

RECEIVED

Sep 29 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

The Honorable Steven C Kirven
Case Nos. 2019CP3700687 and 2020CP3700188

Appellate Case No. 2022-001189

Montgomery Holdings, LLC d/b/a IBI Builders,..... Respondent,

v.

Christopher J. Merlo and Grandsouth Bank, Defendants

AND

Christopher J. Merlo,..... Appellant,

v.

Gregory K. Grissinger, Jr. and John Montgomery, ...Respondents.

SECOND REVISED RECORD ON APPEAL - VOLUME II

Townes B. Johnson III (SC Bar# 75412)
TOWNES B. JOHNSON III, LLC
PO Box 9246
GREENVILLE, SC 29604
PH: (864) 757-4899
Attorney for Appellant

Jason M. Tarokh (SC Bar #72837)
Tarokh Law, PLLC
PO Box 10827
Tampa, FL 33679
813-922-5510
jason@tarokhlaw.com
Attorney for Respondent

INDEX

ORDERS

February 18, 2020 Order Granting Plaintiffs Motion to Compel Answers to Interrogatories and Responses and Documents to Requests for Production and Granting Third Party Defendants' Motion to Strike/Dismiss Third Party Complaint in its Entirety (2019CP3700687)	1
August 30, 2021 Consent Order for Consolidation (2019CP3700687 and 2020CP3700188)	4
August 30, 2021 Consent Order for Order of Reference to Master-in-Equity (2019CP3700687)	6
July 20, 2022 Master-in-Equity's Order and Judgment of Foreclosure and Sale	9
July 28, 2022 Notice of Sale	35
August 17, 2022 Order Denying Motion to Alter to Amend	38
August 26, 2022 Order Denying Merlo's Motion and [Proposed] Order Pursuant to South Carolina Code Ann. § 18-9-130(2)	41
August 29, 2022 Plaintiff's Motion and Order Cancelling the Foreclosure Sale	44

PLEADINGS

Respondent's Summons and Complaint (2019CP3700687), filed November 8, 2019	47
Appellant's Answer, Counterclaim and Third Party Complaint (2019CP3700687), filed November 21, 2019	70
Respondent's Answer and Affirmative Defenses to Defendant's Counterclaims (2019CP3700687), filed on December 20, 2019	87
Appellant's Summons and Complaint (2020CP3700188), filed March 6, 2020	99
Respondent's Answer and Affirmative Defenses (2020CP3700188), filed March 23, 2020	107
Appellant's Motion to Alter or Amend, filed July 29, 2022	130
Respondents' Response in Opposition to Merlo's Motion to Alter or Amend, filed on August 9, 2022	136

TRANSCRIPTS

Trial Transcript, May 24 – May 27, 2022	147

OTHER MATERIAL

Satisfaction of Judgment, Filed August 29, 2022	975
Respondents' Trial Exhibit 1	976
Respondents' Trial Exhibit 2	980
Respondents' Trial Exhibit 3	990
Respondents' Trial Exhibit 4	992
Respondents' Trial Exhibit 5	996
Respondents' Trial Exhibit 6	997
Respondents' Trial Exhibit 7	999
Respondents' Trial Exhibit 8	1000
Respondents' Trial Exhibit 9	1002
Respondents' Trial Exhibit 10	1003
Respondents' Trial Exhibit 11	1005
Respondents' Trial Exhibit 12	1006
Respondents' Trial Exhibit 13	1008
Respondents' Trial Exhibit 14	1009
Respondents' Trial Exhibit 15	1010
Respondents' Trial Exhibit 16	1012
Respondents' Trial Exhibit 17	1013
Respondents' Trial Exhibit 18	1014
Respondents' Trial Exhibit 19	1015

Respondents' Trial Exhibit 20	1017
Respondents' Trial Exhibit 21	1018
Respondents' Trial Exhibit 22	1019
Respondents' Trial Exhibit 23	1020
Respondents' Trial Exhibit 24	1021
Respondents' Trial Exhibit 25	1022
Respondents' Trial Exhibit 26	1024
Respondents' Trial Exhibit 27	1028
Respondents' Trial Exhibit 28	1030
Respondents' Trial Exhibit 29	1032
Respondents' Trial Exhibit 30	1033
Respondents' Trial Exhibit 31	1035
Respondents' Trial Exhibit 32	1036
Respondents' Trial Exhibit 33	1039
Respondents' Trial Exhibit 34	1040
Respondents' Trial Exhibit 35	1043
Respondents' Trial Exhibit 36	1044
Respondents' Trial Exhibit 37	1045
Respondents' Trial Exhibit 38	1048
Respondents' Trial Exhibit 39	1054
Respondents' Trial Exhibit 40	1055
Respondents' Trial Exhibit 41	1056
Respondents' Trial Exhibit 42	1058

Respondents' Trial Exhibit 43	1059
Respondents' Trial Exhibit 44	1061
Respondents' Trial Exhibit 45	1064
Respondents' Trial Exhibit 46	1068
Respondents' Trial Exhibit 47	1072
Respondents' Trial Exhibit 48	1076
Respondents' Trial Exhibit 49	1080
Respondents' Trial Exhibit 50	1085
Respondents' Trial Exhibit 51	1091
Respondents' Trial Exhibit 52	1096
Respondents' Trial Exhibit 53	1097
Respondents' Trial Exhibit 54	1098
Respondents' Trial Exhibit 55	1099
Respondents' Trial Exhibit 56	1100
Respondents' Trial Exhibit 57	1102
Respondents' Trial Exhibit 58	1103
Respondents' Trial Exhibit 59	1104
Respondents' Trial Exhibit 60	1105
Respondents' Trial Exhibit 61	1106
Respondents' Trial Exhibit 62	1112
Respondents' Trial Exhibit 63	1113
Respondents' Trial Exhibit 64	1114
Respondents' Trial Exhibit 65	1115

Respondents' Trial Exhibit 66	1116
Respondents' Trial Exhibit 67	1117
Respondents' Trial Exhibit 68	1118
Respondents' Trial Exhibit 69	1119
Respondents' Trial Exhibit 70	1121
Respondents' Trial Exhibit 71	1122
Respondents' Trial Exhibit 72	1131
Respondents' Trial Exhibit 73	1320
Respondents' Trial Exhibit 74	1325
Respondents' Trial Exhibit 75	1331
Respondents' Trial Exhibit 76	1332
Respondents' Trial Exhibit 77	1335
Respondents' Trial Exhibit 78	1336
Respondents' Trial Exhibit 79	1338
Respondents' Trial Exhibit 80	1341
Respondents' Trial Exhibit 81	1343
Respondents' Trial Exhibit 82	1345
Respondents' Trial Exhibit 83	1347
Respondents' Trial Exhibit 84	1348
Respondents' Trial Exhibit 85	1349
Respondents' Trial Exhibit 86	1350
Respondents' Trial Exhibit 87	1351
Respondents' Trial Exhibit 88	1352

Respondents' Trial Exhibit 89	1353
Respondents' Trial Exhibit 90	1354
Respondents' Trial Exhibit 91	1355
Respondents' Trial Exhibit 92	1356
Respondents' Trial Exhibit 93	1358
Appellant's Trial Exhibit 1	1359
Appellant's Trial Exhibit 8	1369
Appellant's Trial Exhibit 10	1374
Appellant's Trial Exhibit 13	1378
Appellant's Trial Exhibit 14	1379
Appellant's Trial Exhibit 19	1380
Appellant's Trial Exhibit 21	1385
Appellant's Trial Exhibit 23	1390
Appellant's Trial Exhibit 25	1396
Appellant's Trial Exhibit 27	1402
Appellant's Trial Exhibit 29	1406
Appellant's Trial Exhibit 31	1408
Appellant's Trial Exhibit 33	1409
Appellant's Trial Exhibit 34	1412
Appellant's Trial Exhibit 35	1413
Appellant's Trial Exhibit 36	1419
Appellant's Trial Exhibit 37	1421
Appellant's Trial Exhibit 38	1422

Appellant’s Trial Exhibit 39	1423
Appellant’s Trial Exhibit 40	1424
Appellant’s Trial Exhibit 42	1425
Appellant’s Trial Exhibit 43	1426
Appellant’s Trial Exhibit 44	1427
Appellant’s Trial Exhibit 45	1428
Appellant’s Trial Exhibit 46	1429
Appellant’s Trial Exhibit 50	1431
Appellant’s Trial Exhibit 51	1432
Appellant’s Trial Exhibit 54	1433
Appellant’s Trial Exhibit 60	1434
Appellant’s Trial Exhibit 61	1435
Appellant’s Trial Exhibit 62	1436
Appellant’s Trial Exhibit 63	1437
Appellant’s Trial Exhibit 64	1438
Appellant’s Trial Exhibit 67	1439
Appellant’s Trial Exhibit 68	1440
Appellant’s Trial Exhibit 70	1441
Appellant’s Trial Exhibit 71	1442
Appellant’s Trial Exhibit 72	1443
Appellant’s Trial Exhibit 75	1444
Appellant’s Trial Exhibit 77	1486
Appellant’s Trial Exhibit 81	1508

CERTIFICATES

Certificate of Counsel 1509

1 course?

2 BY MR. JOHNSON:

3 Yes, Your Honor.

4 BY THE COURT:

5 We'll take back up at that point tomorrow morning -

6 --

7 BY MR. JOHNSON:

8 Very good.

9 BY THE COURT:

10 --- at 10:00.

11 BY MR. TAROKH:

12 Thank you, Judge.

13 BY THE COURT:

14 All right. Thank you, everybody.

15 (COURT ADJOURNED @ 4:50 P.M.)

16 (MAY 25TH, 2022 AT 10:00 A.M. - DAY TWO OF TRIAL)

17 BY THE COURT:

18 All right. These are consolidated cases, civil
19 action number 2019-CP-37-00687, Montgomery Holdings, LLC
20 D/B/A IBI Builders, Plaintiff, versus Christopher J.
21 Merlo and GrandSouth Bank, also civil action number
22 2020-CP-37-00188, Christopher J. Merlo, Plaintiff,
23 versus Gregory K. Grissinger, Jr. and John Montgomery,
24 Defendants. This is day two of trial in this matter. I
25 believe yesterday we were at the point of Mr. Johnson

1 proceeding with his recross of Mr. Montgomery and, Mr.
2 Montgomery, you are still are under oath.

3 BY MR. MONTGOMERY:

4 Yes, sir.

5 BY THE COURT:

6 So please proceed.

7 TESTIMONY OF JOHN MONTGOMERY CONTINUED

8 RECROSS EXAMINATION BY MR. JOHNSON:

9 Q. Thank you, Your Honor, may it please the Court?
10 Mr. Montgomery, in your redirect you talked about
11 the electrical allowance ---

12 A. Yes, sir.

13 Q. --- and the electrical charges. And tell the Court
14 again your understanding of how that played out?

15 A. In the contract it states that Mr. Merlo was/is
16 responsible for his own lighting fixtures.

17 Q. Okay. And then you said what about what
18 transpired?

19 A. He placed, he ordered his appliances or electrical
20 fixtures on our account.

21 Q. Okay. Do you recall the vendors where you sent Mr.
22 Merlo to go?

23 A. I believe it would have been either Greer Lighting
24 or there's another lighting. So we have several
25 accounts throughout the town, Greer Lighting, I

1 think there's a lighting store in Seneca, and we
2 have one on Pleasantburg which is The Lighting
3 Center, so probably one of those three.

4 Q. So it'd be the Gallery of Lighting. ---

5 A. The Gallery of Lighting, yeah.

6 Q. --- the Greer Lighting, ---

7 A. Greer Lighting.

8 Q. --- and then somewhere in Seneca?

9 A. Those are our three, I believe our three accounts.

10 Q. Okay, all right. Do you know where Mr. Merlo went
11 to pick out his lighting fixtures?

12 A. I can't recall. I'd have to look at the invoice.
13 It's one of those three, my assumption is it's one
14 of those three.

15 Q. Okay. So in the middle of this page is an email
16 dated May 8th from Chris to you.

17 A. Yep, May 8th, does not say the date or year, but it
18 does May 8th, yes, sir.

19 Q. Would you assume that's in 2019?

20 A. I don't know if that's the date. I mean I can
21 assume from the document that you're giving me but.

22 Q. I understand. Where does Mr. Merlo say that he
23 wanted to go look for the electrical fixtures?

24 A. John -- do you want me to read the email?

25 Q. Well, you can read the whole thing or read the part

1 in question.

2 A. Okay. "The plumbing fixtures have all been
3 selected from Ferguson minus 2 vessel sinks for the
4 2nd master. In addition, the price for a copper tub
5 was a bit high so we selected a Lowe's model", he
6 gives the Lowe's model, "the lighting has all been
7 selected at Gallery of Lighting. Thanks again for
8 all the assistance & the commitment to finishing it
9 up."

10 Q. So you gave Chris a couple of options to go ---

11 A. Uh-huh (affirmative).

12 Q. --- pick out lights and he went to Gallery of
13 Lighting to pick them out; is that right?

14 A. Yes, typically we would give our accounts because
15 typically we get a little better deal than someone
16 that comes in off the street.

17 Q. Okay. And ---

18 BY THE COURT:

19 Mr. Johnson, are you going to use that as an
20 exhibit?

21 BY MR. JOHNSON:

22 I will put that in, Your Honor.

23 BY THE COURT:

24 I mean let's just from now on if you're going to
25 question a witness about a piece of paper, then we

1 need to get an exhibit introduced before we start
2 talking about it.

3 BY MR. JOHNSON:

4 Okay, all right. Okay. I'd like to introduce it
5 as Defendant's 15.

6 (DEFENDANT'S EXHIBIT 15 MARKED FOR IDENTIFICATION)

7 BY THE COURT:

8 And that's without objection?

9 BY MR. TAROKH:

10 Without objection, Your Honor.

11 BY THE COURT:

12 And that would be some kind of an email?

13 BY MR. JOHNSON:

14 It's an May 8th email between Chris Merlo and ---

15 BY THE COURT:

16 May 8 of '19?

17 BY MR. JOHNSON:

18 Yes, sir.

19 A. Well, it doesn't say the year though, it just says
20 May 8th.

21 (DEFENDANT'S EXHIBIT 15 ADMITTED INTO EVIDENCE)

22 Q. When, what time would the electrical fixtures have
23 been put in this home?

24 A. We have people pick out electrical fixtures before
25 we start, so I don't, I'm not going to guess on

1 that.

2 Q. Okay. Regardless, so Mr. Merlo went out and picked
3 out electrical fixtures at the Gallery of Lighting.

4 A. Okay.

5 Q. And it's your testimony that he put those fixtures
6 on your account; is that correct?

7 A. That is correct.

8 Q. Okay. If you'll take a look at Exhibit 39.

9 A. Okay.

10 Q. Where were the electrical fixtures, where were the
11 majority of them purchased from?

12 A. Greer Lighting, Holder, Holder and Gallery of
13 Lighting is the same thing.

14 Q. Okay. Well, how much was charged to Holder
15 Electric?

16 A. Holder Electric, \$545.15 and \$19.99.

17 Q. And how much was charged to Greer?

18 A. Well, let's get the calculator.

19 Q. Why I mean?

20 A. There's five, there's five different lines. You
21 want me to read them off?

22 Q. Well, the total allowance was over \$12,000?

23 A. Correct.

24 Q. And you say how much was charged to Holder?

25 A. \$545.15 and \$19.99.

1 Q. So the substantial majority of the charges were
2 charged to Greer Flooring?

3 A. Greer Lighting.

4 Q. Greer Lighting, okay. And so your testimony that
5 Mr. Merlo charged them all to the Gallery of
6 Lighting is not correct, is that right?

7 A. I didn't say Gallery of Lighting. You had an email
8 that said Gallery of Lighting.

9 Q. Well, that's, you testified a minute ago that he
10 went to the Gallery of Lighting and he picked out
11 his selections and that the account was charged
12 there?

13 A. This says he picked out his lighting at Gallery of
14 Lighting. It doesn't say, I didn't say he did
15 that. This is from him.

16 Q. Well, right. But did he pick them out at Greer
17 Flooring or Greer Lighting?

18 A. Greer Flooring doesn't sell lighting.

19 Q. Greer Lighting, excuse me.

20 A. When we got billed from them, yes.

21 Q. Well, did you make that order on your own?

22 A. I can't remember. They could've, they could have
23 sent it to me and I could have approved it, but
24 that doesn't mean he's not liable for paying for
25 it.

1 Q. That's a different question. You portrayed
2 yesterday that there was a nefarious plot by Mr.
3 Merlo ---

4 A. There was.

5 Q. --- to charge it to your account?

6 A. There was. Listen, you're belaboring from the
7 facts again. In the contract, not in one spot, but
8 two locations in the contract it is very clear. I
9 read that statement yesterday and I can read it
10 again, homeowner is responsible for their own
11 lighting. It doesn't say to put it on our account
12 and not pay for it.

13 Q. Did IBI make the decision to order those goods from
14 ---

15 A. Absolutely, just because we wanted to be
16 progressive and get products in the houses doesn't
17 mean we're going to pay for it.

18 Q. You're splitting hairs. I mean ---

19 A. No, you are.

20 Q. --- you're claiming a nefarious plot by Mr. Merlo
21 to charge things to ---

22 A. I think this entire case has broken down into
23 nefarious plot by Mr. Merlo, yes. I am, I stand
24 behind that.

25 Q. Well, the facts show that Mr. Merlo went to the

1 Gallery of Lighting, made some selections, and then
2 y'all took those selections and on your own
3 volition you ordered the majority of them from
4 Greer Lighting?

5 A. Now, I can't, that was three or four years ago. I
6 can't tell exactly what we did or what he did. He
7 states in an email he picked out all his lighting,
8 okay. So if we need to get Greer Lighting in here
9 and ask them did he visit Greer Lighting and pick
10 out lighting there, we can do that. I wasn't there
11 for that.

12 Q. So going back to Defendant's 15, after he made his
13 selection at the Gallery of Lighting did you reply
14 anything about you need to go purchase those
15 themselves, any, anything like that?

16 A. Where? Show me on the reply where on this it's
17 broke down, it's difficult to read so it won't take
18 as long.

19 Q. So the email is in the middle of the page, it's May
20 8th. The next email is May 8th, May 9th at 8:38
21 a.m.

22 A. "I will send the granite prices over as soon as
23 they get back. I have not received the lighting
24 choices, you may want to reach out to them to make
25 they send to us. The plumbing, yes, you approved

1 the overage already. The tub you mention feel free
2 to purchase and drop off or coordinate delivery at
3 your convenience. For the record, we did not have
4 anything to do, anything for Wayne. We did that to
5 be neighborly. I met him out there a few times and
6 showed him the issue he faces on his property.
7 Again, just an fyi."

8 Q. So in your response to Mr. Merlo did you state
9 anything about, you know, you need to go just buy
10 it yourself, you're doing something wrong, anything
11 like that?

12 A. That's not my job. The contract dictates that, he
13 knows what he -- he knows, he was very aware of the
14 contract.

15 Q. Well, and you are as well, but you decided anyway
16 to go ahead and purchase the ---

17 A. Well, you wouldn't just sit there and say have --
18 you may want to reach out to them to make sure they
19 send to us? If that's your insinuation of me
20 saying, hey, we're going to pay for your lights,
21 that's your opinion, but I don't read it like that.

22 Q. Well, isn't that what transpired? Didn't y'all
23 order the lights from Greer Lighting?

24 A. I'm reading it as you requested me to do it, Mr.
25 Johnson. "You may want to reach out to him and

1 make sure they send to us." I don't know if you
2 can take it, but I don't read that as saying, hey,
3 we just decided to change our mind and won't pay
4 for your lights. That's what you're insinuating,
5 isn't it?

6 Q. That is not what I am insinuating. I am
7 insinuating that it was an allowance in the
8 ordinary course like other allowances?

9 A. No, no, read the contract, it says in two places
10 the homeowners are responsible for bringing their
11 own lighting.

12 Q. And I'm talking about in the course of dealing with
13 the parties?

14 A. Where are you?

15 Q. Y'all ordered it in the ordinary course. And do
16 you know whether or not that order was even
17 accurate from Greer Lighting, what Mr. Merlo had
18 even requested from the Gallery of Lighting?

19 A. I don't know. I would not be able to -- I'm sure
20 there's an email stating it if it was.

21 Q. Okay, all right. In your redirect regarding
22 Exhibit 39, the final balance sheet, you stated
23 that all the charges on there were known about and
24 approved; do you recall that testimony?

25 A. Yes, yes, sir.

1 Q. Okay. If they were known about and approved, why
2 were they not ever put on the balance sheet?

3 A. Give me, give me an example.

4 Q. So hauling would have been when?

5 A. Multiple times. I mean from the time we started,
6 the first load to when it's complete and there was
7 still dirt on the property during landscaping so
8 landscaping is at the end, so it could have been
9 taken throughout the beginning of the project to
10 the end. There's no specific date to my
11 recollection.

12 Q. But we only have two invoices for hauling; is that
13 accurate?

14 A. That's correct.

15 Q. Okay. And do you want to go look at those
16 invoices, that is Defendant's Exhibit 2, when the
17 last haul invoice ---

18 A. We're going back to, we're going back to the
19 hauling dirt we went through this morning?

20 Q. No. I mean you're saying that that item was a
21 pending charge in October of 2019 and, you know, I
22 want to know why it was pending when these invoices
23 were from a year earlier?

24 A. Because we didn't get to finish the job, not all
25 invoices finally come in until the end. So you

1 don't complete that until all the dirt is gone, all
2 the billing is done, that's why it's pending.

3 Q. So I mean you couldn't put in a number, a
4 placeholder number?

5 A. I wouldn't just make up a number, no.

6 Q. It's not making it up, you have two invoices.

7 A. You said you wouldn't just place a number and no,
8 I'm not going to do that.

9 Q. Instead it's just left pending and then for you to
10 create a number that's \$2,000 more than an invoice?

11 A. It was \$2,000?

12 Q. More than invoiced.

13 A. It was \$2,000?

14 Q. I mean ---

15 A. No, you just said \$2,000. Let's do the math. If
16 it's \$2,000, what is it exactly? Let's be accurate
17 if we're going to -- if you're going to guess,
18 let's at least try to be accurate.

19 Q. I believe you testified yesterday it was around
20 12,000 that was invoiced?

21 A. How much?

22 Q. Around 12,000 that was invoiced and there's 14,000
23 on the balance sheet. But we can run the math, it
24 doesn't matter to me.

25 A. It doesn't matter to me either, but I think we

1 should be accurate to the Court.

2 Q. Well, let's be accurate.

3 A. Well, pull it up, pull it up.

4 Q. Well, look at Exhibit 2, Defendant's Exhibit 2,
5 there are two invoices.

6 A. I don't have Exhibit 2.

7 Q. Defendant's Exhibit 2.

8 A. Exhibit 2 is the contract.

9 Q. Defendant's Exhibit 2.

10 BY THE COURT:

11 Well, I'm going to save you some time. The
12 testimony yesterday was that the charge in the
13 balance sheets is \$14,075. The two invoices that
14 have been introduced as exhibits total \$11,825. So
15 the difference is \$2250.

16 A. No, it's 8975 and 2850.

17 BY THE COURT:

18 Well, the figure I'm looking at had 11,825. Now,
19 is that wrong? I don't know.

20 A. So how much is it?

21 Q. \$2200.

22 BY THE COURT:

23 Well, add it up. Now, you've got two invoices, see
24 what that comes to.

25 A. 11,875 is what I got, so that's what the invoices

1 add up to.

2 Q. Yeah. And how much did you ---

3 A. \$14,075.

4 BY THE COURT:

5 So that's 2200 then?

6 A. \$2200, yeah.

7 BY THE COURT:

8 You got 875? I got ---

9 A. So what is your question about the \$2200?

10 Q. Well, my question is I mean as we discussed, you
11 have no backup to support that difference, the
12 2200, that's one thing; and then those invoices ---

13 A. Well, you already went through that yesterday. Why
14 do you keep regurgitating that?

15 Q. But those invoices are dated when? Look at Exhibit
16 2?

17 A. September 6, 2018 and April 29, 2018, several
18 months apart. As you can see, these are done in
19 stages. We're trying to find the most cost-
20 effective way to get rid of dirt so we could save
21 the homeowner money.

