMATE ARE THE PEOPLE WHO BILLED YOU AND DID THE WORK, RIGHT?

A IN THIS INSTANCE, YES.

Q IN THIS INSTANCE. SO, AS YOU SIT HERE TODAY, CAN YOU EXPLAIN WHY THERE'S A $6,000 DIFFERENCE BETWEEN WHAT YOU COLLECTED FROM THE VERNONS AND WHAT YOU PAID TO YODER'S FOR THE DRYWALL?

A BECAUSE WE USED ESTIMATED TOTALS ON THE SUBCONTRACT.

Q SO, YOU ADMIT---

A NO. WE WERE NEVER ALLOWED TO RECONCILE THE FINAL BILL BECAUSE WE WERE FIRED.

Q OKAY. BUT YOU HAD -- THIS FINAL BILL WAS RECONCILABLE AS OF APRIL 29, 2009, WASN'T IT?

A NO, IT WAS NOT. IT WASN'T FINISHED.

Q IT WASN'T FINISHED. THEY BILLED YOU IN FULL ON APRIL 29TH, DIDN'T THEY? THAT'S THE INVOICE THERE?

A YES, BUT WORK WAS STILL ONGOING. THE CONTRACT WAS NEVER COMPLETED. IT WAS NEVER RECONCILED.

Q WELL, WE KNOW, FOR EXAMPLE, YOU DIDN'T PAY YODER'S $36,000

IN MATERIALS BECAUSE OF A PROBLEM THAT YOU SAY WITH THE MATERIALS FOR THE DECK, CORRECT?

A WRONG.

Q OKAY. WHAT'S WRONG ABOUT WHAT I SAID?

A BECAUSE IT WASN'T JUST MATERIALS. IT INVOLVED LABOR AND CORRECTION OF THE DECK.

Q OKAY. BUT AS OF APRIL 29TH -- DID YOU GET ANOTHER BILL -- IS THIS WRONG? IS THERE ANOTHER BILL FROM YODER'S FOR DRYWALL THAT WE'RE MISSING?

A I DON'T KNOW.

Q SO, APRIL 29TH -- YOU HAVE AN ESTIMATE OF MARCH 4TH FOR THE DRYWALL. THEY BILL YOU $19,323 IN APRIL. YOU BILL THE VERNONS BUT YODER'S CHARGED YOU $13,323, THE SAME AMOUNT IN THAT $6,000. SO, AS OF APRIL 29TH, YOU KNEW THE DIFFERENCE BETWEEN WHAT YOU COLLECTED AND WHAT YOU PAID, ISN'T THAT RIGHT?

A NO.

Q BUT ANYWAY, MAY GOES BY. YOU DIDN'T RECONCILE IT IN MAY, RIGHT?

A TRUE.

Q ALL YOU WOULD HAVE HAD TO DO IS ON YOUR NEXT PAY APPLICATION ISSUE A CREDIT TO THE VERNONS, RIGHT?

A YES.

Q YOU DIDN'T DO IT?

A NO, BECAUSE--

Q DIDN'T DO IT IN MAY--

A --BECAUSE THEN THE DECK BECAME AN ISSUE.
Q DIDN'T DO IT IN JUNE, DIDN'T DO IT IN JULY, DIDN'T DO IT AUGUST, DIDN'T DO IT SEPTEMBER, OCTOBER, NOVEMBER. SEVEN MONTHS YOU DIDN'T RECONCILE IT, TRUE?
A YES.
Q FERGUSON ENTERPRISES, ISN'T IT TRUE THAT YOU COLLECTED FROM THE VERNONS FROM FERGUSON---
A WHAT TAB ARE YOU ON?
Q APRIL 23RD -- EXCUSE ME -- YOU COLLECTED A TOTAL OF $21,430.85, CORRECT?
A CORRECT.
Q FROM THE VERNONS. YOU DIDN'T PAY THAT MONEY TO FERGUSONS, DID YOU, SIR?
A NOT AT THE TIME, NO.
Q YOU UNDERSTAND BY LAW WHEN YOU -- WHEN THE VERNONS -- WHEN YOU COLLECT MONEY FROM THE VERNONS ON BEHALF OF A SUBCONTRACTOR, YOU'RE OBLIGATED BY LAW TO PAY THAT?
A NO.
Q YOU DIDN'T UNDERSTAND THAT AS A LICENSED RESIDENTIAL BUILDER IN SOUTH CAROLINA?
A NO.
Q DO YOU UNDERSTAND IT TODAY?
A THAT IS NOT TRUE. THAT'S NOT WHAT OUR LIEN WAIVER SAYS. THERE'S A DISCREPANCY ON THE INVOICE.
Q OKAY. SO, YOU DIDN'T PAY FERGUSON ANYTHING?

A NOT AT THAT PERIOD IN TIME, NO.
Q AND THEY WOUND UP FILING A LIEN AGAINST YOU AND THE VERNONS, DID THEY NOT?
A YES, BECAUSE THEY DIDN'T PAY THE FINAL BILL.
Q WAIT A MINUTE. WE'VE AGREED THAT YOU'VE COLLECTED $21,430.85 FROM THE VERNONS, CORRECT?
A CORRECT.
Q THE AMOUNT OF THE LIEN WAS $22,663.83?
A I DON'T KNOW. THEY HAD PAYMENTS MADE TO THEM TOO.
Q WOULD YOU AGREE THAT THE TOTAL THAT -- YOU COLLECTED THAT MONEY FROM THE VERNONS. AT THE VERY LEAST, THEY'RE DUE A CREDIT AND THAT LANDMARC OWES THAT MONEY TO FERGUSON OR THE VERNONS, ONE?
A TO FERGUSON, YES.
Q OKAY. YOU TESTIFIED EARLIER THAT MATT-LYNN HAD BEEN PAID IN FULL -- DO YOU REMEMBER THAT? -- ON DIRECT EXAMINATION?
A YES.
Q SO, IF THAT'S THE CASE, WOULD YOU AGREE WITH ME THAT ANY AMOUNT OF THE DIFFERENCE BETWEEN WHAT MATT-LYNN GOT PAID AND WHAT YOU COLLECTED FROM THE VERNONS, YOU OWE THE VERNONS?
A NO.
Q WHY IS THAT?
A BECAUSE HE WAS PAID IN FULL. I'VE ALREADY BEEN THROUGH IT WITH THE SOLICITOR'S OFFICE, FOR GOODNESS SAKE.
Q BUT YOU COLLECTED MORE MONEY THAN THAT?

A NO, I DID NOT.
Q OKAY. WHAT'S THE NEXT TAB, TAB 5? ARE YOU WITH ME?
A YES.
Q AGAIN, YOU BILLED A TOTAL TO THE VERNONS OF $136,475.35 FOR WORK DONE BY MATT-LYNN, ISN'T THAT RIGHT?
A YES.
Q THAT WAS -- HOW MUCH HAVE YOU PAID MATT-LYNN?
A $135,000.
Q YOU PAID $135,000 TO MATT-LYNN?
A YES.
Q WHAT EVIDENCE DO YOU HAVE TO PRODUCE IN THIS COURTROOM TODAY TO SHOW THAT YOU PAID THAT TO MATT-LYNN?
A CANCELED CHECKS.
Q CANCELED CHECKS. THERE'S SOME CANCELED CHECKS BEHIND TAB 5. ARE THESE THE CANCELED CHECKS YOU'RE TALKING ABOUT?
A SOME OF THEM.
Q THE EVIDENCE THAT MR. JOHNSON PUT IN BEFORE THIS COURT SHOWS THAT YOU WERE BILLED -- THAT LANDMARC BILLED THE VERNONS $136,475.35 FOR WORK TO BE COMPLETED BY MATT-LYNN, AND IT WAS PAID IN FULL TO YOU. YOU DON'T DISPUTE THAT, DO YOU?
A NO. IT WAS NOT PAID IN FULL.
Q IT WAS NOT PAID IN FULL?
A NO.
Q IT'S YOUR TESTIMONY UNDER OATH TODAY THE $136,475.35 WAS NOT PAID BY THE VERNONS?

A NO. THERE'S $10,000 IN THE FINAL TWO BILLS THAT WEREN'T PAID BY THEM. WE PAID IT THOUGH.

Q WELL, DO YOU HAVE ANY EVIDENCE TO SHOW THAT MORE THAN $79,000 -- ANY AMOUNT DIFFERENT THAN $79,025, AS MR. JOHNSON TESTIFIED TO, WAS PAID BY YOU TO MATT-LYNN? CAN YOU SHOW ME ANY RECORD THAT YOU HAVE--

A YES.

Q --TO ESTABLISH THAT?

A CANCELED CHECKS.

Q GO GET THEM.

A YOU SUBPOENAED THEM ALL. THEY'RE RIGHT HERE.

Q THEY'RE ALL RIGHT HERE.

A WELL, IF YOU DIDN'T INCLUDE THEM ALL.

Q WHAT I'M LOOKING FOR, CANCELED CHECKS FROM YOU TO MATT-LYNN SHOWING THAT YOU PAID $136,475.35.

A OKAY.

Q DO YOU HAVE IT?

A YES.

Q OKAY. CAN I SEE THEM?

BY THE COURT: MR. RUCKER, DO YOU KNOW OFFHAND WHAT THOSE CHECKS TOTAL?

MR. RUCKER: $136- AND SOME CHANGE.

Q WOULD YOU AGREE THAT TWO OF THESE CHECKS THAT I WAS HANDED ARE DRAWN ON ACCOUNT 1672?

A I DON'T KNOW. YES.

Q THOSE ARE TWO CHECKS FOR TOLLESON, ARE THEY NOT, SIR?
A THAT'S NOT THE RIGHT ONE.
Q WELL, YODER'S HAS INTRODUCED AN EXHIBIT AND THERE'S BEEN TESTIMONY ON DIRECT EXAMINATION THAT THE ACCOUNT THAT YOU USED FOR TOLLESON WAS THE ONE ENDING WITH 1672.
A OKAY.
Q AND THE ACTUAL CHECK SAYS TOLLESON 75 PERCENT AND SO DOES THE OTHER -- THE TWO I JUST HANDED YOU, CORRECT?
A I GUESS.
Q WELL, DOES IT SAY IT OR NOT?
A THAT DOES NOT SAY TOLLESON.
Q BUT IT'S DRAWN ON THE ACCOUNT THAT YOU SET UP FOR TOLLESON, CORRECT?
A YES.
Q SO, THAT LEAVES ME WITH THREE CHECKS FOR VERNONS, RIGHT?
A I DO NOT KNOW.
Q WELL, TAKE A LOOK AT THEM AND SEE IF THEY DON'T MATCH UP CHECK FOR CHECK WITH WHAT MR. JOHNSON---
A BRING ME THE FILE. WHAT DO YOU WANT ME TO DO?
Q DO THE CHECKS THAT WERE PRODUCED BY MR. RUCKER MATCH UP CHECK FOR CHECK WITH THE CHECKS THAT MR. JOHNSON HAS INCLUDED IN HIS TAB TO REFLECT THE PAYMENT OF $79,025?
A I DON'T KNOW WHAT $79,000 MEANS.
MR. STERN: YOUR HONOR, I WOULD LIKE TO MOVE THESE IN COLLECTIVELY AS A PLAINTIFFS' EXHIBIT. I GUESS THAT WOULD BE 15.

MR. RUCKER: IF THEY INCLUDE THE WIRE TRANSFER, WE HAVE NO OBJECTION.

A YES. THAT'S WHAT'S NOT IN HERE.

Q WIRE TRANSFERS THAT YOU MADE TO MATT-LYNN?

A YES.

Q WHERE ARE THOSE?

A THEY'RE IN THE FILE.

Q AT FIRST YOU SAID THESE WERE ALL OF THE CHECKS. NOW, YOU'VE ELIMINATED TWO OF THE CHECKS THAT BELONGED TO THE TOLLESON ACCOUNT, RIGHT?

A I DON'T KNOW WHAT YOU'VE DONE.

MR. STERN: WELL, THESE CHECKS WE CAN MARK COLLECTIVELY AS EXHIBIT 15.

Q NOW, THERE'S SOME OTHER SOURCE OF PAYMENT FOR MATT-LYNN, CORRECT?

A NO, NOT ANOTHER SOURCE FOR PAYMENT.

(CHECKS WITH DEPOSIT SLIPS MARKED AND ENTERED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT NO. 15)

Q WOULD YOU AGREE WITH ME THAT ANY DISPARITIES FROM WHAT YOU PAID -- COLLECTED FROM THE VERNONS AND WHAT YOU PAID TO MATT-LYNN YOU OWE BACK TO THE VERNONS?

A NO.

Q WHY?

A BECAUSE I DON'T OWE ANYTHING TO MATT-LYNN.

Q YOU'VE ESTABLISHED BY THESE RECORDS---

A THERE WAS $10,000 IN THE FINAL TWO BILLS OF THE VERNONS. THEY PAID ZERO THAT WE PAID MATT-LYNN TO PAY HIM IN FULL.

Q CAN YOU PRODUCE FOR ME ANY MORE EVIDENCE IN ANY FORM, CHECKS, WIRE TRANSFERS, THE CONTENTS OF SOMEBODY'S PIGGY BANK, MR. DUNN, THE TOTAL AMOUNT WOULD BE $79,025 THAT YOU PAID TO MATT-LYNN FOR THE VERNONS JOB?

A YES.

Q WHERE?

A IN THE FILE THAT SAYS MATT-LYNN. I DON'T KNOW WHAT YOU WANT ME TO DO. IT'S ALL BEEN PROVIDED IN DISCOVERY.

Q IT'S BEEN PROVIDED IN DISCOVERY?

A YEAH. YOU'VE SUBPOENAED ALL OF MY BANK ACCOUNTS.

Q OKAY. BUT RIGHT NOW, I'M GOING TO GIVE YOU TIME WITH YOUR COUNSEL, ANY OPPORTUNITY, TO SHOW WHERE YOU MADE PAYMENTS AND WHY THE VERNONS DIDN'T OVERPAY MATT-LYNN TO THE TUNE OF $57,450.35. NOW, YOUR MECHANIC'S LIEN IS FOR APPROXIMATELY $139,000, CORRECT?

A CORRECT.

Q AND THAT'S WHAT YOU PUT IN IN, I BELIEVE, JANUARY 2009?

A YES.

Q TODAY, YOU SAY YOU'RE ONLY OWED $46,000?

A OF MY FEE.

Q OF YOUR FEE?

A YES.

Q SO, ARE YOU ASKING FOR $139,000 OR ARE YOU ASKING FOR $46,000?

A AS OUR COMPANY'S FEE OR AS THE TOTAL MECHANIC'S LIEN?
Q I'M ASKING YOU -- I THOUGHT I UNDERSTOOD YOU ON DIRECT EXAMINATION TO SAY THE AMOUNT OF YOUR MECHANIC'S LIEN WAS $139,000 AND CHANGE BUT THAT YOU'RE ONLY SEEKING $46,000. DID I HEAR THAT INCORRECTLY?
A YES, YOU DID.
Q THEN WHAT ARE YOU SEEKING?
A $139,000.
Q OKAY. WHAT'S THE $46,000?
A THAT'S OUR OUTSTANDING FEE.
Q THAT'S YOUR OUTSTANDING FEE. LET'S TURN OVER TO TAB 7, SOUTHERN GUTTER. THE VERY FIRST DOCUMENT IN THAT TAB, WHAT YOU PROVIDED TO THE VERNONS IN ORDER TO COLLECT THIS MONEY, CORRECT?
A YES.
Q OCTOBER 29, 2009, THIS WAS PART OF A PAY APPLICATION THAT WAS PAID BY THE VERNONS, CORRECT?
A CORRECT.
Q AND YOU'VE SHOWN THE AMOUNT THERE IS $2,890, CORRECT?
A CORRECT.
Q AND THE CERTIFICATION SAYS THAT SOUTHERN GUTTER & SIDING'S AUTHORIZED SIGNATURE IS JOE DYCK?
A YES.
Q DID MR. DYCK GIVE YOU PERMISSION TO BILL THAT AMOUNT?
A YES.
Q ISN'T IT TRUE IF I LOOK OVER TO THE INVOICE ITSELF, IT'S

DATED (SIC) $1,890?
A YES.
Q AND THAT THE DIFFERENCE BETWEEN WHAT THE VERNONS PAID YOU AND WHAT YOU PAID SOUTHERN GUTTER IS $1,000?
A CORRECT.
Q YOU OWE THAT BACK TO THE VERNONS, DO YOU NOT?
A YES. WE ACKNOWLEDGED THAT IN OUR ANSWER.
Q SO, THE $139,000 -- I'M TRYING TO GET THIS IN MY MIND -- IN THE MECHANIC'S LIEN, HAVE YOU OR HAVE YOU NOT REDUCED IT BY THE AMOUNT OF OVERPAYMENTS?
A I DO NOT KNOW.
Q YOU DON'T KNOW WHAT YOU'RE SEEKING TODAY?
A YES.
Q $139,000 OR $46,000?
A WHAT?
Q ARE YOU SEEKING $139,000 IN YOUR MECHANIC'S LIEN OR $46,000 AS YOU'VE TESTIFIED TO ON DIRECT?
A $139,000.
Q OKAY. GOING BACK TO YOUR DIRECT EXAMINATION, YOU TALKED ABOUT THE DUTIES THAT YOU HAD, RIGHT?
A YES.
Q WOULD YOU AGREE WITH ME THAT ONE OF YOUR DUTIES WAS TO BE FAIR AND HONEST WITH THE VERNONS?
A YES.
Q TO CHARGE ONLY YOUR ACTUAL COST PLUS THE FEE AS PROVIDED IN

THE CONTRACT?
A CORRECT.
Q AND YOU TALKED ABOUT REGARDING THE CHIMNEY, THAT AN ARCHITECT HAD -- I GATHER SOMETHING WAS DRAWN WRONG?
A NO.
Q WHO HIRED THE ARCHITECT?
A WE DID.
Q GOING BACK, IF YOU WOULD, TO YODER'S BRIEFLY AND I'M ON YODER'S INSULATION AND, AGAIN, THE VERY FIRST TAB. ARE YOU WITH ME?
A UH-HUH (AFFIRMATIVE).
Q HELP ME UNDERSTAND WHY THE INSULATION QUOTE IS $5,451 AND WHAT YOU CLAIM TO BE THE CONTRACT AMOUNT IS $7,814.
A DO WHAT?
Q YOU SHOW A CONTRACT AMOUNT TO THE VERNONS FOR THE FIRST PAY REQUEST ON MARCH 27, 2009 FOR INSULATION, CONTRACT AMOUNT WAS $7,814, CORRECT?
A THAT'S THE ESTIMATED CONTRACT AMOUNT, YES.
Q IF I GO OVER AND SEE THE QUOTE FROM YODER'S FOR $5,451, CORRECT?
A ONE OF THEM, YES.
Q IS THERE ANOTHER YODER'S QUOTE THAT I'M MISSING?
A YES. THERE'S MORE.
Q THERE'S MORE ON THE YODER'S QUOTE?
A YES.

Q SO, DOES THAT MEAN YOU WOULD HAVE PAID YODER'S MORE?
A IF THEY DID CHANGES TO THIS ESTIMATE.
Q OKAY. WELL, IN FACT, IF I ADD UP ALL THAT YODER'S HAS CHARGED YOU AND BILLED YOU FOR, IT'S THE SAME AMOUNT OF THE ESTIMATE.
A OKAY.
Q SO, HELP ME UNDERSTAND WHERE THIS ADDITIONAL AMOUNT TO GO FROM A $5,514 (SIC) ESTIMATE TO THE $7,814 CONTRACT AMOUNT COMES FROM.
A IT'S AN ESTIMATED TOTAL.
Q BY WHO?
A IT'S FROM OUR BUDGET. WE JUST SELECTED TO USE YODER'S IN THIS CASE FOR THIS AMOUNT.
Q BUT THE EFFECT OF THAT BUDGET WAS ENABLING YOU TO REPRESENT TO THE VERNONS THAT YOUR ACTUAL COST WAS HIGHER THAN IT REALLY WAS, ISN'T THAT TRUE?
A NO.
Q AND IT INDICATES BY AUGUST OF 2009, THAT WAS THE LAST INVOICE FROM YODER'S, CORRECT, ON INSULATION?
A I'LL LOOK.
Q TAKE A LOOK.
A THAT'S THE LAST ONE IN THIS BOOK.
Q OKAY. ARE YOU SAYING YOU PAID YODER'S MORE THAN $5,451?
A I DON'T KNOW.
Q BUT YOU WOULD AGREE THAT AS OF THAT LAST BILLING IN AUGUST

YOU COULD HAVE RECONCILED THE DIFFERENCE BETWEEN WHAT YOU COLLECTED FROM THE VERNONS AND WHAT YOU PAID YODER'S, TRUE?

A NOT AT THE TIME.

Q WHY NOT?

A BECAUSE THAT'S WHEN THE DECK CAME UP, AND THAT'S WHEN WE HAD PAYMENTS WITHHELD ON TOP OF THAT. SO, NONE OF THIS GOT RECONCILED BEFORE IT WAS COMPLETED.

Q BUT YOU COULD HAVE RECONCILED, AT THE LEAST, WITH THE VERNONS, COULD YOU NOT?