22 Q. But a year later you can't ---

23 A. Because there's still dirt on the property.

24 Q. A year later you can't give your client an idea of
25 how it is?

1 A. No, because as I explained yesterday, we paid
2 hauling fees based on the distance they're going.

3 Q. All right. If you'll pull up Plaintiff's Exhibit
4 53.

5 A. Yours or Plaintiff's?

6 Q. Plaintiff's, yellow.

7 A. These?

8 Q. No. That's 6 or that's ---

9 BY THE COURT:

10 What number was that?

11 Q. 53, Your Honor.

12 A. Okay.

13 Q. And that was an email with Leo's Landscaping; is
14 that correct?

15 A. You mind if I read it? July 23rd, 2019 from Chris
16 Merlo to myself and to Nikki and Greg it appears.

17 Q. Okay.

18 A. "John - I would like to add 4 low voltage ground
19 lights to shine up on the rear stone columns. In
20 addition, Greg and I spoke about adding some ship-
21 lap to the fireplace & adding a niche to fit the
22 television. He said it would be \$700 & I wanted to
23 confirm my acceptance of the up-charge." My
24 response, "I have told Leo about the lights... and
25 good on the Ship lap."

1 Q. And that email exchange does not have any pricing
2 for the lights?

3 A. "I would like to add 4 low voltage lights" is all
4 it says.

5 Q. So it doesn't have any pricing on it?

6 A. No, it does not.

7 Q. And you don't have an invoice from Leo to support
8 the change?

9 A. I mean I probably could find one if I need one, but
10 Leo doesn't do invoicing like typical people do.
11 He's a one-man band, he's old school, he's been
12 with us a long time and we trust him. He can call
13 me up and say, hey, this is what it is, that's how
14 he does a lot of his business.

15 Q. Okay. But this is charges that you are trying to
16 claim in this action and you have no support for
17 it?

18 A. The email states clearly that he is adding four low
19 voltage lights. How is that not showing it is
20 additional, adding something to the job?

21 Q. Well, how are we to know what that costs?

22 A. Oh, my God, so it's free? Do you work for free?

23 Q. I try not to.

24 A. Did you tell him how much you cost before he got
25 here today or does he just anticipate it? If he's

1 sitting here saying I have added -- let's look at
2 this, let's look at the dates of this. This is
3 July 24th. Let's look, when did he approve the
4 landscaping plan?

5 Q. You tell me.

6 A. I wouldn't know. My assumption would be before
7 July 24th. So when you send an email, after you
8 approve the landscape plans saying I'm adding four
9 lights, wouldn't an honest person have a thought
10 that would say I've got to pay more money for that
11 or is it just free like the rest of his house?

12 Q. You have no documentation to support the additional
13 charge?

14 BY MR. TAROKH:

15 Objection, Your Honor, asked and answered.

16 BY THE COURT:

17 Well, I mean he's on cross examination, I'm going
18 to give him a little latitude. But my recollection
19 of testimony from yesterday is that there was some
20 reference that they were \$250 each, and four of
21 them that's \$1,000. Now, I'm not sure what that
22 was based on, whether there was an invoice or it
23 was in part of the discussion about the landscaping
24 deal ---

25 BY MR. JOHNSON:

1 Your Honor, can ---

2 BY THE COURT:

3 --- which totaled 44,000 and some odd dollars and
4 there was a difference of \$1,000 and that's why
5 that was said, that was the difference was those
6 four lights.

7 Q. I understand that that was Mr. Montgomery's
8 testimony, Your Honor, but there's no supporting
9 documentation on that.

10 BY THE COURT:

11 But you've asked him that about three or four
12 times.

13 Q. And you have no checks?

14 A. I could probably produce checks but they're not
15 going to add up to 1,000 because Leo does multiple
16 jobs for us every day.

17 Q. There were no checks produced in this litigation,
18 were there?

19 A. I don't know. You saw the discovery responses.

20 BY MR. TAROKH:

21 Same objection, Your Honor.

22 BY THE COURT:

23 Hold on.

24 Q. I think we were talking over each other. There
25 were no checks produced in this litigation?

1 A. I don't know. There's thousands of documents we
2 produced in discovery, but you know the days when
3 you didn't so and you were sanctioned twice because
4 of it? We were submitting documents and you were
5 not, so whatever we submitted is what we submitted.

6 Q. Okay. On cross you also testified regarding the
7 widening of the driveway?

8 A. I don't remember discussing that with Mr. Tarokh,
9 but we've discussed it.

10 Q. I mean y'all got into about Mr. Merlo went out and
11 ---

12 A. I remember you questioning me about it, but I don't
13 remember my conversation with him or my testimony
14 with Mr. Tarokh. If you want to ---

15 Q. Well, if you want to look at Plaintiff's 55, then
16 you may refresh your memory?

17 BY THE COURT:

18 Was this part of the redirect examination?

19 BY MR. JOHNSON:

20 It is, Your Honor. This is an exhibit introduced
21 in redirect.

22 BY THE COURT:

23 Exhibit 55?

24 BY MR. JOHNSON:

25 Yes, sir.

1 BY THE COURT:

2 All right.

3 A. I don't remember discussing it, but wait a minute
4 I'll get there. Okay. You want me to read the
5 email?

6 Q. No, just the postscript is "The driveway looks
7 great"; is that right?

8 A. Yes.

9 Q. Okay. And so y'all were discussing that he was
10 pleased with the driveway and ---

11 A. Okay, I remember that.

12 Q. Okay. And you talked about how he made changes to
13 the driveway?

14 A. Not with Mr. Tarokh. I'm sure with you I did.

15 Q. I mean I have it in my notes from your ---

16 A. Okay. Well, you're asking me if I did, I don't
17 remember that.

18 Q. But do you know what changes Mr. Merlo made, if
19 any, to the driveway?

20 A. I was told by Greg at the time that he made, he
21 added another parking pad. I can't be specific
22 because I wasn't there when he made that change to
23 Greg, but I believe it was another parking area.

24 Q. Okay. And we'll pre-mark this as Defendant's 16,
25 Your Honor.

1 BY THE COURT:

2 What is it?

3 Q. It's a text message between Mr. Merlo and Mr. Greg
4 Grissinger.

5 A. So we're not talking about Exhibit 55 anymore,
6 "The driveway looks great"?

7 Q. No.

8 BY THE COURT:

9 All right. Do you have any objection, Mr. Tarokh?

10 BY MR. TAROKH:

11 No, Your Honor.

12 BY THE COURT:

13 I mean are you offering it as an exhibit or just
14 identification?

15 BY MR. JOHNSON:

16 Identification at this stage, Your Honor. I'll put
17 it in through ---

18 BY MR. TAROKH:

19 Your Honor, I don't have a way to deal with -- no
20 objection for it to be identified but in terms of
21 admission, I guess there needs to be some predicate
22 testimony.

23 BY MR. JOHNSON:

24 Yeah, and that's no problem, Your Honor. I was
25 just ---

1 BY THE COURT:

2 It will be Defendant's Exhibit 16 for
3 identification only at this time whatever it is.

4 (DEFENDANT'S EXHIBIT 16 MARKED FOR IDENTIFICATION ONLY)

5 A. What would you like for me to read? You want me to
6 read this text exchange?

7 Q. Well, are there any texts in that thread regarding
8 the driveway?

9 BY MR. TAROKH:

10 Your Honor, I'm going to object. It doesn't appear
11 that Mr. Montgomery was on this, was on these
12 documents.

13 BY THE COURT:

14 Yeah, I agree. I mean if it's not admitted into
15 evidence, then you can't ask him questions about it
16 at this time. You've got to get it authenticated
17 first.

18 Q. Did Mr. Merlo's changes to the driveway have
19 anything to do with the encroachment?

20 A. I don't, I don't ---

21 BY MR. TAROKH:

22 Objection, Your Honor. That's beyond the scope of
23 the testimony regarding the driveway yesterday.
24 Yesterday, if I recall correctly, 55 was identified
25 and Mr. Montgomery testified as to the "PS -

1 Driveway looks great!" (exclamation point).

2 BY THE COURT:

3 Well, my recollection is, Mr. Johnson, is that
4 you've a lot of questions about this on cross
5 examination and there was questions asked on direct
6 examination, and then the part about on redirect
7 was limited really to response to your cross
8 examination, and it was only, you know, there was
9 this email and did it reference the driveway, and I
10 believe he said it looked great according to Mr.
11 Merlo.

12 BY THE COURT:

13 Your Honor, they were using that to imply, to
14 substantiate the changes that they allege that my
15 client made to the driveway.

16 BY THE COURT:

17 That's right.

18 BY MR. JOHNSON:

19 Well, I'm asking if any of the changes that Mr.
20 Merlo made led to the encroachment?

21 BY THE COURT:

22 Well, I think you've already asked that ---

23 BY MR. JOHNSON:

24 Okay, asked and answered, that's fine.

25 BY THE COURT:

1 --- several times so. But I mean I'm not, you
2 know, if you've got a new question about it, that's
3 fine if it's related to the redirect examination.

4 BY MR. JOHNSON:

5 No problem, Your Honor.

6 BY THE COURT:

7 I have no idea what that noise is. Apparently
8 they're doing some kind of work. I know they're
9 replacing the elevators out front and that's
10 probably related to that, but it's annoying.

11 BY MR. TAROKH:

12 Yes.

13 BY THE COURT:

14 I agree.

15 Q. All right. Mr. Montgomery, you also testified
16 regarding the changes to the theater room that were
17 added on the final balance sheet.

18 A. Okay.

19 Q. Do you recall that testimony?

20 A. I remember discussing it with Mr. Tarokh.

21 Q. Okay. And you testified that, well, tell us the
22 changes that were made to the contract ---

23 A. Well, all I'm aware of that he made -- you're
24 talking about to the theater room itself?

25 Q. Yes.

1 A. I'm aware that ---

2 Q. After the contract, the changes that were made
3 after you went under contract?

4 A. Well, he changed the plan. I didn't talk about the
5 plans with Mr. Tarokh.

6 Q. Do you believe that the -- you testified about the
7 foam insulation and the wire and the specialty
8 lighting, were those part of the original contract?

9 A. No, because the theater room wasn't on the original
10 plans.

11 Q. Now you're splitting hairs. The plans that are
12 Defendant's Exhibit 6, those were before or after
13 you entered the contract with Mr. Merlo?

14 A. I mean I don't know exactly when they were. But
15 the first plans that we priced the home off of were
16 not these plans. I am 100% sure of that.

17 Q. But you went under contract based on ---

18 A. I don't know, I don't know. I'd have to check.
19 That's -- I don't remember. You're asking me
20 multiple questions and then you're insinuating that
21 I'm splitting hairs. I don't -- you said did I
22 talk to Mr. Tarokh about the theater changes; I
23 said, yes, we talked about the theater being
24 larger. And then you said, and now we're talking
25 about the contract and the original plans again and

1 the secondary plans, so I think your question tends
2 to be very -- your question is confusing and I
3 would just ---

4 BY THE COURT:

5 Well, let me ask a question or two because I'm
6 confused about this also. As I understand it, it
7 was originally purchased, the Don Gardner Sandy
8 Creek, just a standard plan that was purchased and
9 that was the starting point of the discussions?

10 A. Yes, sir.

11 BY THE COURT:

12 At some point Mr. Merlo went to Mr. Gardner and had
13 that plan revised significantly, and then that was,
14 I think they referred to as the modified plan and
15 then that was submitted to IBI. Now, what I'm
16 confused about is did the modified plan have the
17 theater on it?

18 A. The modified plan does a theater room on it.

19 BY THE COURT:

20 And then after that, Mr. Merlo wanted to make some
21 additional changes to the theater room?

22 A. Yes, he made ---

23 BY THE COURT:

24 On the modified plan?

25 A. Yes, sir.

1 BY THE COURT:

2 Okay.

3 Q. Does this contract, Plaintiff's Exhibit 2, does the
4 contract contemplate the movie theater room?

5 A. I believe it does. Let me find it.

6 BY MR. TAROKH:

7 Your Honor, I'm going to object on relevance. As
8 Your Honor just stated, the plans were subsequently
9 changed and IBI built upon those modified plans,
10 and then as Your Honor stated Mr. Merlo made
11 changes to the theater room.

12 BY THE COURT:

13 Well, now, I'm going to overrule your objection. I
14 mean I think it's relevant, but I mean I don't --
15 it seems clear now after I had asked my questions
16 the sequence of events. The modified plan had a
17 theater on it, but at some point after, later on,
18 Mr. Merlo decided it wasn't big enough and it
19 needed additional insulation and wiring and all
20 these things so he said, how about change this? So
21 that was where the charge, the 7,000 plus dollars I
22 think it was, went on to the balance sheet because
23 of those additional changes.

24 A. That's correct, Your Honor.

25 BY MR. JOHNSON:

1 And, Your Honor, that's, the contract does not
2 support that. The contract ---

3 BY THE COURT:

4 Well, the contract is one thing, the change order
5 is a different thing.

6 BY MR. JOHNSON:

7 Your Honor, I ---

8 A. Well, we got the theater. I'll be honest, I'll be
9 glad to read it. So there is a theater room on
10 here and it talks about foam insulation for better
11 sound. It also says equipment not included and we
12 have the email where he told our vendor to put it
13 on our bill essentially. So that's the second
14 issue of what Mr. Tarokh and I were discussing
15 yesterday was the theater room being requested be
16 made larger. So what constitutes more costs in
17 that? Square footage, heated space, paint,
18 drywall, foam insulation, that's what, that's what
19 we talked about yesterday.

20 Q. Okay. And so the theater room was expanded on two
21 sides by four feet; is that right?

22 A. I don't know. You'd have to ask Greg, he was, he
23 did that. I don't know exactly, Greg would know
24 exactly.

25 Q. Okay. But it was expanded on both sides by four

1 feet from those points?

2 A That's what you say; I don't know exactly because
3 I'm not in the field.

4 Q. Does the contract already contemplate foam
5 insulation?

6 A. Yes.

7 Q. Does the contract already contemplate specialty
8 rewiring?

9 A. Hold on, I'll read it, "(Equipment not included.
10 Will prewire.)"

11 Q. So wire was already in there ---

12 A. "SPACE, LAYOUT UNDEFINED."

13 BY MR. TAROKH:

14 Your Honor, I'm going to object again ---

15 A. All these changes should be reflected on the
16 revised plans. He changed the plans after the
17 contract, and it says it right here and he reported
18 that part.

19 Q. And so this says, it says "Revised Cost based on
20 meeting on September 4, 2017"?

21 A. Right, and look, the contract says ---

22 Q. And when did you ---

23 A. Let's read it again.

24 Q. When did you sign the contract?

25 BY THE COURT:

1 Mr. Johnson, if you will step down?

2 A. It says, "SPACE AND LAYOUT UNDEFINED. These
3 changes should be reflected on the revised plans."
4 That tells me he's in the process of modifying his
5 plans.

6 Q. When did you sign the contract?

7 A. I don't know.

8 Q. Would you look at the date?

9 A. The date says November 17th or November 11th, 2017,
10 but that isn't when we signed it, that's just,
11 that's printed. There's no signature date on here.

12 Q. Why don't you look at the signature page please?

13 BY MR. TAROKH:

14 Let me object, Your Honor. On the day he signed
15 the contract, it's clear on the space and again
16 from Mr. Montgomery's testimony ---

17 BY THE COURT:

18 I mean it's still relevant. It might be repetitive
19 but it's relevant.

20 BY MR. TAROKH:

21 Well, objection, repetitive, asked and answered,
22 this whole line of questions.

23 BY THE COURT:

24 Okay.

25 BY MR. JOHNSON:

1 Well, I mean it's going to be very clear when on
2 direct examination on the sequence of events. I
3 mean it's very clear that there were original
4 plans, there was a proposal, there were subsequent
5 plans, and then they went under contract with those
6 plans right there, Your Honor.

7 A. Well, no, it doesn't say that in the contract.
8 That's not true, I'll read it again. It says it
9 very clear in the contract. You see, he didn't
10 want to read that part.

11 BY THE COURT:

12 All right, let the witness answer.

13 Q. It's your testimony ---

14 BY THE COURT:

15 Now, Mr. Johnson, I said let the witness answer.

16 A. It states again, the "SPACE AND LAYOUT UNDEFINED.
17 These changes should be reflected on the revised
18 plans." That means he's revising the plans to
19 extend the theater room.

20 Q. I understand. But are you testifying that you
21 didn't have those plans at the time you signed that
22 contract?

23 A. No, I'm not testifying to that. I'm testifying
24 that this contract states that he is revising the
25 plans and that it is understood that he is revising

1 the plans.

2 Q. If you had those plans at the time you went under
3 contract, did you agree to build that house for
4 \$625,000?

5 A. What's the question now?

6 Q. If you had that set of plans, Defendant's Exhibit
7 6, at the time you signed that contract in November
8 ---

9 A. Yes, that would be, that contract amount is 625.

10 Q. Okay. So if it included a theater room, then you
11 agreed to build that for 625; is that correct?

12 A. If it included the theater room and we stated it,
13 it would, yeah.

14 Q. Okay.

15 A. Also in the contract, it doesn't state -- this,
16 this plan right here that you keep referencing, it
17 states, "Sandy Creek modifications". The original
18 plan states "Sandy Creek". Our contract states
19 proposal based off, or right here, "SPEC SHEET...
20 based off of plans provided by Don Gardner named
21 Sandy Creek." It does not state the modification
22 plans.

23 Q. Again, if you had those plans ---

24 A. I said yes to you if I had those plans. I said yes
25 to the theater room, but that doesn't mean that he

1 didn't make the theater room larger.

2 Q. I'm not saying that. But the original contract
3 already included foam, already included wiring,
4 already included all this stuff. We're talking
5 about an expansion of four feet of a wall on two
6 sides.

7 A. You're saying four feet, I don't know.

8 Q. Well, we'll get into it with Mr. Grissinger. But
9 again, all that, you have no backup documentation
10 to support the \$7,000 charge? You have no time and
11 materials, you have nothing; is that correct?

12 BY MR. TAROKH:

13 Objection, argumentative ---

14 BY THE COURT:

15 I'm going to sustain the objection, it's totally
16 argumentative at this point, Mr. Johnson.

17 BY MR. JOHNSON:

18 Okay.'

19 BY THE COURT:

20 And you keep on arguing and, you know, arguing,
21 making an argument and opinion, stating your
22 opinion. Just ask questions.

23 BY MR. JOHNSON:

24 That's all the questions I have, Your Honor.

25 BY MR. TAROKH:

1 Your Honor, I have a very brief ---

2 BY THE COURT:

3 All right, look, one bite at the apple, I'm getting
4 tired of this same thing. We're not going to go
5 back and forth, we'll never get this case ended.

6 BY MR. TAROKH:

7 I understand, Your Honor.

8 BY THE COURT:

9 And you people act like, you know, whoever has the
10 last word is going to win and that ain't the case
11 necessarily. So if you've got some questions that
12 relate to this recross then, you know, let's make
13 it real brief and we need to move on.

14 REDIRECT EXAMINATION BY MR. TAROKH:

15 Q. Thank you, Judge, I'll be very brief. Mr.
16 Montgomery, can you explain the difference between
17 the invoices and for the haul dirt and what's
18 reflected on the final balance sheet for the haul
19 dirt, the \$2200 roughly difference, can you explain
20 that?

21 A. Yes. A lot of -- the hauling is from the dirt
22 being transported from the site to the location
23 it's being hauled to. There's costs associated
24 with loading that hauler. The dump trucks don't
25 get out there and load it themselves, those drivers

1 don't do that. We pay somebody to do that.
2 Typically when that happens on site our guys are
3 doing multiple jobs for us and he calls me and
4 says, hey, I spent two days out there, give me 500,
5 I spent, you know, an example. And so that's,
6 that's where we make it, that's where the other
7 costs come from. The majority of the costs is
8 always going to be hauling, but there's also costs
9 for loading.

10 BY THE COURT:

11 And I think he's already testified to that earlier.

12 BY MR. TAROKH:

13 Thank you, Judge. No further questions.

14 BY THE COURT:

15 All right. Let me ask this questions, Mr.

16 Montgomery.

17 A. Yes, sir.

18 BY THE COURT:

19 In the earliest part of your testimony you said
20 that there are two options on a contract of this
21 nature, one is a flat rate price, one price which
22 is what we ended up here?

23 A. Yes, sir.

24 BY THE COURT:

25 And the other is a cost-plus percentage?

1 A. Yes, sir.

2 BY THE COURT:

3 And what is that percentage normally in your
4 business?

5 A. Well, that's a good question. It varies due to
6 price of the home, but you can say 15 to 20%.

7 However, a lot of people now are just going to a
8 cost-plus flat fee, okay, so you don't have to ---

9 BY THE COURT:

10 Now, I'm talking about your testimony was that you
11 gave the option of a cost-plus ---

12 A. Yes.

13 BY THE COURT:

14 --- or a flat price?

15 A. Like 15 to 20%.

16 BY THE COURT:

17 15 to 20%, all right.

18 A. Back then, you know, it'd probably been 14 or 15%.

19 BY THE COURT:

20 Okay. And I mean my question, does that type of
21 calculation come into play when there's change
22 orders and there are costs incurred at the request
23 of the owner that are outside the scope of the
24 original agreement?

25 A. Yes, sir.

1 BY THE COURT:

2 And you have to spend "X" dollars, and then is

3 there a percentage added on for profit?

4 A. You would think so and I believe our contract
5 states that if there's changes outside the plans
6 and scope there will be additional costs. So, yes,
7 sir.

8 BY THE COURT:

9 Okay, all right. Is that it? You can step down
10 and you better hurry right quick before somebody
11 thinks up some more questions. All right, Mr.
12 Tarokh?

13 BY MR. TAROKH:

14 Yes, Your Honor. The Plaintiff calls Mr.
15 Grissinger.

16 BY THE COURT:

17 All right, Mr. Grissinger.

18 BY COURT REPORTER:

19 Would you raise your right hand? Do you solemnly
20 swear or affirm to tell the truth, the whole truth
21 and nothing but the truth so help you God?

22 BY MR. GRISSINGER:

23 Yes, ma'am.

24 TESTIMONY OF GREGORY K. GRISSINGER, JR.

25 DIRECT EXAMINATION BY MR. TAROKH:

1 Q. Mr. Grissinger, please state your name for the
2 record?

3 A. Gregory K. Grissinger, Jr.

4 Q. And can you give the court the benefit of your
5 background?

6 A. Yeah. I've a builder for about 18 years. John and
7 I have been building together for about 15 years
8 and that's about it.

9 Q. Do you hold a license from the State of South
10 Carolina for building?

11 A. I have a residential builder's license.

12 Q. Okay. And you do business in the name of IBI
13 Builders?

14 A. Yes.

15 Q. And how long have you been doing business that way?

16 A. 15 to 16 years.

17 Q. And are you familiar with the Merlo project?

18 A. Yes.

19 Q. And how are you familiar?

20 A. I was the builder on the job.

21 Q. And did IBI perform under the subject contract?

22 A. Yes.

23 Q. Can you explain for us briefly your role and what
24 you did generally as it relates to the Merlo
25 project?

1 A. Yes. I schedule the labor, the materials, meet
2 folks out there and oversee the work.

3 Q. And how often were you at the project during the
4 course of your time working on it?

5 A. Depending on what was going on, sometimes there was
6 nothing going on so I would go, you know, two or
7 three times a week but that was pretty basic, yeah.

8 Q. And did you communicate with Mr. Merlo throughout
9 the duration of the project?

10 A. Yes, in meetings, texts and phone calls.

11 Q. And how frequent were those communications?

12 A. I would say pretty frequent, at least once a week
13 or so, and sometimes multiple times a week if you
14 look through the text messages.

15 Q. Was your communication with Mr. Merlo typical of
16 other jobs or not?

17 A. In starting off, yeah, typical; towards the end, it
18 was a lot more frequent.

19 Q. Now, Mr. Merlo terminated the contract, correct?

20 A. Yes.

21 Q. Did you have any advanced notice that that would
22 happen?

23 A. No, no. We suspected that he was going to do
24 something but, no.

25 Q. When did you start suspecting something like that?

1 A. When he started throwing everything on the balance
2 sheet and not paying.

3 Q. Can you explain that?

4 A. Typically we require folks to pay as they ask for
5 those change orders and it started off he did, and
6 then as we got towards the middle, towards the end,
7 he stopped and he started loading up the balance
8 sheet with all these extras.

9 Q. Do you remember your first -- did you ever have any
10 conversation with Mr. Merlo about the boulder wall?

11 A. Yes.

12 Q. Do you remember the first time you had that
13 conversation?

14 A. It was in the beginning we met out there and talked
15 about it while we were moving the house around.

16 Q. Do you remember the date roughly that the contract
17 was signed, November 2017?

18 A. I don't recall the date, no.

19 Q. Would it have been early 2018?

20 A. Yes. It was when the foundation was going in so
21 right in the very beginning.

22 Q. And why, why were you having conversations with Mr.
23 Merlo about the boulder wall?

24 A. Because we started seeing -- there's two options to
25 do a boulder wall. You can either lay the dirt

1 back really far, you know, you can haul a bunch of
2 dirt off or you can put a wall in. So those two
3 options were up to him and we talked about it.
4 Esthetically, the boulder wall looked better and
5 gave him more yard so he had his parking pad that
6 he added to the contract.

7 Q. Were you waiting on Mr. Merlo to make a decision as
8 to the boulder wall?

9 A. Yes, a very long time.

10 Q. And can you quantify that roughly?

11 A. I'd say probably three months.

12 Q. But Mr. Merlo didn't make the decision for the
13 boulder wall until sometime in 2019, correct?

14 A. Correct. And there were multiple conversations of
15 how it was holding the job up during that time as
16 well.

17 Q. Can you go into that a little bit?

18 A. Well, it was hard to get to the site. You know, we
19 had the boulders there. Like we didn't have it
20 there yet, but we needed to get the boulders so we
21 could get to the site, put the driveway in. There
22 was lots of rain, lots of mud. It was hot so the
23 mud would dry out and become silt and almost
24 undrivable to get there.

25 Q. And can you explain the purpose of a boulder wall

1 as you're describing it?

2 A. It's to retain the dirt in front of it.

3 Q. Did the weather impact the progress or, excuse me,
4 did the weather impede the progress of the
5 construction of the Merlo project?

6 A. Yes, a lot, on all the projects that year for sure.

7 Q. And specifically, what we're talking about, what
8 timeframe generally?

9 A. October-ish I would say.

10 Q. October of 2018 or let me see ---

11 A. Yeah, I'm not, I'm not sure of the dates. We'd
12 have to pull the rain chart up but ---

13 Q. Okay. But it's your ---

14 A. --- I want to say there were constant conversations
15 about the weather, we were meeting out there about
16 the weather. There was constant erosion stuff that
17 we were working with. I mean it was a rainy season
18 for sure.

19 Q. Okay. I'm going to show you a document.

20 (PLAINTIFF'S EXHIBIT 57 MARKED FOR IDENTIFICATION)

21 BY MR. JOHNSON:

22 No objection.

23 BY THE COURT:

24 What number is that?

25 BY COURT REPORTER:

1 57.

2 BY THE COURT:

3 57?

4 BY COURT REPORTER:

5 Yes, sir.

6 BY THE COURT:

7 All right. That will be Plaintiff's Exhibit 57
8 admitted without objection.

9 (PLAINTIFF'S EXHIBIT 57 ADMITTED INTO EVIDENCE)

10 Q. I'm going to show you a document that's been marked
11 as Plaintiff's Exhibit 57 that's been admitted into
12 evidence. What is that document?

13 A. It's a text message between me and Merlo.

14 Q. And if I can point you to what appears to be a text
15 message from April 17th, 2019 at 2:07 p.m.; do you
16 see that?

17 A. Yes. He says, "I negotiated a Tennessee boulder
18 wall down to \$23,700 versus John's quote of
19 \$41,000. It seems too good to be true" and
20 basically he's wanting me to meet the guy down
21 there and me talk to him about doing the work and
22 then putting it on our balance sheet.

23 Q. And specifically he states, "my preference is to
24 have IBI enter into the agreement with contractor
25 with the understanding that the cost is added to my

1 balance sheet."

2 A. Yes, that's the biggest key is that he wanted the
3 cost added to the balance sheet. He didn't use
4 that guy because I told him that he would have to
5 pay for it directly with that contractor, that we
6 wasn't going to be responsible for the wall that
7 went up if it wasn't through us. So it was a huge
8 savings to him, he should've went with it, but his
9 motive was actually just to put in the balance
10 sheet, that's all he cared about.

11 Q. And he also states in the next sentence, "You have
12 the experience to protect us both here."

13 A. Yeah.

14 Q. What do you think he meant by that?

15 A. I guess to watch the boulder wall, how it was
16 constructed, and so on and so forth, but I think
17 it's really just buttering the bread, yes, sir.

18 Q. Explain that.

19 A. Well, he wanted, he wanted me there. Really he
20 just wanted us to take over that process, use this
21 guy, save the money, and then put it on our balance
22 sheet. But when I said, you know, we're going to
23 pay for that, that's a change order, you know, you
24 can pay directly. We don't have to make money off
25 of it, just pay the guy directly after he got the

1 charge down, and you'd think he would jump all over
2 that but his intent was to do what he did so.

3 Q. So he had an option based upon this text to buy his
4 own boulder wall for a significantly less price for
5 cost, correct?

6 A. Yeah, and we met with the contractor. You know,
7 and he met or talked to several other folks, too, I
8 believe, he had several things kind of wheeling and
9 dealing about that boulder wall.

10 Q. And you found it suspicious that he decided to go
11 with the higher quote?

12 A. It would have made no sense for him to make us do
13 it other than for it to be on our balance sheet.

14 Q. And so the date of this text is April 17th, 2019,
15 correct?

16 A. Yeah, correct.

17 Q. And I believe your testimony was he started to have
18 conversations about the boulder wall with Mr. Merlo
19 and it's necessity back in, ---

20 A. Correct.

21 Q. --- back in February of 2018 roughly?

22 A. Yes. Yes, there was an email out there saying that
23 we were going to meet to talk about it on the site
24 while the foundation was going in, so at the
25 beginning of the job.

1 Q. Well, would you consider the decision, Mr. Merlo's
2 delay to make a decision about the boulder wall, as
3 a significant factor in the progress of
4 construction?

5 A. Yeah, not only the progress of construction but
6 also we had some major storms that come through and
7 it would have been great to have this put in place
8 so we could put our erosion control in because, you
9 know, of the issues to the house that we had to fix
10 under our costs.

11 Q. And did you communicate the importance of a boulder
12 wall to Mr. Merlo?

13 A. Oh, we talked about it a lot, yes. He was pushing
14 back at that time about progress, so we were
15 pushing back about the boulder wall.

16 Q. Do you recall the last day you were at the Merlo
17 project?

18 A. Sure.

19 Q. And do you remember what day that was?

20 A. I do not remember the date, no, but I remember the
21 event.

22 Q. Would it have been the day before the termination
23 you mentioned?

24 A. It was a Friday, yeah.

25 Q. October 11th, 2019?

1 A. Correct, I think that was it.

2 Q. And do you remember what you were doing at the
3 property specifically?

4 A. Yeah, we had appliances delivered so I was going
5 there to make sure the appliances were there. We
6 were scheduling some folks to work on the screened
7 porch. I think there was some pile of stuff going
8 in. They were blue taping the house with painters,
9 just kind of typical, getting ready to finish up
10 the house.

11 Q. What about the installation of a bathtub?

12 A. Yeah, there was a bathtub going in that Merlo
13 purchased.

14 Q. And before that, do you recall the downstairs
15 kitchen backsplash being installed?

16 A. Yes.

17 Q. Would that have been sometime around or in August
18 2019?

19 A. Correct.

20 Q. And what did you do related to the tile backsplash
21 that you just testified about?

22 A. We got the selection, so I got to John to order it
23 up and I scheduled the work.

24 Q. And did you subsequently after its installation go
25 and inspect it?

1 A. I'm sure I ended up doing it.

2 Q. So you handled that? After Mr. Montgomery ordered
3 the tile, you went and you took control of the
4 entire installation?

5 A. Correct, yes, to be clear I was.

6 Q. Okay. The Court's indulgence?

7 BY MR. JOHNSON:

8 No objection, Your Honor.

9 Q. I'm going to show you what will be marked as
10 Plaintiff's 58 and 59.

11 (PLAINTIFF'S EXHIBITS 58 & 59 MARKED FOR IDENTIFICATION)

12 BY THE COURT:

13 No objection on that?

14 BY MR. JOHNSON:

15 No objection.

16 BY THE COURT:

17 All right. Those two will be admitted without
18 objection.

19 (PLAINTIFF'S EXHIBITS 58 & 59 ADMITTED INTO EVIDENCE)

20 Q. These two documents have been admitted into
21 evidence. The first one I'm going to show you is
22 Exhibit 58 and I'll also hand you Exhibit 59. If
23 you can take a look at Exhibit 58 and please tell
24 the Court what that is?

25 A. It's a Complaint that was filed against us with the

1 SCLLR and by Merlo and it was dismissed.

2 Q. Was that, was that against you?

3 A. Yes.

4 Q. And the site location is Mr. Merlo's address?

5 A. Correct.

6 BY THE COURT:

7 When you say "you" are you talking about IBI or
8 talking about Mr. Grissinger?

9 A. IBI. But I'm the license so it's against me.

10 Q. So it's addressed to you, correct?

11 A. Correct.

12 Q. And what's the file number on that?

13 A. It's 2019-812 or 812.

14 Q. And does it describe the complaint that Mr. Merlo
15 made against you?

16 A. Yes.

17 Q. What does it say?

18 A. Substandard work.

19 Q. And if I can -- did anything come from that?

20 A. No, it was investigated and there was nothing
21 found.

22 Q. And if you can look at Plaintiff's Exhibit 59
23 please which had been admitted?

24 A. Yeah.

25 Q. And what is that document?

1 A. It's basically saying the investigation was over
2 with no, it was dismissed with no findings.

3 Q. Okay. And I apologize for going backward, Your
4 Honor, but just to clarify, Plaintiff's Exhibit 58,
5 what's the date of that document, the Complaint?

6 A. November 26, '19.

7 Q. So approximately five or six weeks after the
8 contract was terminated?

9 A. Yes.

10 Q. And then that would've been after the lien was
11 recorded, correct?

12 A. Correct.

13 Q. And Exhibit 59, what's the date of that document?

14 A. January 27th, '21.

15 Q. Okay. And can you read what that document says?

16 A. "South Carolina Department of Labor, Licensing and
17 Regulation investigated the initial complaint
18 against you. On 10/14/20, the Residential Builders
19 Commission ordered the complaint be dismissed.
20 Thank you for your cooperation in this matter."

21 Q. You'd agree it states that "the LLR investigated
22 the initial complaint against you. On October 14th,
23 2020, and the Residential Builders Commission
24 ordered the initial complaint be dismissed"?

25 A. That's correct.

1 Q. They also, they also wish you well in your future
2 endeavors, correct?

3 A. Yes.

4 Q. And that was related to the Merlo project, correct?

5 A. Correct.

6 Q. Now, you've been sitting in Court today and since
7 the trial started yesterday, correct?

8 A. Yes, sir.

9 Q. And you heard testimony about this interior poured
10 concrete wall or the lack thereof, correct?

11 A. Yes, sir.

12 Q. Do you have any idea what that subject is about?

13 A. Yes. There is -- on the plans, it shows a concrete
14 retaining wall that we did. We actually had to
15 make it larger so we changed the plan at no cost to
16 Merlo on that. There was an interior wall of
17 concrete that we did not do that is the not -- the
18 foundation company met us out there, we sat the
19 house on the lot, he told us how high the walls
20 needed to be in every direction so we wouldn't have
21 any issues and we'd be able to have ---

22 Q. If I can just ---

23 A. Go ahead.

24 Q. If I can just stop you?

25 A. Go ahead.

1 BY MR. TAROKH:

2 Your Honor, I don't have a projection screen
3 obviously. Is there a way he can show you what
4 he's referencing like not to ---

5 BY MR. JOHNSON:

6 I can put it on the screen if you want?

7 BY THE COURT:

8 Well, I'll just stand right here and look at it.

9 Q. Thank you. And can you please explain what you
10 were just saying?

11 A. Yeah. So we met with the foundation contractor out
12 there, we talked all these walls. This is where
13 the front of the house is so we needed to backfill
14 that. We increased this wall to six feet or so.
15 It says three feet in the plan, but we increased it
16 to six feet. And this wall is not needed because
17 this elevation, this elevation and this elevation
18 is the same, so we held the dirt back here and
19 there was not no elevation change here. So this is
20 more interior space, there's no need for a concrete
21 wall. So by taking the concrete here, we increased
22 it here, and it was a wash to Merlo and it worked
23 out fine, so that's what we did.

24 Q. And I'm going to show you another document and this
25 is already in evidence. This is Defendant's

1 Exhibits 13 and 14 I believe. I think they're next
2 to you.

3 A. Okay.

4 Q. It's the picture, it's the -- it looks like this.
5 Here it is.

6 A. Okay.

7 Q. So I'm going to show you what's already been
8 admitted into evidence as Exhibits 13 and 14, and
9 if you can take what you just showed us on the
10 plans and I guess for lack of a better description
11 superimpose that description on these two
12 documents?

13 A. Yeah, so this was an eight foot door here, so that
14 wall is about six foot. We're retaining all the
15 dirt here, that's this wall right here, here, and
16 this wall is what they were talking about being
17 concrete but you not want that as a concrete wall.
18 It's got a window on it, you've got the interior
19 space and so that's how we built it. This has been
20 done the entire process, you know, they never
21 brought it up. It was never an issue. What
22 they're laughing about over there is we had a big
23 flood and some water came in that door and got mud
24 into the basement. They're going to bring that up
25 in a little bit and we'll talk about that, but

1 that's their point of showing this.

2 Q. And that door, is that door depicted on the Exhibit
3 14?

4 A. Right here, yes.

5 Q. And this water intrusion event, for lack of a
6 better description, when did that happen? And
7 while I'm asking that, what phase in the
8 construction did that happen?

9 A. Well, it happened a couple of times but where it
10 happened, what they're bring up with the pictures,
11 is when the interior space was done down there. So
12 we'll talk about that when it happened. But it was
13 a major rain event, we had 11 inches of rain. Some
14 people died in a mudslide close by, I think Channel
15 4 had something on it. It happened, it ruined some
16 baseboards, some drywalls, some insulation. We
17 probably should have put it on his insurance
18 because it was an act of God, but we didn't, we
19 paid for it out our own costs. It wasn't a cost-
20 plus job so, you know, we paid for all it, it's a
21 non-issue.

22 Q. And the fact that there wasn't poured concrete, is
23 there ---

24 A. It wouldn't have mattered. That's a rock wall and
25 it's got waterproofing behind it. It came through

1 the door and that's what happened is the mud came
2 around, it came around here, washed in through the
3 door and got into this space; and we removed
4 everything out of that space at our expense and put
5 it back, and that's why there are no emails about
6 it or complaints about it or on any punch list, she
7 never mentioned it because we handled under our
8 dime and it didn't cost the project anything.

9 Q. And Mr. Merlo was frequently at the property,
10 correct?

11 A. Yes, all the time.

12 Q. And so he probably had an opportunity to view what
13 was going on, correct?

14 A. Yes.

15 Q. And he never complained ---

16 A. Yes, he was concerned about it like anyone else
17 would be, but we handled it quickly. We had fans
18 in there and drying it out, we ripped everything
19 out so, and obviously he had to do nothing else to
20 it after we left because the other builder didn't
21 touch that space.

22 Q. So in other words, there's no need for a poured
23 concrete wall ---

24 A. No.

25 Q. --- such as the one he's ---

1 A. No. You know what it done? The mud come through
2 the door, it didn't come underneath that space.

3 Q. Now, when would a concrete wall have been
4 appropriate?

5 A. If we were backfilling this with dirt. You know,
6 you have a concrete wall where you're going to have
7 to retain dirt. This is the same elevation
8 everywhere so you're not retaining anything.

9 Q. Now, I believe, I believe the ---

10 A. And it gave him more space in the house so, you
11 know, he should have been thankful for that.

12 Q. I believe the term they used to describe this issue
13 was the Plaintiffs fraudulently poured, failed to
14 pour a concrete wall?

15 A. Correct.

16 Q. Is there any benefit or advantage to IBI of not
17 pouring the concrete wall as they described?

18 A. No. And we took that concrete that's on the plans
19 and we made this wall higher to hold that dirt
20 back. This shows a three foot wall in the plan but
21 it's six feet or so.

22 Q. So you ---

23 A. And to be honest, it was never mentioned, you know.
24 At the end when we got fired and all that stuff,
25 all he did was go through the plans and he tried to

1 pick everything he could for this case. It never
2 got mentioned in the two years he said to build the
3 house. You'd think there would've been much emails
4 about it or concerns about it so.

5 Q. Are you familiar with Southern Basements?

6 A. Yes.

7 Q. And who are they?

8 A. They are our contractor that did this job. They're
9 a licensed basement installer. They engineer their
10 walls and installed them for us. And really we use
11 them to tell us what to do in this situation based
12 on how it's placed on the lot. They're the ones
13 that come in and say, Greg, you need to change this
14 so it's a better situation, you need to do this
15 here. So we really used their direction in that
16 process and they've probably done 2,000 houses on
17 the lake.

18 Q. I'm going to show you a document.

19 (PLAINTIFF'S EXHIBIT 60 MARKED FOR IDENTIFICATION)

20 Q. I'm going to show you a document.

21 BY MR. JOHNSON:

22 No objection.

23 BY THE COURT:

24 All right. That's Plaintiff's Exhibit 60 admitted
25 without objection.

1 (PLAINTIFF'S EXHIBIT 60 ADMITTED INTO EVIDENCE)

2 Q. This is Plaintiff's Exhibit 60 admitted into
3 evidence. Can you take a moment and tell me what
4 that document is?

5 A. It's an engineering letter from a third party that
6 does engineering on Southern Basements' work. It's
7 about the rebar, the footings and how he
8 constructed the foundation.

9 Q. And this says "City of Seneca Certified", correct?

10 A. Correct.

11 Q. So this is a City of Seneca certified document?

12 A. Correct.

13 Q. Now, is this letter in connection with what you
14 just described?

15 A. Well, it's basically saying that work was
16 engineered, yes.

17 Q. Okay. So IBI's foundation work at the Merlo
18 project was engineered?

19 A. Yep, and it's not failed; it's in great shape.
20 There's no wall issues at that house even today.

21 Q. And this letter is signed by a professional
22 engineer it looks like?

23 A. Correct, it's stamped.

24 Q. So if there was an issue with this interior wall
25 that Mr. Merlo is complaining about, then it seems

1 that an engineer would've picked up on that,
2 correct?

3 A. If that wall was needed, Southern Basements
4 would've put it in. There's other changes to this
5 wall, you know, in the plan two that was based in
6 the field. You know, the left elevation, that wall
7 drops down several times because you don't want to
8 have that space, interior space. You want to get
9 as much interior space as you can. If it's not
10 needed, we don't put it in.

11 Q. So ---

12 A. And in this plan that we're looking at it that
13 we're saying, oh, this is how it should be; this
14 plan wasn't designed for the lot. So it's really
15 just -- that's all it is an idea of what we should
16 do. But when we get out in the field we make the
17 adjustments, that's just how it needs to be.

18 Q. So in other words, IBI was not cutting corners or
19 anything like that ---

20 A. Absolutely not, no.

21 Q. --- as it relates to this?

22 A. No. Southern Basements puts in exactly how it
23 needs to be, and it's engineered and set for the
24 lot, so I wouldn't want to make any changes or
25 dictate anything that's going to cause issues.

1 Q. You've heard about the, I'll call it the 10 foot
2 ceiling issue?

3 A. Correct.

4 Q. Are you aware of what that is?

5 A. I did. I am aware of this.

6 Q. And can you ---

7 A. He keeps stating that there's 10 foot ceilings in
8 the basement and as you go to the plan in the cross
9 section it shows 11'7 going from the basement floor
10 to the first floor elevation, 11'7.

11 Q. Can you show, can you show me what?

12 A. Right here, 11'3, not 7, 11'3. So from the
13 basement elevation where the concrete is poured to
14 the first floor is supposed to be 11'3 and one-
15 quarter inch.

16 Q. And if I can stop you? Your Honor, is there a way
17 that I can show you this? I'm sorry, I don't mean
18 to make you keep getting up?

19 A. Well, it solves a lot of this issue that they're
20 bringing to the table on the 10 foot. So it's 11'3
21 from here to where you stand on the first floor.
22 If you add a 16 inch I-joist that brings it in, and
23 an half inch drywall, that brings it to 9'8 and
24 that's what's in the basement, so we built it per
25 plan. They keep saying we didn't but those are our

1 plans right there.

2 Q. And, in fact, Mr. Merlo knew that the basement
3 ceilings were not 10 feet?

4 A. Yes, he brought it up and we had a conversation
5 just like this and then it was dead. There was an
6 email about it I think on the, there was some email
7 we read yesterday about it asking. So we talked
8 about it in the field and then a year later we
9 talked about it again in this courtroom.

10 Q. And so ---

11 A. But it's built per plan, that's the point of it
12 all.

13 Q. So Mr. Merlo didn't know -- knew that the ceilings
14 were not 10 feet?

15 A. They can't read the plans apparently.

16 Q. Okay. And can you describe the context of when Mr.
17 Merlo knew that the ceiling was less than 10 feet?

18 A. He brought it up and I guess a running punch list
19 or something it was mentioned, we read it
20 yesterday. We had a conversation about it and it
21 was never brought up again because he understood
22 why it was like it was, you know, it was built to
23 plan.

24 Q. So in other words, he consented to the ceiling not
25 being exactly 10 feet?

1 A. And it was never brought again. Go through the
2 emails or text messages, never brought up again.

3 Q. And you relied upon the failure of Mr. Merlo to
4 make an issue about it after you spoke to him?

5 A. Well, it can't be, it's built to plan and that's
6 what I'm supposed to do so there's nothing else to
7 it.

8 Q. I'm going to show you -- if you will please look at
9 Defendant's Exhibit 1, it's the first blue one,
10 it's already been admitted into evidence, it's a
11 couple of pages.

12 A. This is a mess over here.

13 Q. And please take a moment and look at that document
14 and let me know when I can ask you some questions
15 about it, specifically regarding all the pictures
16 that were attached after page 2.

17 A. Okay.

18 Q. Are you familiar with what these pictures are
19 depicting?

20 A. Yes.

21 Q. And are you familiar with what stage in the
22 construction process?

23 A. Of course.

24 Q. Okay. Can we got through them?

25 A. Yeah, which ones you want to talk about?

1 Q. Let's start with "Water issues: Kitchen door" and
2 you can kind of go left to right?

3 A. Yeah, so what -- and that's not necessarily water
4 issues, that's people tracking in and out. It was
5 a very muddy site, there again, no driveway in, not
6 necessarily a water issue there.

7 Q. And for each one can you describe what phase of the
8 construction those were in if you can recall?

9 A. Yeah. So this is, this is I think this is after we
10 had the flood issue and all this that you see was
11 ripped out and replaced.

12 Q. Okay. And the next page, what's that about?

13 A. This is some siding that he kept saying that ship-
14 lap was little off center, so we kept going back
15 and fixing it and eventually we were done with it.
16 We couldn't even -- I mean if you look in that
17 picture and tell me what's wrong other than the
18 house is not painted, I'd be happy to talk about
19 it. But he was nitpicking some of these things,
20 but we addressed it and then we moved on.

21 Q. And the next set of pictures?

22 A. This is the beginning of the drywall. The drywall
23 has just started mudding. You know, drywall
24 mudding is a process, it's not done overnight, it's
25 probably a 7-day deal. Some of these pictures are

1 talking about the unfinished work, which obviously
2 the house is finished so that's not an issue. The
3 crown was coming off the center ceiling, some of
4 this stuff was replaced. We did go through two
5 trim carpenters in this process, but we got it
6 right.

7 Q. Okay. And the next set?

8 A. This is a raised shingle on the roof. This is
9 where we cut out water damage when the flood
10 happened. There is some bad trim work that we
11 fixed. There is a receptacle that's lower than the
12 trim. We didn't have the trim picked out in the
13 beginning so when we put receptacles in we didn't
14 know the size of it and we ended up moving that
15 receptacle up and fixing it. Just basically
16 incomplete work, things that we were working
17 through the process.

18 Q. And what about the next set of photographs?

19 A. This is more of that flood that happened that I
20 described. This is a receptacle or stair light
21 that we had to move up. There again, we moved it
22 up, it's not like that today. This is can light.
23 We added a larger crown in that area and had to
24 move the can light over. This is some mud that's
25 on that's some OSB and that's a picture of a

1 window.

2 Q. Okay. Then the next set?

3 A. Mud on the site here, a picture of two windows,
4 there again, crown on a can light that we had to
5 move, and the door trim out, and some drywall
6 issues that have been finished.

7 Q. And the next set?

8 A. This is a shower where there is no HardieBacker
9 boarding, you know, we're about to start tile, just
10 some drywall corners. There was some -- I don't
11 know what some of these pictures are, they just
12 look random pictures that he had taken through the
13 house. There again, at this process the house is
14 not finished obviously, we're just starting the
15 drywall and trim.

16 Q. So essentially he took pictures of the progress of
17 your construction?

18 A. He did, he took a lot of pictures and then he took
19 pictures of that main plug there.

20 Q. And so the pictures you looked at, do these raise
21 any issues in your mind as to the quality of the
22 craftsmanship or anything of that nature?