A WHY AM I GOING TO RECONCILE IT WHEN I'M NOT GETTING PAID?

Q WELL, YOU HAD COLLECTED $7,814 AS OF APRIL 16, 2009. I BELIEVE THE TESTIMONY IS UNDISPUTED THAT is THE FIRST TIME YOU WEREN'T PAID BY THE VERNONS AND THAT THEY WERE PAID IN FULL BY THE BEGINNING OF DECEMBER, ISN'T THAT RIGHT?

A NO.

Q THE VERNONS HADN'T PAID YOU IN FULL AS OF THE FIRST OF DECEMBER?

A IN AUGUST.

Q THE VERNONS HAD NOT PAID YOU IN AUGUST?

A NOT IN FULL.

Q WHAT DID THE VERNONS OWE YOU IN AUGUST?

A AT THE TIME, ON TOP OF RETAINAGE, $15,000.

Q THAT'S RIGHT. AND THEY PAID IT WITH THE VERY NEXT PAYMENT, DIDN'T IT?

A THE NEXT ONE OR TWO.

Q THE NEXT ONE OR TWO. SO, YOU NEVER RECONCILED THIS EITHER?
A NOT AT THE TIME.
Q AND AS YOU SIT HERE TODAY, YOU OWE THAT, OR A CREDIT AT LEAST, FOR THAT DIFFERENCE BETWEEN WHAT YOU COLLECTED FROM THE VERNONS AND WHAT YOU CHARGED?
A YES.
Q AND THAT WOULD REDUCE THE AMOUNT OF YOUR MECHANIC'S LIEN, CORRECT?
A I WOULD ASSUME.
Q AS WITH ANY OVERPAYMENT AS MR. JOHNSON HAS CALCULATED?
A NO.
Q CAN YOU SHOW ME ONE OVERPAYMENT -- WELL, FIRST, LET ME ASK YOU THIS. WOULD YOU AGREE THAT THE ACTUAL COST IS WHAT YOU PAID SOMEBODY?
A IN MOST CASES, YES.
Q IN WHAT CASES WOULD IT NOT BE AN ACTUAL COST?
A IF IT WAS A PROGRESS PAYMENT.
Q OKAY. FAIR ENOUGH. WITH REGARD TO A FINAL RECONCILIATION OF PAYMENT, WOULD YOU AGREE WITH ME THAT YOU CAN ONLY CHARGE WHAT YOU ACTUALLY SPEND TO DO THE WORK, RIGHT?
A IN THE FINAL RECONCILIATION, CORRECT.
Q AND IF IT'S NOT PAID, IT'S NOT A COST, CORRECT?
A NOT TRUE.
Q WHY NOT TRUE?
A BECAUSE I GOT HUNG WITH A BUNCH OF MATERIAL BILLS THAT

WEREN'T PAID BECAUSE I WASN'T PAID.

Q I WASN'T TALKING ABOUT THAT SPECIFICALLY--

A WELL, THAT'S WHAT YOU ASKED ME.

Q --I'M JUST SAYING THAT -- SO, WHAT YOU'RE SAYING IS IT'S OKAY FOR YOU TO CHARGE THE VERNONS MORE THAN YOUR ACTUAL COST BECAUSE THE VERNONS DIDN'T PAY SOME BILLS. IS THAT WHAT YOU'RE TELLING THIS COURT?

A NO, I'M NOT.

Q THEN I DON'T UNDERSTAND. WHY DON'T YOU EXPLAIN IT TO ME?

A EXPLAIN WHAT? WHAT'S THE QUESTION?

Q EXPLAIN TO ME WHY I AM WRONG IN THINKING THAT UNLESS YOU PAY SOMETHING, IT IS NOT AN ACTUAL COST.

A I DON'T UNDERSTAND WHAT YOU'RE ASKING.

Q OKAY. I'M GOING TO SHOW YOU WHAT I WOULD LIKE TO MARK FOR IDENTIFICATION AS PLAINTIFFS' EXHIBIT 16.

(P&L JOB BUDGET COMPARISON MARKED FOR IDENTIFICATION AS PLAINTIFFS' EXHIBIT NO. 16)

Q CAN YOU IDENTIFY WHAT'S MARKED AS PLAINTIFFS' EXHIBIT 16?

A A BUDGET.

Q IS THAT PREPARED BY LANDMARC CONSTRUCTORS?

A YES.

Q DOES THAT REPRESENT THE BUDGET FOR THE VERNON RESIDENCE?

A ONE OF THEM, YES.

Q WOULD YOU GO DOWN THERE AND LOOK AT INSULATION, WHAT'S THE AMOUNT YOU HAVE IN THAT BUDGET?

A $7,000.

Q NOT $7,814?

A CORRECT.

MR. STERN: YOUR HONOR, I MOVE THE ADMISSION OF EXHIBITS 15 AND 16.

MR. RUCKER: I HAVEN'T ACTUALLY SEEN IT. NO OBJECTION.

(P&L JOB BUDGET COMPARISON ENTERED INTO EVIDENCE AS PLAINTIFFS' EXHIBIT NO. 16)

Q THANK YOU. THAT'S ALL OF THE QUESTIONS I HAVE.

BY THE COURT: ALL RIGHT, MR. DUDLEY.

CROSS-EXAMINATION BY MR. DUDLEY:

Q MR. DUNN, LANDMARC CONSTRUCTORS, THERE WAS A WHILE IN WHICH YOUR FATHER WAS THE LICENSOR FOR LANDMARC, CORRECT?

A NO.

Q NO. YOU WERE ALWAYS THE LICENSE HOLDER?

A YES.

Q YOU WEREN'T GRANDFATHERED IN -- YOU'RE NOT OLD ENOUGH TO BE GRANDFATHERED -- YOU ACTUALLY HAD TO TAKE AN EXAM, DIDN'T YOU, TO GET YOUR LICENSE?

A CORRECT.

Q PART OF THAT EXAM TO GET YOUR RESIDENTIAL BUILDER'S LICENSE, THERE WAS A SECTION CALLED BUSINESS LAW, DO YOU REMEMBER THAT?

A YES.

Q THAT TALKED ABOUT LIENS AND IT ALSO TALKED ABOUT THE STATUTES THAT OBLIGATED A CONTRACTOR WHEN A CONTRACTOR IS PAID BY

AN OWNER FOR WORK DONE BY A SUBCONTRACTOR, THAT THAT CONTRACTOR HAS TO PAY THAT SUBCONTRACTOR, RIGHT? DO YOU REMEMBER THAT?

A IN COMMERCIAL CONTRACTING, YES.

Q ACTUALLY, IT DOESN'T SAY---

MR. RUCKER: OBJECTION.

Q I'M NOT GOING TO ARGUE WITH YOU, BUT THE COURT CAN LOOK AT THAT STATUTE. SO, YOU DON'T REMEMBER, WHEN YOU TOOK YOUR RESIDENTIAL BUILDER'S LICENSE -- DO YOU HAVE A GENERAL CONTRACTOR'S LICENSE?

A YES.

Q YOU HAVE A GENERAL CONTRACTOR'S LICENSE IN ADDITION TO A RESIDENTIAL BUILDER'S LICENSE?

A YES.

Q ALL RIGHT. SO, THAT'S SOMETHING YOU LEARNED IN YOUR COMMERCIAL AND YOU DIDN'T KNOW THAT THAT APPLIES TO RESIDENTIAL?

A CORRECT.

Q NOW, WITH REGARDS TO A COST-PLUS CONTRACT, WHEN YOU FIRST STARTED dOING COST-PLUS CONTRACTS, YOU KIND OF GOT YOURSELF EDUCATED ON WHAT THAT MEANT, RIGHT?

A CORRECT.

Q ONE OF THE THEMES WAS THAT YOU HAD TO PASS ALONG YOUR ACTUAL COSTS TO THE OWNER TO GET REIMBURSED, RIGHT, OR TO GET PAID?

A YES.

Q ONE OF THE WAYS YOU HAD TO PASS ALONG YOUR ACTUAL COSTS WAS YOU HAD TO SEGREGATE THOSE COSTS, RIGHT?

A YES, SIR.
Q YOU COULDN'T JUST SAY, WELL, HERE ARE ALL OF THE PORT O LETS FOR ALL THREE OF MY PROJECTS, I'LL JUST CHARGE THAT TO WHATEVER. YOU HAD TO SEGREGATE YOUR COSTS SO THAT YOU WERE ONLY PASSING ALONG YOUR ACTUAL COSTS TO THAT HOMEOWNER, RIGHT?
A CORRECT.
Q NOW, THERE'S NO REQUIREMENT IN THAT CONTRACT OR ANYWHERE THAT SAYS YOU HAVE TO OPERATE A SEPARATE BANK ACCOUNT FOR EACH PROJECT, RIGHT? YOU TESTIFIED TO THAT.
A RIGHT.
Q BUT YOU CHOSE TO DO THAT. THAT'S THE WAY LANDMARC KIND OF OPERATES. YOU HAD SEPARATE BANK ACCOUNTS THAT MONEY FLOWED INTO -- THAT THAT'S WHAT YOU DID, YOU HAD SEPARATE BANK ACCOUNTS FOR EACH PROJECT?
A TRIED TO.
Q NOW, ONE OF THEM WAS AN OVERHEAD ACCOUNT?
A YES.
Q AND THEN YOU HAD ONE -- YOU HAD AN EXISTING ACCOUNT THAT BECAME THE VERNON ACCOUNT?
A THAT'S RIGHT.
Q IT'S THE SAME WAY WITH ALL OF YOUR OTHER ONES, YOUR WORK IN PROGRESS. DO YOU REMEMBER -- AS THE LICENSE HOLDER, YOU PRIMARILY GAVE THE FIELD OPERATIONS THE CONSTRUCTION PART, RIGHT?
A YES.
Q AND YOUR WIFE'S AN ENGINEER. AT THE TIME, IN 2006 WHEN SHE

STARTED WORKING WITH LANDMARC, SHE KIND OF DID THE DAY-TO-DAY ACCOUNTING AND WAS THE OFFICE MANAGER, RIGHT?

A YES.

Q NOW, IN REGARDS TO PAY APPLICATIONS AND SUBMITTING LIEN WAIVERS, YOU WERE INVOLVED IN THAT PROCESS ALSO, WEREN'T YOU?

A YES.

Q ALL RIGHT. AND YOU REVIEWED THE LIEN WAIVERS AND YOU PREPARED THE LIEN WAIVERS FOR SUBS AND THE OWNERS BEFORE THEY WERE SUBMITTED. YOU WERE INVOLVED IN THE ACCOUNTING PART OF THAT, TOO?

A CORRECT.

Q OKAY. LOOK AT MY NOTEBOOK. MINE IS THE BLACK NOTEBOOK. THERE IT IS. I'M SORRY, IT'S THE WHITE NOTEBOOK. LOOK UNDER TAB 20 -- I'M SORRY -- 21.

A OKAY.

Q THIS IS A DOCUMENT THAT WAS INTRODUCED AT YOUR WIFE'S DEPOSITION. THIS IS A DOCUMENT THAT YOU AND YOUR WIFE, TOGETHER, PUT TOGETHER, RIGHT? SHE TESTIFIED TO THAT. DO YOU REMEMBER COMPILING THE INFORMATION ABOUT WHEN THE VERNONS HAD PAID Y'ALL AND THEN KIND OF A--

A I DON'T REMEMBER.

Q --LISTING OF ALL OF THE YODER'S -- DO WHAT?

A I SAID, I DON'T REMEMBER.

Q BUT HERE'S WHAT I WANT TO ASK YOU, AT LEAST AS OF NOVEMBER, THAT WAS THE LAST PAYMENT THAT YOU RECEIVED FROM THE VERNONS,

RIGHT? YOU SUBMITTED A BILLING FOR NOVEMBER 5TH? DO YOU REMEMBER THAT?

A I THINK SO, YES.

Q WE CAN LOOK OVER AT YOUR LIEN WAIVERS. THAT WOULD CORRESPOND. PRIOR TO SUBMITTING A PAY APPLICATION TO THE VERNONS, YOU HAD TO COMPILE ALL OF THAT DATA?

A YES.

Q AND THEN YOU SUBMITTED IT TO THEM. SO, THERE MAY HAVE -- ALL OF THIS TIME, WORK WAS GOING ON, RIGHT?

A CORRECT.

Q SO, THERE MAY HAVE BEEN A LAG OF A COUPLE OF DAYS WHERE YOU DIDN'T GET INVOICES OR WORK WAS DONE AND THEN YOU SUBMITTED THAT PAY REQUEST TO THE VERNONS?

A YES.

Q YOU SUBMITTED A PAY REQUEST IN NOVEMBER -- I'M SORRY -- YOU GOT PAID IN NOVEMBER FOR A PAY REQUEST. THEN IN DECEMBER YOU WORKED -- YOU SUBMITTED TWO PAY REQUESTS IN DECEMBER, ONE WAS A PROGRESS PAYMENT AND ONE WAS YOUR FINAL. DO YOU REMEMBER THAT, YOUR TWO DECEMBER PAY REQUESTS?

A WE NEVER GOT -- THERE'S TWO. BUT, NO, WE NEVER EVEN GOT TO SUBMIT A FINAL.

Q WELL, YOU SUBMITTED ONE IN DECEMBER AS YOUR NORMAL ONE AND THEN LATER IN DECEMBER YOU SUBMITTED YOUR FINAL ONE THAT HAD -- YOU WERE SEEKING A RETAINAGE AND ALL OF YOUR COSTS THAT YOU HAD INCURRED SO FAR?

A YES.

Q BUT FROM NOVEMBER ALL OF THE WAY TO THE MIDDLE OF DECEMBER, LANDMARC WAS WORKING, RIGHT?

A YES.

Q AND YOU DIDN'T GET PAID FOR THOSE TWO INVOICES?

A NO.

Q THOSE WERE ACTUAL COSTS AND THEN RETAINAGE THAT HAD BEEN WITHHELD -- ALL ALONG THE PROGRESS, YOU WOULD BILL THEM FOR THAT UNPAID RETAINAGE THAT HAD BEEN WITHHELD, RIGHT?

A YES.

Q NOW, DURING THE PROGRESS YOU WERE PAID THE 15 PERCENT?

A NO.

Q I'M SORRY, YOUR 12 PERCENT, YOU WERE ENTITLED TO 15, YOU WERE PAID 12 PERCENT?

A CORRECT.

Q AND THAT MONEY YOU PUT INTO YOUR OVERHEAD ACCOUNT, RIGHT?

A I ASSUME.

Q AND YOU USED THAT?

A YES.

Q I MEAN, YOU LOOKED AT EXHIBIT 19 THAT THE VERNONS HAD. IT WAS $126,000 OF TRANSFERS, YOU TOOK YOUR 12 PERCENT AND USED IT FOR YOUR OVERHEAD AND PAYING YOURSELF, RIGHT?

A YES, TO RUN THE BUSINESS.

Q YOU DIDN'T USE ANY OF THAT 12 PERCENT TO PAY SUBS, DID YOU?

A NO.

Q YOU KNEW WHEN YOU GOT PAID BY THE VERNONS THAT THERE -- UP UNTIL THE DECK ISSUE, YOU KNEW YOU HAD AN OBLIGATION THAT IF YOU SUBMITTED A PAY REQUEST THAT INCLUDED WORK FOR YODER'S AND THE VERNONS PAID YOU THAT, YOU HAD AN OBLIGATION TO PAY YODER'S?
A CORRECT.
Q NOW, YOU SAY YOU HAD 60 TO 90 DAY TERMS WITH YODER'S, RIGHT?
A CORRECT.
Q THE VERNONS WEREN'T PAYING YOU 60 TO 90 DAYS LATE; THEY WERE PAYING YOU A LOT LESS THAN THAT, RIGHT?
A TYPICALLY, YES.
Q THEY WERE PAYING YOU QUICKER THAN WHAT YOUR TERMS WERE -- YOU THOUGHT YOUR TERMS WERE WITH YODER'S, RIGHT?
A RIGHT.
Q BUT YOU DON'T HAVE ANYTHING IN WRITING THAT SAYS YOU'RE ENTITLED TO 60 TO 90 DAYS, DO YOU?
A NO.
Q SO, THE DECK ISSUE COMES UP IN THE SUMMER OF 2009, RIGHT?
A YES.
Q NOW, THE VERNONS WITHHELD $15,000 FROM YOU AND, ULTIMATELY, THEY PAID YOU THAT $15,000 BACK, RIGHT?
A RIGHT.
Q AND YOU TOLD YODER'S, "AT SOME POINT, I WANT A $36,000 CREDIT," RIGHT?
A CORRECT.
Q IT WAS YOUR TESTIMONY IN YOUR DEPOSITION THAT WAS ONLY --

THE WAY YOU CALCULATED THAT $36,000 THAT WAS THE MATERIAL THAT YODER'S SUPPLIED FOR THE DECK TO BE BUILT THE FIRST TIME. THAT'S HOW YOU EXPLAINED HOW YOU ARRIVED AT THAT NUMBER, RIGHT?

A I THINK SO, YES.

Q AND, REMEMBER, WHEN I ASKED YOU WHAT THAT WAS ALL ABOUT, YOU SAID, "WELL, YODER'S HAD SUPPLIED A DEFECTIVE DRAIN."

A CORRECT.

Q THAT WAS WHAT YOU SAID. THAT WAS YOUR TESTIMONY. YOU SAID IT WASN'T DEFECTIVELY INSTALLED. THERE WAS A DEFECT IN HOW IT WAS DELIVERED, RIGHT? THAT WAS YOUR TESTIMONY?

A CORRECT.

Q SO, IF IT WASN'T DEFECTIVELY INSTALLED, MATT-LYNN CARPENTRY CHARGED YOU TO REBUILD THAT DECK?

A YES.

Q DID YOU BRING THAT BILL TODAY?

A I DON'T KNOW.

Q NOW, LET ME ASK YOU THIS TOO: IF IT WAS THE DEFECTIVE MATERIAL, NOT LIKE DAMAGED AT THE YODER'S WAREHOUSE, IF IT WAS DEFECTIVE MATERIAL, YOU COULD HAVE MADE A CLAIM AGAINST THE MANUFACTURER FOR THAT, RIGHT?

A WE REQUESTED YODER'S TO DO THAT, BUT I DON'T THINK IT WAS EVER DONE.

Q YOU COULD HAVE DONE THAT TOO, COULDN'T YOU?

A WELL, IT WOULD HAVE TO BE THROUGH YODER'S BECAUSE THEY SUPPLIED IT.

Q ALL RIGHT. OKAY.
A I GUESS.
Q BUT IF IT HAD BEEN DEFECTIVE MATERIAL, IF THERE WAS SOMETHING WRONG WITH IT, THAT MATERIAL SUPPLIER OBVIOUSLY, THAT MANUFACTURER WOULD HAVE PAID FOR THE REPLACEMENT MATERIAL AND THE LABOR. THEY WOULD HAVE DONE THAT?
A WE TRIED TO DO THAT, YES.
Q IF IT WAS NOT DEFECTIVELY INSTALLED, YOU COULD HAVE BILLED YODER'S FOR EVEN THE LABOR INCLUDED IN REBUILDING THE DECK BECAUSE THAT'S NOT SOMETHING MATT-LYNN CARPENTRY OUGHT TO HAVE TO SUCK UP, SHOULD THEY?
A TRUE.
Q NOT SOMETHING THAT LANDMARC SHOULD SUCK UP EITHER, RIGHT?
A TRUE.
Q AND YET YOU HAVE NEVER BEEN ABLE TO PRODUCE ANY DOCUMENTATION TO BACK UP THE $36,000 IN MATERIALS; YOU HAVEN'T PRODUCED ANYTHING THAT MATT-LYNN CARPENTRY GOT PAID TWICE TO REBUILD THE DECK. YOU DIDN'T HAVE -- YOU HAVEN'T PRODUCED ANY DOCUMENTATION TO BACK UP THAT $36,000, HAVE YOU?
A I THINK WE HAVE.
Q WELL, LET ME ASK YOU, DO YOU REMEMBER ME TAKING YOUR DEPOSITION? BECAUSE I ASKED YOU THIS, MR. DUNN. BEFORE I GET TO THAT AGAIN, I WANT TO ASK YOU AGAIN. I ASKED YOU AT YOUR DEPOSITION: WHERE IS THE SUPPORTING DATA? AND YOU DIDN'T KNOW. DO YOU REMEMBER ANSWERING IT THAT WAY?

A YES.
Q DO YOU REMEMBER ME ASKING YOU AT YOUR DEPOSITION, WHEN I ASKED YOU HOW YOU ARRIVED AT IT, YOU DIDN'T KNOW HOW YOU KNEW THAT. YOU DIDN'T KNOW HOW YOU HAD ARRIVED AT IT, THE $36,000?
A CORRECT.
Q WHEN I ASKED YOU WHERE THE BACKUP DOCUMENTATION FOR ALL -- YOU DIDN'T KNOW WHERE THAT WAS?
A NO.
Q AND YOU DON'T KNOW WHERE IT IS TODAY, DO YOU?
A I GUESS IT'S IN THE DISCOVERY DOCUMENTS.
Q NOW, IF YOU WOULD -- YOU AGREE THAT AS OF NOVEMBER OF 2009, THAT WAS WHEN YOU GOT YOUR LAST PAYMENT FROM THE VERNONS. YOU AGREE THERE WAS AN AMOUNT OWED YODER'S?
A CORRECT.
Q YOU HAD A PROBLEM WITH -- MAYBE WE CAN GO OVER THAT WITH YOUR WIFE -- YOU HAD A PROBLEM WITH THE WAY YODER'S HAD TAKEN CHECKS AND APPLIED THEM TO OTHER LANDMARC JOBS?
A TRUE.
Q SO, YOUR CONTENTION WAS, "WELL, THAT'S A CHECK THAT SHOULD HAVE BEEN APPLIED TO THE YODER'S ACCOUNT BUT YOU APPLIED IT TO THE MARSHALL ACCOUNT." THAT WAS A HOUSE THAT HAD BEEN DONE IN THE EARLIER PART OF '09, RIGHT?
A I THINK SO.
Q SO, AS OF NOVEMBER '09, THE MARSHALL JOB LIEN RIGHTS WERE GONE NOW, AREN'T THEY?

A I DON'T KNOW.
Q WELL, THE MARSHALL JOB WAS DONE IN JANUARY, IN JANUARY OF '09. THAT PROJECT WAS DONE.
A OKAY.
Q NOW, YOU HAD IN YOUR ACCOUNTING -- YOU USE QUICKBOOKS, RIGHT?
A YES.
Q YOU KEEP TRACK AND YOU SEGREGATE ALL OF YOUR COSTS BY JOB ON QUICKBOOKS, DON'T YOU?
A YES.
Q ALL RIGHT. YOU ALSO DID THAT OR YOU ATTEMPTED TO DO THAT WITH ALL OF THESE DIFFERENT BANK ACCOUNTS. YOU WERE ATTEMPTING TO SEGREGATE YOUR COSTS PER JOB BECAUSE YOU WERE PASSING ALONG ONLY YOUR COSTS TO THESE OWNERS, RIGHT?
A YES.
Q WHEN YOU PRINT OUT CHECKS IN QUICKBOOKS, A NEAT LITTLE THING, KEYSTROKE, YOU CAN PUT A MEMO SECTION AS TO HOW YOU WANT THAT CHECK CREDITED, CAN'T YOU?
A I GUESS.
Q WELL, WE LOOKED AT EXHIBIT -- WHAT'S EXHIBIT 15, CAN YOU PULL THAT OUT? THESE ARE CHECKS FOR LANDMARC, RIGHT?
A YES.
Q LET'S LOOK AT THE FIRST ONE, CHECK NUMBER 1357, A CHECK PAYABLE TO MATT-LYNN CARPENTRY, AND IN THE MEMO SECTION IT SAYS, "VERNON RESIDENCE"?

A CORRECT.

Q SOME OF THESE CHECKS -- CHECK NUMBER 1345 IS A CHECK TO MATT-LYNN CARPENTRY AND THERE'S NOTHING IN THE MEMO SECTION.

A YES.

Q SO, I'M NOT SAYING THAT YOU NEVER DO THIS, BUT IF YOU NEEDED TO COMPILE ALL OF YOUR CHECKS TO SHOW THAT YOU PAID MATT-LYNN CARPENTRY ON ONE PROJECT, YOU CAN COMPILE ALL OF THESE CHECKS WITH NOTHING IN THE MEMO SECTION AND SAY THAT WENT TO PAY THE VERNON RESIDENCE. YOU COULD DO THAT, COULDN'T YOU? BECAUSE IT DOESN'T SAY TOLLESON/SMITH, OR SOME OTHER PROJECT ON THAT CHECK, RIGHT?

A TRUE.

Q YOU'RE ASSUMING -- WELL, YOU'RE NOT ASSUMING -- YOU WANT YODER'S WHEN THEY GET A CHECK AND IN THE MEMO SECTION IT SAYS VERNON RESIDENCE TO APPLY THAT TO THE VERNONS' ACCOUNT, DON'T YOU?

A THAT'S HOW WE'VE DONE IT FOR YEARS, YES.

Q DID YOU EVER HAVE -- SO -- I THINK THAT'S ALL ON THAT. IF YOU COULD TURN NOW IN MY NOTEBOOK, LET'S TURN BACK TO 20 -- 21. EXCUSE ME. I'M SORRY. TWENTY-ONE YOU SAID YOU DON'T HAVE A SPECIFIC RECOLLECTION OF PULLING THIS TOGETHER?

A WHAT IS THIS? THE ONE I'M LOOKING AT NOW?

Q TWENTY-ONE IS THAT THE SPREADSHEET YOU'RE LOOKING AT? TAKE A MINUTE AND LOOK AT IT.

A I DON'T THINK I---

Q ALL RIGHT. THAT'S FINE. IF YOUR WIFE SAID SHE DID IT WITH YOU, SHE AT LEAST DID IT AND WE'LL TALK TO HER ABOUT THAT.
A I DON'T REMEMBER.
Q LOOK AT 13.
A TAB?
Q TAB 13 IN MY NOTEBOOK. IT'S THE DEMAND LETTER. WHILE YOU'RE GETTING THERE, AGAIN, I WANT TO GO BACK, IN NOVEMBER OF '09, YOU ADMIT THAT YOU OWE YODER'S MONEY. YOU JUST -- YOU ADMIT HOW IT WAS APPORTIONED. SO, IF A CHECK COMES IN THAT YOU THOUGHT SHOULD GO TO VERNON AND YOU SAID, NO, THAT'S SUPPOSED TO GO TO -- EXCUSE ME -- YOU THOUGHT IT SHOULD GO TO VERNON AND YODER'S APPLIED IT TO THE MARSHALL JOB, YOU MAY STILL OWE THE AMOUNT ON VERNON BUT YOU OWE LESS ON THE MARSHALL JOB. IF A CHECK COMES IN AND GETS CREDITED, THE OVERALL DEBT OF LANDMARC GOES DOWN. YOU DON'T DISPUTE THAT. YOU ADMIT THAT?
A TRUE.
Q IF A CHECK COMES IN AND DOESN'T GET APPLIED TO THE ACCOUNT THAT YOU WANT, AT LEAST THE OVERALL DEBT FOR LANDMARC IS REDUCED?
A YES.
Q BUT YOUR CONTENTION IS THAT, WELL, A CHECK CAME IN, THE VERNON ACCOUNT WOULD SHOW MORE, THE MARSHALL ACCOUNT WOULD SHOW LESS. SO, IT WOULD BE MOOT, ONE, AFTER THE FACT FROM MARSHALL TO VERNON, THEN WE AGREE WE OWE THE FINANCES CHARGED ON MARSHALL BUT WE DON'T OWE THEM ON THE VERNON?
A CORRECT.

Q BUT YOU ADMIT, AT LEAST IN NOVEMBER, YOU OWE OVER $100,000 TO YODER'S ON ALL OF THAT -- ALL OF YOUR PROJECTS? THERE WAS OVER $100,000 OWED BY LANDMARC ON ALL OF THE YODER'S PROJECTS?

A I DON'T KNOW THAT.

Q YOU DON'T KNOW THAT. DO I NEED TO ASK YOUR WIFE THAT?

A AT THAT POINT IN TIME, I DON'T KNOW.

Q AS OF NOVEMBER -- I'M SORRY -- AS OF DECEMBER WHEN THE DEMAND LETTER WAS SENT, YOU KNEW YOU HAD A $36,000 BACK CHARGE FOR THE DECK, THAT YOU CLAIM WAS YOUR BACK CHARGE, CORRECT?

A YES.

Q YOU CLAIM THERE WERE SOME ISSUES ABOUT MONEY THAT HAD BEEN -- THE CHECK WENT TO MARSHALL AND IT SHOULD HAVE GONE TO VERNON. YOU EXPLAINED HOW YOU WANTED THAT TO TAKE CARE -- THAT TO BE TAKEN CARE OF?

A YES.

Q AND THEN THERE WAS AN ISSUE ABOUT A FRONT DOOR CREDIT YOU WERE SEEKING AND A MAN DOOR THAT YOU CLAIM WAS NEVER DELIVERED, RIGHT?

A YES.

Q THAT -- YOU STILL THOUGHT -- AFTER ALL OF THOSE CREDITS, $139,000, YOU ADMIT THAT YOU OWED YODER'S AT LEAST $27,000 ON THE VERNON JOB, RIGHT?

A CORRECT.

Q AND YOU KNEW THAT IN DECEMBER, DIDN'T YOU?

A YES.

Q WHEN YOU GOT THIS DEMAND LETTER -- AND YOU GOT THIS DEMAND LETTER AND THERE WAS NO RESPONSE FROM LANDMARC EXPLAINING OR PAYING THE UNDISPUTED AMOUNT. IN FACT, YOU NEVER PAID THE UNDISPUTED AMOUNT, DID YOU?

A NO.

Q THERE WAS NO EXPLANATION AS TO WHY THAT WAS UNDISPUTED UNTIL YOU FILED YOUR ANSWER TO THE CLAIM?

A HONESTLY, THIS BECAME SUCH AN ACCOUNTING MESS WITH YODER'S IN THE YEAR OF -- WAS IT 2009?

Q 2009.

A WE HAVE ACCOUNTS WITH CHECKS BEING APPLIED TO PLACES WE DID NOT KNOW. WE ATTEMPTED TO RECONCILE THIS NUMEROUS TIMES WITH NO RESPONSE.

Q NUMEROUS TIMES, OKAY. BUT THE EASY -- YOU HELD THE CONTROL WHEN YOU WROTE THE CHECK TO PUT IN THE MEMO SECTION JUST LIKE YOU DID ON THE MATT-LYNN CARPENTRY WHERE YOU WANTED THAT CHECK TO APPLY?

A WE TRIED---

Q CAN YOU TELL ME THAT?

A WE TRIED TO, YES.

Q IT'S A KEYSTROKE. IT'S NOT LIKE YOU COULDN'T REACH OVER AND YOU HAD -- THERE WAS A PRINTER PROBLEM. WHEN YOU WROTE THE CHECK, YOU CAN PUT THAT IN THE MEMO SECTION, CAN'T YOU?

A THAT OR CORRESPONDENCE WITH YODER, YES.

Q BUT THE ISSUE IS YOU HELD THE KEY THAT DIRECTED THE PAYMENT,

AND IF THERE'S AN ISSUE -- YOU'VE NEVER FOUND TO THIS DAY A CHECK THAT WAS -- THE MEMO SECTION SAID TO GO TO VERNON AND IT WAS APPLIED TO ANOTHER PROJECT. YOU HAVEN'T FOUND ANY OF THOSE THAT WEREN'T APPLIED BASED ON THE CHECK MEMO, HAVE YOU?

A YES, THERE ARE.

Q WELL, LET ME ASK YOU -- LET'S LOOK AT THIS. IF YOU'RE GOING TO SAY THAT, LET'S TAKE A LOOK. EXHIBIT 19, SIR, IN MY NOTEBOOK. LOOK AT EXHIBIT 19 AND WE WILL LOOK AT EXHIBIT 1.

A OKAY.

Q EXHIBIT 19, IF YOU LOOK AT THE VERY LAST PAGE, THAT IS FROM A LANDMARC QUICKBOOKS FILE, ISN'T IT? LANDMARC CONSTRUCTORS, THIS IS YOUR QUICKBOOKS ACCOUNT AS OF MARCH 1, 2010. LET ME MAKE SURE---

A THE LAST PAGE?

Q I'M SORRY, EXHIBIT 19. 19, THE LAST PAGE OF THAT EXHIBIT.

A THERE'S ONE AFTER THAT. THAT ONE?

Q I'M NOT SURE WHY THAT'S THERE. WE'RE LOOKING AT THE QUICKBOOKS REPORT OF ALL TRANSACTIONS. THIS IS FOR THE VERNON ACCOUNT BECAUSE IT SAYS VERNON ACCOUNT, DOESN'T IT?

A YES.

Q RIGHT THERE. THESE ARE ALL OF THE PAYMENTS FOR YOUR SEGREGATING OF THE MONEY FOR THE VERNON ACCOUNT THAT YOU PAID YODER'S ON THE VERNON ACCOUNT, RIGHT?

A CORRECT.

Q $229,260.42. AND YOU GOT THE CHECK NUMBERS AND THE CHECK

DATES, RIGHT?
A YES.
Q IF YOU LOOK AT THE FIRST PART OF EXHIBIT 19, WE CAN GO THROUGH EACH ONE. THE FIRST ONE IS ON FEBRUARY -- IT'S A $12,000 CHECK.
A UH-HUH (AFFIRMATIVE).
Q NOTHING IN THE MEMO SECTION ABOUT WHERE IT'S SUPPOSED TO GO, RIGHT?
A RIGHT.
Q GO TO THE NEXT ONE, $43,646.84 AND YOU'VE GOT THAT ON YOUR QUICKBOOKS REGISTRY THAT'S ALSO HERE. THIS IS A COPY OF THE CHECK, RIGHT?
A UH-HUH (AFFIRMATIVE).
Q NOTHING IN THERE ABOUT WHERE IT'S SUPPOSED TO GO. ALL RIGHT. LOOK AT THE NEXT CHECK. IT'S FOR $13,276.11. THAT'S IN YOUR QUICKBOOKS CHECK REGISTRY, RIGHT?
A YES.
Q IT SAYS "VERNON JOB" ON THE LOWER SECTION, RIGHT?
A YES.
Q LET'S FLIP FORWARD TO EXHIBIT 1. HOLD YOUR PLACE THERE AND THEN GO TO EXHIBIT 1 IN MY NOTEBOOK, AT THE VERY BEGINNING, EXHIBIT 1, IN MY NOTEBOOK. HOLD YOUR SPOT. THIS IS THE YODER'S ACCOUNTS RECEIVABLE TRANSACTIONS.
A OKAY.
Q FLIP TO THE DATE OF THAT CHECK OF APRIL 6, 2009, ON THE

SECOND PAGE. EXHIBIT 1 OF MY NOTEBOOK, THE SECOND PAGE OF THIS HALF WAY DOWN THERE IS A -- APRIL 3RD, THERE IS A PAYMENT.

A OKAY.

Q DO YOU SEE, "PYMNT"?

A YES.

Q CHECK NUMBER 1296 FOR $13,276.11. DID I READ THAT CORRECTLY? ON APRIL 3RD, THERE IS A PAYMENT RECEIVED FOR CHECK NUMBER 1296 FOR THE EXACT AMOUNT OF THE CHECK NUMBER 1296?

A YES.

Q SO, WHEN IT WAS DESIGNATED "VERNON JOB" FOR YODER'S ACCOUNTING, 100 PERCENT OF THAT CHECK GOT APPLIED TO THE VERNON ACCOUNT, RIGHT?

A I DON'T KNOW.

Q WELL, ALL RIGHT. I'M SURE YOU DON'T. SO, LET'S FLIP TO THE NEXT COUPLE OF CHECKS, THE MAY CHECK, THERE'S NOTHING IN THAT THAT SAYS VERNON JOB, IS IT? GO BACK TO 19. THERE'S A MAY 1, 2009 CHECK FOR $12,908.

A OKAY.

Q NOTHING IN THAT MEMO SECTION ABOUT VERNON JOB, RIGHT?

A NO.

Q LOOK AT THE JUNE PAYMENT, $84,000, NOTHING IN THE MEMO SECTION ABOUT THAT ONE EITHER. DO YOU SEE IT?

A YES.

Q THE NEXT ONE, YOUR OCTOBER 10TH PAYMENT, NOTHING IN THE MEMO SECTION ABOUT VERNON, IS THERE?

A NO.
Q LOOK AT THE LAST PAYMENT YOU -- THE LAST PAYMENT YOU PAID YODER'S ON THIS PROJECT WAS ON OCTOBER 23, 2009. NOTHING IN THE MEMO SECTION OF THAT CHECK, RIGHT?
A NO.
Q SO, ONE OF THE CHECKS -- ALL OF THE CHECKS THAT YOU ACTUALLY SENT -- YOUR QUICKBOOKS ACCOUNT SAYS WENT TO THE VERNON JOB FOR YODER'S, ONLY ONE OF THEM DESIGNATED WITH THE KEYSTROKE IN THE MEMO SECTION THAT IT SHOULD GO TO VERNON. WE LOOKED AT IT ON EXHIBIT 1, 100 PERCENT OF THAT GOT CREDITED TO THE VERNON ACCOUNT?
A OKAY.
Q ALL RIGHT. YOU COULD HAVE DONE THAT FOR EACH OF THOSE CHECKS, AND YOU DID NOT?
A NO, I DID NOT.
Q THANK YOU.
MR. DUDLEY: THAT'S ALL I HAVE.
BY THE COURT: ANY OTHER QUESTIONS?
MR. RUCKER: JUST A FEW FOLLOW-UP QUESTIONS, YOUR HONOR. YOUR HONOR, MAY I APPROACH? I WANT TO LOOK AT ONE OF THE EXHIBITS.
BY THE COURT: OH, CERTAINLY.
REDIRECT EXAMINATION BY MR. RUCKER:
Q MARCUS, I'M GOING TO HAND YOU PLAINTIFFS' EXHIBIT NO. 16. JUST IDENTIFY THAT FOR THE RECORD. IT'S ALREADY BEEN INTRODUCED

INTO EVIDENCE.
A IT'S A BUDGET.
Q WHAT IS THE DATE OF THAT BUDGET?
A MAY 28, 2008.
Q IS THAT EARLY IN THE PROCESS?
A MID-WAY.
Q WERE THERE CHANGE ORDERS EXECUTED AFTER THAT?
A YES.
Q HOW -- JUST FROM YOUR MEMORY -- WE CAN GET INTO THIS WITH KERRI LATER. WHAT WAS THE TOTAL COST OF CHANGE ORDERS AFTER THIS BUDGET? DO YOU RECALL?
A I DON'T HAVE A TOTAL.
Q I'M ASKING YOU IF YOU RECALL INDEPENDENTLY?
A THERE WAS ABOUT $230,000 IN CHANGE ORDERS.
Q DID LANDMARC GENERATE A DOCUMENT THAT SHOWED THOSE CHANGE ORDERS?
A YES.
Q DID WE SEND IT TO THE OTHER SIDE -- THE OTHER SIDES?
A YES.
(CHANGE ORDER LOG MARKED FOR IDENTIFICATION AS DEFENDANT LANDMARCS' EXHIBIT NO. 1)
Q MARCUS, I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS DEFENDANTS' EXHIBIT NO. 1. DO YOU RECOGNIZE THAT DOCUMENT?
A YES.
Q WHAT IS THAT DOCUMENT?

A IT'S JUST A CHANGE ORDER LOG, A SUMMARY OF ALL OF THE CHANGES.

Q IS THAT ALL OF THE CHANGES IN THE JOB?

A A SUMMARY OF THEM, YES.

Q A SUMMARY OF ALL OF THE CHANGES IN THE JOB?

A YES.

MR. RUCKER: YOUR HONOR, I WOULD ASK THAT BE INTRODUCED AS DEFENDANTS' EXHIBIT NO. 1.

BY THE COURT: ALL RIGHT.

(CHANGE ORDER LOG ENTERED INTO EVIDENCE AS DEFENDANT LANDMARC'S EXHIBIT NO. 1)

Q IS IT NORMAL TO HAVE THAT MANY CHANGE ORDERS IN A CONSTRUCTION PROJECT LIKE THIS?

A IT'S A GOOD MANY.

Q DID YOU FOLLOW THROUGH ON ALL OF THOSE CHANGE ORDERS AND WERE YOU PAID?

A NO.

Q ARE -- THE DIFFERENCES BETWEEN THOSE CHANGE ORDERS AND WHAT'S LISTED THERE ABOUT WHAT WAS ACTUALLY PAID TO YOU, IS THAT REFLECTED IN THE MECHANIC'S LIEN?

A ASK AGAIN.

Q IS THAT THE TOTAL AMOUNT OF PAID CHANGE ORDERS OR IS THAT THE TOTAL AMOUNT OF REQUESTED CHANGE ORDERS?

A THIS IS REQUESTED BECAUSE SOME WERE NEVER APPROVED THAT WE DID.