23 A. I think there's some things in there that we
24 changed that, you know, we want it to be as nice as
25 possible. So, yes, I would say that he had

1 something there. As far as the rain that flooded
2 the house, that flooding issue with water, I mean
3 no one can control that, there was damage all over
4 the lake so there was nothing I could do. But I
5 did this, we cleaned it up and fixed it and none of
6 these things in these pictures are like that to
7 date because we fixed them under our own dollar,
8 and then the new builder that came in doesn't have
9 invoices to support that he had to re-work any of
10 this.

11 Q. So before you were terminated, all the alleged
12 issues depicted in these photographs were resolved
13 by IBI?

14 A. Correct, correct, and some of these things are
15 nonissues. You know, this is a light switch that
16 he -- you know, we walked the house, he tells us
17 where he wants his light switches, we put them
18 there and then he wants us to move them so we move
19 them, and I mean we don't charge him for that, you
20 know. That's just trying to keep that back and
21 forth good, you know, customer thing going so.

22 Q. So, for example, like he would text you on an issue
23 during the course of construction and what would
24 you do?

25 A. I would respond back to him, offer to meet him and

1 then it wasn't necessarily fixed over night because
2 you have to schedule subcontractors and, you know,
3 that kind of stuff but it was fixed. He made
4 mention in an email that we had a six page or a
5 four page punch list and it got to one page and we
6 were getting close to the end. A lot of that stuff
7 was in there except for the water damage, that
8 wasn't, this wasn't mentioned in the list ---

9 Q. So it was your understanding ---

10 A. --- for re-work.

11 Q. It was your understanding that these types of
12 pictures were taken by Mr. Merlo and they would
13 fluctuate based upon the progress of construction?

14 A. Correct.

15 Q. In other words, what we just saw in these pictures,
16 are these considered big deals?

17 A. No, because it -- no.

18 Q. These are ---

19 A. And the flood was a big deal and it cost us a lot
20 of money to fix that. But the little stuff like
21 the corner beam not being finished, some, you know,
22 trim around the window that we had to replace
23 because the gap wasn't quite right. I mean none of
24 these subcontractors are perfect. That's what we
25 do on a day to day basis is work with these guys

1 and try to get the best we can out of them.

2 Q. And, in fact, as you just testified, you received a
3 complaint from the South Carolina Department of
4 Labor, Licensing and Regulation for substandard
5 work, correct?

6 A. Correct.

7 Q. Which was dismissed?

8 A. Correct.

9 Q. Based upon their investigation and based upon ---

10 A. Absolutely, and none of these things that he shows,
11 gaps in trim, stuff like that, was like that at the
12 end of the project, period.

13 Q. No project is perfect, correct?

14 A. It is not and on any given day you can come and
15 take a bad picture of any house that we're
16 building. It doesn't mean it's going to be that
17 way, it doesn't mean we want it to be that way.
18 It's just you've got 75 subs that are working for
19 us daily moving around and things happen so.

20 Q. So besides the major weather event you testified
21 to, these pictures depict, for lack of a better
22 description, common issues?

23 A. Correct, and I met Merlo and his wife out there and
24 looked at these things in person and we addressed
25 them in person, so it wasn't like we were hiding

1 behind them or whatever. I agreed that some of the
2 trim needed to be replaced and that's why replaced
3 it. You know, being a turnkey project, anytime we
4 remove something and we put it back, it's on our
5 dollar so this really doesn't affect him at all
6 other than the conversation we had to have about
7 it.

8 Q. Did you always try to respond to Mr. Merlo when he
9 would try to communicate with you?

10 A. Yes, yes, even when I was frustrated with him, yes.

11 Q. Because you're a professional?

12 A. For sure.

13 Q. You heard the last witness, Mr. Montgomery, testify
14 about the theater room being larger issue?

15 A. Yeah.

16 Q. That's my label on it. But do you know what that's
17 about?

18 A. Absolutely. So we were framing the house and Merlo
19 and I met and he wanted to push that wall all the
20 way back to the foundation wall, which created an
21 extra room on the side, so there was a door that
22 had to be bought there that John just didn't know
23 about or knew about. And then he had square
24 footage, oh, yeah, it was about 80 square feet.
25 When you do that times \$170 he stills owes us

1 money. We only charged him Seven Grand on it, so
2 the flooring, the insulation, yes, it was in the
3 contract amount, but not that much insulation
4 because it grew about 80 feet. The drywall, the
5 paint, the extra trim, the extra door, the extra
6 room, you know, that all adds up and he got a deal
7 at \$7,000. And everyone seems to forget, we need
8 to make a little money here, too. No one talks
9 about that. They want these invoices to be exactly
10 what they are, but how do we make money?

11 Q. So regarding the theater room being larger just so
12 we're clear, the original contract referenced a
13 theater room but after all that Mr. Merlo wanted
14 what was depicted, what was referenced in the
15 contract which was subsequently modified by the
16 plans; he wanted that larger?

17 A. Yes, around 80 square feet.

18 Q. Okay. So he wanted ---

19 A. Five foot deeper and then 13 foot wide.

20 Q. And you're looking at the plans right now, correct?

21 A. Yes, so this wall here just moved all the way back.
22 I think it's actually, yeah, it's right at five
23 feet.

24 Q. And that's what you did for him, correct?

25 A. Correct. And it caused, when you moved this wall

1 back, it created a whole other room that needed to
2 have stuff done to it and a door installed. So it
3 was more than just making it wider, it was creating
4 another space.

5 Q. And did you communicate directly with Mr. Merlo
6 regarding making the theater room larger?

7 A. Yes.

8 Q. And what types of things did you communicate with
9 him about as to that subject?

10 A. Well, just the, it really was we didn't know the
11 costs because we were trying to get him to an at
12 cost so we waited until the end to actually fill in
13 all the numbers by doing the square footage on the
14 driveway and the square footage on the paint, the
15 extra door, we put all that in. We tend to do that
16 at the end anyway because there is some items that
17 just kind of get left in the open until we finish
18 getting the invoices in. But everything is the
19 houses are done by square footage, so when you add
20 80 square feet to it that's a big deal. All our
21 subs bill us mostly by square footage.

22 Q. The Court's indulgence, Your Honor? Mr.
23 Grissinger, how did you discover that Mr. Merlo had
24 terminated the contract?

25 A. John called me.

1 Q. What did he say?

2 A. He said that Merlo let us go and that we needed to
3 try to get those appliances back.

4 Q. And how did that make you feel?

5 A. Well, it hurt because we know how much money we had
6 in it and that directly affects our business, our
7 homes and, you know, I was blown away by it and,
8 yeah, just defeated for a little bit for sure.

9 Q. Now, right before you were terminated on October
10 11th, 2019, and you were terminated on October 12th,
11 2019, correct, by virtue of that email, ---

12 A. Correct.

13 Q. -- but the day before when you were at the property
14 doing the things you just testified about, did you
15 have any indication that you were going to be
16 terminated?

17 A. No. No, we were trying to get finished. We were
18 talking about CO-ing the house later in the next
19 week. I mean he was there excited about the
20 appliances going in, it was just a regular meeting.

21 Q. Was there any indication from Mr. Merlo that you
22 were in jeopardy of being terminated?

23 A. No, no.

24 Q. So it was a complete surprise?

25 A. It was a complete surprise.

1 Q. And it hurt?

2 A. Oh, 100%, it's been hurting for years.

3 Q. No further questions.

4 BY THE COURT:

5 All right, well, this would be a good time for us
6 to take about a 10-minute break so be back in 10
7 minutes.

8 (OFF THE RECORD)

9 BY THE COURT:

10 All right, Mr. Johnson, cross examination.

11 BY MR. JOHNSON:

12 Thank you, Your Honor, may it please it Court, as a
13 preliminary, what time do you think we'll break for
14 lunch so I can -- depending on what time?

15 BY THE COURT:

16 I'm flexible, you know. How long do you anticipate
17 this taking?

18 BY MR. JOHNSON:

19 It's going to be a while but I can break up the
20 subjects depending on ---

21 BY THE COURT:

22 Well, I mean we'll probably go to, say, 12:30 or so
23 or quarter till 1.

24 CROSS EXAMINATION BY MR. JOHNSON:

25 Q. Okay, very good. All right, Mr. Grissinger?

1 A. Yes, sir.

2 Q. You testified in your direct examination regarding
3 the conversations with Mr. Merlo regarding delay
4 from the boulder wall?

5 A. Yes.

6 Q. Do you have any text messages or emails that talk
7 about a delay for the boulder wall?

8 A. I remember an email that he was kind of complaining
9 about progress and John sent him an email about,
10 you know, these are the things we need to get done
11 to help with the progress, and the boulder way and
12 driveway I think was part of that.

13 BY THE COURT:

14 Just so I understand, what's the terminology, is it
15 border wall or boulder wall?

16 Q. Boulder.

17 BY THE COURT:

18 Boulder, all right.

19 Q. But that hasn't been produced in this litigation,
20 is that correct, in this trial?

21 A. I'm sure all emails have been ---

22 Q. In this trial, is that ---

23 A. No, not that I've seen.

24 Q. All right. Do you have any text messages with Mr.
25 Merlo regarding the delay on his side that you're

1 aware of?

2 A. I'm not sure. I like to have those conversations
3 in person, you know, when we were on site and we
4 talk about it face to face, I think that's the best
5 thing to do.

6 Q. But you would admit that there are numerous text
7 messages between you and Mr. Merlo?

8 A. Yes.

9 Q. And it's discussing all facets of the project?

10 A. No, mainly answering his questions and giving him
11 information.

12 Q. But nothing about delay?

13 A. I don't know.

14 Q. Okay. And so the boulder wall ended up being put
15 in by your subcontractor?

16 A. Yes.

17 Q. Do you know whether or not your subcontractor put
18 the boulder wall in such that it encroached on the
19 neighbor's yard?

20 A. No, I don't know if there's a survey that suggested
21 that it did.

22 Q. Okay. Would you agree that under your contract if
23 the boulder wall did encroach, that would have been
24 y'all's responsibility?

25 A. Well, it was laid out by me and the homeowner, so

1 the homeowner kind of needs to know his metes and
2 bounds, too, so we was under his instruction of
3 where it went.

4 Q. If you'd pull Plaintiff's Exhibit 2 for me, the
5 contract.

6 A. Yeah, we referenced this earlier, so the contract
7 suggests that it will responsible, yes. Is that
8 better?

9 Q. Okay. Solely responsible, is that the wording?

10 A. No, that's no such thing. We're building a custom
11 house for a client, I don't make all the decisions.

12 Q. Does your, does the contract language state that
13 you would be solely responsible for the actions of
14 your subcontractors and employees?

15 A. Yes, sir. I think it says in general that there
16 will be some things that are not exactly to plan
17 and I think that there's something out there like
18 that, I can try to find it. You can ask some more
19 questions while I look for it, sure.

20 Q. No, no, you're fine.

21 A. That's my signature.

22 Q. The contract will speak for itself. With regard to
23 Exhibits 58 and 59, those were the LLR exhibits?

24 A. Yes.

25 Q. Did the LLR make any findings of fact in that case?

1 A. No.

2 Q. Okay. Why not?

3 A. Because there was nothing to find.

4 Q. Do you know whether or not the LLR is going to
5 reopen that investigation after this trial?

6 A. I wouldn't think they would.

7 Q. Do you know that the LLR dismissed that case
8 because Mr. Rampy wouldn't provide any testimony?

9 A. I do not know why. I'm sure it's because of their
10 findings though. I mean they're investigating the
11 house and not Mr. Rampy. The only reason they were
12 contacted was just a tactic on your client's part,
13 he was harassing us in every way possible.

14 Q. So you think there was anything wrong with the
15 project?

16 A. No, and neither does LLR.

17 Q. Well, you just testified that they didn't make any
18 findings?

19 A. Correct.

20 Q. So they're not -- that's not saying there are no
21 problems?

22 A. Well, if there was something here to talk about
23 we'd be talking about it, wouldn't we?

24 Q. That's not what their decision was.

25 BY THE COURT:

1 Mr. Johnson, let's don't be argumentative.

2 A. I'm sorry, Judge.

3 BY THE COURT:

4 I mean you've got an exhibit and it says what it
5 says.

6 Q. I agree, Your Honor.

7 BY THE COURT:

8 And I can read it just as good as you can.

9 Q. Regarding Defendant's Exhibits 13 and 14, we're
10 looking at the plan for the poured wall in the
11 photograph. So it's your testimony that you can
12 disregard plans and make field changes?

13 A. Those plans are not based on that site. So if I
14 was to build by those plan exactly how they are,
15 the house wouldn't be where it's at. It'd be
16 impossible to put it there and Merlo was with us
17 the entire time we were building the house. It was
18 never brought up. It's not an issue. It was the
19 best decision made for the house.

20 Q. Why didn't you have any conversations with Mr.
21 Merlo regarding a change like that to something?

22 A. It's not, it's not a change. I didn't have a
23 conversation that I made the wall six foot instead
24 of three feet to benefit him either. I mean it's
25 the right, it's the thing to do. We were

1 instructed by the foundation company how to do it
2 and that's how we did it and they do thousands of
3 homes a year, maybe 600 homes a year.

4 Q. Do you have any records showing that that's what
5 Southern Basements recommended?

6 A. Yeah, we have layout and we have their proposal and
7 invoice and the work that's in the field.

8 Q. And where is that evidence?

9 A. Well, he's living in one of them.

10 Q. And so you can unilaterally change plans as you see
11 fit?

12 A. I didn't change the plans.

13 Q. You testified ---

14 A. The foundation company was hired to put that house
15 where it was at so that's exactly what they did,
16 and they built the walls at the height they needed
17 to be to retain the dirt based on what he wanted.
18 That's all there is to it.

19 Q. Well, could it also be just a lack of supervision
20 from ---

21 A. So you're saying that Southern Basements doesn't
22 have supervision? There was probably 15 people out
23 there building that wall. There was a foreman,
24 there was myself and the owner of the company. I
25 don't think there was probably -- there was more

1 supervision going on with that foundation than any
2 other part of the job.

3 Q. Then how was a wall missed?

4 A. It wasn't missed. There's nothing missed that
5 they're referring that needed to be there, it
6 didn't need to be there, and we added to the other
7 walls to make up the difference so it wasn't a cost
8 savings to us. It's not like it was something, oh,
9 let's save some money. We added, we took a three
10 foot wall and made a six foot and no change order
11 for that. It was just the thing to do for the
12 layout of that house. You can't look at this plan
13 and place it on that lot without modifications to
14 the plan, it's impossible.

15 Q. What about that lot required a modification to that
16 wall?

17 A. The steepness of it, where the house was placed,
18 the retention of the dirt that we were retaining.
19 Let me ask this, why is it not been brought up
20 during the entire process? If he missed that wall
21 so much, why didn't he talk about it the day we
22 poured the foundation or the day after or the 200
23 days after that? What is the reason they're
24 talking about it today?

25 Q. Well, Mr. Merlo will testify to when he learned

1 about the change but ---

2 A. You're saying he don't, he don't know how to read
3 the plans? Is that what you're admitting?

4 Q. I know he's not a general contractor.

5 A. Okay. But all of a sudden he is? The wall was not
6 needed and it was not a change that I made. It had
7 to be changed for where the house was going to sit
8 on the lot and it was of no benefit to anyone on
9 the project other than the homeowner.

10 Q. The wall had to be changed?

11 A. Yeah, I had to go from three foot to six foot, I
12 had to spend that extra money so the dirt would be
13 retained.

14 Q. So you're talking -- no, you're not talking about
15 the wall that was specified in the plans to be a
16 poured wall and you made it a framed wall with zip
17 board, you're talking about the wall on the outside
18 of the porch?

19 A. The only reason that wall would have been put there
20 is if it was going to retain dirt. Do you know
21 that, do you agree with that?

22 Q. You don't think there are houses that have poured
23 concrete foundations that aren't retaining dirt?

24 A. No. Why would you do that? You have smaller room,
25 you have poor insulation, it's not a superior

1 product. It's only there to retain dirt. No one
2 just pours 10 inch concrete walls everywhere
3 through their house. I answered the question. Can
4 you move on?

5 Q. Is a poured concrete wall more expensive than a
6 framed wall?

7 A. No.

8 Q. No?

9 A. No, because a framed wall is going to take
10 insulation, studs, a water barrier, and this wall
11 has rock that's lapped, mortar in rock and rock is
12 expensive.

13 Q. Well, wouldn't it have rock either way?

14 A. Not, not necessarily.

15 Q. Do the plans call for rock in that wall?

16 A. A portion of that wall looks like it is, yeah.

17 Q. So that wouldn't have changed?

18 A. I suppose not, no. But do you think the wall there
19 that went from three foot to six foot cost more
20 money or was that free?

21 Q. I am not aware of any change order or any ---

22 A. There wasn't, because we took the one over there
23 and we put it over here to make it work for the
24 house, the layout. How would you have done it?

25 Q. I would follow the plans.

- 1 A. Really? Then you wouldn't have had a retaining
2 wall there and all that dirt would have fallen into
3 the house, even while he lives there now. So I
4 wouldn't build if I was you.
- 5 Q. Okay. Well, I mean there are change orders as
6 well?
- 7 A. They were ignored so.
- 8 Q. The change orders were ignored?
- 9 A. Yes, absolutely, and still being ignored today.
- 10 Q. What change orders were ignored?
- 11 A. All the ones he didn't pay for, he didn't want to
12 pay for it and now, now we're here so.
- 13 Q. Okay. Did you ever say anything to Mr. Merlo about
14 the change to the half wall?
- 15 A. No, I just did it because it needed to be done.
- 16 Q. And you never said anything to him about the change
17 to the other wall, the poured wall?
- 18 A. No, it was never mentioned.
- 19 Q. And you testified that the leaks that were related
20 to that wall went under a door?
- 21 A. Yes, I was there and I seen it, and then after we
22 cleaned it up and we finally got the landscaping
23 and the wall in, it stopped doing that. You know,
24 that was needed to stop that and that's what
25 happened.

1 Q. And you don't think there was water underneath that
2 wall?

3 A. And what's stopping it from going underneath the
4 wall today?

5 Q. And you don't believe any of the changes were made
6 to that wall?

7 A. Which wall?

8 Q. The wall that should have been poured.

9 A. There was nothing up against that wall, there was
10 no dirt against that wall. There's no reason that
11 you'd put a retaining wall there.

12 Q. Okay. Well, is it exterior porch, I mean is it
13 open air?

14 A. I believe there's a deck going over it, yeah,
15 there's a deck extension that we added that still
16 hasn't been paid for that's over that, it's just
17 not completely open, no.

18 Q. But water can go against that wall?

19 A. Water can go against the wall back to the house,
20 too. That's not for rain, it's for backfilled dirt
21 and there's no dirt against that wall, and even
22 today if you do a site visit and I have pictures
23 showing there's no dirt against that wall today.

24 Q. And you said there was never any communications
25 from Mr. Merlo regarding those leaks?

1 A. Of course, we talked about the leaks. We met on
2 site and it was a rain event that happened.

3 Q. But you testified earlier there were no
4 communications throughout the project. I'll give
5 you this.

6 BY MR. TAROKH:

7 I object, Your Honor, I don't believe the witness
8 said that.

9 BY THE COURT:

10 Well, I haven't heard any questions here for the
11 last couple of minutes so.

12 A. And who determined there was a leak in the wall.
13 Was there a professional brought out or was it
14 Merlo?

15 Q. Your Honor, I want to put this in as -- is it 16 or
16 17?

17 BY COURT REPORTER:

18 17. 16 was the text message.

19 BY THE COURT:

20 That's Defendant's Exhibit 17?

21 BY COURT REPORTER:

22 Yes, sir.

23 (DEFENDANT'S EXHIBIT 17 MARKED FOR IDENTIFICATION)

24 BY THE COURT:

25 Is there any objection?

1 BY MR. TAROKH:

2 No, Your Honor.

3 BY THE COURT:

4 All right. So that's admitted without objection.

5 (PLAINTIFF'S EXHIBIT 17 ADMITTED INTO EVIDENCE)

6 Q. I'm going to hand that to you and then we'll look
7 at it on the computer.

8 A. These are hardly legible. Do you have better
9 copies?

10 Q. I'm going to pull it up right here, sir.

11 A. Okay.

12 BY MR. TAROKH:

13 Your Honor, may I?

14 BY THE COURT:

15 Sure.

16 Q. So this is a text message dated November 13th, 2018.

17 BY THE COURT:

18 November 13, '18?

19 Q. Yes, sir. Is the water shown in that picture
20 coming from a door?

21 A. Well, you can't see it. I mean that's one picture
22 of a corner. You don't know what else is in that
23 room or picture. I mean I can show you exactly
24 what flooded in the basement. I can show you all
25 that on the plan and that we fixed it and replaced

1 it.

2 Q. Okay. Show us everywhere that flooded.

3 A. I will. Okay, the water came through this double
4 door. We were building the retaining wall up here.
5 The landscaper wasn't quite there yet or maybe he
6 was working. The water came around the house this
7 way, came through here, and you've got a picture of
8 all the mud on this porch, and it came through the
9 door and flooded all this, all of this. All of
10 this had to be replaced. We replaced the
11 baseboard, we replaced the drywall, the insulation.
12 We put fans in there, we cleaned it up and it
13 wasn't talked about again. So, yes, those did
14 happen for sure, but we fixed them. I mean eleven
15 inches in two something hours, I'm sorry, there's
16 nothing I can do about it.

17 Q. And water didn't go into the bedroom three on
18 multiple occasions?

19 A. Not that I know of, no. And if it did, if water
20 did get in there it's because we wasn't done with
21 the landscaping and we couldn't get the water
22 turned. But as soon as all that was done we never
23 had an issue with water again and that's months and
24 months and months of us continuing to work. So why
25 is this even being brought up? If he was so

1 dissatisfied about that picture that no longer
2 exists and it's corrected, why didn't he fire us?

3 Q. Well, if that poured wall on the plans had been
4 done and been waterproofed, would you have had this
5 issue?

6 A. Absolutely, it went through the door. Do you think
7 this wall here would've, or a drywall wall would've
8 kept water from going through the rest of the
9 house?

10 Q. I understand your testimony and Mr. Merlo will
11 provide his prospective as well.

12 A. Well, let me ask you this, is there any issues with
13 water today?

14 Q. Well, Mr. Merlo will testify to that. On the next
15 page of Exhibit 17?

16 A. Yes. This, the one where he's saying up 30% in the
17 market and killing it, is that what you want me to
18 say?

19 Q. No, sir. I'm talking about the picture in the
20 middle of the page.

21 A. Okay, yeah.

22 Q. Your testimony is that water is not coming
23 underneath that wall?

24 A. Well, where is the water starting in? Can you see
25 in that picture? How do you know it's not coming

1 from my direction over here to that wall and
2 damming against the wall? Is that wall leaking
3 today? My testimony is we had a hell of a lot of
4 rain that year, excuse my language. We had a lot
5 of rain that year and we had to deal with it all
6 the time and it costs us money but it didn't cost
7 the homeowner anything.

8 Q. Do you know if Mr. Merlo had that wall waterproofed
9 after ---

10 A. I looked at all the invoices of the other builder
11 and I didn't see any that suggested that.

12 Q. Did you look through the pictures?

13 A. Well, did he waterproof for free? Did he remove
14 all that rock and drywall and did all that for
15 nothing because he sure charged for a lot of other
16 things?

17 Q. You didn't see any pictures of the removal of the
18 rock and waterproofing?

19 A. Uh-uh (negative), no. Do you have any?

20 Q. Well, we'll get into that later as well. On
21 Plaintiff's Exhibit 60 -- well, strike that and
22 we'll go back to this boulder wall issue. In your
23 direct examination you testified that that wall
24 didn't make sense because he had a window and
25 whatever else?

1 A. Maybe. Now I'm not for sure, I can't remember.

2 Q. On the opposite side of the house, I mean that
3 poured wall has windows and whatnot?

4 A. Not in the concrete, no, that -- it's great that
5 you brought that up. So that poured wall at the
6 other end of the house drops down every so many
7 feet, so it's not a 10 foot wall at the back of the
8 house because there's no dirt retaining it so we
9 didn't do that. So it drops down, the concrete
10 wall that we framed off of, and those windows are
11 in that framing.

12 Q. Is that part of the plans or is that another field
13 change?

14 A. Show me on the plans, show me on these plans where
15 it shows a concrete wall with a window. Come on.
16 You're assuming it's a field change; can you show
17 me please?

18 Q. The plans speak for themselves; you're testifying.

19 A. No, no, there's a lot of implied information in
20 these plans.

21 Q. With regard to Plaintiff's Exhibit 60, that is a
22 letter from Mr. Cottingham.

23 A. Okay.

24 Q. Can you pull that up please?

25 A. No, you can find it. Where is it? Okay. Can I

1 remove all these things here, these exhibits, or
2 are we going to go through them? What you got?
3 Okay.