Q CAN YOU RECALL BY LOOKING AT IT WHICH ONES WERE NEVER APPROVED?
A THE DRIVEWAY WAS NEVER APPROVED, THE GARAGE FLOOR EPOXY WAS APPROVED BUT WE NEVER DID IT BECAUSE WE WERE FIRED, AND THE RETAINING WALLS WEREN'T COMPLETED.
Q CAN YOU SUM UP -- YOU DON'T HAVE TO HAVE AN EXACT NUMBER -- BUT AN ESTIMATE OF THOSE THREE, HOW MUCH THAT WAS? COULD YOU LOOK AT THE NUMBERS?
A $15-, $20,000.
Q OKAY. DID YOU INCLUDE THAT AMOUNT IN YOUR MECHANIC'S LIEN?
A NONE.
Q ANY OF IT. NOW, IN THE DISCUSSION ABOUT YODER'S -- AS TOM SAID, WE'RE JUST MAINLY GOING TO BE -- KERRI'S GETTING READY TO TESTIFY. BUT DO YOU RECALL WHEN YOU SEND IN -- THE PROCESS -- WHAT'S REQUIRED WHEN YOU SEND IN A CHECK TO YODER'S, WAS ANY OTHER PAPERWORK REQUIRED?
A I THINK THERE WAS -- THERE WERE SUMMARY STATEMENTS AND MAYBE THEY HAD A TEAR OFF.
Q I KNOW YOU'RE TIRED. WOULD IT BE A STUB OR---
A A STUB, YES.
Q WHAT DID THAT STUB REFLECT?
A THE AMOUNT ON THAT PROJECT.
Q WOULD IT ALSO INDICATE THE PROJECT ITSELF?
A I BELIEVE, YES.
Q WERE YOU EVER GIVEN COPIES OF THAT -- THOSE STUBS AT ANY

POINT?
A IT CAME WITH THE STATEMENTS.
Q WHEN Y'ALL SENT THEM BACK -- AND MAYBE KERRI DID THIS. YOU MAY NOT KNOW. WERE THE STUBS, EITHER THROUGH DISCOVERY OR ANY OTHER PROCESS, EVER SUBMITTED BACK TO YOU?
A NO. NOT THAT I'M AWARE OF, NO.
MR. RUCKER: NO FURTHER QUESTIONS.
MR. STERN: JUST A COUPLE FOLLOW UP.
BY THE COURT: YES, SIR.
RECROSS EXAMINATION BY MR. STERN:
Q WE HAD A DISCUSSION ABOUT CHANGE ORDERS. MR. RUCKER JUST ASKED YOU ABOUT THE CHANGE ORDERS. DO YOU RECALL THAT?
A UH-HUH (AFFIRMATIVE).
THE COURT REPORTER: IS THAT A YES?
THE WITNESS: YES. SORRY.
Q AND, I BELIEVE, YOU IDENTIFIED THE DRIVEWAY, GARAGE FLOOR. THEY'RE NOT COSTS BECAUSE THE WORK WAS NEVER DONE?
A CORRECT.
Q AND THE AMOUNT THAT WAS SENT BACK ON THE STATEMENT WOULD REFLECT -- THERE WERE STATEMENTS BY PROJECT. IS THAT---
A ARE YOU ASKING ABOUT YODER'S?
Q YES.
A YES. THERE WERE STATEMENTS BY PROJECT.
Q THE DOCUMENT THAT YOU SENT BACK WITH THE PAYMENT, FOR WANT OF A BETTER TERM, IS THAT WHAT IS CALLED REMITTANCE ADVICE?

A I DON'T KNOW.

Q TELLS YOU HOW TO APPLY IT?

A KIND OF LIKE WHEN YOU SEND YOUR POWER BILL IN WITH YOUR PAYCHECK?

Q CORRECT.

A IN PRINCIPLE, YES.

Q OKAY. THAT'S ALL.

BY THE COURT: MR. DUDLEY?

MR. DUDLEY: NO, SIR.

BY THE COURT: ALL RIGHT. THANK YOU, SIR. YOU CAN STEP DOWN.

(WITNESS EXCUSED)

BY THE COURT: I'M ASSUMING THE NEXT WITNESS IS SOMEWHAT LENGTHY AS WELL?

MR. RUCKER: YES, SIR.

BY THE COURT: ALL RIGHT. WE'LL TAKE A 15-MINUTE BREAK AND START BACK AT 20 TILL 4:00.

(WHEREUPON, A RECESS WAS TAKEN AT 3:22 P.M.)

(WHEREUPON, THE TRIAL RESUMED AT 3:40 P.M.)

BY THE COURT: IF YOU WOULD COME AROUND TO THE WITNESS STAND, PLEASE. (COMPLIES)

KERRI L. DUNN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

BY THE COURT: IF YOU WOULD COME AROUND AND HAVE A SEAT, PLEASE. (COMPLIES) IF YOU'LL STATE YOUR FULL NAME.

THE WITNESS: KERRI L. DUNN.

BY THE COURT: COULD YOU SPELL YOUR FIRST NAME?

THE WITNESS: K-E-R-R-I.

BY THE COURT: YOUR WITNESS.

MR. RUCKER: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION BY MR. RUCKER:

Q KERRI, I'M GOING TO TURN YOUR ATTENTION BACK TO -- BRIEFLY BACK TO PLAINTIFFS' EXHIBIT NO. 1, THE CONSTRUCTION AGREEMENT. THERE SHOULD BE A COPY IN THE SMALL -- YES, THAT ONE. TO YOUR KNOWLEDGE, DID ANY REPRESENTATIVE FROM LANDMARC DRAFT THIS AGREEMENT?

A NO.

Q WHO, FROM YOUR UNDERSTANDING, ACTUALLY DRAFTED THE AGREEMENT?

A MR. GRAY AND THE VERNONS.

Q WHO WAS HE WORKING FOR? I'M SORRY.

A THE VERNONS.

Q DID YOU EVER AT ANY TIME YOURSELF SPEAK WITH BRYAN JOHNSON AND TELL HIM, OR EMAIL HIM OR WRITE HIM THAT ONE SPECIFIC ACCOUNT, ONE CHECKING ACCOUNT WOULD BE USED FOR THE VERNON BUSINESS?

A NO, I DID NOT.

Q NOW, LET'S TALK BRIEFLY ABOUT THE WAY THE CHECKING ACCOUNTS OPERATE. THERE HAVE BEEN SEVERAL CHECKING ACCOUNTS MENTIONED HERE. WE HAVE CONCEDED THAT WE HAVE USED SEVERAL CHECKING ACCOUNTS IN THIS PART.

A CORRECT.

Q WHY WOULD THAT HAPPEN? WHY WOULD YOU USE SEVERAL CHECKING ACCOUNTS ON DIFFERENT PROJECTS? FOR EXAMPLE, IN THE 8447, SOME OF THAT WENT TO THE VERNONS, SOME WENT TO OTHER PLACES.

A THAT WAS JUST OUR STANDARD PRACTICE. WE HAD BEEN DOING IT FOR TEN YEARS WHEN I CAME ON BOARD, AND THAT'S WHAT WE CONTINUED TO DO.

Q DID YOU TURN OVER -- ARE YOU HIDING ANY FINANCIAL INFORMATION BY USING DIFFERENT CHECKING ACCOUNTS?

A NO, I'M NOT.

Q DID YOU -- TO YOUR KNOWLEDGE, HAVE WE GIVEN OVER TO BOTH PARTIES EVERYTHING WE HAVE?

A YES.

Q IN FACT, HAVE THEY SUBPOENAED YOUR BANK OF AMERICA RECORDS?

A YES, THEY HAVE.

Q I WANT TO TURN YOUR ATTENTION -- AND GIVE ME ONE SECOND TO FIND IT. I THINK IT WILL BE A GOOD TIME TO TALK ABOUT IT. MUCH HAS BEEN MADE BY PLAINTIFFS' COUNSEL ABOUT CERTAIN CHECKS -- AND I'M NOT GOING TO POINT TO AN INDIVIDUAL ONE -- BUT THERE ARE CERTAIN CHECKS THAT DO NOT HAVE -- THE WAIVERS DO NOT HAVE A SIGNATURE ON THEM. THEY HAVE SOMEBODY'S NAME JUST TYPED THERE.

A CORRECT.

Q WHY WOULD THAT HAPPEN?

A IF THEY ARE OFF SITE AND WE NEED THE APPLICATION DONE AND THEY AUTHORIZE IT FOR THEM.

Q SO, THEY DO, IN FACT, AUTHORIZE YOU TO DO THAT?
A CORRECT.
Q THE MONEY THAT'S INDICATED WENT TO THOSE PEOPLE?
A CORRECT.
Q I WANT TO TURN YOUR ATTENTION -- AND I CANNOT REMEMBER THE NUMBER -- IT HAS BEEN MARKED AS PLAINTIFFS' EXHIBIT NO. 15. IT'S BEEN INTRODUCED INTO EVIDENCE. DO YOU RECOGNIZE THAT?
A YES. CAN I ASK A QUESTION?
Q SURE.
A WERE THESE INCLUDED WITH THIS EXHIBIT? IT'S ALL ONE BECAUSE IT SHOULD HAVE BEEN.
Q LET ME CHECK.
A THAT'S OUR COPIES THAT GO WITH THESE. THEY'RE DIFFERENT.
(FOUR PAGES OF COPIES OF CHECKS MARKED FOR IDENTIFICATION AS DEFENDANT LANDMARC'S EXHIBIT NO. 2)
Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS DEFENDANTS' EXHIBIT NO. 2.
A THANK YOU.
Q DO YOU RECOGNIZE THOSE DOCUMENTS?
A YES.
Q WHAT ARE THEY?
A THEY ARE TRANSFER SLIPS AND THEY ARE CANCELED CHECKS GIVEN TO MATT-LYNN CUSTOM CARPENTRY.
Q EXHIBIT 2 IS A SEPARATE DOCUMENT FROM THE CHECKS. DO YOU UNDERSTAND THAT?

A WELL, IF YOU---

Q YES. YOU FLIPPED THEM OVER---

A I UNDERSTAND. THESE CHECKS ARE TRANSFERS INTO MATT-LYNN'S ACCOUNT. THESE ARE ACTUAL CHECKS PROVIDED TO MATT-LYNN.

MR. RUCKER: WELL, I ASK THAT -- ON THAT BASIS, I ASK THAT DEFENDANTS' EXHIBIT NO. 2 BE ENTERED INTO EVIDENCE.

BY THE COURT: ALL RIGHT.

(FOUR PAGES OF COPIES OF CHECKS ENTERED INTO EVIDENCE AS DEFENDANT LANDMARC'S EXHIBIT NO. 2)

Q EXPLAIN WHAT'S GOING ON WITH EXHIBIT 1, THE CHECKS THAT WERE -- NOT EXHIBIT 1. I FORGET THE NUMBER. JUST LOOK ON THE BACK.

A EXHIBIT 15?

Q OKAY, EXHIBIT 15 OF THE PLAINTIFF.

A OKAY. MATT-LYNN CUSTOM CARPENTRY, TYPICALLY, WE COULD PROVIDE THEM A CHECK. IF IT WAS OVER $10,000 -- OR OVER $5,000 -- WE WENT TO THEIR BANK AND JUST DID A WIRE TRANSFER INTO THEIR ACCOUNT NUMBER 8320.

Q OKAY. WHY WOULD YOU DO IT THAT WAY RATHER THAN CUTTING A CHECK?

A THE CHECK WOULD BE HELD MAYBE FOR 12 DAYS AND MATT-LYNN ASKED ME TO DO IT FOR HIM AND WE HAD A GOOD RELATIONSHIP. SO, I DID IT FOR HIM.

Q NOW, BRIEFLY -- I KNOW YOU'RE THE MATH PERSON, AT LEAST ON OUR SIDE. WHAT DO THOSE CHECKS AND WIRE TRANSFERS ADD UP TO, ROUGHLY? DO YOU KNOW?

A $136,000.
Q HOW DO YOU KNOW THAT?
A BECAUSE I CALCULATED IT.
Q YOU'RE THE ONE WHO ACTUALLY WORKS THE BOOKS, CORRECT?
A CORRECT.
Q THE WIRE TRANSFERS AND CHECKS, THOSE ARE THE ORIGINALS; IS THAT RIGHT?
A CORRECT.
Q AND THEY ARE IN EVIDENCE?
A YES.
Q NOW, HOW DOES DEFENDANTS' EXHIBIT NO. 2 DIFFER FROM THOSE?
A WELL, THESE ARE COPIES OF THE CANCELED CHECKS WHERE MATT-LYNN HAS SIGNED AND DEPOSITED THEM. THESE ARE THE ACTUAL WIRE TRANSFERS THAT SHOW THE ACCOUNT THEY ARE PUT IN, 8320 FOR THE CHECK AND THE TRANSFER.
Q YOUR UNDERSTANDING IS MATT-LYNN HAS BEEN PAID IN FULL?
A THERE WAS SOME REMAINING ON THEIR LAST TWO BILL STATEMENTS THAT WERE PROVIDED TO THE VERNONS, ABOUT $10,000 THEY HAVE NOT BEEN PAID.
Q THERE WERE QUESTIONS ASKED ABOUT THE TOLLESON ACCOUNT WITH THE WIRE TRANSFERS AND THE CHECKS, I BELIEVE, DO YOU SEE ANYTHING ABOUT THE TOLLESONS ON THE CHECKS?
A I DO.
Q WHAT CHECKS INDICATE SOMETHING ABOUT THE TOLLESONS?
A CHECK NUMBER 1025.

Q WHY WOULD IT HAVE TOLLESON ON IT?

A IF I HIT THE KEYSTROKE BY ACCIDENT. I NEED TO KNOW IF THAT WAS IN MY CHART.

Q YOU NEED TO SEE YOUR CHART?

A YES. YOU SHOULD HAVE THAT RIGHT THERE ON THE TOP.

Q I'M SORRY, KERRI. I THINK MAYBE YOUR HUSBAND MOVED IT. DESCRIBE IT BRIEFLY SO I CAN PICK IT UP.

A IT'S ACTUALLY A PIECE OF PAPER THAT'S KIND OF RIPPED IN HALF. I JUST WANTED TO CHECK---

Q WELL, TO REFRESH YOUR MEMORY, I'M GOING TO PRESENT A DOCUMENT TO YOU. I BELIEVE THERE'S GOING TO BE AN OBJECTION TO ITS ADMITTANCE INTO EVIDENCE.

MR. RUCKER: YOUR HONOR, MAY I APPROACH?

BY THE COURT: CERTAINLY.

Q ALL RIGHT. DOES THAT DOCUMENT REFRESH YOUR MEMORY AS TO WHAT WAS GOING TO HAPPEN WITH THE WIRE TRANSFERS AND THE CHECKS?

A YES, IT DOES.

Q CAN YOU RECALL INDEPENDENTLY NOW HOW MUCH WAS PAID ON THIS PROJECT WITH THOSE CHECKS FOR HIM?

A YES. THE REASON I ASKED FOR THIS WAS THIS CHECK 1025 IS NOT INCLUDED IN MY AMOUNT THAT WAS PAID TO MATT-LYNN FOR VERNON. SO, THIS CHECK IS FOR THE TOLLESONS. IT SHOULD NOT BE INCLUDED IN THE VERNONS.

Q HOW MUCH WAS THAT CHECK FOR?

A THAT CHECK IS FOR $10,885.

Q IT'S YOUR TESTIMONY THAT SHOULD OR SHOULD NOT BE INCLUDED?
A CHECK NUMBER 1025 AND CHECK NUMBER 1050 ARE NOT LISTED ON MY CHART RIGHT THERE. SO, THEY SHOULD NOT BE INCLUDED IN THESE CHECKS FOR THE VERNONS.

BY THE COURT: SO, IS THE TOTAL OF THOSE TWO CHECKS THE $10,885?

THE WITNESS: NO. THE TOTAL IS $22,000 AND THAT'S NOT INCLUDED IN THE ACCOUNT OF WHAT WAS PAID TO THE -- YODER'S FOR THE VERNONS. SORRY.

BY THE COURT: SO, ARE YOU SAYING THAT $136,000 WAS PAID OR $136,000 MINUS $22,000?

THE WITNESS: $136,000 WAS PAID TO YODER'S FOR THE VERNONS. THESE TWO CHECKS WERE--

BY THE COURT: HOLD ON.

THE WITNESS: --JUST IN THE FILE. I SHOULDN'T HAVE GIVEN THEM TO YOU.

BY THE COURT: ALL RIGHT. STOP, STOP, STOP. YOU'VE REALLY GOT ME CONFUSED NOW. I THOUGHT WE'RE TALKING ABOUT MONEY PAID TO MATT-LYNN.

THE WITNESS: OH, YEAH. SORRY. IT'S MATT-LYNN CUSTOM CARPENTRY IS WHAT I'M TALKING ABOUT. DOWN HERE IS THE VERNON RESIDENCE, AND THAT TOLLESON RESIDENCE CHECK WAS NOT ON MY CHART. SO, THAT'S WHY I TOOK IT OUT. IT WAS JUST MIXED UP IN THE FOLDER. I APOLOGIZE.

BY THE COURT: THAT'S FINE. SO, YOU'RE TELLING ME THAT

YOUR DOCUMENTS SAY $136,000 WAS PAID BY LANDMARC EITHER THROUGH CHECK OR THE WIRE TRANSFERS ON THE MATT-LYNN?

THE WITNESS: CORRECT.

BY THE COURT: HELP ME UNDERSTAND WHAT THE $22,000 THAT YOU SAID SHOULDN'T HAVE BEEN INCLUDED.

THE WITNESS: WELL, IT SHOULDN'T HAVE BEEN BROUGHT UP HERE WITH THESE CHECKS. THAT'S WHY. I HAD A FOLDER FOR MATT-LYNN OVER THERE, AND IT JUST WAS MIXED UP WITH IT. THAT WAS ALL.

BY THE COURT: ALL RIGHT. THANK YOU.

MR. STERN: YOUR HONOR, I JUST WANT TO OBJECT TO THIS SUMMARY OF THE DOCUMENTS THAT'S NOT BEEN PREVIOUSLY PRODUCED IN CONNECTION WITH THE LITIGATION.

MR. RUCKER: IT WAS JUST HER WORK.

BY THE COURT: YES. HE'S NOT INTRODUCED IT.

MR. RUCKER: IT'S JUST TO REFRESH HER MEMORY.

MR. STERN: OKAY.

Q KERRI, THERE IS A -- MR. DUDLEY HAS A TRIAL NOTEBOOK UP THERE. IT IS BLACK WITH A WHITE CAPTION ON THE FRONT.

A WHITE?

MR. DUDLEY: WHITE, THE WITNESS NOTEBOOK.

Q YES.

A OKAY. GOT IT.

Q I'M GOING TO DIRECT YOUR ATTENTION TO TAB 18 AND IT'S MARKED WITH A DATE STAMP OF DEF 0021, IT'S ALSO MARKED AS EXHIBIT NO. 5, K DUNN.

A CORRECT. I'VE GOT IT.
Q DO YOU RECOGNIZE THIS DOCUMENT?
A I DO.
Q OKAY. WHAT IS THIS DOCUMENT?
A THIS IS A SUMMARY OF BILLING DATE AMOUNT -- THE BILLING DATE, THE BILLING AMOUNT AND THE AMOUNT PAID BY THE VERNONS.
Q BRIEFLY -- YOUR HONOR IS GOING TO HAVE THE MATERIAL UP THERE -- BUT HOW MUCH OF THIS HAS NOT BEEN PAID AND WHERE WOULD YOU LOOK TO SEE?
A THE AMOUNT THAT HAS NOT BEEN PAID IS $139,510.49. YOU CALCULATE THIS AMOUNT BY LOOKING AT THE DECEMBER 5, 2009 BILLING AMOUNT AND THE DECEMBER 17, 2009 BILLING AMOUNT.
Q DECEMBER 5TH, 2009, WHAT IS THAT -- WHAT SUBCONTRACTORS OR VENDORS DOES THAT $67,000 REPRESENT?
A WE'VE GOT ELECTRICAL, MARATHON LIGHTING, WE'VE GOT CLAYTON TILE, WE'VE GOT HOLDER ELECTRIC, WE'VE GOT FERGUSON, AND MATT-LYNN. THERE'S ALL OF THE VENDORS AND THE SUBS THAT HAVE DONE WORK IN THAT BILLING STATEMENT.
Q WAS THAT MATERIAL DISCLOSED IN DISCOVERY?
A YES.
Q IT'S YOUR BELIEF IT'S IN THESE NOTEBOOKS?
A CORRECT.
Q NOW, THERE WAS TESTIMONY EARLIER ABOUT ESTIMATES. DO YOU KNOW HOW MUCH OF THE $139,510.49 WOULD BE INCLUDED AS AN ESTIMATE OR WERE ACTUALLY CONSIDERED ESTIMATES?

A I WOULDN'T KNOW OFFHAND BECAUSE I HAVEN'T RECONCILED THE FINAL BILL, AND THAT'S USUALLY WHEN THAT OCCURS.

Q EXPLAIN THE RECONCILIATION PROCESS, GENERALLY.

A THE RECONCILIATION PROCESS, ON PROJECTS THAT ARE COST PLUS, WE HAVE QUOTES THAT COME IN, WE HAVE ESTIMATES THAT COME IN, AND WE HAVE TO BILL THE OWNER FOR THE ESTIMATES. AND THEN SOMETIMES THERE'S CHANGES THAT HAPPEN: THAT SUB HAS TO ADD ONE, IT HAS TO DO MORE WORK, THE VENDOR HAS SUPPLIED DIFFERENT PRODUCTS. WE HAD, YOU KNOW, 17 CHANGES ON THIS ONE. THE VERNONS CHANGED THE FIREPLACE 13 TIMES UNTIL WE CAME TO THE ACTUAL AMOUNT AND WOOD COLOR.

BY THE COURT: SIR, THERE'S TO BE NO LAUGHTER AT THE TESTIMONY.

MR. VERNON: I'M SORRY, YOUR HONOR.

BY THE COURT: GO AHEAD.

A I'M SORRY. WHAT WAS THE---

Q I'M JUST -- AND WE'LL GO THROUGH THIS IN STAGES. I CAN'T ALLOW YOU TO JUST TESTIFY LIKE YOU DID FIVE MINUTES AGO. MAKE SURE EVERYTHING'S -- OKAY. THE RECONCILIATION PROCESS, DO YOU DO THAT WITH EVERY PROJECT?

A YES, I DO.

Q GENERALLY, WHAT IS RECONCILIATION? WHAT IS THAT?

A RECONCILIATION IS WHEN YOU MATCH UP WHAT YOU HAVE BEEN BILLED FOR TO WHAT YOU'VE BEEN PAID FOR, AND IF THERE'S ANY DISCREPANCIES, YOU CAN EITHER CREDIT OR BILL THE OWNER WHATEVER

THE DIFFERENCE IS OR THE ADD ON.

Q WAS THAT PROCESS DONE IN THIS CASE?

A NO, IT WAS NOT.

Q WHY WAS IT NOT DONE?

A BECAUSE WE WERE FIRED.

Q HOW FAR -- LOOKING AT THE BOOKS AND LOOKING AT THE MATERIAL THAT'S ALREADY BEEN ADMITTED AND WHAT YOU KNOW OF THE CASE, HOW FAR ALONG WAS LANDMARC IN COMPLETING THIS OPERATION, THIS CONTRACT?

A I THOUGHT WE WERE VERY CLOSE TO COMPLETING IT.

Q HOW CLOSE WOULD THAT BE?

A TWO WEEKS, FOUR WEEKS.

Q ALL RIGHT. DID YOU RECEIVE -- AND WE'VE ALREADY TALKED ABOUT IT, SO I'M GOING TO JUST TALK ABOUT IT BRIEFLY. WE JUST TALKED ABOUT IT WITH MARCUS. JEFFREY GRAY'S LETTER -- AND IT'S IN THE -- YOU DON'T HAVE TO READ IT. DID YOU RECEIVE THAT? WAS THAT YOUR CONSIDERATION THAT YOU HAD BEEN TERMINATED, THAT Y'ALL HAD BEEN TERMINATED?

A YES.

Q IS IT YOUR CONTENTION, AFTER TESTIMONY, THAT THE FULL $139,000 IS DUE AT THIS POINT?

A I'M SORRY. WHAT WAS THAT QUESTION?

Q IS THE FULL $139,000 DUE UNDER THE MECHANIC'S LIEN?

A IN MY OPINION, YES.

Q DO YOU KNOW FOR SURE THOSE ESTIMATES WEREN'T COVERED OR

WAIVERED BY OTHER SUBCONTRACTORS?

A NO, BECAUSE I WALK THE JOB.

Q NOW, I'M GOING TO GO THROUGH THESE SMALLER NOTEBOOKS. I BELIEVE IT'S PLAINTIFFS AND THIRD-PARTY DEFENDANTS VERNONS' TRIAL EXHIBITS. IT IS TAB 11, PLAINTIFFS' EXHIBIT NO. 11 THAT'S ALREADY BEEN INTRODUCED.

A WHICH BOOK WAS IT AGAIN? SORRY.

Q THE THIN ONE.

A AND IT'S 11?

Q RIGHT, IT IS.

A WHICH TAB?

Q TAB 11.

A I ONLY HAVE 5 TABS IN THIS LITTLE BOOK.

MS. WRIGHT: YOU NEED THE OTHER ONE. THAT WAS FROM MR. VERNON.

A THERE IS 29 AND THERE IS 20. THERE IS NONE WITH 11. THAT ONE HAS BEEN UP HERE.

BY THE COURT: WHAT'S THE EXHIBIT NUMBER AGAIN?

MR. RUCKER: THIS IS PLAINTIFFS' EXHIBIT 11 IN THE SMALL PLAINTIFF AND THIRD-PARTY DEFENDANT VERNONS' TRIAL EXHIBITS.

BY THE COURT: ALL RIGHT.

Q ALL RIGHT. MRS. DUNN, WHAT IS THIS? WHAT DOES THIS DOCUMENT REFLECT?

A THIS IS A LETTER I WROTE TO WILEY ON AN EMAIL DISCUSSING OUR ACCOUNT, TRYING TO FIGURE OUT WHY WE WERE HAVING ISSUES.

Q DID YOU RECEIVE A RESPONSE FROM MR. MCLANE ON THIS?
A I THINK I RECEIVED A LIEN.
Q OKAY. THERE'S SOME CONFUSION ABOUT APPLICATION OF FUNDS THAT CAME FROM THE VERNONS TO OTHER ACCOUNTS. HOW DID YOU DIRECT YODER'S TO PAY FOR THE VERNON ACCOUNT?
A I WOULD CUT THE STUB OFF AND INCLUDE IT IN THE ENVELOPE TO YODER'S.
Q DID Y'ALL RETAIN STUBS?
A NO. IT JUST HAD ONE.
Q TO YOUR KNOWLEDGE, HAVE WE RECEIVED THESE STUBS FROM THE OPPONENTS?
A NO, WE HAVE NOT.
Q IN LOOKING AT PLAINTIFFS' EXHIBIT 11 DATED DECEMBER 3, 2009, HOW MUCH WAS STILL DUE AT THAT POINT FOR THE VERNON RESIDENCE?
A ABOUT $20,000.
Q NOW, WHO OWES WHO THAT $20,000?
A LANDMARC OWES YODER'S $20,000.
Q AND AT THAT POINT WAS LANDMARC OWED THAT MONEY FROM THE VERNONS?
A I THINK WE WERE NOT.
Q SO, IS IT YOUR BELIEF THAT THE TOTAL FOR YODER'S, BASED ON YOUR FINANCIAL INFORMATION AND YOUR JOB WITH THIS BUSINESS, THE TOTAL AMOUNT YODER'S IS DUE IS $20,000 FOR THIS JOB?
A CORRECT.
Q ARE THERE OUTSTANDING BALANCES OUTSIDE RELATED TO OTHER

JOBS?

A YES, THERE ARE.

Q WITH THE LIEN WAIVER PROCESS, WHAT DOES A LIEN WAIVER ACTUALLY DO, TO YOUR KNOWLEDGE? HOW DID A LIEN WAIVER AFFECT YOU IN YOUR JOB AT LANDMARC?

A I DIDN'T PUT THEM TOGETHER.

Q WELL, HOW WOULD YOU KNOW HOW TO DISBURSE CHECKS IS REALLY WHAT I'M ASKING?

A IF THE WORK WAS COMPLETED AND IF THE SUPPLIES PROVIDED WERE CORRECT.

Q HOW WOULD YOU FIND OUT IF THE WORK HAD BEEN COMPLETED?

A MARC DUNN WOULD TELL ME.

Q ALL RIGHT. I'M GOING TO TURN YOU TO PLAINTIFFS' EXHIBIT NO. 7 IN THAT SAME BOOK. IT'S GOT A DATE STAMP AT THE BOTTOM YBS-0215. IT'S YOUR EXHIBIT 25. WHAT IS THAT EMAIL?

A IT'S AN EMAIL TO WILEY.

Q AS OF JUNE 19, 2009, TELL ME THE CONVERSATION THAT'S HAPPENING, WHAT THIS EMAIL REPRESENTS.

A THAT I WOULD TAKE A LOOK AT THE ACCOUNT OVER THE WEEKEND AND GET BACK TO HIM NEXT WEEK.

Q DID YOU, IN FACT, DO THAT?

A I CONVERSED WITH WILEY QUITE A FEW TIMES DURING THE ENTIRE -- I SHOULD SAY MANY TIMES DURING THE JOB, AT LEAST ON A MONTHLY BASIS OR TWICE A MONTH.

Q DID YOU KNOWINGLY REFUSE -- KNOWINGLY, WILLFULLY REFUSE TO

PAY AN AMOUNT THAT YOU KNEW WAS DUE TO YODER'S? THAT'S WHAT I'M ASKING.

A YES, BECAUSE THE MATERIALS WERE DEFECTIVE.

Q AT THE END, DID Y'ALL HAVE THE ABILITY AFTER BEING PAID BY THE VERNONS, WOULD YOU HAVE PAID YODER'S THE AMOUNT THAT THEY ACTUALLY ARE OWED?

A YES.

Q DID YOU WILLFULLY MISDIRECT ANY MONEY FROM THE VERNONS TO SOMEONE OTHER THAN YODER'S THAT WAS OWED?

A NO.

Q YOU HANDLED THE BOOKS ENTIRELY YOURSELF, NOT YOUR HUSBAND, CORRECT?

A CORRECT.

Q I'M GOING TO DIRECT YOU BACK TO PLAINTIFFS' EXHIBIT NO. 2 IN THE SAME BOOK. DO YOU RECOGNIZE THAT DOCUMENT?

A HOLD ON JUST A SEC.

Q SORRY.

A YES, I DO.

Q WHAT IS IT?

A THIS IS THE FIRST CHANGE ORDER FOR THE OFFICE TO BE ADDED TO THE HOUSE, AN OFFICE WING.

Q HOW MANY TOTAL CHANGE ORDERS WERE THERE?

A THIS IS CHANGE ORDER NUMBER 1. I BELIEVE, THERE WERE 17 ON THAT SUMMARY SHEET THAT YOU HAD EARLIER.

Q DID WE SUPPLY THOSE CHANGE ORDERS TO THE OPPONENTS?

A YES, WE DID.

Q DID YOU ASSIST IN PUTTING TOGETHER THE ORIGINAL BUDGET OF THIS PROJECT?

A I HELPED WITH THE SOFTWARE BUT NOT THE ACTUAL NUMBERS. NO.

Q DID THE NUMBERS CHANGE AFTER THAT INITIAL BUDGET?

A YES. THE NUMBERS CHANGED AFTER EVERY CHANGE ORDER.

Q BRIEFLY -- I'M SURE EVERYBODY IN THE ROOM KNOWS THIS BUT JUST FOR THE RECORD -- WHAT IS A CHANGE ORDER?

A A CHANGE ORDER IS WHEN THE CUSTOMER IS CHANGING SOMETHING ON THE HOUSE.

Q HOW WOULD YOU KNOW THAT THERE WAS GOING TO BE A CHANGE ORDER?

A THE OWNER ASKED US TO CHANGE SOMETHING, ADD SOMETHING, TAKE AWAY SOMETHING, ADD IT AGAIN.

Q LET'S TALK BRIEFLY ABOUT THE INSURANCE. WHY WAS -- YOU WERE THE BUSINESS MANAGER -- WHY DID Y'ALL HAVE -- WHY DID YOU GET INSURANCE ON ANY PART OF THE PROJECT?

A BECAUSE MARC SAID I HAD TO GET IT.

MR. RUCKER: NO FURTHER QUESTIONS, YOUR HONOR.

BY THE COURT: YOUR WITNESS, MR. STERN.

MR. STERN: MAY IT PLEASE THE COURT.

CROSS-EXAMINATION BY MR. STERN:

Q YOU TESTIFIED THAT BECAUSE OF THE TERMINATION YOU DO NOT DO THE NORMAL RECONCILIATION BETWEEN WHAT WAS BILLED BY WAY OF ESTIMATE VERSUS THE ACTUAL COST; IS THAT CORRECT?

A WE NEVER GOT TO COMPLETE THE JOB. SO, SOMETIMES WHEN YOU ESTIMATE, A CONTRACTOR WILL COME BACK ON THE SITE AND ADD TO WHAT THEY'RE DOING AND THEN YOU HAVE -- IT'S A LIVE PROJECT, I GUESS YOU COULD SAY, THAT'S GOING ON.

Q SO, YOU WERE PRESENT DURING MR. JOHNSON'S TESTIMONY, CORRECT?

A YES, EARLIER TODAY.

Q DURING THAT TESTIMONY HE WENT THROUGH IN SOME DETAIL THOSE SUBCONTRACTORS AND SUPPLIERS WHOSE CHARGES FOR LANDMARC WERE LESS THAN WHAT HAD BEEN COLLECTED FROM THE VERNONS. DO YOU RECALL THAT?

A CORRECT.

Q AS TO THOSE NUMBERS, DO YOU DISPUTE ANY OF THEM?

A I WOULD HAVE TO GO THROUGH THEM BECAUSE THEY WEREN'T FROM MY BOOK. THEY WERE FROM BRYAN'S BOOK. BUT IN LOOKING AT THE NUMBERS, THE ESTIMATES WERE, WHAT, $10,000 DIFFERENCE AND I WOULD AGREE WITH THAT. YES.

Q BUT THAT'S PART OF YOUR FINAL RECONCILIATION THAT YOU SAID YOU DID NOT GET TO DO, CORRECT?

A CORRECT, DIDN'T HAVE A CHANCE.

Q CONSEQUENTLY, YOU HAD THE TWO BILLS IN DECEMBER THAT REPRESENT ESSENTIALLY THE AMOUNT OF THE MECHANIC'S LIEN?

A THAT'S CORRECT.

Q WHEN YOU SUBMITTED THE MECHANIC'S LIEN, YOU FILED WHAT IS CALLED A VERIFIED STATEMENT OF ACCOUNT. DO YOU UNDERSTAND WHAT

THAT IS?

A I DID.

Q IT'S A STATEMENT UNDER OATH, CORRECT?

A YES.

Q IF I COULD SHOW YOU, DOES THAT APPEAR TO BE YOUR SIGNATURE?

A IT IS.

Q IS IT TRUE THAT YOU HAVE GIVEN NO CREDIT FOR ANY OF THE AMOUNTS IDENTIFIED BY MR. JOHNSON WHERE YOU COLLECTED MORE FROM THE VERNONS THAN YOU PAID OUT TO SUBS AND SUPPLIERS?

A WELL, I WAS NEVER PAID THE FINAL PAYMENT.

Q BUT WHAT YOU'RE ASKING FOR IS THE FINAL PAYMENT, THE $139,000, CORRECT?

A I'M ASKING FOR THE LIEN AMOUNT WHICH IS $139,000.

Q THAT WOULD BE THE FINAL PAYMENT?

A WELL, THAT'S MY TWO PAYMENTS PUT TOGETHER. I NEVER GOT TO DO A FINAL BILL.

Q CORRECT. BUT YOU DID FILE A VERIFIED STATEMENT OF ACCOUNT, CORRECT?

A I DID.

MR. STERN: I WOULD LIKE TO MARK THAT AS THE NEXT PLAINTIFFS' EXHIBIT.

(MECHANIC'S LIEN DOCUMENTS MARKED AND ENTERED INTO EVIDENCE AS PLAINTIFFS' EXHIBIT NO. 17)

Q AND THIS WASN'T PREPARED UNTIL JANUARY 29TH, CORRECT?

A THAT'S WHEN IT WAS FILED ON HERE. CORRECT.

Q OKAY. SINCE YOU GOT YOUR TWO FINAL BILLS, YOU HAVEN'T GIVEN ANY RECOGNITION FOR ANY AMOUNT IDENTIFIED BY MR. JOHNSON WHERE THE AMOUNTS YOU COLLECTED BY THE VERNONS WAS GREATER THAN THE ACTUAL COST.

A I NEVER RECEIVED ANY INFORMATION FROM MR. JOHNSON THAT THE AMOUNTS WERE INCORRECT OR THAT HE HAD DISPUTED -- IT WOULD HAVE BEEN NICE TO HAVE HAD THAT. THEN WE COULD HAVE DISCUSSED IT.

Q WELL, LET'S TALK ABOUT IT THEN.

A OKAY.

Q GET THE LARGE BOOK IN FRONT OF YOU IF YOU DON'T MIND.

A THERE'S TWO LARGE BOOKS. WHICH ONE?

Q TAB 1 IS THE INFORMATION FROM YODER'S BUILDING SUPPLY. YOU DIDN'T NEED ANY INFORMATION FROM MR. JOHNSON TO DETERMINE WHETHER THERE WAS A DISCREPANCY BETWEEN WHAT YOU COLLECTED FROM THE VERNONS AND WHAT YOU PAID TO YODER'S, TRUE?

A I'M SORRY. CAN YOU REPEAT THE QUESTION?

Q YOU DIDN'T NEED ANY INFORMATION FROM MR. JOHNSON TO KNOW YOURSELF THAT YOU COLLECTED MORE FROM THE VERNONS THAN YOU PAID OUT TO YODER'S, ISN'T THAT TRUE?

A I DIDN'T COLLECT MORE FROM THE VERNONS. I DIDN'T GET PAID TWO BILL STATEMENTS.

Q LET'S TALK ABOUT THAT. LET'S GO TO THE FIRST TAB.

A I'M HERE.

Q STONE. OKAY?

A YES. THAT'S IN THE FIRST TAB.

Q AND THE TOTAL AMOUNT -- YOU SEE THE FIRST BILL FOR FEBRUARY 27, 2009. ARE YOU THERE?

MR. DUDLEY: IT'S THE SECOND BILL, JANUARY 30TH.

Q IT'S THE SECOND BILL. MY BOOK WAS CANNIBALIZED. I'M SORRY.

A WHAT'S THE DATE?

Q FEBRUARY 27, 2009, IT SAYS ORIGINAL CONTRACT AMOUNT, $8,500, CORRECT?

A CORRECT.

Q THAT IS AN AMOUNT THAT YOU SUBMITTED TO THE VERNONS AND THAT YOU WERE PAID FOR, CORRECT?

A FOR THE STONE PORCH FLOORING, CORRECT.

Q THAT WAS $6,800?

A CORRECT.

Q THESE ARE YOUR RECORDS, ARE THEY NOT? ALL I NEED TO DO IS TOTAL THESE LANDMARC CUSTOM HOME INVOICES, SWORN INVOICES, TO GET THE TOTAL?

A THE STONE COLUMNS, AND THE STONE VENEER, AND THE STONE PORCH. THEY'RE ALL IDENTIFIED UP AT THE TOP FOR WHAT THEY GO TO.

Q OKAY. AND THE LAST AMOUNT THAT YOU COLLECTED FROM THE VERNONS, THE LAST INVOICE WAS FOR $4,898.70 -- DO YOU SEE THAT? -- ON APRIL 10TH?

A AMOUNT DUE THIS REQUEST, YES.

Q SO, AS OF MAY OF 2009, YOU COLLECTED $65,657 FROM THE VERNONS FOR THE STONE VENEER SUPPLIED FOR YODER'S, CORRECT? IF I TOTAL THOSE INVOICES, IF YOU ACCEPT MY MATH---

A WELL, THE STONE VENEER, THE ORIGINAL CONTRACT AMOUNT WAS $43,640. THE NET CHANGE IS $48,000. VALUE OF WORK COMPLETED IS $48,000. NOW, YOU'RE GOING TO A DIFFERENT ONE THAT SAYS STONE PORCH FLOORING. IT WOULD BE DIFFERENT.

Q I'M GOING TO THE STONE INVOICES THAT ARE INCLUDED UNDER STONE.

A THE $8,500 IS STONE PORCH FLOORING, NOT STONE VENEER.

Q OKAY. IF I TOTAL UP--

A STONE VENEER.

Q --IF I TOTAL UP THE ITEMS UNDER STONE COLUMNS, THE STONE PORCH, ALL OF THE STONE ITEMS SUPPLIED BY YODER'S, THE INVOICE THAT BEGAN JANUARY 30TH -- THAT'S NOT IN THERE. THAT'S FOR $20,000. I TOTAL $65,657. THIS IS WHAT WAS TESTIFIED TO BY MR. JOHNSON. IF I TOTAL THE AMOUNT OF INVOICES THAT YOU RECEIVED FROM YODER'S, I GET $58,981.38, CORRECT?

A CAN YOU GIVE ME JUST A MOMENT?

Q CERTAINLY.

A I GUESS MY ISSUE IS THE STONE COLUMNS WERE $5,670.

Q OKAY.

A YOU'RE INCLUDING THAT IN THE STONE VENEER.

Q OKAY.

A SO, IF YOU DO $65- MINUS $58-, YOU COME UP WITH YOUR $8,000 NUMBER. IS THAT CORRECT?

Q I DON'T KNOW. I JUST TOTALED UP ALL OF THE INVOICES AND I GET $65,057 (SIC) AND I GET THE ACTUAL INVOICES FROM YODER'S TO

COME UP WITH $58,981.38. THE POINT IS THIS, MA'AM: IF THERE IS A DISCREPANCY BETWEEN WHAT YOU COLLECTED FROM THE VERNONS AND WHAT YOU PAID TO YODER'S, YOU DON'T NEED TO HAVE MR. JOHNSON'S SUMMARY, YOU CAN LOOK AT YOUR OWN RECORDS, CORRECT?

A AND I DID BUT THESE ARE---

Q WHERE HAVE YOU GIVEN A CREDIT TO THE VERNONS IN YOUR MECHANIC'S LIEN OR ANYWHERE ELSE FOR THE DIFFERENCE BETWEEN WHAT YOU COLLECTED FROM THE VERNONS FOR THE STONE VERSUS WHAT YOU PAID OUT TO YODER'S?

A WELL, THE STONE VENEER WAS THE $58-. THE STONE PORCH WAS DIFFERENT. YOU'RE COMBINING THE TWO. I GUESS THAT'S MY ISSUE. YOU'RE---

Q OKAY. LET'S TALK ABOUT INSULATION, IF YOU WANT TO QUIBBLE WITH ME ON THAT.

A OKAY.

Q INSULATION, DO YOU SEE WHERE IT SAYS ORIGINAL CONTRACT AMOUNT AT THE FIRST TAB?

A I DO.

Q $7,814.