4 Q. Is Mr. Cottingham making any representation that
5 the foundation was done pursuant to the plans?

6 A. No. Well, if we built the foundation per plan, it
7 wouldn't fit on that lot. I've said that several
8 times now.

9 Q. Well, I ---

10 A. And Merlo understands that, too, that's why he
11 hires a custom builder to be able to do that. If
12 we were cookie-cutters, we would've just took that
13 plan and plopped it on there and whatever happened
14 happens. He would've been falling off his back
15 porch patio and having a 10 foot drop. There's so
16 many things that we changed to get that house to
17 fit there under -- I'm showing how and what we're
18 doing and he's okay with it. It's the only way to
19 do it and Southern Basements has been doing this
20 for 30 something years. There's nothing else we
21 should've done to that foundation. It says on here
22 six foot retaining wall and there's only three foot
23 in the plans so I guess that's some information.

24 Q. Your concern is?

25 A. Yes, six foot and the plans was three foot.

- 1 Q. And that's on the left side porch?
- 2 A. Yes, sir.
- 3 Q. If you could pull out Exhibit 2 please, Plaintiff's
- 4 2, the contract?
- 5 A. Okay.
- 6 Q. That's Defendant's Exhibit 2.
- 7 A. All right.
- 8 Q. With regard to the ceiling in the basement, ---
- 9 A. Yeah.
- 10 Q. --- what did you agree to build?
- 11 A. I agreed to build it per plan.
- 12 Q. What did the specifications say that you agreed to
- 13 build?
- 14 A. It says here that we're going to build it per plan
- 15 and it gives the plan number and everything, that's
- 16 behind that page. It says right here, "General
- 17 notes on plans are not considered specs and are
- 18 subject to change." That's on the contract and
- 19 Merlo signed two lines underneath it.
- 20 Q. Okay. So in your own contract you're saying the
- 21 specifications control over plans?
- 22 A. I'm saying it's subject to change, that's what it
- 23 says in the contract. The possibility by plan, I
- 24 just went over that a little bit earlier today.
- 25 Q. And you said the general notes on the plans don't

1 override the specifications; is that what the
2 contract says?

3 A. No, it's saying it's subject to change.

4 Q. The general notes on the plans are not considered
5 specs?

6 A. Correct.

7 Q. Okay. So the specifications ---

8 A. And the specifications is the plans.

9 Q. Then why do you have a spec sheet under the
10 contract?

11 A. It's information, but what we're going off of is
12 the plans on that wall.

13 Q. Then why have any specifications in your contract?

14 A. You're asking about why those ceilings are 9'8, and
15 they're 9'8 because that's what the plans say to do
16 and it made sense to do them 9'8.

17 Q. Did it save you money?

18 A. No, it does not save any money. You can still, you
19 can see in this letter we still poured a 10 foot
20 wall, so you see that on the letter we just looked
21 at, it said 10 foot wall. We did everything we
22 were supposed to do.

23 Q. And is that because it's just poor supervision?

24 A. How does that, how does that relate to poor
25 supervision?

- 1 Q. Not knowing what you ---
- 2 A. Going by the plan is poor supervision?
- 3 Q. Not knowing what you contracted for?
- 4 A. Not knowing what I contracted? I contracted to
- 5 build it by the plan.
- 6 Q. Yet the specifications which your own contract says
- 7 are higher in predominance show 10 foot ---
- 8 A. Well, let me ask you this, why are we not talking
- 9 about through the whole entire build of the house?
- 10 Why is that not something? I mean we built it per
- 11 plan, that's the most important to take away here.
- 12 But also let's talk about their work, it's never
- 13 been brought up.
- 14 Q. Well, ---
- 15 A. Well, let me ask you this, is this conversation
- 16 we're attacking as to why he hasn't paid us our
- 17 money or is it facts?
- 18 Q. Is it a fact that ---
- 19 A. By fact I built it by the plan.
- 20 Q. Is it a fact that the contract specified 10 feet?
- 21 A. It's 10 foot walls right here. You see where he
- 22 poured the 10 foot basement wall.
- 23 Q. Yeah. Are the ceilings 10 feet?
- 24 A. No, they're 9'8 like they are in the plan.
- 25 Q. And you would agree with me that that was brought

1 to your attention in December of '18?

2 A. He asked why and I explained to him that it was
3 like the plan and this is how you get to those
4 measurements, and then it was never brought up
5 again.

6 Q. What would you have had to have done at that point
7 to remediate that problem?

8 A. There's not a problem. Why are we saying remediate
9 the problem? What's the problem, that we built it
10 by plan?

11 Q. Well, I'll change my question. What would have had
12 to have been done to make the ceilings in the
13 basement 10 feet at the time Mr. Merlo recognized
14 that they were 9'8?

15 A. He had a plan that says 10 foot ceilings in the
16 basement, not 9'8, and I followed that. When I
17 brought it to his attention that we did it per
18 plan, that subject was dropped. Now what are we
19 talking about?

20 Q. Well, we're talking about the specifications of the
21 contract but I'm asking you a simple question.
22 What would have needed to have been done to change
23 the house from 9'8 in the basement ceiling to 10
24 feet when he recognized it ---

25 A. Well, Merlo would have had to have been willing to

1 remove the foundation that we put in per plan, have
2 an architect draw up a plan that says what it takes
3 to give you a true 10 foot ceiling in the basement,
4 not 9'8, this is a ridiculous conversation, and
5 then we would have started over, and I don't think
6 he would've did that.

7 Q. So you would have had to rip off the entire upper
8 two stories of the home?

9 A. No, this would have been at foundation, so I don't
10 think it wasn't built yet. The point is it's built
11 per plan.

12 Q. In December of '18 when Mr. Merlo recognized it,
13 what would've had to have been done?

14 BY MR. TAROKH:

15 Objection, Your Honor, asked and answered and
16 repetitive.

17 BY MR. JOHNSON:

18 No, he answered regarding the foundation ---

19 BY THE COURT:

20 Well, I'm having trouble figuring out what the
21 relevance of it is to tell you the truth.

22 A. Same here, Your Honor.

23 BY THE COURT:

24 I mean he's explained the whole process and you
25 say, well, what would it take to change it? Well,

1 what difference does it make?

2 BY MR. JOHNSON:

3 Your Honor, the difference is it's, I mean he could
4 have required tearing down the house ---

5 BY THE COURT:

6 Well, he's already testified that they built it per
7 plan. Now, you may not agree with that but you can
8 ask other questions of other witnesses. But I
9 mean, you know, you're assuming in your question
10 that he did not do that; he's testified he did.

11 Q. Okay. You did not built it pursuant to the
12 contract?

13 A. I built it per plan. It says in the contract that
14 I would build it per plan and I showed you that,
15 where it shows in the plans the height of the
16 ceilings.

17 Q. Show me again where it says to build per plan?

18 BY MR. TAROKH:

19 Objection, Your Honor. We've covered this
20 territory, asked and answered, repetitive.

21 Q. No, no, that's not what actually ---

22 A. Yeah, it actually gives the plan number and
23 everything.

24 BY THE COURT:

25 Hold on a minute. Mr. Johnson, you're being

1 totally argumentative here.

2 BY MR. JOHNSON:

3 Well, Your Honor, ---

4 BY THE COURT:

5 I mean you've asked the same question many, many
6 times.

7 BY MR. JOHNSON:

8 Because we're getting circular answers.

9 BY THE COURT:

10 You may not like the answer you're getting but
11 you've asked the question and you got your answer.

12 A. What is circular about building per plan? I don't
13 understand how that's beating around the bush.

14 Q. Where does it say that in the contract?

15 A. It says here, "This price is based off the plans by
16 DG 1329-D". So if we priced it to build it that
17 way, that's exactly how we built it. We built it
18 off this plan and it says the plan number.

19 Q. And from your meeting in September, '17, you again
20 contemplate that the ceilings are going to be 10
21 feet and that's memorialized in the contract; is
22 that right?

23 BY MR. TAROKH:

24 Objection, relevance.

25 BY THE COURT:

1 Well, I'm going to let him ask that question.

2 That's a different question.

3 A. That could've been a typo. I mean it doesn't say
4 9'8. Every house we put on the lake for any
5 basement always comes to 9'8 because it's a 10 foot
6 poured wall, it's the floor systems are the same.
7 You're the only person that we've ever had to have
8 this conversation with because most people are
9 reasonable and they understand what the plan says.
10 And if it was a problem, we would've been talking
11 about it daily, not one time, one event and then
12 now brought up now. If it had bothered him so
13 much, why did he continue to let us move forward?
14 By letting us move forward, let's go this route, by
15 letting us move forward, then he accepted the fact
16 that it was 9'8. Do you agree with that? I cannot
17 do ---

18 BY THE COURT:

19 Hold on, hold on. Mr. Grissinger, let me just ---

20 A. I'm sorry, Your Honor.

21 BY THE COURT:

22 I've you go on for a while and the process we're
23 involved in is you're the witness.

24 A. Yes, sir.

25 BY THE COURT:

1 You're here to answer questions, not ask them. And
2 I mean I'm going to give you every opportunity to
3 answer fully any questions that he asks you and
4 explain your answers if you need to do that. But
5 he's not the witness.

6 A. Yes, Your Honor.

7 BY THE COURT:

8 So let's move on.

9 Q. And that's where I was leading. At the stage that
10 Mr. Merlo recognized that it was not in accordance
11 with the contract, would it have been economically
12 suitable to rip out all the work that had been done
13 at that stage and start again?

14 A. There would've been no need to even have that
15 conversation. He fully understood the ceiling
16 heights and he was fine with it because we built it
17 per plan.

18 Q. Regarding the theater, where in the contract does
19 it say anything about you doing anything on a
20 square foot basis?

21 A. That's how we derived at costs. You asked us how
22 we came up with the \$7,000; we derived that cost by
23 square footage, extra materials and extra door,
24 extra labor.

25 Q. Is that a cost?

1 A. It's a cost to the job, yeah, a cost to us, we paid
2 for it.

3 Q. And what evidence, what evidence do you have to
4 support that that is a cost that should be ---

5 A. Yes, sir, I have plenty of evidence. So I have
6 invoices from the floor company, I have invoices
7 from the installer of the floor company, I have
8 invoices from the drywall contractor, I have
9 invoices from the paint contractor, I have invoices
10 from the insulation company, I have invoices from
11 the framer, all those invoices, and he's very, he's
12 very lucky that we didn't try to make money on that
13 because that was what costs came in. We sat there,
14 John and I, when we were wrapping this thing up
15 after we got terminated and we were trying to
16 figure out the costs, the honest costs of it, and
17 we gave the honest cost to him; and if you can't
18 see that, then I'm sorry.

19 Q. Have you presented any of that in this case?

20 A. I believe we've presented tons of invoices. The
21 square foot suggests that it should've been like
22 \$16,000. Do you not think that's a fair price at
23 Seven Grand?

24 Q. Again, you're testifying. But as it stands you
25 don't have any invoice?

1 A. We have like probably 17 invoices if start talking
2 about individual contractors.

3 Q. You don't have any invoice in this case that has
4 been presented that shows an increase of 7,000
5 whatever dollars?

6 A. No, because we give it at cost, multiple invoices.
7 We don't invoice the client, it just goes on the
8 balance sheet.

9 Q. Don't you think that it's important to be able to
10 pass along to the client in a change order
11 situation what the cost is ---

12 BY MR. TAROKH:

13 Objection, relevance.

14 A. We did. He admits the costs of \$7,000.

15 BY THE COURT:

16 I'm going to overrule.

17 A. We were still doing paint touch-up. We didn't have
18 all the invoices in when we were terminated so we
19 had to gather all that stuff. We weren't planning
20 on getting terminated so when that happened we had
21 to scramble and get all that stuff together. I
22 mean we could've took advantage of the situation
23 and we didn't.

24 Q. How would we know?

25 A. Because if you add the square footage up and you

1 times it by the square footage, the cost of the
2 house is going to be like \$16,000 and that's how
3 most builders price their stuff is by square foot
4 cost. We took each individual invoice and broke it
5 down to get it to the \$7,000. It wasn't a filled-
6 in number, it was an actual factual number.

7 Q. I understand in estimating on a lump-sum project
8 that you can come to an amount. Does an amount
9 equal a cost?

10 A. Re-ask the question.

11 Q. Okay. In a lump-sum project when you're giving a
12 proposal, I understand that you do a takeoff and
13 maybe do a ---

14 A. Sure.

15 Q. Right. But a change order is different, is that
16 not right?

17 A. It could be, just depending on the change order.

18 Q. But unless it's agreed upon, would you agree that
19 it's your burden to prove of the costs of the
20 change order?

21 A. I can prove the costs.

22 Q. But you have no documentation?

23 A. I have several, several invoices that have the
24 costs of all the drywall in the house, that room
25 was drywalled.

1 Q. Where are those invoices?

2 BY MR. TAROKH:

3 Objection, Your Honor, repetitive.

4 BY THE COURT:

5 I agree. I mean you've asked the same questions
6 dozens of times and you may not like the answer
7 you're getting but that's his answer, so let's move
8 on.

9 BY MR. JOHNSON:

10 Your Honor, I think that's all the questions I
11 have.

12 BY THE COURT:

13 All right. Have you got any redirect? Now, I just
14 want to warn both of you, now we're not going back
15 and forth, back and forth. You're entitled to
16 redirect on matters he brought up in cross
17 examination.

18 BY MR. TAROKH:

19 I think Your Honor will be pleased, I have no
20 further questions.

21 BY THE COURT:

22 Well, sometimes your prayers are answered. All
23 right, well, you can step down.

24 A. Yes, sir.

25 BY THE COURT:

1 All right. Now what you've got left? What have
2 you got next?

3 BY MR. TAROKH:

4 Some basic housekeeping, Your Honor. I have a
5 witness under Subpoena, he was told to be here
6 around 2:30. I presume that will be close to when
7 we get back from lunch. My housekeeping matters,
8 Your Honor, are ---

9 BY THE COURT:

10 You're saying we're going to want to take one of
11 them three martini lunches or something?

12 BY MR. TAROKH:

13 (Laughing) That would be nice. Your Honor, now
14 specifically counsel and I had filed a Stipulated,
15 and you mentioned this yesterday at the beginning
16 of the trial, a Stipulated List of Exhibits ---

17 BY THE COURT:

18 All right.

19 BY MR. TAROKH:

20 And there are some documents I want to get into
21 evidence before I call the next witness.

22 BY THE COURT:

23 All right.

24 BY MR. TAROKH:

25 I think to save time if we could do that. Can you

1 mark this one please?

2 BY COURT REPORTER:

3 Sure.

4 (PLAINTIFF'S EXHIBIT 61 MARKED FOR IDENTIFICATION)

5 BY THE COURT:

6 What exhibit number is that going to be?

7 BY MR. TAROKH:

8 Your Honor, this is going to be Plaintiff's Exhibit

9 61. This is Defendant, ---

10 BY THE COURT:

11 61?

12 BY MR. TAROKH:

13 61, Your Honor.

14 BY THE COURT:

15 61, All right.

16 BY MR. TAROKH:

17 Counsel has stipulated that it comes in without

18 objection.

19 BY THE COURT:

20 Goes in without objection, it's admitted.

21 (PLAINTIFF'S EXHIBIT 61 ADMITTED INTO EVIDENCE)

22 BY MR. TAROKH:

23 And, Your Honor, just to describe for the Court,

24 this document are Responses to my Requests for

25 Admissions to the Defendant, GrandSouth Bank, and

1 the first one for the record, Your Honor, "It is
2 admitted that GRANDSOUTH Bank made only nine (9)
3 draw payments to Plaintiff in the total amount of
4 \$581,250.00 in connection with the construction of
5 the home located at 548 Marina Bay Drive, Seneca,
6 South Carolina." The Response ---

7 BY THE COURT:

8 Was that a total figure?

9 BY MR. TAROKH:

10 Yes, Your Honor, total. I'll repeat, "Admit that
11 GRANDSOUTH BANK made only nine (9) draw payments to
12 Plaintiff in the total amount of \$581,250.00 in
13 connection with the construction of the home
14 located at 548 Marina Bay Drive, Seneca, South
15 Carolina." The Response is "Admit". "Number 2,
16 Admit that upon the request of Christopher J.
17 Merlo, GRANDSOUTH BANK made a draw payment in the
18 amount of \$43,750.00 to Plaintiff in or about March
19 2018." The Response is "Admit". "Number 3, Admit
20 that upon the request of Christopher J. Merlo,
21 GRANDSOUTH BANK made a draw payment in the amount
22 of \$68,750.00 to Plaintiff in or about May 2018."
23 The Response is "Admit". "Number 4, Admit that
24 upon the request of Christopher J. Merlo,
25 GRANDSOUTH BANK made a draw payment in the amount

1 of \$93,750.00 to Plaintiff in or about July 2018."
2 The Response is "Admit". "Number 5, Admit that
3 upon the request of Christopher J. Merlo,
4 GRANDSOUTH BANK made a draw payment in the amount
5 of \$43,750.00 to Plaintiff in or about August
6 2018." The Response is "Admit." "Number 6, Admit
7 that upon the request of Christopher J. Merlo,
8 GRANDSOUTH BANK made a draw payment in the amount
9 of \$87,500.00 to Plaintiff in or about September
10 2018." The Response is "Admit". "Number 7, Admit
11 that upon the request of Christopher J. Merlo,
12 GRANDSOUTH BANK made a draw payment in the amount
13 of \$75,000.00 to Plaintiff in or about October
14 2018." The Response is "Admit". "Number 8, Admit
15 that upon the request of Christopher J. Merlo,
16 GRANDSOUTH BANK made a draw payment in the amount
17 of \$75,090.00 to Plaintiff in or about March 2019."
18 The Response is "Admit". Number 9 -- only a few
19 more of these, Your Honor. "Number 9, Admit that
20 upon the request of Christopher J. Merlo,
21 GRANDSOUTH BANK made a draw payment in the amount
22 of \$62,410.00 to Plaintiff in or about June 2019."
23 The Response is "Admit". "Number 10, Admit that
24 upon the request of Christopher J. Merlo,
25 GRANDSOUTH BANK made a draw payment in the amount

1 of \$31,250.00 to Plaintiff in or about August,
2 2019." The Response is "Admit". "Number 11, Admit
3 that GRANDSOUTH BANK did not pay the Plaintiff the
4 specific amount of \$127,000.00 in the form of a
5 single draw payment, a single check, a single wire
6 transaction or any other single transaction in
7 connection with the construction of the home
8 located at 548 Marina Bay Drive, Seneca, South
9 Carolina." The Response is "Admit". "12, Admit
10 GRANDSOUTH BANK did not receive any request from
11 Christopher J. Merlo to pay Plaintiff the specific
12 amount of \$127,000.00 in the form of a single draw
13 payment, a single check, a single wire transaction
14 or any other form of payment." The Response is
15 "Admit". "Number 13, Admit that GRANDSOUTH BANK
16 wired the specific amount of \$127,000.00 in January
17 2018 to pay off a mortgage held on the real
18 property located at 548 Marina Bay Drive, Seneca,
19 South Carolina, then owned by Christopher J.
20 Merlo." The Response is "Admit".

21 BY THE COURT:

22 Who was that to?

23 BY MR. TAROKH:

24 This was to the Co-Defendant. I'm sorry.

25 BY THE COURT:

1 Bank of Travelers Rest?

2 BY MR. TAROKH:

3 No, Your Honor. Travelers Rest was dismissed.

4 They were originally ---

5 BY THE COURT:

6 Well, who is the payment? You just mentioned

7 GrandSouth made a payment to pay off the mortgage.

8 Who was that mortgage holder?

9 BY THE TAROKH:

10 They did admit. Excuse me, the Request doesn't

11 specifically say, but I can tell you what I believe

12 it is. I believe it's Bank of Travelers Rest which

13 is why they were dismissed.

14 BY THE COURT:

15 Well, that's what I was getting to. So have you

16 got any trouble with bringing that in?

17 BY MR. JOHNSON:

18 No, Your Honor.

19 BY THE COURT:

20 They paid Bank of Travelers Rest the 127 and the

21 others in effect, for all the others is that

22 581,250 was paid in nine different draw payments by

23 GrandSouth to IBI?

24 BY MR. TAROKH:

25 Yes, Your Honor, at the request of Mr. Merlo.

1 BY THE COURT:

2 Right, right, I got you.

3 BY MR. TAROKH:

4 And there's also some more added exhibits and these
5 will go fast.

6 BY THE COURT:

7 Promises, promises. See, this is what I suggested
8 yesterday, if y'all had got together on Monday and
9 put all these exhibits in a list and identified
10 them and agreed on them, we could have saved a half
11 a day. But anyway, there's no need to worry about
12 that now.

13 BY MR. TAROKH:

14 Your Honor, the first one is an email dated January
15 -- I guess I should identify it first, I'm sorry.
16 This will be ---

17 BY THE COURT:

18 62?

19 BY MR. TAROKH:

20 Yes, Your Honor, Plaintiff's Exhibit 62.

21 (PLAINTIFF'S EXHIBIT 62 MARKED FOR IDENTIFICATION)

22 BY THE COURT:

23 Is that agreed to, Mr. Johnson?

24 BY MR. JOHNSON:

25 Yes, sir.

1 BY MR. TAROKH:

2 It's an email from Mr. Merlo to Laura Thompson with
3 GrandSouth Bank and it's dated January 6, 2019.
4 Mr. Merlo says, "Laura - I hope you had a good
5 holiday & New Year. I noticed on my new bill that
6 the Prime Rate jumped to 5.25 & my rate now is
7 5.75. Yikes, I'm interest rate sensitive. Can you
8 tell me your current fixed 30 year jumbo rate &
9 your heloc rate. We may need to massage this for
10 comfort. Construction is slow with all the rain
11 but continues. The end-product should be
12 exceptional."

13 BY THE COURT:

14 All right. It's admitted, Number 62 without
15 objection.

16 (PLAINTIFF'S EXHIBIT 62 ADMITTED INTO EVIDENCE)

17 BY MR. TAROKH:

18 And the next one, Your Honor.

19 (PLAINTIFF'S EXHIBIT 63 MARKED FOR IDENTIFICATION)

20 BY THE COURT:

21 63.

22 BY MR. TAROKH:

23 63.

24 BY MR. JOHNSON:

25 No objection.

1 BY THE COURT:

2 Admitted without objection.

3 (PLAINTIFF'S EXHIBIT 63 ADMITTED INTO EVIDENCE)

4 BY MR. TAROKH:

5 It's an email from Mr. Merlo to Laura Thompson with
6 GrandSouth Bank dated March 8th, 2019. "Laura - My
7 Builder has requested another Draw. I had a good
8 conversation with John after we spoke on the phone
9 & we are meeting this Tuesday to walk thru the
10 house together. I am satisfied with the project
11 but my impatience is catching up. I really never
12 thought it would take 18 months to build but that
13 looks like the case. I feel certain the final
14 appraisal will reflect a number that soothes my
15 anxiety. Thank you for the assistance along the
16 way."

17 BY THE COURT:

18 All right, wait a minute. Let me go back to Number
19 62. What was the date of that?

20 BY MR. TAROKH:

21 January 6, 2019.

22 BY THE COURT:

23 And the date of Number 63?

24 BY MR. TAROKH:

25 March 8th, 2019.

1 BY THE COURT:

2 All right.

3 BY MR. TAROKH:

4 And the next one.

5 (PLAINTIFF'S EXHIBIT 64 MARKED FOR IDENTIFICATION)

6 BY THE COURT:

7 Will be 64.

8 BY MR. JOHNSON:

9 No objection, Your Honor.

10 BY THE COURT:

11 Admitted without objection.

12 (PLAINTIFF'S EXHIBIT 64 ADMITTED INTO EVIDENCE)

13 BY MR. TAROKH:

14 This is an email from Mr. Merlo to Laura Thompson
15 with GrandSouth Bank dated April 25th, 2019. "Hi
16 Laura - I hope you had a great Easter holiday.
17 After speaking with my builder & encouraging him to
18 get moving on the house, work is finally moving
19 along briskly. If they keep up at this pace, I
20 anticipate occupancy in June. Should we consider a
21 rate lock? I am still interested in a 30 year
22 fixed with a Heloc. The engineered boulder wall
23 quote just came back at \$51,000 & while it adds
24 costs, I think it will also add equity. The
25 appraisal should be favorable."