BY THE COURT: WHAT'S THE DATE OF THE INVOICE?

A YOU SAID DRY---

Q I'M UNDER INSULATION.

A UNDER INSULATION?

Q YES, MA'AM. AND I SAID PAY REQUEST 1, MARCH 27, 2009, ORIGINAL CONTRACT AMOUNT, $7,814.

A THAT'S CORRECT.
Q AND THIS BILLING IS FOR $6,251?
A THAT'S CORRECT.
Q OKAY. THAT'S AN AMOUNT YOU COLLECTED FROM THE VERNONS, CORRECT?
A CORRECT.
Q AS YOU DID THE $1,562.80 IN THE NEXT ONE?
A THAT'S CORRECT.
Q AS YOU DID WITH -- THOSE TWO INVOICES TOTAL $7,814. THAT'S WHAT YOU COLLECTED?
A $7,814.
Q THE $6,251.20 AND THE $1,562.80 TOTAL $7,814 WHICH HAPPENS TO COINCIDE WITH THE CONTRACT AMOUNT THAT YOU SHOW?
A THE INVOICES MATCH THE $7,814.
Q YES, MA'AM.
A OKAY.
Q WHAT YOU PAID OUT TO YODER'S IS REPRESENTED BY, FIRST, THE INVOICE OF MARCH 9, 2009 FOR $2,914, APRIL 16, 2009, $1,090.10, AUGUST 24, 2009, $1,447, AND THAT TOTALS $5,451, CORRECT?
A CORRECT, HOWEVER, I DON'T SEE THE GARAGE AND THE OFFICE LIEN ON THEIR ESTIMATE AND THAT'S PROBABLY WHY WE ESTIMATED IT FOR THEM ON THE BILLING STATEMENT--
A BUT AT LEAST WITH RESPECT TO THESE---
Q --BECAUSE WE HAD A CHANGE ORDER THAT WAS GIVEN.
Q OKAY. SO, ARE YOU TELLING ME THAT YOU HAVE AN INVOICE THAT

WOULD MAKE UP THE DIFFERENCE THAT YODER'S CHARGED YOU BETWEEN WHAT YOU COLLECTED FROM THE VERNONS AND WHAT YOU PAID TO YODER'S?

A I WOULD HAVE TO RECONCILE TO FIND IT OUT, AND I COULDN'T BECAUSE THEY DIDN'T PAY ME.

Q NO, MA'AM. WHAT I'M ASKING YOU IS -- THESE ARE RECORDS OF YOURS.

A NO. THESE ARE RECORDS THAT BRYAN JOHNSON SUBMITTED RIGHT HERE. CORRECT?

Q MA'AM, I'M LOOKING AT WHAT HE HAS SUMMARIZED. HE SUMMARIZED INVOICES FROM YOU, TWO OF THEM, REAL SIMPLE, THOSE ARE LANDMARC, THOSE WERE PREPARED BY YOU, RIGHT?

A THIS SHEET WAS NOT PREPARED BY ME.

Q THE FIRST PAGE, MA'AM, LANDMARC CUSTOM HOMES---

A YES, IN CONJUNCTION WITH YODER'S. YES.

Q IN CONJUNCTION WITH YODER'S?

A YES, DAVID POWELL.

Q DAVID POWELL TOLD YOU AND YOU GOT DAVID POWELL'S AUTHORIZATION TO CHARGE $6,251.20. IS THAT WHAT YOU'RE TESTIFYING?

A NO, THE $7,814.

Q $7,814, THE CONTRACT -- THAT CAME FROM YODER'S?

A THAT'S THE ESTIMATE, CORRECT, BECAUSE IF YOU LOOK AT WHAT THE ESTIMATE WAS, IT DOESN'T HAVE THE OFFICE WING.

Q OKAY. BUT IN ANY CASE -- WELL, DID YOU DO THAT WORK?

A WE DID THE OFFICE WING, YES.

Q SO, YODER'S WOULD HAVE HAD TO SUPPLY THE DRYWALL, RIGHT?
A YES.
Q SO, THERE SHOULD BE ANOTHER YODER'S INVOICE? AM I MISSING ONE?
A POSSIBLY.
Q COULD YOU FIND IT RIGHT NOW SO WE CAN RESOLVE THIS?
A I COULD NOT, SORRY.
Q BUT YOU RECEIVED BACK THERE THE INSULATION QUOTE FROM YODER'S. IT'S $5,451?
A YES, AND IT'S DATED ON 2/3/2009. THE OFFICE WING WAS ALREADY BEING DONE.
Q THE OFFICE WING WAS ALREADY BEING DONE. OKAY. SO, WHERE IS THE INVOICE?
A I DON'T KNOW.
Q SO, THERE IS---
A EITHER WAY, YOU'RE SAYING THERE IS A $2,000 DIFFERENCE. IS THAT THE QUESTION?
Q YES, MA'AM.
A IF I WAS ABLE TO RECONCILE IT, I WOULD HAVE CREDITED THE VERNONS $2,000, YES, BUT I WAS NOT ABLE TO DO THAT.
Q WHY WERE YOU NOT ABLE TO RECONCILE IT BASED ON THE FACT THAT YOU HAD YOUR BILLINGS TO THE VERNONS AND YOU HAD YOUR BILLINGS FROM YODER'S THAT THEY CHARGED? ISN'T THAT ALL YOU NEED TO RECONCILE IT, MA'AM?
A ACTUALLY, NO, WE COULDN'T BECAUSE OF THE FACT THAT I DID NOT

DO A FINAL INSPECTION. IF THAT INSPECTOR CAME IN AND TOLD MARC TO FIX THIS DRYWALL, I WOULD HAVE TO GET YODER'S BACK OUT THERE TO FIX IT.

Q OKAY. HELP ME UNDERSTAND THIS -- AND IT'S YOUR TESTIMONY, YOUR SWORN TESTIMONY UNDER OATH, THAT YOU PAID OUT TO YODER'S $7,814?

A I PAID OUT $229,000 TO YODER'S.

Q I'M TALKING ABOUT JUST THE INSULATION, MA'AM.

A IT WAS LUMPED TOGETHER WITH A LARGER AMOUNT TO YODER'S.

Q LUMPED TOGETHER. BUT IF I LOOK AT THE YODER'S INVOICES, AN INSULATION QUOTE, CORRECT?

A WE DIDN'T PAY PER INVOICE. WE PAID PER STATEMENT.

Q YOU DIDN'T PAY PER INVOICE. YOU PAID PER STATEMENT. OKAY. WE'LL GET INTO THAT. OKAY?

A OKAY.

Q SO, WHAT YOU SHOULD HAVE SOMEWHERE IS ANOTHER QUOTE FOR INSULATION, ANOTHER BILL FOR INSULATION FROM YODER'S?

A IF THEY DID ANYMORE WORK, YES.

Q IF THEY DIDN'T DO ANYMORE WORK, THEN THEY'RE ONLY ASKING FOR WHAT YOU PAID THEM?

A AND I COULD HAVE RECONCILED THAT IF I COULD COMPLETE THE JOB.

Q WELL, HELP ME UNDERSTAND, MA'AM, WHEN YOU DID YOUR VERIFIED STATEMENT OF ACCOUNT, YOU UNDERSTOOD THAT WAS A STATEMENT UNDER OATH JUST AS YOUR TESTIMONY HERE TODAY?

A YES.
Q YOU HAVE SWORN THAT THAT $139,000 IS WHAT YOU'RE ENTITLED TO IN APRIL OF -- IN JANUARY OF 2009 (SIC), A MONTH AFTER YOU LEFT THIS JOB, RIGHT?
A I DID, CORRECT.
Q AND YOU HAVEN'T SHOWN ANY CREDITS BASED ON THE DIFFERENCE BETWEEN WHAT YOU COLLECTED FROM THE VERNONS AND WHAT WAS PAID TO SUBS AND SUPPLIERS, HAVE YOU?
A HAVE I NOT SHOWN -- I MEAN, I HAVE A CREDIT FOR YODER'S THAT I'VE ASKED THEM TO APPLY.
Q I UNDERSTAND THAT---
A THEIR AMOUNT SHOULD GO DOWN.
Q $36,000, RIGHT?
A YES.
Q ANY OTHER CREDIT DUE FROM YODER'S?
A THEY SHIPPED A COUPLE -- EXTRA MATERIAL OUT THERE, I BELIEVE.
Q HELP ME UNDERSTAND -- AND LET'S GET TO SOMETHING. FIRST OF ALL, LET'S GO BACK TO THIS INSULATION QUOTE, APRIL 16TH (SIC) OF '09. DO YOU SEE IT? IT'S RIGHT IN FRONT OF YOU.
A I JUST NEED TO TURN THE PAGE. OKAY.
Q IT'S YOUR TESTIMONY THAT THIS $7,814 IS AN ESTIMATE, RIGHT?
A YES.
Q AND YOUR HUSBAND TESTIFIED THAT IT CAME FROM A BUDGET. DO YOU RECALL THAT?

A OKAY.

Q AND THE BUDGET IS IN EVIDENCE AND IT'S $7,000, RIGHT?

A OKAY.

Q LET'S LOOK AT THE LANGUAGE OF THIS -- THIS IS A LANDMARC DOCUMENT, TRUE?

A YES. IT'S ON LANDMARC LETTERHEAD.

Q AND IT SAYS, "VALUE OF WORK COMPLETED TO DATE LISTED ABOVE MUST BE FOR WORK ACTUALLY COMPLETED AT THE TIME THE APPLICATION IS MADE." DID I READ THAT CORRECTLY?

A THIS IS OUR TYPICAL FORM.

Q AND IT GOES ON TO SAY, "DO NOT REQUEST WHAT YOU HOPE TO ACCOMPLISH. DO NOT SHOW CHANGE ORDERS UNTIL THEY HAVE BEEN APPROVED. THIS WILL DELAY PAYMENT." THERE IS ABSOLUTELY NOTHING IN HERE THAT SAYS THAT WHAT YOU'RE REQUESTING IS FOR AN ESTIMATE, IS THERE?

A I TOLD BRYAN JOHNSON AND THE VERNONS THAT IT WOULD BE ESTIMATE AS THEY REQUESTED.

Q ANSWER MY QUESTION, MA'AM, NOT THE ONE YOU THINK YOU WANT ANSWERED BUT THE ONE I'M ACTUALLY ASKING YOU.

A OKAY.

Q IT DOESN'T SAY ANYTHING IN HERE ABOUT THESE APPLICATIONS BEING ANYTHING OTHER THAN ACTUAL COSTS INCURRED FOR WORK DONE, ISN'T THAT TRUE?

A WHEN PAID BY THE OWNER, YES.

Q MA'AM, I'LL ASK YOU ONE MORE TIME. I READ WHAT I ASKED YOU

TO AGREE WITH ME ON OR NOT. YOU CAN SAY YES, IT'S IN THERE OR NO, IT'S NOT. BUT DOES THIS SAY ANYWHERE ANYTHING THAT THE INVOICE IS SUPPOSED TO BE FOR ANYTHING OTHER THAN WORK ACTUALLY PERFORMED?

A I'M NOT SURE.

Q WHO DRAFTED THIS?

A MY HUSBAND, MARC DUNN.

Q DRYWALL, ON APRIL 29TH, 2009, YOU SHOW AN ORIGINAL CONTRACT AMOUNT, $19,323, TRUE?

A THAT'S CORRECT.

Q AGAIN, YOU'VE GOT THE AUTHORIZATION FROM MR. POWELL?

A CORRECT.

Q FOR THAT SPECIFIC AMOUNT?

A CORRECT.

Q SO, MR. POWELL -- BUT IF YOU GO OVER AND LOOK AT THE DRYWALL QUOTE, IT'S FOR $13,323, CORRECT?

A THAT DOESN'T INCLUDE THE CHANGE ORDERS.

Q OKAY. THIS IS AN ORIGINAL QUOTE, RIGHT, IS IT NOT--

A I DIDN'T SEE THIS QUOTE--

Q --BEFORE WORK'S DONE?

A THIS WAS GIVEN TO MY HUSBAND.

Q WELL, I'M LOOKING DOWN THERE, IT SAYS, QUOTED BY DAVID POWELL, RIGHT?

A YES.

Q SO, THE SAME MR. POWELL WHO QUOTED $13,323 SAID, "YEAH, GO

AHEAD AND BILL THEM $19,323." IS THAT YOUR TESTIMONY?

A TWO MONTHS LATER, THE BILLING STATEMENT WAS SUPPLIED ON 4/29. THIS QUOTE WAS GIVEN ON 3/04. THINGS CHANGED A LOT ON THE VERNON PROJECT.

Q WELL, LET'S LOOK AT WHAT THEY ACTUALLY CHARGED, MA'AM. LET'S GO TO THE VERY LAST ONE. THIS IS ON APRIL 29TH. THE QUOTE IS ON MARCH 4TH. THEY WEREN'T ENTITLED TO GET PAID UNTIL THE WORK WAS DONE. ISN'T THAT WHAT WE JUST READ?

A WELL, THEY WERE ENTITLED TO---

Q ANSWER MY QUESTION, MA'AM.

A YES.

Q THIS IS ON APRIL 29TH, AND THEY BILLED YOU $13,323, THAT'S THE AMOUNT?

A THIS WAS INCLUDED IN THE BILLING STATEMENT FROM YODER'S.

Q AND THAT'S WHAT YOU PAID YODER'S?

A IN CONJUNCTION WITH SEVERAL OTHER PAYMENTS.

Q DO YOU HAVE ANY INFORMATION THAT YOU PAID ANYMORE FOR DRYWALL OTHER THAN THIS PARTICULAR INVOICE? COULD YOU PRODUCE ANY OTHER INVOICE?

A NO.

Q AND THE DIFFERENCE BETWEEN WHAT WAS CHARGED TO THE VERNONS IS BETWEEN THE $19,323 AND THE $13,323, CORRECT?

A IT'S $6,000.

Q $6,000?

A NOW, WE'RE UP TO $8,000.

Q NOW, YOU DO -- AND YOU KNEW THAT AS OF APRIL 29, 2009 BECAUSE YOU HAD ALREADY COLLECTED THE FULL AMOUNT FROM THE VERNONS, CORRECT?

A NO, I DID NOT KNOW THAT BECAUSE THERE WERE CHANGES MADE TO THE HOUSE. CHANGES WERE ONGOING ON THIS HOUSE, 17 CHANGES HAPPENED ON THE HOUSE -- A LOT.

Q IS IT OR IS IT NOT YOUR TESTIMONY THAT AS OF THE BEGINNING OF DECEMBER 2009 THE VERNONS HAD PAID IN FULL?

A NO.

MR. STERN: MAY I HAVE PERMISSION TO UNSEAL THE TRANSCRIPT?

BY THE COURT: CERTAINLY.

Q LET ME ASK YOU TO TURN TO PAGE 107.

A OKAY, 107.

Q I'M GOING TO BEGIN READING AT PAGE 107, LINE 17, AND MY QUESTION TO YOU, MA'AM, IS IF I READ THE QUESTION AND THE ANSWER CORRECT.

"QUESTION: SO THE CLAIM THAT YOU HAVE AGAINST THE VERNONS, THAT LAST BILLING IS FOR ALL OF THE RETAINAGE THAT WAS WITHHELD ON THE EARLIER PAY APPLICATIONS, AND YOU WERE SEEKING THAT 3 PERCENT?"

"ANSWER: YES, ON THE LAST BILLING STATEMENT THAT THEY DIDN'T PAY. THE LAST TWO."

"ALL RIGHT. AND YOUR EARLIER TESTIMONY, YOU AGREE UP UNTIL NOVEMBER THAT THE VERNONS PAID FOR EVERYTHING EXCEPT RETAINAGE?"

AND YOUR ANSWER WAS: "UH-HUH."

DID I READ THAT CORRECTLY?

A YES.

Q GO ON, "FOR EVERY BILLING THAT YOU SUBMITTED TO THEM, THEY PAID IN FULL, RIGHT?"

"ANSWER: EVENTUALLY, YES."

DID I READ THAT CORRECTLY?

A YES.

Q SO, AS OF NOVEMBER, THE VERNONS HAD PAID FOR EVERYTHING THAT YOU BILLED THEM, CORRECT?

A THAT WE BILLED THEM. YOU DIDN'T SAY THAT IN YOUR EARLIER QUESTION.

Q SO, IF I QUALIFY MY EARLIER QUESTION THEN, AS OF DECEMBER, EVERYTHING YOU BILLED FOR THE VERNONS HAD BEEN PAID?

A PRIOR TO DECEMBER.

Q PRIOR TO DECEMBER?

A THAT'S CORRECT.

Q AND THAT WOULD INCLUDE THE AMOUNT THAT YOU COLLECTED FROM THEM FOR DRYWALL?

A CORRECT.

Q SO, YOU COLLECTED $19,323 -- AND JUST SO I KNOW, IT'S YOUR TESTIMONY THAT THIS GENTLEMAN, MR. POWELL FROM YODER'S, KNOWINGLY ASKED FOR YOU -- AUTHORIZED YOU TO COLLECT FOR HIM, AND LANDMARC I GUESS, AN AMOUNT GREATER THAN WHAT HE ACTUALLY QUOTED. IS THAT YOUR TESTIMONY?

A IT'S AN ESTIMATE.
Q OKAY. AN ESTIMATE THAT HAS TO BE VERIFIED AGAINST THE ACTUAL AMOUNT?
A YES, AFTER THE PUNCH LIST WAS GONE AND THERE MAY BE SOME DRYWALL ISSUES THAT NEEDED TO BE FIXED. YOU CAN'T PAY UNTIL YOU KNOW THAT IT'S ACTUALLY CORRECT.
Q BUT THAT WAS BILLED BY THEM ON APRIL 29, 2009?
A THAT'S CORRECT.
Q AND EVEN AT THE TIME THAT YOU PREPARED YOUR VERIFIED STATEMENT OF ACCOUNT, YOU HADN'T DONE THAT RECONCILIATION, CORRECT?
A NO, COULDN'T. I WAS FIRED.
Q HELP ME UNDERSTAND SOMETHING ELSE. I'M A LITTLE UNCLEAR ON THE MATT-LYNN.
A OKAY.
Q HOW DO I DETERMINE THE TOTAL AMOUNT THAT YOU PAID TO MATT-LYNN? I ADD UP THESE CHECKS?
A AND THE TRANSFERS.
Q WHAT ARE THE TRANSFERS?
A THAT'S WHEN I PUT MONEY DIRECTLY INTO THEIR ACCOUNT. IT WAS A DEPOSIT TO SHOW THAT IT WENT INTO THEIR ACCOUNT, THE TOP SLIP.
Q YOU STARTED WORKING FOR YOUR HUSBAND'S COMPANY IN 2006 OR THEREABOUTS; IS THAT CORRECT?
A CORRECT.
Q AND YOU DEALT WITH YODER'S DURING THAT TIME?

A CORRECT.
Q ON LOTS OF JOBS?
A HOWEVER MANY WE HAD WITH YODER'S, YES.
Q WELL, IN 2009, YOU HAD TOLLESON THAT INVOLVED YODER'S?
A YES, IT DID.
Q MARSHALL?
A YES. THERE WERE SEVERAL.
Q DAVIS?
A CLANCEY -- WE CAN KEEP ON GOING.
Q A LONG, ESTABLISHED RELATIONSHIP WITH THEM?
A YES, FOR ABOUT 20 YEARS.
Q PRIOR TO THE VERNON JOB, HAD YOU EVER HAD AN ISSUE COME UP AS FAR AS THE ALLOCATION OF PAYMENTS?
A MARSHALL STARTED TO GET A LITTLE MUDDY. WE USED TO DEAL WITH DAVID LASH FOR, LIKE, 10 YEARS AND THEN WE HAD A NEW PERSON COME ON.
Q DID ANYBODY EVER TELL YOU THAT IN THE ABSENCE OF A MEMO SECTION SIGNED IN ON THE CHECK THAT THEY WOULD APPLY TO THE OLDEST ACCOUNT?
A NO, NEVER.
Q WHAT WOULD HAPPEN IF THERE WAS A QUESTION AS FAR AS THE APPLICATION OF PAYMENTS?
A I WOULD THINK YODER'S WOULD ASK ME.
Q OKAY. SO, YOU GET A STATEMENT THAT'S -- IS IT BY PROJECT?
A IT'S BY YODER'S.

Q IT'S BY YODER'S?
A AND THEN IT'S SEPARATED OUT BY PROJECT. SO, I HAVE A STUB FOR EACH PROJECT.
Q OKAY. SO, YOUR PRACTICE WOULD BE TO TAKE OFF THAT STUB?
A CORRECT.
Q BUT IT WOULD BE THE BOTTOM PART OF THE STATEMENT?
A IT WAS ACTUALLY THE TOP PART OF THE STATEMENT.
Q TOP PART OF THE STATEMENT BUT THE REST OF IT -- THE BOTTOM PART OF THE STATEMENT REFLECTS WHAT YOU'RE PAYING AND YOU FILL OUT THE STUB BASED ON THE AMOUNT?
A THEY HAVE IT TYPED IN THERE, YODER'S.
Q OKAY. AND YOU SENT THAT BACK WITH EACH APPLICATION?
A WITH EACH---
Q PAYMENT?
A YES.
Q SO, FROM THAT, IT WOULD BE BY PROJECT OR HOW WOULD IT---
A BY STUB.
Q BY STUB. SO, THE STATEMENTS, WOULD THEY BE BY PROJECT? HELP ME WITH THE STATEMENTS.
A THE STATEMENTS WOULD BE BY PROJECT. THAT'S CORRECT.
Q NOW, IT WAS YODER'S BUSINESS PRACTICE TO SEPARATE -- TO PUT DEPOSITS THEY RECEIVED FROM CUSTOMERS INTO SEPARATE ACCOUNTS?
A I DON'T KNOW YODER'S PRACTICES.
Q EXCUSE ME. I'M SORRY. LANDMARC'S PRACTICES?
A TO DO WHAT AGAIN?