1 (PLAINTIFF'S EXHIBIT 65 MARKED FOR IDENTIFICATION)

2 BY MR. JOHNSON:

3 No objection.

4 BY MR. TAROKH:

5 The next one, Your Honor, is 65.

6 BY THE COURT:

7 Okay. So Plaintiff's Exhibit 65 is admitted
8 without objection.

9 (PLAINTIFF'S EXHIBIT 65 ADMITTED INTO EVIDENCE)

10 BY MR. TAROKH:

11 This is an email from Mr. Merlo to Laura Thompson
12 with GrandSouth Bank dated April 30th, 2019. "Laura
13 - I had time to thoughtfully consider the options &
14 here are my thoughts. The present loan is at
15 \$752,000 and I owe the builder another \$150,000 &
16 have paid him cash of \$30,000 already. It feels
17 like a 1st mortgage at 4.5% for 30 years fixed is
18 the right product." And I have another one, Your
19 Honor. This will be Plaintiff's Exhibit 66.

20 (PLAINTIFF'S EXHIBIT 66 MARKED FOR IDENTIFICATION)

21 BY MR. JOHNSON:

22 No objection.

23 BY THE COURT:

24 All right. So Exhibit 66 is admitted without
25 objection.

1 (PLAINTIFF'S EXHIBIT 66 ADMITTED INTO EVIDENCE)

2 BY MR. TAROKH:

3 This is another email, Your Honor, from Mr. Merlo
4 to Laura Thompson dated May 3rd, 2019. "Hi Laura -
5 After consideration, it makes sense on my side to
6 maximize the 1st mortgage. The Contract is
7 \$752,000. I owe the builder \$150,000. I paid the
8 builder \$30,000 already & spent another \$60,000 on
9 the project (plans, survey, trees, etc.) I have
10 receipts for everything. Can we do a 1st loan for
11 \$992,000", it actually says 'for 992', "that gets
12 my builder paid & reimburses my costs, assuming it
13 appraises at \$1,250,000 or higher. The boulder
14 wall is going to slow the project down because
15 there are not enough boulders in stock. That will
16 push a move-in date into July." This next one,
17 Your Honor, is 67, Plaintiff's Exhibit 67.

18 (PLAINTIFF'S EXHIBIT 67 MARKED FOR IDENTIFICATION)

19 BY MR. JOHNSON:

20 No objection.

21 BY THE COURT:

22 All right. Exhibit 67 admitted without objection.

23 (PLAINTIFF'S EXHIBIT 67 ADMITTED INTO EVIDENCE)

24 BY MR. TAROKH:

25 This is an email from Mr. Merlo to Laura Thompson

1 with GrandSouth Bank dated May 29th, 2019. "Laura -
2 I'm not certain why I would be going back to Ryan.
3 I thought we cleared the following path... After
4 consideration, it makes sense on my side to
5 maximize the 1st mortgage. The Contract is for
6 \$752,000. I owe the builder \$150,000. I paid the
7 builder \$30,000 already & spent another \$60,000 on
8 the project (plans, survey, trees, etc.). I have
9 receipts for everything. Can we do a 1st loan for
10 992, that gets my builder paid & reimburses my
11 costs, assuming it appraises at \$1,250,000 or
12 higher. Please advise." And the last one, Your
13 Honor, the last one of these emails, Your Honor, is
14 Plaintiff's Exhibit 68.

15 (PLAINTIFF'S EXHIBIT 68 MARKED FOR IDENTIFICATION)

16 Q. It's an email from Mr. Merlo to Laura Thompson with
17 GrandSouth Bank dated August 20th, 2019. "Hi Laura
18 - It's hard to believe, but we are almost finished
19 with the house. It's been a long road. The house
20 now exceeds our initial expectations though. The
21 builder is requesting a draw."

22 BY THE COURT:

23 Mr. Johnson, any objection?

24 BY MR. JOHNSON:

25 No, objection, Your Honor.

1 BY THE COURT:

2 All right. It will be admitted.

3 (PLAINTIFF'S EXHIBIT 68 ADMITTED INTO EVIDENCE)

4 BY THE COURT:

5 Is that it?

6 BY MR. TAROKH:

7 For now, Your Honor.

8 BY THE COURT:

9 Well, for now, all right. Is there anything we
10 need to do before we go to lunch?

11 BY MR. TAROKH:

12 Not from my side, Your Honor.

13 BY THE COURT:

14 Well, now it's 12:30 so, or 12:35. Every clock I'm
15 looking at is different, but anyway I would say
16 normally we would be back at 2. But now, if you're
17 not going to have anybody available at 2 then ---

18 BY MR. TAROKH:

19 I hate to waste the Court's time. I was judging
20 from how everything played out yesterday, I emailed
21 Jim Cassidy and told his client to be here around
22 2:30 this morning.

23 BY THE COURT:

24 So y'all want to come back at 2:30?

25 BY MR. TAROKH:

1 That's fine with us.

2 BY THE COURT:

3 So what are we going to do with all that extra
4 time?

5 BY MR. TAROKH:

6 Well, ---

7 BY THE COURT:

8 We don't have time for nine holes.

9 BY MR. TAROKH:

10 You mention martinis a lot so (laughing).

11 BY THE COURT:

12 That might be ill-advised. All right, well, we'll
13 come back at 2:30 then.

14 BY MR. TAROKH:

15 Thank you, Judge.

16 BY THE COURT:

17 All right. Now, just so I can, you know, think
18 ahead on planning, now you've just one witness from
19 GrandSouth?

20 BY MR. TAROKH:

21 Yes, Your Honor, and ---

22 BY THE COURT:

23 Do you plan to have more witnesses or not? I mean
24 I'm holding you to it.

25 BY MR. TAROKH:

1 I understand. Probably, I have two under Subpoena.
2 I'm probably going to get through. I don't see
3 this next witness being long at all and I may rest
4 after that just to give you a preview. I may ---

5 BY THE COURT:

6 I'm thinking Mr. Merlo is going to testify I
7 assume?

8 BY MR. JOHNSON:

9 Yes, sir.

10 BY THE COURT:

11 And others or is that it?

12 BY MR. JOHNSON:

13 We're still potentially going to have Mr. Wayne
14 Culbertson, we're working through that.

15 BY THE COURT:

16 That's fine. I'm not trying to hold you to
17 anything. I'm trying to figure out if we're going
18 to be able to get through this thing tomorrow.

19 BY MR. JOHNSON:

20 Well, I know that, I know that he would be
21 available if we could bring him in on video? I
22 don't know if that's acceptable. He is out of
23 state working at the moment.

24 BY THE COURT:

25 It's a little bit late in the day to do all that.

1 BY MR. JOHNSON:

2 Well, it would be tomorrow.

3 BY THE COURT:

4 Well, do you have any objection to that? I mean I
5 don't know that we have all the set up to do it and
6 everything, that you would be up to you.

7 BY MR. JOHNSON:

8 Yeah, I can that set up, no problem and I will
9 bring in another TV that doesn't have the lines on
10 it.

11 BY MR. TAROKH:

12 Your Honor, I'm not sure if I object to that or
13 not.

14 BY THE COURT:

15 Well, think about it over lunch and let me know.

16 BY MR. TAROKH:

17 Yes, Your Honor, and just to clarify I believe I
18 definitely have one more witness going forward. I
19 have two more after that that are sort of
20 contingent on his case in chief so.

21 BY THE COURT:

22 Okay, I understand. I'm not trying to limit you,
23 I'm just trying to get an idea.

24 BY MR. TAROKH:

25 Thank you, Judge.

1 BY THE COURT:

2 All right. We'll be back at 2:30.

3 (OFF THE RECORD FOR LUNCHBREAK AT 12:35)

4 BY MR. TAROKH:

5 Your Honor, my next witness is outside.

6 BY THE COURT:

7 All right. Well, let's proceed.

8 BY MR. TAROKH:

9 Yes, Your Honor, I'll be right back. Your Honor,
10 my next witness is Mr. Ronald Marchant.

11 BY THE COURT:

12 All right. Mr. Marchant, come around here and be
13 sworn in. I notice we have Mr. James Cassidy with
14 us. Are you here on behalf of GrandSouth?

15 BY MR. CASSIDY:

16 Yes, sir.

17 BY THE COURT:

18 Good to have you.

19 BY COURT REPORTER:

20 Would you raise your right hand? Do you solemnly
21 swear or affirm to tell the truth, the whole truth
22 and nothing but the truth so help you God?

23 BY MR. MARCHANT:

24 I do.

25 BY COURT REPORTER:

1 Is your first name Ron?

2 BY MR. MARCHANT:

3 Ronald.

4 BY THE COURT REPORTER:

5 Ronald, okay.

6 BY THE COURT:

7 All right, Mr. Tarokh?

8 TESTIMONY OF RONALD MARCHANT, III

9 DIRECT EXAMINATION BY MR. TAROKH:

10 Q. Mr. Marchant, please state your name for the
11 record?

12 A. Ronald Marchant, III.

13 Q. And can you give the Court the benefit of your
14 education and background?

15 A. I have Bachelor's Degree in Economics from the
16 University of Georgia, I have a Graduate Degree in
17 Banking from LSU.

18 Q. And where are you currently employed?

19 A. I'm currently employed at GrandSouth Bank here in
20 Anderson.

21 Q. And how long have you been employed there?

22 A. Four months -- four years and 10 months.

23 Q. And before that, what did you do?

24 A. I was a commercial lender with Synovus.

25 Q. And before that what did you do?

1 A. It was as commercial lender with a Georgia bank,
2 BrandBank.

3 Q. And how long have you been in the banking industry?

4 A. 22 plus years.

5 Q. And what is your current position with GrandSouth
6 Bank?

7 A. I'm the Senior Vice President in market, for the
8 Anderson market presently.

9 Q. And can you briefly describe to the Court what that
10 means?

11 A. Overall responsibility of the operation of the
12 Anderson branch with primary function being
13 commercial lending.

14 Q. Were you in that position in November of 2019?

15 A. Yes.

16 Q. Are you familiar with the Merlo project?

17 A. Yes, sir.

18 Q. And that's the project located at 548 Marina Bay,
19 Seneca, South Carolina?

20 A. Correct.

21 Q. And how are you familiar?

22 A. One of the ladies in my office made the loan and I
23 reviewed it when it was made and when this dispute
24 arose I got back in the file and reviewed it and
25 went and visited the property.

1 Q. Do you recall when you visited the property?

2 A. I believe it was November 12th of '19.

3 Q. Okay. And why did you visit the property?

4 A. We received service of the suit between the two
5 parties over the mechanic's lien filed and I wanted
6 to go out there and lay eyes on what we had and
7 make sure what we had is what we thought we had.

8 Q. And did what you thought you had actually, was that
9 actually what you had?

10 A. Yes, it matched up with what our inspection records
11 said.

12 Q. And can you tell about the inspection that you
13 performed on November 12?

14 A. Yes. I walked around the property and had to call
15 Mr. Merlo that day to get entry into the home which
16 he was gracious enough to give me. You know, I
17 walked in and observed the completion level of the
18 house. It was, I thought, right on with what our
19 inspection had said. It was nearing completion,
20 almost to the punch list, you know, the appliances
21 were on site and not in.

22 Q. In your opinion how did the house look?

23 A. It looked, to me it looked to be at the level of
24 completion it should be and it looked presentable.

25 Q. Do you remember sending an email to Mr. John Wood?

1 A. Can you be more specific?

2 Q. Yes, sir, I'll show you a document I'd offer which
3 I believe will refresh your memory.

4 BY MR. JOHNSON:

5 No objection, Your Honor.

6 BY MR. TAROKH:

7 This will be marked as 69.

8 (PLAINTIFF'S EXHIBIT 69 MARKED FOR IDENTIFICATION)

9 BY THE COURT:

10 That's 69?

11 BY MR. TAROKH:

12 Yes, Your Honor.

13 BY THE COURT:

14 All right. Well, that will be admitted without
15 objection.

16 (PLAINTIFF'S EXHIBIT 69 ADMITTED INTO EVIDENCE)

17 Q. Can you take a moment and tell me what that email
18 is about, just the top part of it?

19 A. Yeah, I'm familiar with it.

20 Q. And you state -- I guess, who, who is Mr., who is
21 John Wood?

22 A. John Wood is my boss and the lender, Laura
23 Thompson's boss, he's the Executive Vice President
24 for the bank.

25 Q. And in the email that you state that you visited

1 the house and it looks good?

2 A. Yes, sir.

3 Q. And if I can get you to read, sir, excuse me, if I

4 can point you to ---

5 A. Yes.

6 Q. "I visited..."

7 A. Yes, sir. I wrote to John, "I visited the home

8 yesterday and it looks good. Needs to be punched

9 out and appliances installed. Other than that, it

10 is ready to go. Heat was on, all utilities in

11 place."

12 Q. When you stated "it is ready to go" what did you

13 mean by that?

14 A. I felt like it was nearing completion, it was ready

15 for the, you know, whatever little things needed to

16 buttoned up that weren't complete or weren't in or

17 I felt like it was nearing, very nearing

18 completion.

19 Q. And the little things, that's how he would

20 reference like a punch list type of thing?

21 A. Yes.

22 Q. Or things?

23 A. Yeah.

24 Q. Okay. If I can point you to that stack of

25 documents to your right and if you can look for,

1 it's a yellow sticker, it Plaintiff's Exhibit 51.
2 It's the Draw Inspection Report. They should be in
3 order.

4 A. All right.

5 Q. Now, do you recognize that document? Just take a
6 minute to look at it.

7 A. Yeah, I know what it is. It looks like all of our
8 documents, yes.

9 Q. And so Mr. West performed that inspection that
10 you're looking at for you, for the bank, excuse me?

11 A. I believe so, yes, sir.

12 Q. And was your visit to the property on November 12th,
13 2019 consistent with that inspection report?

14 A. Yeah. I don't know that I took this with me but,
15 yes, I would say so.

16 Q. Did you find anything wrong, anything obviously
17 wrong with the house when you -- I know that's a
18 general question and that's intentional, did you
19 find anything wrong with the house during your
20 inspection?

21 A. No, sir. I mean I wasn't looking for structure.

22 Q. And this wasn't your first inspection, correct?

23 A. Yes, sir, that's correct.

24 Q. How many times have you inspected homes in your
25 career in the banking industry?

1 A. It's hard to quantify but, you know, a couple of
2 hundred.

3 Q. And those are commercial and residential?

4 A. No, those would be residential.

5 Q. All residential?

6 A. Yeah.

7 Q. So there are certain things that you kind of
8 instinctively knew to look for when you went on
9 that inspection?

10 A. Yeah. I'm not sure I was looking for them but,
11 yes, sir.

12 Q. Do you know the status of the loan, Mr. Merlo's
13 loan, with the bank right now?

14 A. It's in good standing.

15 Q. Has the final draw payment been made?

16 A. Advanced?

17 Q. Advanced, I'm sorry?

18 A. No, sir, it has not.

19 Q. Okay. Please answer any questions that opposing
20 counsel has.

21 CROSS EXAMINATION BY MR. JOHNSON:

22 Q. Mr. Marchant, my name is Townes Johnson and I
23 represent Christopher J. Merlo. When you made your
24 site visit on November 12th, 2019 did you discuss
25 with Chris, Mr. Merlo, any of the issues that he

1 was having problems with?

2 A. We may have discussed it vaguely. I know he was --
3 yes, when I asked him why we were in this and it
4 was a timing issue, he was not satisfied with, to
5 my recollection, he wasn't satisfied with the
6 timing and the product, and I did not got any
7 deeper than that since we were -- the lawsuit had
8 been filed.

9 Q. Okay. So you -- Mr. Merlo mentioned that he was
10 not happy with certain items of the construction?

11 A. I believe that would be correct, yes, sir.

12 Q. Okay. And you didn't ask him about any of those
13 lists?

14 A. No, sir.

15 Q. And you didn't do any investigation regarding any
16 of those concerns?

17 A. Correct.

18 Q. You did a cursory investigation to make sure the
19 collateral with the bank was in good standing?

20 A. Correct.

21 Q. Are you a residential builder?

22 A. No, sir.

23 Q. Okay. Have you been qualified in any court to
24 provide an opinion on quality of construction?

25 A. No, sir.

1 Q. Okay. So you really, I mean you were satisfied
2 from the bank's perspective that your collateral
3 was secure; is that accurate?

4 A. Yes, sir.

5 Q. In your investigation did you make any attempt to
6 see if the project had been built in accordance
7 with the plans and specifications?

8 A. No, sir, I did not.

9 Q. Okay. That's all the questions I have.

10 BY MR. TAROKH:

11 No redirect, Your Honor.

12 BY THE COURT:

13 I've got one question. You mentioned that the last
14 draw had not been advanced?

15 A. Yes, sir.

16 BY THE COURT:

17 What's the amount of the remaining funds in the
18 loan?

19 A I believe we have frozen it and there is no
20 availability. At the time it was approximately
21 45,000 I believe or somewhere in that neighborhood.

22 BY THE COURT:

23 Okay, thanks. You can step down.

24 BY MR. TAROKH:

25 Your Honor, at this time I would like to state for

1 the record that I have released Mr. Marchant and
2 Ms. Thompson with GrandSouth Bank from my Subpoena.

3 BY THE COURT:

4 All right. Any objection?

5 BY MR. JOHNSON:

6 No objection.

7 BY THE COURT:

8 All right, thank you very much. Good luck. You
9 did an excellent job, Mr. Cassidy, as always.

10 BY MR. CASSIDY:

11 Thank you, Judge.

12 BY THE COURT:

13 An excellent job as always.

14 BY MR. CASSIDY:

15 Thank you, Your Honor.

16 BY THE COURT:

17 All right, Mr. Tarokh, what's next?

18 BY MR. TAROKH:

19 The Plaintiff rests, Your Honor.

20 BY THE COURT:

21 All right, the Plaintiff rests. Mr. Johnson?

22 BY MR. JOHNSON:

23 Your Honor, at this time I would like to make a
24 directive verdict motion.

25 BY THE COURT:

1 All right, sir.

2 BY MR. JOHNSON:

3 Count II of the Plaintiff's Complaint, Your Honor,
4 is for breach of contract. According to Silver v.
5 Abstract Pools which is 658 South Carolina 2nd 539,
6 it says when a contract is not performed, the party
7 who is guilty of the first breach is generally the
8 one upon who all liability of the nonperformance
9 rests. Then it's also stated in Judon (phonetic)
10 versus Zinom Vu Wang (phonetic) which is actually
11 an unrecorded Court of Appeals case. But it says
12 in the status law of South Carolina, that the first
13 breach cannot later complain of the subsequent
14 breach by the other party. Your Honor, in this
15 case it is clear that they, as of December 19th,
16 2018 that they did not build the house according to
17 their contract. They breached the contract in 2018
18 and they cannot proceed along with their breach of
19 contract case according to Silver versus Abstract
20 Pools, so that's the first thing. The second part
21 of the directive verdict would be in regard to the
22 alleged Guaranty Agreement. Your Honor, there's
23 zero consideration with regard to the Guaranty.
24 Mr. Merlo was a party to, a party in his personal
25 capacity, to the original contract and he is the

1 only alleged guarantor under the Guaranty. And the
2 only obligations are the obligation of the original
3 contract which in Section III(A) of the contract
4 Mr. Merlo already had a personal obligation to pay
5 for appropriate changes, and so the Guaranty is
6 based on prior consideration which is under the law
7 failure of consideration. Your Honor, I would also
8 weigh a directive verdict motion on the Fourth,
9 Fifth and Sixth Causes of Action in Mr. Merlo's
10 Counterclaim and his Third-Party Complaint. Well,
11 excuse me, the Third, Fourth, Fifth and Sixth
12 Causes of Action are for negligent
13 misrepresentation, fraud, Unfair Trade Practices
14 Act violation and breach of fiduciary duty based on
15 IBI and its members invoicing Mr. Merlo for items
16 that they have no documentation for or basis for
17 other than pulling out a number that they think is
18 reasonable. There has been no invoice submitted in
19 this case thus far. There has been no backup
20 documentation to support any costs for any change
21 order other than the agreed upon change orders that
22 were done in email. I'd ask the court that the
23 documents show that the change orders under the
24 contract had to either be in writing or they had to
25 be approved over email; and at the very least, Your

1 Honor, the change orders that occurred after
2 termination, they are either misrepresentations if
3 we're looking at the dirt hauling invoice or they
4 just have zero documentation. So, Your Honor, that
5 would go to the negligent misrepresentation, the
6 fraud, the Unfair Trade Practices Act claim and the
7 breach of fiduciary duty.

8 BY THE COURT:

9 Is that it?

10 BY MR. JOHNSON:

11 That's it, yes, sir.

12 BY THE COURT:

13 Mr. Tarokh?

14 BY MR. TAROKH:

15 Yes, Your Honor. We would ask the Court to deny
16 the motion for directive verdict on the three
17 grounds as stated by Mr. Johnson for the following
18 reasons. Your Honor, the Court is supposed to take
19 a look at what has been submitted before it and
20 determine whether the Plaintiff has established
21 it's prima facie case through the evidence
22 presented. And in this particular case, Your
23 Honor, you've heard testimony from, extensive
24 testimony from all the Plaintiff's witnesses
25 regarding they entered into a contract, the fact

1 that the Guaranty modified the contract, and my
2 client's performance of the contract, Mr. Merlo's
3 termination of the contract which is a default of
4 the contract, and damages. And those damages, Your
5 Honor, were supported by testimony regarding these
6 balance sheets, and you've heard extensive
7 testimony about how the balance sheets would
8 fluctuate based upon things, some change orders and
9 additional items that the homeowner wanted and
10 those would be offset by payments that they would
11 receive. That's how my clients did business.
12 Those documents were admitted. My client testified
13 that those were his business records effectively
14 because that's how he determined a particular,
15 that's how he determined the accounting for this
16 particular project. And I believe he also
17 testified that's how he does it for all his other
18 projects as well. So there's evidence from the
19 Court can find that we met our prima facie burden,
20 we've established breach of contract. And
21 counsel's argument that there was some kind of
22 waiver or something of that nature or a first
23 breach, excuse me, in December 2018 doesn't really
24 make sense when confronted with all the evidence.
25 There's no evidence that, you know, my client,

1 number one, breached the contract by deviating from
2 what the original contract said or what the
3 modified plan said. You've heard extensive
4 testimony about how Mr. Merlo was made aware of
5 certain aspects of the home, mainly the ceiling not
6 being 10 feet, and you've heard the explanation, a
7 very detailed explanation I believe, from my
8 witnesses regarding the fact that this concrete
9 wall was not necessary. And I think the Court
10 should first undertake to determine whether, if
11 that's true, whether those items are material
12 breaches or are they technical breaches? And I
13 think what we've established, Your Honor, is Mr.
14 Merlo knew about these things and didn't do
15 anything about it. So I believe that we have
16 established at least silence by, excuse me,
17 estoppel by silence and waived on the part of Mr.
18 Merlo. The fact that the interior wall wasn't
19 poured concrete is not a material breach. The fact
20 that the ceiling wasn't 10 feet was explained and
21 is not, it's not a material breach, we're not even
22 conceding it was a breach. But these are items
23 that Mr. Merlo knew about and he effectively agreed
24 to because the parties continued with the
25 relationship all the way until they were

1 terminated. And if Your Honor examines the
2 evidence you'll see how pleased Mr. Merlo was with
3 the final project, with the project until
4 termination. He's telling the bank it exceeds his
5 initial expectations. He's saying things that are
6 inconsistent with a breach and, you know, if he
7 felt he had a breach at that time, then the goal is
8 not to say, or excuse me, the action on his part
9 should not be put this, you know, 48,000, whatever
10 it was, dollar boulder wall on my balance sheet.
11 So this whole Guaranty comes into play when you
12 examine this issue because in April 2019 he
13 promises that he's going to pay what's due, my
14 client says I'm not going to call for a CO and
15 different items are going to be added to the
16 balance sheet. I think that's important because
17 the law in South Carolina is, Your Honor, the fact
18 that the Guaranty and the original contract was
19 entered into on separate different times, you know
20 -- and I'm citing the Bishop Realty and Rentals,
21 Inc. versus Perk, Inc. case, that's 292 South
22 Carolina 182, it's an 1987 case and it states,
23 "Where instruments entered into by the same parties
24 at different times relate to the same subject
25 matter, the instruments will be construed together

1 to determine the entire agreement between the
2 parties. That the provisions of one document
3 limit, explain or otherwise effect the provisions
4 of the other, they will be given effect to
5 accomplish the entire agreement between the
6 parties." And that's what happened. We've pled
7 and I believe we've proven that the parties
8 supplemented the original contract by virtue of the
9 Guaranty. Opposing counsel is raising a
10 consideration issue but the Guaranty states that
11 it's enforceable. You know, the defense of
12 consideration doesn't apply, and I can't point
13 specifically to where it says that but it says
14 that. It addresses that this thing is still
15 enforceable regardless of whether or not there's
16 consideration for it. And my client relied upon
17 the Guaranty in order to put the cost of the
18 boulder wall on the balance sheet and continue with
19 the project. So there is legally sufficient
20 consideration and as a matter of law, there was no
21 breach back in December 2018 based upon the
22 homeowner's own actions and non-action by not
23 raising the issue when he could have raised it,
24 there's a lack is an issue I believe that's there.
25 It's full of estoppel type arguments, too, because

1 if it's true that they breached the contract back
2 in December of 2018, which they didn't do, they
3 should have done something about it then, not allow
4 my client to bill out and incur all this expense
5 that they're seeking recovery for today or in this
6 case. And, Your Honor, regarding the Counts of the
7 Counterclaim, Four, Five and Six, this is my case
8 in chief. You've heard my case in chief. Opposing
9 counsel has not yet put in his case in chief. So,
10 you know, to say that, you know, he's proven fraud
11 and negligence and an Unfair Business Practice Act
12 violation is not supported by the evidence. It's
13 simply not supported by the evidence and at this
14 juncture it's almost like a summary judgment
15 standard. Is there any evidence that the Plaintiff
16 has put before the Court to establish its
17 entitlement to a lien foreclosure and we have; its
18 entitlement for relief under a breach of contract
19 claim and it has; and in addition, you know, we
20 have those two tag-along counts, the equity counts,
21 the quantum meruit and unjust enrichment. So at
22 this stage, Your Honor, there's an abundant amount
23 of evidence to demonstrate we've proven, we've
24 established our prima facie case. Now, it's his
25 burden in his case in chief to try to rebut that;

1 that's how the affirmative defense of process
2 should work. But the fact that, you know, they're
3 claiming that we breached the agreement back in
4 December 2018 is rebut by the fact that the
5 contract that, you know, and the emails show it,
6 there's a long history of work that was done from
7 December 2018 until they were unjustifiably
8 terminated in October, and also after incurring
9 considerable expense such as the boulder wall, and
10 all these other things for which they seek
11 recovery. So based upon that, Your Honor, we'd ask
12 the Court to deny the Defendant's motion for
13 directive verdict.