Q TO TAKE DEPOSITS THE VERNONS PAID YOU, IT WOULD GO INTO A VERNON ACCOUNT LESS THE OVERHEAD COMPONENT THAT YOU COULD APPLY ELSEWHERE; IS THAT CORRECT?

A MONIES WOULD COME INTO A VERNON---

Q YOU HAD AN ACCOUNT FOR THE VERNONS?

A I HAD LOTS OF ACCOUNTS.

Q YOU HAD AN ACCOUNT FOR TOLLESON?

A WAS NOT DESIGNATED, NO.

Q OKAY. YOU HAD -- FAIR ENOUGH. I WOULD LIKE YOU -- YOUR HUSBAND TESTIFIED TO AN ISSUE REGARDING THE APPLICATION OF CERTAIN PAYMENTS, CORRECT? DO YOU RECALL THAT?

A CORRECT.

Q I WOULD LIKE YOU TO TURN TO TAB 1 IN THE BOOK.

A I'M SORRY. WHICH BOOK?

Q THE LARGE BOOK.

A THANK YOU. TAB 1?

Q YES, MA'AM. THE FIRST DOCUMENT I WOULD LIKE YOU TO LOOK AT, IN THAT IS AN EMAIL---

A I MUST BE IN THE WRONG ONE.

BY THE COURT: ARE YOU TALKING ABOUT PLAINTIFFS' 6?

MR. STERN: PLAINTIFFS' 6, YES, SIR.

Q THIS IS IT RIGHT HERE.

A TAB 1?

Q TAB 1. IF YOU COULD TURN TO THE TAB UNDER YODER'S BUILDING SUPPLY, THERE'S AN EMAIL WITH WILEY MCLANE AT THE TOP. IT HAS

BATES NUMBER YBS-0215. SO YOU SEE THAT?

A YBS-0215, CORRECT.

Q THIS BEGINS A CHAIN OF EMAILS THAT YOU'RE INVOLVED WITH. DO YOU SEE THAT?

A YES. THE FIRST THREE ARE FROM JUNE, CORRECT.

Q THEY CONTINUE ON BACK. CAN YOU IDENTIFY THOSE?

A THEY HAVE OCTOBER, NOVEMBER AND DECEMBER.

Q TURNING TO THE EMAIL DATED JUNE 26, 2009, IS THAT AN EMAIL FROM YOU? AT THE BOTTOM, IT'S YBS-0218. IT'S FROM YOU TO WILEY MCLANE?

A WELL, IT ORIGINALLY STARTED FROM WILEY, AND THEN I'M RESPONDING TO WILEY. IT'S A REPLY.

Q OKAY. AND THE SUBJECT MATTER CONCERNS THE ALLOCATION OF PAYMENTS TO THE VERNONS; IS THAT CORRECT?

A ON JUNE 26, 2009 AT 2:48 P.M. AT THE TOP?

Q YES, MA'AM. 1:20 P.M.

A AT 1:20 P.M. I'M TALKING TO WILEY ABOUT OUR PAYMENT TERMS THAT WERE INCORRECTLY ALLOTTED AND THE FINANCE CHARGES SHOULD BE TAKEN OFF.

Q AND THEN YOU GO DOWN THERE AND SAY THE CHECK YOU RECEIVED FOR THE 6/10 PAYMENT WAS FOR THE VERNONS. DO YOU SEE THAT? IN THE SAME EMAIL.

A I'M SORRY, WHAT LOCATION IN THE PARAGRAPH? THERE ARE -- ONE, TWO, THREE -- FOUR EMAILS.

Q I'M SORRY. I'M AT THE BOTTOM EMAIL, JUNE 26TH AT 1:20 P.M.,

"HEY, WILEY," THAT'S THE ONE I'M TALKING ABOUT.

A OKAY.

Q THE FIRST PART OF IT REFERS TO THE PAYMENT TERMS, CORRECT?

A OKAY.

Q WHAT WERE YOUR PAYMENT TERMS WITH YODER'S?

A 60, 90.

Q OKAY. YOU HAD UP TO 90 DAYS TO MAKE A PAYMENT?

A CORRECT.

Q YOU GO DOWN AND I'M AT THE PART THAT BEGINS, "THE CHECK YOU RECEIVED FOR THE 6/10 PAYMENT WAS FOR THE VERNONS." DO YOU SEE THAT?

A CORRECT.

Q DID YOU EXPECT THEM TO APPLY IT THAT WAY?

A I DID.

Q HAD YOU PREVIOUSLY INDICATED HOW THAT WAS TO BE APPLIED WHEN YOU MADE THAT PAYMENT?

A WITH THE STUB.

Q DOWN THERE AT THE LAST PARAGRAPH, IT SAYS, "ALSO, WE ARE HAVING ISSUES WITH COLLECTING FINAL PAYMENT FROM THE MARSHALLS." DO YOU SEE THAT?

A YES.

Q DID YOU HAVE PROBLEMS COLLECTING FROM THE MARSHALLS?

A YES.

Q WHEN WAS THAT JOB FINISHED?

A I BELIEVE, MARCH OR APRIL BECAUSE WE PUT IN AN OUTDOOR

FIREPLACE.

Q WERE THE LIEN RIGHTS EXPIRED OR ABOUT TO EXPIRE ON THAT JOB?

A I DON'T KNOW.

Q AND YOU ALSO TALK ABOUT FINANCE CHARGES NOT BEING APPROPRIATE, CORRECT?

A YES, CORRECT.

Q IT SAYS, "THEREFORE, WE SHOULD NOT HAVE ANY FINANCE CHARGES ON THE VERNONS UNLESS WE ARE LATE ON THE 7/10 PAYMENT. PLEASE DELETE THE 4/15, 5/15, 6/16 FC" OR FINANCE CHARGES; IS THAT CORRECT?

A CORRECT.

Q DO YOU KNOW IF THE YODER'S LIEN INCLUDES FINANCE CHARGES?

A I DON'T KNOW.

Q WOULD IT BE APPROPRIATE TO INCLUDE ANY FINANCE CHARGES TO THE VERNONS ON ANY INVOICES BEFORE -- THAT WERE PAID BY THE VERNONS TO YOU BEFORE DECEMBER OF 2009?

A I DON'T THINK FINANCE CHARGES SHOULD BE INCLUDED ON THE LIEN.

Q NOW, WOULD YOU TURN OVER TO THE NEXT EMAIL. THIS IS ONE DATED OCTOBER 22, 239 (SIC) AT 12:39 PM.

A CORRECT.

Q YOU'RE TELLING WILEY THAT YOU'LL PAY -- MAKING A PAYMENT TOMORROW, WHICH WOULD BE OCTOBER 23RD?

A AND NEXT FRIDAY, CORRECT.

Q AND THAT YOU ARE INDICATING THAT THE PAYMENTS TO BE MADE ON

OCTOBER 23RD, THE NEXT DAY, AND THE FOLLOWING FRIDAY ARE FOR THE VERNONS, CORRECT?

A CORRECT.

Q AND YOU HAD ALSO -- IF YOU COULD GO TO THE NEXT EMAIL, NOVEMBER 19TH, IS ANOTHER EMAIL YOU SENT?

A YES. MY THREE YEAR OLD COUSIN HAD PASSED AWAY FROM CANCER.

Q IS IT FAIR TO SAY THAT BEFORE YOU EVEN SENT THOSE MONIES TO YODER'S, YOU INDICATED THAT BOTH OF THOSE PAYMENTS WERE FOR THE VERNONS?

A YES, CORRECT.

Q AND YOU HAD ALSO SUPPLIED THE STUBS---

A WITH IT.

Q SO, LET'S GO TO THE NEXT -- APRIL 19TH -- THAT'S YBS-0221. AND THE SECOND PARAGRAPH OF THAT EMAIL FROM YOU---

A YOU SAID APRIL?

Q NO, I'M SORRY. THURSDAY, NOVEMBER 19, 2009.

A OKAY.

Q "I WAS UNABLE TO SLEEP LAST NIGHT." DO YOU SEE THAT?

A YES, BECAUSE OF MY COUSIN'S PASSING AWAY DUE TO CANCER.

Q AND YOU NOTICED -- "AND I NOTICED ON OUR MOST RECENT BILL 10/25/09 THAT I DO NOT SEE THE 2 CHECKS WERE SENT ON THE VERNON ACCOUNT POSTED TO THEIR ACCOUNT." CORRECT?

A YES. HE DID NOT POST THEM TO THE CORRECT ACCOUNT.

Q THOSE ARE THE SAME TWO -- ONES THAT YOU ASKED PRIOR TO SENDING THEM TO BE POSTED TO THE VERNON ACCOUNT?

A ON 10/23 TO BE POSTED TO THE ACCOUNT, YES.
Q AND NEXT FRIDAY, WHATEVER DATE THAT WOULD BE?
A I DON'T KNOW WHAT THAT DATE WOULD BE.
Q "PAYMENT ON THE VERNONS WILL BE MAILED OUT TOMORROW AND NEXT FRIDAY." THAT SUGGESTS TO ME TWO PAYMENTS. DOES IT TO YOU?
A YES.
Q AND IN THIS LETTER IN NOVEMBER, YOU INDICATED THAT THE ONE DATED OCTOBER 10TH, $40,270.43 AND THE ONE DATED OCTOBER 23RD, $22,493, BOTH WERE TO BE CREDITED TO THE VERNONS, CORRECT?
A CORRECT.
Q HAS YODER'S GIVEN THOSE CREDITS TO THE VERNONS?
A I DON'T THINK SO BECAUSE THAT WAS OUR BIG DISCREPANCY.
Q OKAY. GO TO THE NEXT EMAIL, IF YOU WOULD, MA'AM.
A OKAY.
Q THIS IS ONE DATED DECEMBER 2ND, 2009 AT 10:21 P.M. -- A.M., YBS-0222; IS THAT CORRECT?
A YES.
Q "WITH THE PAYMENTS I SENT DURING OCTOBER AS LISTED BELOW SHOULD HAVE PUT MY ACCOUNT FOR THE VERNONS BACK ON TRACK OR CLOSE TO IT INCLUDING THE PAYMENT I WAS GOING TO SEND PRIOR TO BEING ADVISED BY SOMEONE OTHER THAN YODER'S THAT MY ACCOUNT WAS ON HOLD." AND YOU AGAIN ADDRESSING THE ALLOCATION OF YOUR CHECKS TO VERNONS -- EXCUSE ME -- TO YODER'S IN THIS EMAIL?
A I AM. YES, SIR.
Q ALSO, YOU GO ON TO SAY THAT YOU HAVE NOT BEEN PAID IN FULL

BY THE MARSHALLS OR THE TOLLESONS, "AND THAT ALL MONIES THAT I HAVE SENT TO YODER'S SHOULD HAVE BEEN APPLIED TO THE VERNONS ACCOUNT"; IS THAT CORRECT?

A THAT'S CORRECT.

Q THE MARSHALLS' AND TOLLESONS' JOB WERE COMPLETED WHEN?

A THE TOLLESONS' JOB, AS OF THAT DATE, IT WAS COMPLETED THREE MONTHS PRIOR AND THE MARSHALLS WAS COMPLETED, I BELIEVE, SIX MONTHS PRIOR.

Q AND YOU UNDERSTAND THAT SOUTH CAROLINA LIEN LAW GIVES A MAXIMUM OF 90 DAYS FROM THE LAST DAY WORKED TO FILE A MECHANIC'S LIEN?

A I DO NOW.

Q MECHANIC'S LIEN RIGHTS HAD EXPIRED ON THOSE JOBS.

A OKAY.

Q WOULD YOU AGREE WITH ME THAT YODER'S WOULD HAVE THE INCENTIVE TO APPLY THOSE FUNDS DESPITE YOUR INSTRUCTIONS TO THE OLDER BILL BECAUSE OF THE VALUE OF THE MECHANIC'S LIEN RIGHTS THEY STOOD LESS OF A CHANCE OF COLLECTING?

A WELL, THEY SHOULD HAVE PROCEEDED THAT ON THE JOBS THAT THEY WERE GETTING PAID FOR. I'M PAYING THEM FOR THE VERNONS, AND THEY SHOULD PUT THE MONEY ON THE VERNONS' JOB.

Q OKAY. IF YOU COULD LOOK AT THE NEXT EMAIL.

A I THINK I'M THERE ALREADY.

Q DECEMBER 3RD?

A 8:39 A.M.

Q OKAY. THIS IS YOUR EMAIL TO MR. MCLANE AGAIN, CORRECT?
A YES.
Q AND YOU AGAIN ADDRESS THE MATTER OF APPLICATION OF THOSE FUNDS?
A YES. I WAS CONCERNED BECAUSE TWO WEEKS AGO I FOUND OUT THAT THEY SPOKE TO MR. VERNON ABOUT MY ACCOUNT WHICH THEY SHOULD NOT HAVE. THEY SAID THEY DID, AND THEN I ASKED THEM AND THEY SAID THEY DIDN'T. SO, I WANTED TO WRITE WILEY A LETTER AND EXPLAIN WHAT WAS GOING ON, WHAT I EXPECTED AND HOW WE NEEDED TO FIX THIS.
Q WHY WOULD IT CONCERN YOU IF YODER'S SPOKE TO THE VERNONS?
A BECAUSE THEY WERE GIVING THEM MISINFORMATION. THEY WEREN'T PUTTING MY CHECKS TO WHERE THEY WENT. SO, THEY'RE TELLING MR. VERNON THAT I OWED THEM MONEY. IT'S UNTRUE. I WAS ALMOST CLOSE TO UP-TO-DATE ON THE VERNONS WHEN THE PHONE CALL WAS MADE.
Q WOULD YOU BE CONCERNED THAT YOU WOULDN'T WANT IT DISCLOSED TO THE VERNONS THAT THEIR MONEY COULDN'T BE USED BY YOU FOR 60 OR 90 DAYS?
A NO. I DID NOT WANT THE VERNONS TO KNOW FROM YODER'S THAT THEY'RE MISAPPROPRIATING THE FUNDS. I SHOULD BE THE ONE TAKING CARE OF IT BECAUSE I'M THE ONE PAYING YODER'S.
Q WHAT DO YOU SHOW DOWN THERE ON THIS EMAIL AS THE AMOUNT THAT YOUR RECORDS SHOWS AS THE AMOUNT THAT'S OWED?
A TO THE VERNONS?
Q OR--
A TO YODER'S?

Q --TO YODER'S ON THE VERNON RESIDENCE?
A $20,000.
Q AND THAT'S AS OF THE FIRST OF DECEMBER?
A YES.
Q THE NEXT DOCUMENT THAT I WANT TO GO OVER IS A COPY OF YODER'S BILLING TRANSACTIONS, YODER'S BUILDING SUPPLIES, INC.? DO YOU SEE THAT?
A AM I -- KEEP ON FLIPPING?
Q YES, MA'AM. TWO PAGES OVER. THIS IS FROM--
A ACCOUNTS RECEIVABLE.
Q --STATEMENT OF ACCOUNT?
A CORRECT.
Q I'M ON PAGE 3.
A OKAY.
Q LOOKING DOWN AT THE ENTRY WHERE THERE IS A PAID AMOUNT SHOWN OF $3,557.41. DO YOU SEE THAT?
A YES.
Q AND OVER NEXT TO MAY 12, 2009 IS A CREDIT MEMO, CORRECT?
A YES.
Q AND THAT MEANS A CREDIT MEMO WAS ISSUED TO LANDMARC BY YODER'S, CORRECT?
A FOR THE INVOICE THAT THEY ISSUED INCORRECTLY, YES.
Q OKAY. HAVE YOU GIVEN THAT CREDIT TO THE VERNONS?
A I DIDN'T CHARGE THEM FOR IT. THE INVOICE WAS WRONG. $3,557.41, ON THE SAME DATE THAT THE INVOICE WAS ISSUED, YODER'S

GAVE ME A CREDIT BECAUSE THEY DID IT WRONG. THEY MADE A MISTAKE. PEOPLE DO THAT.

Q SO, IT'S YOUR TESTIMONY THAT THAT AMOUNT WAS NEVER INVOICED TO THE VERNONS IN THE FIRST PLACE?

A I DON'T BELIEVE SO. NO. IT'S THE SAME DAY. I MEAN, YODER'S WOULDN'T GIVE ME AN INVOICE FOR A CREDIT THAT THEY GAVE ME THE SAME DAY.

Q WOULDN'T IT BE IMPORTANT TO PROPERLY ALLOCATE CHARGES TO PARTICULAR JOBS, I MEAN, FOR WORK? CONCERNING YODER'S, FOR EXAMPLE?

A YODER'S WOULD GIVE ME AN INVOICE FOR THE JOB THAT THEY SENT THE MATERIAL FOR.

Q THERE'S NO DISPUTE THAT YOU OWE YODER'S MONEY AS YOU SIT HERE TODAY ON SEVERAL JOBS, CORRECT?

A CORRECT.

Q IF FUNDS ARE NOT PROPERLY ALLOCATED, IT CAN CAUSE AN INCREASE IN THE FINANCE CHARGES FOR THAT AMOUNT, CORRECT?

A EXACTLY.

Q AND YOU DISAGREE THAT THE $139,000 THAT YODER'S IS SEEKING IN ITS MECHANIC'S LIEN IS THE CORRECT AMOUNT, ISN'T THAT CORRECT?

A THAT'S AN INCORRECT AMOUNT.

Q IT'S AN INCORRECT AMOUNT?

A YES.

Q WHEN YOUR HUSBAND TESTIFIED $20,000, $25,000, I DON'T REMEMBER HONESTLY, DOES THAT SOUND ABOUT RIGHT?

A THE $20,000.

MR. STERN: THAT'S ALL I HAVE.

BY THE COURT: YOUR WITNESS.

MR. DUDLEY: THANK YOU.

CROSS-EXAMINATION BY MR. DUDLEY:

Q ALL RIGHT. MRS. DUNN, I'M GOING TO DO THIS LIGHTNING ROUND. WE'RE NOT GOING TO REPLOW ANY GROUND. SINCE 2006, YOU DID THE BOOKKEEPING?

A CORRECT.

Q YOU REFERRED TO YOURSELF AS THE DAILY ACCOUNTANT?

A WELL, I'M NOT REALLY AN ACCOUNTANT, NEVER SAID AN ACCOUNTANT.

Q WELL, YOU SAID IT. YOU'RE NOT A CPA. YOU WERE DOING THE DAILY ACCOUNTING---

A DOING THE BOOKS, CORRECT.

Q AND MARC IS THE BOSS, ISN'T HE?

A CORRECT.

Q IT WAS BOTH OF YOU. YOU MAY HAVE BEEN DOING THE BULK OF IT, BUT HE WAS ASSISTING YOU IN LIEN WAIVERS, PAY REQUESTS AND ALL OF THAT STUFF, RIGHT?

A CORRECT.

Q YOU AGREE THAT -- MR. STERN SHOWED YOU IN YOUR -- AS OF NOVEMBER WHEN YOU GOT YOUR LAST PAYMENT FROM THE VERNONS, THAT THE VERNONS PAID IN FULL FOR WHAT Y'ALL HAD BILLED THEM AT THAT POINT?

A YES. THAT'S CORRECT.
Q ALL OF NOVEMBER -- AS OF NOVEMBER, LANDMARC ADMITS THEY OWED MONEY TO YODER'S?
A CORRECT.
Q DISPUTE THE AMOUNT, THAT EVEN THOUGH YOU HAD BEEN PAID IN FULL BY THE VERNONS, YOU STILL -- YOU ADMIT THAT AT LEAST $20,000 WAS OWED TO YODER'S?
A YES.
Q YOU HAD GOTTEN PAID BY THE VERNONS FOR WORK THAT YODER'S HAD DONE AND HAD NOT PAID YODER'S?
A THEY DIDN'T DO IT RIGHT.
Q NO, NO, NO. THAT $20,000 WAS AFTER APPLYING---
A OH, THE $20,000. I AGREE, THE $20,000. YES. UH-HUH (AFFIRMATIVE).
Q I WANT TO -- WHILE WE'RE ON THE DECK ISSUE -- THIS IS THE TRIAL.
A YES.
Q YOU PREPARED FOR IT TODAY. WHATEVER YOU WANT TO DO, TODAY IS THE DAY YOU BRING YOUR TESTIMONY, YOUR EVIDENCE, OR WHATEVER. THERE HAS BEEN, WITH YOU AND YOUR HUSBAND, THERE HAS BEEN ZERO DOCUMENTATION TO BACK UP THE $36,000 BACK CHARGES, ISN'T THERE?
A I WOULDN'T SAY ZERO. I WROTE A LETTER TO WILEY.
Q ALL RIGHT. YOU HAVE NOT PRODUCED ONE DOCUMENT, PHOTO, STATEMENT, WITNESS OR ANYBODY TO BACK UP THE $36,000 BACK CHARGES OR, MORE IMPORTANTLY, TO BACK UP THE DOCUMENT -- THE FACT THAT

THE DRAIN MAT WAS INCORRECTLY SUPPLIED BY LANDMARC -- OR BY THE VERNONS -- YODER'S. I'VE GOT IT.