14 BY THE COURT:

15 All right. I'm going to deny the motion so we'll
16 now proceed with Defendant's case. Mr. Johnson?

17 BY MR. JOHNSON:

18 Thank you, Your Honor. I will call Christopher
19 Merlo to the stand.

20 BY COURT REPORTER:

21 Raise your right hand. Do you solemnly swear or
22 affirm to tell the truth, the whole truth and
23 nothing but the truth so help you God?

24 BY MR. MERLO:

25 Yes, I do.

1 TESTIMONY OF CHRISTOPHER J. MERLO

2 DIRECT EXAMINATION BY MR. JOHNSON:

3 Q. Mr. Merlo, if you would state your full name for
4 the record please?

5 A. Christopher James Merlo.

6 Q. Mr. Merlo, have you ever built a house before?

7 A. No, sir. This was my first home that I actually
8 built. I had bought a couple previously, but I've
9 never built one up until this one here.

10 Q. And tell us what you did in preparation for
11 building your first home?

12 A. Sure, absolutely. It was kind of a big deal for my
13 wife and I. We saved for a nice lakefront piece of
14 property for about 20 years. We found one at
15 auction, we purchased that piece of land and
16 decided we were going to build a house on it. We
17 talked to about two dozen builders. We kind of
18 narrowed that down to a dozen that we were
19 interested in, and I think we ended quoting the
20 project with probably six of them and IBI was one
21 of those six.

22 Q. Okay. And why did you choose IBI?

23 A. Well, it wasn't for the price to be honest with
24 you; they actually came in higher than some of the
25 other folks that we priced. But we decided that

1 this was a big investment, we wanted it done
2 properly, we wanted a house that was well-built and
3 we decided to go with IBI because they were priced
4 a little higher, and we looked at one of their
5 houses they were building, it looked like the
6 quality of house that we wanted, the site was well-
7 maintained, and so we decided to enter into a
8 contract with them to build the house in one year.
9 We did a one-year contract.

10 Q. And was that your expectation -- oh, strike that.
11 Tell us how the construction progressed.

12 A. Well, we signed a contract in November of 2017. It
13 started kind of slow and we didn't expect a lot to
14 be done over the holidays with Thanksgiving and
15 Christmas and everything, so it didn't really kick
16 off until early 2018. They did some grade work,
17 poured the foundation and it kind of progressed
18 from there.

19 Q. Okay. And did you have any issues with IBI's work
20 as the project evolved?

21 A. Absolutely, yes, sir, we did, quite a few issues.

22 Q. How would you describe IBI's supervision of the
23 project?

24 A. You know, I tried to go out and visit the site two
25 to three times a week and I believe there was a

1 lack of supervision on their side. That was
2 evident throughout the entire building process.
3 You know, we gave them 12 months to build a house;
4 we fired them at month number 23.

5 Q. And were there any delays on the project?

6 A. Yes, sir, quite a few delays.

7 Q. And were those minimal or were those extended?

8 Tell us about those delays.

9 A. Well, initially the work was moving along and my
10 wife and I started noticing discrepancies in the
11 craftsmanship. As we walked through we saw issues
12 that we didn't think should be there. We brought
13 those issues to the forefront with both Greg and
14 John and the issues were simply swept under the
15 rug. It got to the point that we realized they
16 simply just weren't listening to us, listening to
17 us, you know, a year in, and so we decided to put
18 together this re-work list to summarize some of the
19 smaller aspects that, you know, we had to have
20 conversations with Greg and John about. And that
21 started in December of '18 we put together the
22 first re-work list because things were going
23 sideways. And, you know, they framed the house and
24 things weren't right and they said, don't worry
25 about it, we framed it but when we sheetrock it, it

1 will cover up all those sins of framing. We said
2 okay, you know, we just didn't know any better.
3 And as the job progressed farther and farther down
4 the line, you know, there was just a lot of
5 promises that were not kept and the craftsmanship
6 got worse and worse as we went along.

7 Q. And so that first re-work list from December of '18
8 should be marked as Defendant's Exhibit 1.

9 A. Yes, sir.

10 Q. Okay. So that was the first in the series of re-
11 work lists that you submitted to IBI?

12 A. That is correct.

13 BY THE COURT:

14 Which exhibit was that, what's the number?

15 Q. Exhibit 1, Defendant's Exhibit 1, Your Honor.

16 A. So we, we basically sent them that first re-work
17 list in December of 2018 and they stopped. They
18 literally stopped work on the project.

19 Q. For how long did they stop work?

20 A. Well, you heard the appraiser testify already that
21 in a five-month timespan they completed 12% of the
22 project, and I agree with that. And my
23 recollection was we signed a 12-month contract with
24 them and they were supposed to build the house in
25 12 months. So if you quit for five months and only

1 do 12%, you know, I mean you're kind of behind the
2 8-ball I guess.

3 Q. In that initial re-work list you note that the
4 ceiling, the basement ceilings weren't built to 10
5 feet?

6 A. That's correct. The contract was 10 feet. I had
7 visited my neighbors' houses up and down the
8 street. Some of them had 10 foot ceilings
9 downstairs, some of them had 11 foot ceilings, some
10 had 12 and we just thought 10 foot was kind of the
11 ideal and so we wanted to go with 10 feet. That's
12 not what we got, but that's what the contract
13 stated it was supposed to be 10 feet.

14 Q. And when you raised that issue to IBI, what was the
15 response you received?

16 A. You know, the same thing I got every time I raised
17 an issue, you know, we'll correct it, we'll fix it,
18 we'll adjust it, we'll do this, we'll do that. And
19 so I really just simply didn't have any recourse.
20 I mean the ceiling was 9'8 and I didn't know how to
21 change it. You know, I'm not a builder, I didn't
22 know how to change it.

23 Q. In looking at those pictures of the re-work list,
24 at what stage was the construction in, in mid-
25 December of 2018?

1 A. Everything was framed and in the dry. You wouldn't
2 know it by looking at the pictures because of all
3 of the water and everything, but it was all framed
4 and in the dry.

5 Q. Okay. And so had they started sheetrocking?

6 A. According to these pictures, yeah, there's
7 sheetrock inside.

8 Q. Okay. Did the sheetrock have any bearing on your
9 ability to know how tall the ceiling was in the
10 basement as opposed to framing?

11 A. Well, we were able to measure it with more
12 certainty I guess.

13 Q. All right. And so to make that 10 feet at that
14 stage, would it require taking off the main floor
15 and your bonus room ---

16 BY MR. TAROKH?

17 Objection, leading.

18 BY THE COURT:

19 All right, sustained from leading the witness.

20 A. My understanding was that they ordered the wrong
21 joists and then that lowered the ceiling. I don't
22 know if that makes sense or not, but that's what I
23 was told. So if they ordered the wrong joists for
24 the house, you know, that lowered the ceiling.
25 That's what it came down to and after you've got

1 two more levels on top of it, I don't know how you
2 would fix that.

3 BY COURT REPORTER:

4 Defendant's 18.

5 (DEFENDANT'S EXHIBIT 18 MARKED FOR IDENTIFICATION)

6 Q. All right. I'm going to hand a document marked ---

7 BY THE COURT:

8 Hold on a minute. What are you giving him?

9 BY MR. JOHNSON:

10 It's an email.

11 BY THE COURT:

12 I mean is it an exhibit?

13 BY MR. JOHNSON:

14 Yes, sir.

15 BY THE COURT:

16 And that will be Defendant's Exhibit what?

17 BY MR. JOHNSON:

18 18, Your Honor.

19 BY THE COURT:

20 18?

21 BY MR. JOHNSON:

22 Yes, sir.

23 BY THE COURT:

24 And is there any objection to that?

25 BY MR. TAROKH:

1 No, no objection to the email. Just for
2 clarification, are you using the pictures?

3 BY MR. JOHNSON:

4 I'll do them separate like he did.

5 BY MR. TAROKH:

6 Okay, no objection to 18, Your Honor.

7 BY THE COURT:

8 All right. 18 is admitted without objection.

9 (DEFENDANT'S EXHIBIT 18 ADMITTED INTO EVIDENCE)

10 Q. So what's the date of that email, Mr. Merlo?

11 A. February 1st, 2019.

12 Q. Okay. And the second email in that thread is from
13 whom?

14 A. Well, it looks like to John Montgomery, to Greg
15 from me.

16 Q. Okay. And was there an attachment to that email?

17 A. Yes, there was, it looks like a re-work list.

18 Q. We'll mark this as Defendant's 18.

19 BY THE COURT:

20 That's been admitted.

21 BY MR. JOHNSON:

22 Oh, 19, 19, excuse me.

23 (DEFENDANT'S EXHIBIT 19 MARKED FOR IDENTIFICATION)

24 BY THE COURT:

25 All right. Defendant's Exhibit 19, have you seen

1 that, Mr. Tarokh?

2 BY MR. TAROKH:

3 I did, Your Honor. No objection.

4 BY THE COURT:

5 All right. No objection, it shall be admitted.

6 (DEFENDANT'S EXHIBIT 19 ADMITTED INTO EVIDENCE)

7 Q. All right, Mr. Merlo, is that re-work list the
8 attachment to the email of February 1st?

9 A. Yes, sir, it is, yes.

10 Q. And that's your February re-work list?

11 A. Yes, sir.

12 Q. We're marking this as Defendant's 20, Your Honor.

13 This is an email.

14 (DEFENDANT'S EXHIBIT 20 MARKED FOR IDENTIFICATION)

15 BY THE COURT:

16 Any objection?

17 BY MR. TAROKH:

18 No, Your Honor.

19 BY THE COURT:

20 All right, that's admitted without objection.

21 (DEFENDANT'S EXHIBIT 20 ADMITTED INTO EVIDENCE)

22 Q. Mr. Merlo, that second email, tell us about that
23 email.

24 A. Well, I mean the issues weren't getting fixed, they
25 were just basically ignoring us and so we thought

1 if we sent another list that perhaps it would get
2 their attention and they would take care of some of
3 these items. It's dated February 26th, 2019.

4 Q. Okay.

5 A. And if I could read a little piece of it, it says,
6 "Moving forward, I would like to encourage you to
7 bring on the subs needed to complete the project
8 expeditiously. Please make certain the subs are
9 proficient to eliminate any unnecessary re-work.
10 While we remain patient, a May Move-in date would
11 be greatly appreciated."

12 Q. Okay. And was there an attachment to that email?

13 A. Yes, a re-work schedule.

14 (DEFENDANT'S EXHIBIT 21 MARKED FOR IDENTIFICATION)

15 Q. I'm going to hand you what's been marked as
16 Defendant's 21.

17 A. That's it, yes, March re-work, yes.

18 BY THE COURT:

19 Any objection?

20 BY MR. TAROKH:

21 No, Your Honor.

22 BY THE COURT:

23 All right. So 21 will be admitted and that's the
24 attachment which is another re-work list, is that
25 right?

1 BY MR. JOHNSON:

2 Yes, Your Honor.

3 (DEFENDANT'S EXHIBIT 21 ADMITTED INTO EVIDENCE)

4 (DEFENDANT'S EXHIBIT 22 MARKED FOR IDENTIFICATION)

5 Q. Defendant's 22, Your Honor, is an email.

6 BY THE COURT:

7 And that's without objection?

8 BY MR. TAROKH:

9 Without objection, Your Honor.

10 BY THE COURT:

11 Admitted.

12 (DEFENDANT'S EXHIBIT 22 ADMITTED INTO EVIDENCE)

13 Q. Tell us about that email, Mr. Merlo.

14 A. This was another list that was put together. The
15 email was from March 31st, 2019, additional items
16 that were needed to make the project right and it
17 looks like it went to John and Greg and also to
18 Nikki.

19 Q. And did that email have an attachment?

20 A. Yes, it did.

21 Q. Okay.

22 (DEFENDANT'S EXHIBIT 23 MARKED FOR IDENTIFICATION)

23 BY THE COURT:

24 That's Defendant's Exhibit 23?

25 BY MR. JOHNSON:

1 22, Your Honor.

2 BY COURT REPORTER:

3 23.

4 BY MR. JOHNSON:

5 23, Your Honor.

6 BY THE COURT:

7 23 is the attachment?

8 BY MR. JOHNSON:

9 Yes, sir.

10 BY THE COURT:

11 And that's without objection?

12 BY MR. TAROKH:

13 No objection.

14 BY THE COURT:

15 It will be admitted.

16 (DEFENDANT'S EXHIBIT 23 ADMITTED INTO EVIDENCE)

17 (DEFENDANT'S EXHIBIT 24 MARKED FOR IDENTIFICATION)

18 Q. I hand you a document that's been marked as

19 Defendant's 24.

20 BY THE COURT:

21 Any objection?

22 BY MR. TAROKH:

23 No, Your Honor.

24 BY THE COURT:

25 It will be admitted.

1 (DEFENDANT'S EXHIBIT 24 ADMITTED INTO EVIDENCE)

2 (DEFENDANT'S EXHIBIT 25 MARKED FOR IDENTIFICATION)

3 Q. Tell us about that email, Mr. Merlo.

4 A. This one is dated May 8th, 2019 and this was the May
5 re-work list of the items that had not been
6 corrected and it contained an attachment it looks
7 like on the email list.

8 BY THE COURT:

9 Mr. Merlo, could you speak up a little bit louder
10 so we can hear you?

11 BY COURT REPORTER:

12 Yes, please.

13 A. Yes, sir.

14 BY THE COURT:

15 So 25 is the ---

16 BY MR. JOHNSON:

17 The attachment.

18 BY THE COURT:

19 And no objection?

20 BY MR. TAROKH:

21 No objection, Your Honor.

22 BY THE COURT:

23 It will be admitted.

24 (DEFENDANT'S EXHIBIT 25 ADMITTED INTO EVIDENCE)

25 Q. Mr. Merlo, is that, Exhibit 25, the attachment to

1 the prior email?

2 A. Yes, it is. Yes, that's correct.

3 (DEFENDANT'S EXHIBIT 26 & 27 MARKED FOR IDENTIFICATION)

4 BY THE COURT:

5 No objection?

6 BY MR. TAROKH:

7 No objection, Your Honor.

8 BY THE COURT:

9 So I guess this is going to be 26 and 27?

10 BY MR. JOHNSON:

11 26 and 27, Your Honor.

12 BY THE COURT:

13 Those will be admitted without objection.

14 (DEFENDANT'S EXHIBITS 26 & 27 ADMITTED INTO EVIDENCE)

15 Q. Mr. Merlo, 26 and 27 what month re-work lists were
16 those?

17 A. The first one here is dated June 4th of 2019.

18 BY THE COURT:

19 And is 27 the attachment?

20 BY MR. JOHNSON:

21 Yes, Your Honor.

22 BY THE COURT:

23 And it will be another re-work list?

24 BY MR. JOHNSON:

25 Yes, sir.

1 BY THE COURT:

2 So I can just, I know what's coming.

3 BY MR. JOHNSON:

4 We're going to put the entire series of re-work
5 lists into evidence, Your Honor, as we look through
6 them.

7 (DEFENDANT'S EXHIBITS 28 & 29 MARKED FOR IDENTIFICATION)

8 BY THE COURT:

9 So this next batch will be 28 and 29?

10 BY MR. JOHNSON:

11 Yes, sir.

12 BY THE COURT:

13 And no objection?

14 BY MR. TAROKH:

15 No objection.

16 BY THE COURT:

17 They will be admitted.

18 (DEFENDANT'S EXHIBITS 28 & 29 ADMITTED INTO EVIDENCE)

19 Q. So the email that's Defendant's 28, Mr. Merlo,
20 what's the date on that email?

21 A. The date on this is July 10th, 2019.

22 Q. And did that email have an attachment?

23 A. Yes, it did, yes, sir, a re-work list for July.

24 (DEFENDANT'S EXHIBITS 30 & 31 MARKED FOR IDENTIFICATION)

25 Q. Okay. Mr. Merlo, Exhibit 30 tell us about that

1 email.

2 BY THE COURT:

3 And I assume that's without objection?

4 BY MR. TAROKH:

5 Without objection, Your Honor.

6 BY THE COURT:

7 And 31?

8 BY MR. TAROKH:

9 Yes, Your Honor.

10 BY THE COURT:

11 Those will be admitted.

12 (DEFENDANT'S EXHIBITS 30 & 31 ADMITTED INTO EVIDENCE)

13 A. This is also an email dated August 8th, 2019.

14 Q. Okay. And did that have an attachment?

15 A. It did, a re-work list, yes, sir.

16 Q. And that's the August re-work list?

17 A. Yes, it is.

18 Q. And that what you're looking at is a true copy of
19 the attachment?

20 A. Yes, it is.

21 (DEFENDANT'S EXHIBITS 32 & 33 MARKED FOR IDENTIFICATION)

22 Q. Exhibit 32, Mr. Merlo, tell us about that email.

23 A. This one here is dated September 11, 2019. It
24 says, "Please find an updated list for the house"
25 and it looks like the attachment was the re-work

1 list for September.

2 BY THE COURT:

3 So 32 and 33, no objection?

4 BY MR. TAROKH:

5 No objection.

6 BY THE COURT:

7 They will be admitted.

8 (DEFENDANT'S EXHIBITS 32 & 33 ADMITTED INTO EVIDENCE)

9 Q. Is Exhibit 33 the attachment to the prior email?

10 A. Yes, it is.

11 Q. All right. This will be Exhibit 34.

12 (DEFENDANT'S EXHIBIT 34 MARKED FOR IDENTIFICATION)

13 BY THE COURT:

14 No objection?

15 BY MR. TAROKH:

16 No objection.

17 BY THE COURT:

18 It will be admitted.

19 (DEFENDANT'S EXHIBIT 34 ADMITTED INTO EVIDENCE)

20 A. Yes, this is the final one, October 9th, 2019.

21 (DEFENDANT'S EXHIBIT 35 MARKED FOR IDENTIFICATION)

22 Q. Okay. And did it have an attachment?

23 A. Yes, sir, it did.

24 BY THE COURT:

25 Any objection to ---

1 BY MR. TAROKH:

2 No, Your Honor, no objection.

3 BY THE COURT:

4 It will be admitted. Is that a re-work list?

5 (DEFENDANT'S EXHIBIT 35 ADMITTED INTO EVIDENCE)

6 BY MR. JOHNSON:

7 Yes, he said that's the final re-work list.

8 A. That is correct, yes.

9 Q. Tell us about the items on the final re-work list.

10 A. Well, I'm not a builder by any means, that's why I
11 hired one. These are just items that I noticed at
12 the residence that were not correct just by walking
13 around and visually inspecting it. Where do you
14 want me to start?

15 Q. Just at the top and if the Court will give me two
16 seconds I'm going to pull this up so that ---

17 BY MR. TAROKH:

18 Your Honor, is it possible to have the TV pushed so
19 that my clients can see it as well?

20 BY THE COURT:

21 If it is possible you need to.

22 BY MR. JOHNSON:

23 If I can get it plugged in, it's possible.

24 BY THE COURT:

25 How about centering that thing if you can so that

1 we can see it, too. The witness needs to see it
2 obviously without difficulty. Can you see that
3 now, Mr. Merlo?

4 A. Yes, Your Honor, I can.

5 BY THE COURT:

6 And can you see that, counsel?

7 BY MR. TAROKH:

8 Yes, Your Honor, that's fine.

9 BY THE COURT:

10 If y'all need to come in and stand right over here
11 so you see it, that's fine.

12 BY MR. TAROKH:

13 Thank you.

14 BY THE COURT:

15 There's nothing I can see right now.

16 BY MR. JOHNSON:

17 Update in progress.

18 BY THE COURT:

19 This reminds of me of dealing with my television at
20 home and about this time I start using language
21 that's not acceptable.

22 BY MR. TAROKH:

23 I think we all can relate.

24 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

25 Q. All right. So we were looking at the very last re-

1 work list.

2 BY COURT REPORTER:

3 Please speak up.

4 Q. All right. So we're looking at the October, 2019
5 re-work list. So let's go over it, and what was
6 the date of this re-work list, Mr. Merlo?

7 A. This was October 9th, 2019.

8 Q. Okay. So the first item is what?

9 A. The first item is underneath the front door had not
10 been finished. Come to find out later on, it was
11 not water-sealed either so the whole front porch
12 leaks.

13 Q. Does it still leak today?

14 A. No, I paid a contractor and he took care of it.

15 Q. Item number 2?

16 A. The garage entry floor, "Finish underneath", I
17 think that was a picture of the steps and just
18 underneath the entryway. That was completed but
19 the garage floor was kind of an issue there because
20 it wasn't poured properly.

21 Q. Okay. How was it not poured properly?

22 A. Well, most garages when you pull in them they'd be
23 poured to drain outside the garage so when you pull
24 the car in the water kind of drains outside. Mine
25 was kind of the opposite. When they poured my

1 garage floor they sloped it towards the house so it
2 runs back into the cellar in my house.

3 Q. Okay. Item number 3?

4 A. That was underneath the sunroom that was later
5 taken care of by Joy Construction. They had to
6 rebuild all that because it just wasn't done
7 properly.

8 Q. Okay. Item number 4?

9 A. That was also done by Joy Construction.

10 Q. And it says, "Finish the stone work"?

11 A. Correct, yes.

12 Q. Item number 5?

13 A. The driveway we hadn't done anything with yet
14 because they poured it on my neighbor's lot and it
15 might need to be broken up and moved, so all of it
16 is cracked and it's chipped and it looks terrible.
17 That's not a very good picture, of course. We
18 haven't done thing because we may end up in
19 litigation on it.

20 Q. So while we're there tell us about, tell us about
21 that. Tell us, what was your involvement with the
22 pour of the driveway?

23 A. Yeah, great question. So early on we provided a
24 site plan to IBI, I'm not sure what exhibit number
25 it is, but they talked us into staking the house

1 all the way down in by the lake, and so there's no
2 room to back a car out of the driveway and
3 effectively turn around and go out the driveway.
4 So we wanted it to be kind of a, kind of a circular
5 down below and that's the plan we gave them. But
6 they just did it the way they wanted to do it and
7 now, you've been in the house and you've backed out
8 of my driveway and it's not, you know, it's not
9 very user-friendly.

10 Q. And what did you have to do? What involvement did
11 you have with forming the driveway?

12 A. None whatsoever. IBI was responsible for every
13 aspect of this project from day one. They hired
14 their guys to come out there and frame up the
15 driveway and pour the driveway. I was there the
16 day they poured the driveway and I took a picture
17 of them pouring it. They testified earlier that I
18 told them to make the driveway wider. You know why
19 that can't be true, because I don't speak Spanish?
20 Every single person on site doing that driveway
21 work were Hispanics, I couldn't have talked to them
22 if I wanted to. The driveway is on my neighbor's
23 lot. It's not a few inches. From the survey that
24 I've been given, it's three to four feet on the
25 neighbor's lot. He's not just going to give me his

1 lakefront property for my driveway, he wants
2 compensation for that.