A PATRICK SAID THAT IT WAS DEFECTIVE.

Q OKAY. PATRICK HADN'T TESTIFIED YET, HAS HE?

A NO.

Q THIS IS YOUR -- THIS IS A BACK CHARGE THAT -- YOU HAVE THE BURDEN OF PROOF AND YOU HAVE -- IT'S THE FIRST DOCUMENT THAT SAYS, THAT PROVES THAT THE DRAIN MAT OR ANY OF THE MATERIAL WAS DEFECTIVE SUPPLIED BY YODER'S, AND YOU HAVEN'T PRODUCED ANY DOCUMENT TO BACK UP THE $36,000 AND HOW YOU ARRIVED AT THAT. YOU HAVEN'T DONE IT?

A YODER'S HASN'T GIVEN ME ANY REASON TO DO THAT.

Q YOU KNOW WHAT, IT'S YOUR CLAIM TO BACK CHARGE YODER'S. YOU HAVEN'T PRODUCED THAT AND YOU HAVEN'T DONE IT. LET'S NOW MOVE ON.

LET'S TALK ABOUT THE BUSINESS PRACTICE OF LANDMARC. YOU SAY YOU HAD ALL OF YOUR BANK ACCOUNTS WITH BANK OF AMERICA. YOU HAD FIVE OF THEM?

A CORRECT.

Q EACH PROJECT HAD A SEPARATE ACCOUNT. THAT'S THE WAY YOU OPERATED? THAT'S THE WAY YOU SET IT UP?

A NO. I DID NOT.

Q GO TO YOUR PAGE 90 OF YOUR DEPOSITION.

A OKAY.

Q DO YOU REMEMBER BEING DEPOSED?

A I DID.
Q TOOK AN OATH JUST LIKE YOU DID HERE TODAY. REMEMBER THAT?
A CORRECT.
Q NOW, GO TO PAGE 90, STARTING AT LINE 7. I'M GOING TO READ IT. I WANT YOU TO ANSWER WHAT YOU SAID.
A OKAY.
Q "WHAT WAS THE BUSINESS PURPOSE OF THE FIVE DIFFERENT BANK ACCOUNTS?"
WHAT WAS YOUR ANSWER?
A "WE HAD ONE FOR GENERAL BANK ACCOUNT. WE HAD ONE FOR EACH PROJECT THAT WE WERE ON."
Q QUESTION, WE'RE ON LINE 14, "NOW, FOR THE VERNON PROJECT, WAS THERE A SEPARATE BANK ACCOUNT FOR THE VERNON PROJECT?"
WHAT WAS YOUR ANSWER?
A "WHEN IT WAS APPLICABLE, YES."
Q KEEP GOING.
A "WHEN WE WERE PAID ON TIME, WE USED THEIR ACCOUNT."
Q I SAID, "OKAY." WHAT WAS YOUR ANSWER AFTER THAT?
A "SO THERE WAS AN ACCOUNT FOR THE VERNONS."
Q "YES. SO THERE WAS AN ACCOUNT FOR THE VERNONS. YES."
A BUT WE MISSED A SPOT. WE SKIPPED OVER. IS THAT OKAY? I'M SORRY.
Q YOU WERE ONLY WITHHELD $15,000 FROM THE VERNONS. THAT'S THE ONLY MONEY THEY EVER HELD BACK FROM YOU.
A BESIDES THE TWO PAY APPLICATIONS.

Q BESIDES THEN BUT UP UNTIL NOVEMBER, YOU WERE PAID IN FULL. THEY ONLY WITHHELD $15,000, AND AS OF NOVEMBER THEY PAID IT TO YOU. AS OF NOVEMBER, THE VERNONS HAD PAID YOU 100 PERCENT OF WHAT YOU THOUGHT YOU WERE OWED FOR THAT PROJECT, 100 PERCENT, AND YOU HAD NOT PAID YODER'S?

A NO, BECAUSE THEY HAD NOT FIXED EVERYTHING THAT WAS IN QUESTION: THE MISAPPROPRIATION OF THE CHECK, THE DRAIN MAT, THE CREDIT. ALL OF THIS INFORMATION I WAS GOING BACK AND FORTH WITH WILEY ON, I NEVER GOT A RESOLUTION TO IT. I WAS ASKING FOR ONE. I WAS TRYING TO BUILD THE RELATIONSHIP -- WE HAD WORKED WITH THEM FOR 15 YEARS.

Q AND YOU NEVER -- I'M GOING TO PUT WORDS IN YOUR MOUTH. DID YOU SEND WILEY A BUNCH OF DOCUMENTS TO BACK UP THE BACK CHARGES FOR THE DECK?

A I SENT HIM AN EMAIL.

Q DID YOU SEND ANY DOCUMENTS THAT BACK UP, "HERE IS ALL OF THE MATERIAL"--

A HE DIDN'T ASK FOR THEM.

Q LET ME FINISH.

A OKAY.

Q "HERE ARE ALL OF THE MATERIALS, HERE'S THE LABOR WE CHARGED, HERE IS THE BACKUP AND THE PICTURES TO SHOW THIS WAS DEFECTIVE." DID YOU EVER SEND THAT TO HIM?

A I BELIEVE ON A LETTER I SENT TO WILEY I DID BREAK OUT ON THE BOTTOM EXACTLY HOW IT WAS DONE. NOW, WILEY DIDN'T ASK FOR ANY

ADDITIONAL DOCUMENTS. THAT'S WHY I DID NOT PROVIDE THEM. WE HAD A GOOD RELATIONSHIP WITH YODER'S. WE'VE HAD CREDITS PROVIDED IN THE PAST 10 YEARS. I TELL THEM WHAT IT IS AND THEY CREDIT THE ACCOUNT BECAUSE THEY WORK WITH US A LOT. I MEAN, IF THEY NEEDED MORE DOCUMENTATION, THEY SHOULD HAVE ASKED FOR IT AND NOT FILED A LIEN.

Q YOU WERE ASKING FOR A $36,000 CREDIT BACK IN JUNE, AND THEN IN DECEMBER -- I TAKE THAT BACK. DECEMBER 3RD WAS THE FIRST TIME YOU SPELLED OUT WHAT THAT BACK CHARGE IS, ISN'T THAT CORRECT?

A YES, BUT I ASKED FOR IT IN NOVEMBER.

Q IN DECEMBER YOU ASKED -- YOU'RE RIGHT. NOVEMBER 19TH YOU SENT AN EMAIL.

A I DID.

Q THAT'S THE FIRST TIME -- THIS WAS $36,000 YOU'RE ASKING FOR IN NOVEMBER FOR A DECK ISSUE THAT HAPPENED IN THE SUMMER?

A BUT I HAD SENT SEVERAL EMAILS IN BETWEEN THERE THAT WAS TALKING ABOUT THE DECK. IT MIGHT NOT HAVE PUT A NUMBER ON IT YET, TALKING ABOUT THE DECK.

Q YOU DIDN'T INTRODUCE THOSE INTO EVIDENCE TODAY, DID YOU?

A I---

Q YOU DIDN'T.

A I THINK THEY WERE PREVIOUSLY.

Q YOU FIND THEM WHILE WE'RE HAVING SOME TIME HERE HAVING THIS FUN. THEY'RE NOT THERE.

A OKAY.

Q DECEMBER 3RD, YOU WRITE AND SAY, "I WANT $36,000." OTHER THAN THAT, YOU SUPPLIED ZERO BACKUP FOR THAT, ZERO. AND YOU WERE MAD BECAUSE YOU WANTED THEM TO GIVE YOU THE CREDIT AND THEY WEREN'T GIVING IT TO YOU, AND YOU DIDN'T SUPPLY THEM ANY OTHER INFORMATION?

A THEY ACTUALLY NEVER TOLD ME THEY WERE NOT GOING TO GIVE IT TO ME OR THAT THEY WERE GOING TO GIVE IT TO ME. THEY FILED A LIEN.

Q WE'LL GET TO THAT TOO BECAUSE THERE'S SOME DOCUMENTATION BETWEEN THE DECEMBER 3RD EMAIL AND WHEN THEY FILED THE LIEN. ALL RIGHT. AS OF DECEMBER, LANDMARC -- AFTER THEY GOT TERMINATED FROM YODER -- FROM THE VERNON JOB, LANDMARC WAS OUT OF BUSINESS?

A CORRECT.

Q IT'S YOUR TESTIMONY THAT AS OF DECEMBER THAT'S THE LAST TIME Y'ALL TOOK MONEY OUT OF THE VERNON BANK ACCOUNT?

A THE BANK ACCOUNTS WERE ALL ACROSS THE BOARD.

Q WELL, NO.

A LET'S GO BACK TO THAT.

Q WELL, LET ME ASK YOU THIS. IS DECEMBER THE LAST TIME YOU TOOK MONEY OUT OF THE VERNON BANK ACCOUNT?

A I DON'T KNOW.

Q YOU DON'T KNOW. THE BANK RECORDS WOULD SHOW?

A CORRECT.

Q BUT YOU TESTIFIED AT DEPOSITION THAT AS OF DECEMBER THERE WAS NO MORE MONEY LEFT IN THAT BANK ACCOUNT FOR THE VERNONS?

A THERE'S NO MORE MONEY LEFT IN THAT BANK. THERE'S NO MONEY LEFT IN ANY BANK ACCOUNT.
Q NOW, LET'S TALK SPECIFICALLY -- EVERY MONTH YOU GOT A MONTHLY STATEMENT FROM YODER'S. ALL RIGHT. YOU GOT A MONTHLY STATEMENT FROM YODER'S. THEN IT KEPT A RUNNING TOTAL OF WHAT YOUR BALANCE WAS ON EACH ONE OF YOUR PROJECTS, RIGHT?
A CORRECT, ELECTRONICALLY.
Q EVERY MONTH YOU KNEW WHEN YOU GOT THAT YODER'S STATEMENT HOW MUCH YODER'S WAS HOLDING AS AN ACCOUNTS RECEIVABLE FROM YOU ON ALL OF YOUR VARIOUS ACCOUNTS. THAT'S PART OF WHAT THAT BIG MONTHLY STATEMENT WAS. IN ADDITION, THERE WAS A PROJECT STATEMENT FOR EACH PROJECT BROKEN DOWN BY THAT NAME?
A CORRECT.
Q THAT'S WHERE YOU SAID YOU RIPPED THAT OFF THE TOP?
A UH-HUH (AFFIRMATIVE).
Q YOU HAD TOLLESON/SMITH, MARSHALL, VERNON GOING ON IN '09. SO, YOU SENT THREE CHECKS -- AT LEAST THREE DIFFERENT CHECKS WITH THREE DIFFERENT STUBS EVERY MONTH TO YODER'S. IS THAT YOUR TESTIMONY?
A NO. SOMETIMES I WOULD COMBINE THE CHECK AND SEND THE THREE STUBS. THEY WOULD HAVE TO ALLOCATE IT ACCORDING TO THE STUBS.
Q SO, SOMETIMES YOU WOULD PUT ON VERNON JOB, SOMETIMES YOU DIDN'T. WHAT WAS THE MODUS -- WHY WOULD YOU WRITE IT DOWN AND SOMETIMES YOU DIDN'T?
A DIFFERENT DAY.

Q JUST DIDN'T. IT WASN'T OUT THERE?

A IT WASN'T A KEY STROKE. YOU ACTUALLY HAD TO GO INTO THE CHECK AND TYPE INFORMATION.

Q ACTUALLY, WITH QUICKBOOKS, WHEN YOU TYPE IT IN, WHEN YOU'RE DOING THE CHECK, YOU'RE PREPARING THAT INFORMATION--

A YES.

Q --YOU CAN TAB OVER TO IT WITH THE DIFFERENT SECTIONS ON THE CHECK YOU WANT TO FILL IN, RIGHT?

A YES.

Q SO, IT'S THE TAB BUTTON AND THEN YOU HAVE TO TYPE IN VERNON---

A YOU HAVE TO TYPE MORE IN, YES.

Q IT'S A KEYSTROKE TO GET TO THAT. ALL RIGHT. AND ON EVERY MONTH YOU WENT THROUGH THE YODER'S STATEMENTS BEFORE YOU SUBMITTED THEM TO THE VERNONS. YOU WENT THROUGH THOSE TO MAKE SURE THEY WERE CORRECT. YOU AND MARC BOTH WENT THROUGH THE YODER'S STATEMENTS TO MAKE SURE -- BEFORE YOU PASSED THEM ON TO THE VERNONS TO PAY, YOU WANTED TO MAKE SURE THEY WERE CORRECT?

A YES.

Q SOMETIMES, THERE WERE MATERIALS -- THERE WERE CREDITS. EXHIBIT 1 IN OUR NOTEBOOK SHOWS THAT YOU DISCOVERED THERE WOULD BE CREDITS TO YOUR ACCOUNT FOR EITHER RAW MATERIAL OR YOU BROUGHT SOMETHING BACK BECAUSE YOU DIDN'T NEED ALL OF IT. YOU GOT CREDITS ALONG THE WAY. THAT'S THE LITTLE CRM'S, THE CREDIT MEMOS, ON YOUR ACCOUNT, RIGHT?

A I SAW THEM ON THIS, YES.
Q NOW, FOR YOUR, LANDMARC, YOU HAD A BANK ACCOUNT THAT YOU WERE OPERATING WITH, ALL OF THE MONEY THAT CAME IN -- SUPPOSED TO BE -- ALL OF THE MONEY THAT CAME IN FROM THE VERNONS WENT INTO THE VERNON 8447 BANK ACCOUNT, RIGHT?
A IF THEY PAID ON TIME, YES.
Q ALL RIGHT. WELL, LET'S SEE. HAVE YOU LOOKED TO SEE HOW OFTEN YOU HAD A CHECK -- NO, NO. YOU'RE MISUNDERSTANDING ME. WHEN THE VERNONS PAID YOU--
A YES.
Q --WHEN THE VERNONS PAID YOU, YOU TOOK -- PUT THAT CHECK INTO THE VERNON DESIGNATED BANK ACCOUNT, 8447, DIDN'T YOU?
A I PUT IT INTO A BANK ACCOUNT.
Q WELL, WHY WOULD YOU HAVE A VERNON BANK ACCOUNT AND NOT PUT IT INTO IT?
A WELL, I DIDN'T HAVE A LABEL ON IT AS THE VERNON BANK ACCOUNT.
Q YOU DIDN'T?
A NO.
Q SO, WHEN YOU DECIDED TO MAKE A PAYMENT, YOU JUST DECIDED WHICHEVER BANK ACCOUNT HAD MONEY IN IT TO PAY THE SUBS OFF?
A NO. I HAD WHAT WAS PAID BY THE VERNONS, AND I USED THAT TO PAY YODER'S. NOW, WHERE THAT MONEY WAS IN AN ACCOUNT, I WENT TO WHAT THE VERNONS PAID AND THAT'S WHAT I PAID YODER'S.
Q OKAY. NO. THE CHECKING ACCOUNT--

A YES.
Q DID YOU JUST DECIDE WHICHEVER CHECKING ACCOUNT HAD THE MONEY IN IT AS TO HOW YOU WROTE THAT CHECK OFF OF IT?
A NO.
Q I WANT TO ASK YOU -- I'LL TELL YOU THIS, REPRESENT THIS TO YOU. I'LL TAKE A FEW MINUTES AND I'LL WALK YOU THROUGH IT. EVERY ONE OF THE VERNON CHECKS EXCEPT ONE WENT INTO THE 8447 ACCOUNT. WE'VE GOT THE BACKUP. IT'S ALL RIGHT HERE.
A OKAY, THEN 8447.
Q EXCEPT THE FIRST ONE. THE $25,000 DEPOSIT WENT INTO THE TOLLESON/SMITH ACCOUNT. DO YOU HAVE AN EXPLANATION FOR THAT?
A PROBABLY BECAUSE THE VERNON ACCOUNT WASN'T SET UP YET OR IT WAS THE DEPOSIT SLIP I HAD IN MY HAND, BUT IT MADE IT TO THE VERNONS' ACCOUNT. IT WAS IN THE VERNONS' ACCOUNT. IT WAS APPLICABLE TO THE VERNONS' ACCOUNT.
Q THAT $25,000 DID EVENTUALLY MAKE IT TO THE 8447 ACCOUNT. THAT'S IN YOUR BANK RECORDS.
A CORRECT.
Q BUT FOR ALL OF THE OTHER ACCOUNTS, ALL OF THE OTHER DEPOSITS, YOU PUT THEM INTO THE 8447 ACCOUNT BECAUSE THAT'S WHERE YOU WERE GOING TO PAY THE SUBS OUT OF, RIGHT?
A IF THE MONEY WAS THERE, YES.
Q TURN TO PAGE 91 OF YOUR DEPOSITION, THE NEXT PAGE. I'M GOING TO ASK -- I'M GOING TO START ON LINE 2. I'M GOING TO ASK THE QUESTION. I WANT YOU TO GIVE ME YOUR ANSWER.

"QUESTION: AND DID ALL OF THE PAYMENTS FROM THE VERNONS GO INTO THAT ACCOUNT?" WHAT WAS YOUR ANSWER?

A "YES." I DON'T KNOW WHAT ACCOUNT YOU'RE ASKING ABOUT.

Q LET'S GO BACK. LET'S GO BACK TO THE OTHER PAGE, REMEMBER.

A YES. I SEE 8447.

Q PAGE 90, WE TALKED ABOUT THAT. YOU SAID THERE WAS A SEPARATE BANK ACCOUNT FOR THE YODER'S -- THE VERNON'S ACCOUNT. DO YOU REMEMBER THAT?

A AS APPLICABLE WHEN THEY PAID ON TIME, YES. RIGHT IN HERE.

Q SO, LET'S START AT 22 ON THE BOTTOM OF PAGE 90.

"THERE WAS A BANK OF AMERICA -- AND YOU CAN PROVIDE THE INFORMATION TO YOUR ATTORNEY WHICH ACCOUNT NUMBER WAS DESIGNATED FOR THE VERNON ACCOUNT."

WHAT WAS YOUR ANSWER ON THE NEXT PAGE?

A "YES."

Q THEN MY QUESTION: "AND DID ALL OF THE PAYMENTS FROM THE VERNONS GO INTO THAT ACCOUNT?"

WHAT IS YOUR ANSWER?

A "YES."

Q NEXT QUESTION: "ALL RIGHT. AND THEN ALL OF THE PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS ON THAT PROJECT CAME FROM THAT ACCOUNT."

WHAT WAS YOUR ANSWER?

A "IF WE WERE PAID ON TIME."

Q IF THE VERNONS PAID ON TIME, ALL OF THE SUBS GOT PAID OUT OF

THAT ACCOUNT. SOMETIMES, YOU'RE SAYING, YOU HAD TO PAY A SUB OUT OF YOUR OVERHEAD ACCOUNT?

A CORRECT.

Q BUT THAT WAS YOUR GOAL AND THAT'S HOW YOU WERE SEGREGATING THAT MONEY. ALL OF THE VERNON CHECKS WENT INTO THAT ACCOUNT, AND YOU TRIED, AS BEST YOU COULD, TO PAY ALL OF THOSE OUT OF THAT ACCOUNT, RIGHT?

A IF POSSIBLE.

Q NOW, THAT WAS ONE WAY YOU TRIED TO SEGREGATE YOUR COSTS AND SEGREGATE YOUR PAYMENTS. YOU HAD A QUICKBOOKS ACCOUNT DO THAT TOO, DIDN'T YOU?

A YES.

Q AND YOU TRACKED EVERY COST THAT WAS CODED ON VERNON IN YOUR QUICKBOOKS ACCOUNT, AND EVERY PAYMENT THAT YOU MADE ON THE VERNON PROJECT YOU KEPT TRACK IN THE QUICKBOOKS ACCOUNT IRRESPECTIVE OF WHAT BANK ACCOUNT IT CAME OUT OF, RIGHT?

A I HAD SEVERAL ACCOUNTS IN QUICKBOOKS, AND I WASN'T AN EXPERT. SO, I DID THE BEST I COULD.

Q WELL, YOU HAD BEEN DOING IT SINCE '06. I KNOW YOU'RE NOT AN EXPERT. YOU HAD BEEN DOING IT SINCE '06. BUT YOUR JOB -- BECAUSE ALL YOU COULD BILL TO THE VERNONS WAS YOUR ACTUAL COSTS. AND SO YOU KNEW THERE WAS AN OBLIGATION TO SEGREGATE THOSE COSTS AND WHEN THE MONEY CAME IN, YOU PAID IT OUT. YOU HAD AN OBLIGATION AND THAT'S WHAT YOU WERE TRYING TO DO, RIGHT?

A I WAS TRYING TO PAY THE SUBS, YES, CORRECT, AND THE VENDORS.