3 Q. And is there landscaping on your neighbor's lot as
4 well?

5 A. The driveway is on my neighbor's lot, the landscape
6 is on my neighbor's lot, they installed irrigation
7 on my neighbor's lot; it's all on his side.

8 Q. Okay. Going back to this October of 2019 list --
9 well, strike that. When did you learn about the
10 encroachment of the driveway?

11 A. When my neighbor started building his house last
12 year. There's an email in '21. I didn't know, I
13 mean that wasn't our responsibility and I just
14 didn't take notice of it.

15 Q. But it was well after you had terminated IBI?

16 A. Yes.

17 Q. Okay. And well after this list?

18 A. Yes.

19 Q. All right. Item 6?

20 A. That was just fix dents in the gutters. The guys
21 came to do some touch-up paint or something and
22 then they took a steel ladder and basically the
23 gutter was put up there, you know, 30 feet of it
24 and they just smashed it into the gutter and slid
25 it up and down the gutters which needs to be

1 replaced.

2 Q. Okay. Item 7?

3 A. That wanted a white vent and put it in brown stone,
4 so we thought it might look better if it was brown.

5 Q. Okay. Item 8?

6 A. You know, those three windows on front of the
7 house, they couldn't for the life of them get those
8 right. They just, I think they ordered the wrong
9 windows and when they brought the windows in they
10 couldn't figure out where to put them and they put
11 them all in the wrong place, and so they moved them
12 three, four, five times and finally we just said,
13 hey, if you can just center them we'll just accept
14 them where you put them and that's what happened.

15 Q. Okay. Did IBI end up centering them or did you
16 engage another contractor to do that?

17 A. I think IBI ended up finally centering them at the
18 end.

19 Q. Item 9?

20 A. Oh, the plan had some shutters on it and so we were
21 just requesting those shutters. Those were never
22 delivered I guess.

23 Q. Okay. Item 10?

24 A. That's items that another contractor took care of
25 after IBI was let go.

1 Q. What was item 10?

2 A. Pardon me?

3 Q. What was item 10? Or are you saying item 9 they
4 took care of?

5 A. Yes, and item 10, also. Yeah, they did all the
6 stonework over, yeah. The stonework that was done
7 incorrectly, they redid all of that.

8 Q. So item 11?

9 A. The stonework, they redid all the gaps in the stone
10 and fixed all that. I ---

11 Q. Item 12? Excuse me.

12 A. That's what I was getting ready to say, we did not
13 pay to have all that ledge stone added back in.
14 They just corrected it the best they could, the new
15 contractor did.

16 Q. And that's regarding item 12?

17 A. Yes, sir, yes.

18 Q. Okay. Item 13?

19 A. That was corrected with the new contractor.

20 Q. Okay. And what is it, what does it say the issue
21 was?

22 A. The plugs were not level on the stone because they
23 didn't put some type of backer or something behind
24 it so the plugs wouldn't open. I mean they were
25 there on the wall but you couldn't open them, kind

1 of useless.

2 Q. Item 14?

3 A. That was corrected by the new contractor.

4 Q. Okay. And what was that item concerning?

5 A. There was some shaker missing underneath. They
6 ended up cutting out that entire wall because that
7 was where one of the leaks was coming in, so that
8 whole wall was cut out. I think we've got some
9 documentation.

10 Q. Okay. Item 15?

11 A. Yeah, so this was underneath the screened porch.
12 The wall that Greg said would be fine earlier just
13 continually leaked from day one. It brought water
14 into the house, mold into the house, and had that
15 wall been done in concrete like the plan called,
16 you know, I don't think any of that would've
17 happened.

18 Q. And was that an item that your subsequent
19 contractor you engaged them to do anything with?

20 A. Yes, sir. Yes, that was probably top priority
21 because at that time it was a big issue with water
22 coming into the house, in my home.

23 Q. Okay. Item 17?

24 A. My new contractor tried to fix that the best they
25 could. I think they, you know, they didn't want to

1 spend \$3,000 for new doors. When IBI put those in
2 they cracked them, they were not able to put in
3 windows and doors that were level, and so the
4 windows that they installed did not open, the doors
5 were cracked because they were not installed level.
6 And so we came back and tried to piece that back
7 together. They damaged all the tracks on the doors
8 so none of the screens stay in. That's what that
9 relates to there. We priced out the doors and they
10 were like, I guess the bottom of them is made with
11 the door and it was not cost-effective to replace
12 the whole door.

13 Q. Okay. Item 18?

14 A. That was taken care of by the new contractor.

15 Q. Okay. What was the issues that you were pointing
16 out?

17 A. They weren't square, they were missing some trim
18 pieces, there was a gap on both sides so the garage
19 door gapped about two inches on each side and it
20 just wasn't right.

21 Q. Okay. Item 19?

22 A. Yes, this goes to the doors and windows not being
23 installed correctly. Like it says, "Most of the
24 outside doors don't close or latch correctly.
25 Reinstall them if need be. Weather strip." You

1 know, whatever you've got to do to make them right.

2 Q. Item 20?

3 A. Yeah, this was quite an issue here. So they took
4 out a tree at some point in the project and then
5 dropped the tree on the gangplank and destroyed the
6 gangplank, and so John was supposed to hire someone
7 to come and put a replacement gangplank in. When
8 they brought it out, you know, it wasn't the
9 perfect color match, it had some variation on the
10 treads and the siding on the side of the gangplank
11 was not finished so there was like 8 or 10 steel
12 pieces missing so I was encouraging him to get
13 those guys back out there and to make it right.

14 Q. Okay. Item 21?

15 A. Oh, the top of the deck was supposed to have some
16 cedar and I was encouraging him to get that
17 finished.

18 Q. Okay. The next section says "Interior Re-work" and
19 item 1 is what?

20 A. Insulation upstairs over the family room, we just
21 happened go in the attic and noticed that they
22 forgot to put insulation up there, so we didn't
23 want it to raise the bill up real high so we just
24 requested insulation at the end. It was the only
25 spot insulation was not put in, but it's just the

1 only picture that we put in.

2 Q. Where else was insulation missing?

3 A. Well, in the master bedroom there's an overhang, no
4 insulation was put in there; in the kitchen area
5 there's an overhang, no insulation was put in
6 there. We didn't realize that until we moved into
7 the house and then, of course, when it gets cold
8 and you walk across the floor and there's a pretty
9 big variation there.

10 Q. Looking at the plans, are these the areas that are
11 ---

12 A. Yes, sir, that is correct, yes.

13 BY THE COURT:

14 What was that exhibit number on the plans?

15 BY MR. JOHNSON:

16 Exhibit 6, Your Honor.

17 BY THE COURT:

18 So Plaintiff's Exhibit 6? Plaintiff's Exhibit 6 or
19 Defendant's Exhibit 6?

20 BY MR. JOHNSON:

21 Defendant's Exhibit 6, Your Honor.

22 BY THE COURT:

23 Just for the record that we know what you were
24 pointing to when you were asking him.

25 Q. All right. Item 2 on the interior re-work portion

1 of October 2019 re-work list?

2 A. Yeah, so this ceiling was just an absolute mess
3 from day one. When they put the ceiling up they
4 didn't take into account it being level or square.
5 They came behind and just drilled the light holes
6 at random and then they covered it later on with
7 some painters covers and over-sprayed it. It was
8 just, just quite a mess. We ended up taking it
9 down later on just to make it right, it just was a
10 mess.

11 Q. Okay. Item Number 3?

12 A. Yeah, that says, "Sand the wood ceiling so no shoe
13 marks, hand prints are showing." So what they did
14 was they basically took the wood from the garage
15 the guys had walked on, they put it up on the
16 ceiling, and then they just kind of shellac over
17 the top of it so we've to handprints on it, they
18 got footprints on it. You could look up on the
19 ceiling and see that it was never sanded so.

20 Q. And that was supposed to be a natural look?

21 A. Yes, sir, it was.

22 Q. Item number 4?

23 A. "Main Kitchen disposal needs a button installed",
24 that had to do with the operation of the disposal
25 in the kitchen. I guess there was supposed to be a

1 button on the counter that you push for some kind
2 of safety reason I guess.

3 Q. Item number 5?

4 A. That says, "Where is the butcher block piece that
5 was cut out for the sink?" That relates to the
6 butcher block that was purchased for the washer and
7 dryer in the laundry room. We were trying to save
8 money this entire time and so they had priced out
9 granite for the laundry room to the tune of \$1,000.
10 My wife said she preferred butcher block and so I
11 went to one of the supply houses and actually paid
12 about \$200 and bought her a piece of butcher block
13 for in there, so that's what she's looking for,
14 that piece that came there. They cut it out and
15 threw it away I guess and I think she wanted it.

16 Q. Item 6?

17 A. Yeah, this, this was quite an issue. So this was
18 downstairs. When they did the ceiling downstairs,
19 it just wasn't level so when you measured from one
20 side of the room and the other you're maybe three
21 or four inches off. And, you know, they kept
22 telling us, you know, while the framing is not
23 right, don't worry about, we'll go ahead and
24 sheetrock; and then when they sheetrocked it, it
25 was even worse. So above the cabinet on one side

1 you can see a two, two-inch gap, and so we were
2 trying to figure out that the whole time. My new
3 contractor actually corrected that.

4 Q. Okay. Item 7?

5 A. "Downstairs cabinets left side - fix so they open",
6 I think they put them too close to the wall and
7 perhaps they didn't open, so maybe they had to move
8 them.

9 Q. Okay. Item 8?

10 A. Yeah, the coffered ceiling was a mess from day one.
11 They indicated they didn't have a contractor that
12 knew how to put up a coffered ceiling. They pushed
13 this off for months and months and finally they
14 brought somebody in that did not know how to put up
15 a coffered ceiling. They made a mess of it. We
16 ended up taking it down and the new contractor made
17 it right.

18 Q. Item 9?

19 A. Oh, what we were looking for here was just a drain
20 that went out that wasn't in the walkway. They ran
21 a little six inch drain out directly in the walkway
22 and I knew if we walked back and forth over it we'd
23 crack it. What I didn't know at the time, that
24 unit, you know, it was not the right spot so we
25 ended up moving that. The new contractor moved

1 that entirely.

2 Q. Okay. Item 10?

3 A. "Finish Fireplace, shiplap & stone and fix gaps in
4 the stone and in kitchen." My new contractor took
5 all that down and made it right.

6 Q. Item 11?

7 A. "Take the handle off the door in garage and put on
8 the front bedroom door." There was no supervision
9 on this site despite what's been testified to here
10 earlier. Doors were put on in wrong spots, handles
11 were put on at random, and I guess my wife just
12 noticed that they had the handled missed up so she
13 was asking them to fix it.

14 Q. Okay. Item 12?

15 A. "Replace the cabinet doors that were damaged." You
16 know, we're showing two pictures here, there was
17 probably a dozen doors that were damaged, broken,
18 crushed. Their guy came back, took all those doors
19 off and then we were left in a bind. The new
20 contractor handled all that.

21 Q. Okay. Item 13?

22 A. "Make sure all the kick plates are finished on
23 cabinets. Unfinished edges are showing." The new
24 contractor remediated all those items.

25 Q. Okay. Item 14?

- 1 A. "Bonus room bath - put a piece of shoe molding by
2 the sink", I honestly don't remember if they did
3 that or if the new contractor did that. I don't
4 recall.
- 5 Q. Okay. Item 15?
- 6 A. "Bonus bath is missing towel bars."
- 7 Q. Item 16?
- 8 A. "Master Bath - put base in behind door."
- 9 Q. Item 17?
- 10 A. "Master bath - niche is wider at the left." My new
11 contractor ripped all that tile out and made all
12 that right.
- 13 Q. Item 18?
- 14 A. Number 18, that entire bath has stainless steel and
15 then they put a rose-gold shower in there. I don't
16 know if they were trying to save me money or what
17 they were trying to do but it kind of, it kind of
18 sticks out like a sore thumb.
- 19 Q. Item 19?
- 20 A. "Wood and tile needs some type of finishing", the
21 new contractor took care of all those items.
- 22 Q. Item 20?
- 23 A. Yeah, that's the barn door that they ordered for
24 the pantry. They ordered the door in the wrong
25 size, so when it came in it did not cover the

1 opening of the pantry. So they billed us for that
2 door and then we had to, the new contractor
3 reordered the size-appropriate door and installed
4 it properly.

5 Q. Item 21?

6 A. Yeah, this was just one picture of the molding.
7 That was fairly typical of the molding throughout
8 the house. You know, they put it up like that and
9 they threw a bunch of caulking in it. It was a
10 mess. Most of that was taken down and redone.

11 Q. Item 22?

12 A. "Fix the cut outs where the Opening is too large."
13 So initially they put the lights too low on the
14 steps. We had just two or three step lights. They
15 had to go back and move all those outlets up. When
16 they moved them all up they cut the holes too big
17 and the covers did not cover the holes for the
18 outlets.

19 Q. Item 23?

20 A. Yeah, they got a mark on the countertop downstairs
21 that just, we're living with that, it just won't
22 come off.

23 Q. Item 24?

24 A. The garage door is just or the "garage lights need
25 to be lined up." It's pretty simple to just kind

1 of put them in a row. The new contractor took care
2 of that.

3 Q. Item 25?

4 A. Some baseboard missing, the new contractor took
5 care of that.

6 Q. Item 26?

7 A. Also the new contractor, they took care of all that
8 when he they did everything inside.

9 Q. What does the item concern?

10 A. "The handrail going downstairs need to be removed,
11 stained and painted." When they initially wanted
12 to put that handrail up they had a light socket
13 that was in the same position, so they tried to
14 move it and when they put the handrail up I guess
15 they didn't finish the handrail. It was unstained
16 and unfinished.

17 Q. Item 27?

18 A. "Cover up the hole in the downstairs bedroom", the
19 new contractor took care of that.

20 Q. Item 28?

21 A. "Finish on the door, get the stain even", the new
22 contractor redid all the doors, took them all down
23 and stained them properly.

24 Q. Item 29?

25 A. Just missing a small piece of LVT and the new

1 contractor took care of all that.

2 Q. Item 30?

3 A. "Downstairs Bath - right side, fix where you took
4 Baseboard out and painted", I believe the new
5 contractor addressed that.

6 Q. Okay. Item 31?

7 A. "Master closets - air vent in both or moved
8 outside." Yeah, I mean it doesn't sound like a big
9 issue, but it becomes a big issue because they
10 didn't size the air conditioning units for our home
11 and so the master bedroom side of the house doesn't
12 get the airflow that it needs and it's continually
13 10 degrees warmer in the summer and 10 degrees
14 cooler in the winter. So we've had Pittman
15 Mechanical come out and take a look at it and, you
16 know, it's just real expensive to fix it at this
17 stage in the game I guess.

18 Q. Okay. Item 32?

19 A. "Have a professional floor cleaner clean the floors
20 downstairs." This goes back to the whole
21 downstairs flooding. IBI did not notify us. They
22 called a cleaner in the middle of the night to come
23 in and clean everything up and, you know, we could
24 still the remnants of everything I guess.

25 Q. Item 33?

1 A. When you walk down the steps and you get to the
2 last three steps and you could smell mold
3 throughout the entire downstairs. This was in
4 October. I had encouraged them to cut out the
5 walls and look beyond there and make sure we don't
6 have an issue. I told them I couldn't move my
7 family into a house that had mold. They never did
8 anything about it. I put it on there and the new
9 contractor took care of all that. These, this is
10 not comprehensive of the damage that was in that
11 house. This was just me taking an hour out of my
12 time, running through, making a quick list, my wife
13 typing up eight pages and getting it back to them.
14 This does not constitute the problems that were in
15 that home in October of 2019. I came to find out
16 after I talked to the new contractor they went much
17 beyond this.

18 Q. Mr. Merlo, did you take, in addition to the
19 pictures that you included in your re-work list,
20 did you take pictures along the way on the project?

21 A. Yes, sir, I did. Somebody told me early on to just
22 take pictures of the project and so fortunately I
23 did that.

24 Q. Okay. And you personally took all the pictures?

25 A. I did myself personally.

1 BY MR. TAROKH:

2 Object, Your Honor. We want to know what pictures
3 specifically he's referencing and to the extent any
4 pictures were not produced in discovery we also
5 would object to those.

6 BY THE COURT:

7 Well, what specific pictures are talking about,
8 number 1, number 2, were they disclosed in
9 discovery?

10 BY MR. JOHNSON:

11 Yes, Your Honor. We produced I believe 1500
12 pictures.

13 BY THE COURT:

14 Well, it looks like the ones you're looking at
15 right now, what pictures are you talking about?

16 BY MR. JOHNSON:

17 Yes, sir, every single one was produced, Your
18 Honor.

19 BY MR. TAROKH:

20 The issue is, Your Honor, it doesn't bear a Bates
21 stamp number and if I recall correctly all Mr.
22 Johnson's pictures produced during the years of
23 litigation in this case had a Bates stamp number on
24 the bottom right.

25 BY THE COURT:

1 Well, I don't have any idea what was included and
2 what wasn't included, but if it wasn't produced in
3 what was produced during discovery it's not going
4 to be allowed here. So y'all are going to have to
5 tell me where it was produced and when it was
6 produced and ---

7 BY MR. JOHNSON:

8 Your Honor, the original pictures were developed so
9 that we could have the date and time of when they
10 were taken.

11 BY THE COURT:

12 Well, that's fine. I mean that's not the issue
13 when they were taken; the issue is whether or not
14 you provided them to the other side during
15 discovery.

16 BY MR. TAROKH:

17 And it would be very simple for counsel to print
18 out exactly what was produced in picture format and
19 have the picture and have the Bates stamp number so
20 we know that these were produced. These I can't
21 tell if they were produced like I say ---

22 BY THE COURT:

23 Well, I tend to agree on that. I think you're
24 going to have establish that these are pictures
25 that were produced during discovery. If they were,

1 we're fine. If they were not, then they're not
2 going to be allowed at this time.

3 BY MR. JOHNSON:

4 It's going to take that a second to download, Your
5 Honor. It'd be much quicker for the Court for us
6 to use the pictures we have, I mean understanding
7 we've produced 1352 pictures?

8 BY THE COURT:

9 Well, you might have produced 9,000 pictures. If
10 they're not the same ones, then that's a whole
11 different matter. Now, what you're going to have
12 to do I think is hold onto this until tomorrow and
13 then overnight you can identify where those
14 pictures that you want to use now were produced in
15 discovery and provide that information to the
16 opposing counsel because if you didn't produce
17 them, you can't use them now. I mean ---

18 BY MR. JOHNSON:

19 No, I understand and I ---

20 BY THE COURT:

21 --- if you did produce them, then that's fine.
22 Understand, I don't have any way of knowing whether
23 they were produced or not. I haven't seen any of
24 the discovery really except for very limited, so
25 that's what we're going to have to do.

1 BY MR. JOHNSON:

2 Well, Your Honor, I would ask for a recess so that

3 I can ---

4 BY THE COURT:

5 Well, we're not going to have a recess but I would

6 suggest you move on to other areas of examination

7 with this witness and just save that until we come

8 back in the morning. I'm sure he's still going be

9 on the stand because they haven't even started

10 cross examination and it's already 4:00. So I

11 imagine he will be here and available to go back

12 and deal with these photographs at that time.

13 Unless that's all the questions you had left to

14 ask?

15 BY MR. JOHNSON:

16 No, Your Honor. No, Your Honor.

17 BY THE COURT:

18 Well, the Court has to ask.

19 BY MR. JOHNSON:

20 Okay.

21 BY THE COURT:

22 Now, you understand what I'm saying?

23 BY MR. JOHNSON:

24 I do, Your Honor.

25 BY THE COURT:

1 I mean I think it's fair under our rules of
2 discovery exposure and so on that that be provided
3 to opposing counsel so that they can be assured
4 that these are the photographs that you want to
5 talk about now and introduce into evidence I assume
6 were, in fact, produced during discovery. Now,
7 y'all can get together tomorrow and you provide
8 that information before we get started to Mr.
9 Tarokh and then y'all can go from there. How about
10 that? I mean I'm assuming from what y'all have
11 said all this discovery is massive documents and
12 everything else is all Bates stamped and it's
13 identifiable through the Bates stamp. So what
14 you're going to have to do is find the Bates stamp
15 that correlates with the picture you're now wanting
16 to put into evidence and provide that information
17 to Mr. Tarokh before we start tomorrow, and then if
18 you can't do that, then it would appear they
19 weren't produced.

20 BY MR. JOHNSON:

21 No, Your Honor. We can certainly do that. (Mr.
22 Johnson hands documents to Mr. Tarokh to review)

23 BY MR. TAROKH:

24 Objection, Your Honor. I don't recognize, I don't
25 recognize these documents and I think we have it.

1 BY MR. JOHNSON:

2 I listed the entire set fourth set of production
3 that was provided to counsel.

4 BY MR. TAROKH:

5 This is the fourth?

6 BY MR. JOHNSON:

7 The fourth set.

8 BY MR. TAROKH:

9 Your Honor, I can't make a call for now, you know,
10 with a two inch stack of documents. You know, I
11 guess I'll object to them as he sees fit to try to
12 introduce them or whatever but.

13 BY THE COURT:

14 Yeah, I agree. I mean, we need to deal with the
15 documents one at a time instead of ---

16 BY MR. JOHNSON:

17 Oh, we'll deal with them certainly one at a time.

18 BY THE COURT:

19 You've got hundreds of pages.

20 BY MR. JOHNSON:

21 We'll do them one at time, Your Honor, I was just -
22 --

23 BY THE COURT:

24 Well, I mean if you do them one at a time you can,
25 you know, ask him to identify them, and then if he

1 has an objection we'll deal with it and if he
2 doesn't we'll get it admitted.

3 CROSS EXAMINATION RESUMED BY MR. JOHNSON:

4 Q. So Mr. Merlo, after, after you terminated IBI tell
5 us what transpired thereafter?

6 A. Well, I terminated IBI after 23 months because I
7 realized they weren't going to fix the issues that
8 remained at the house. We had unlimited
9 conversations about them, I had sent them re-work
10 lists every single month and they were simply just
11 ignoring us. And so once we terminated them, I
12 went out into the market and tried to find a
13 builder to come in and fix the issues that
14 remained. I probably talked to 12 builders and I
15 located a gentleman that was the President of the
16 Homebuilders Association for Oconee County and we
17 contracted with him to come in and take care of the
18 issues.

19 Q. And who was that contractor?

20 A. Dustin Rampy with Joy Construction.

21 Q. Okay. And did you incur costs in engaging Joy
22 Construction?

23 A. Absolutely. I mean the items that we just went
24 over on the rework lists, these are just cursory
25 items that I noticed; there was a lot more stuff

1 that, you know, he noticed and we set out to make
2 it right.

3 Q. And how much did you end up paying Joy
4 Construction?

5 A. You know, I don't have the sheet in front of me but
6 I think all total we spent, between Joy
7 Construction and cash out of pocket over \$200,000.

8 Q. And in the course of, in the course of doing that,
9 did you keep an accounting of the expenses that you
10 incurred?

11 A. Yes, sir, I did, every single invoice.

12 Q. And did you record that in a spreadsheet?

13 A. Yes, sir, I did.

14 Q. Your Honor, I would offer this as Defendant's 36.

15 (DEFENDANT'S EXHIBIT 36 MARKED FOR IDENTIFICATION)

16 BY THE COURT:

17 Any objection?

18 BY MR. TAROKH:

19 Yes, Your Honor, objection. I don't recognize this
20 document. This appears to be a revised list from a
21 similar document that was introduced in Mr. Merlo's
22 deposition and so I would object on that basis. In
23 my notes, it doesn't appear it has been produced
24 and ---

25 BY MR. JOHNSON:

1 Well, I'll put the one you did in the deposition of
2 Mr. Merlo.

3 BY MR. TAROKH:

4 That's fine, yes. So, yes, objection and I believe
5 counsel is going to substitute it with the one that
6 we talked about at the deposition.

7 BY THE COURT:

8 I mean have you got an extra copy of it, anybody?

9 BY MR. TAROKH:

10 Yes, Your Honor, I'm looking for that right now.

11 BY THE COURT:

12 All right. She can make a copy back here in the
13 back if you her need to.

14 BY MR. TAROKH:

15 Your Honor, I have a copy and I'll agree to its
16 admission into evidence.

17 BY THE COURT:

18 Well, show it to Mr. Johnson.

19 BY MR. TAROKH:

20 And the Plaintiff's Exhibit number from the
21 deposition is on there as well so.

22 BY THE COURT:

23 Is that the right one, Mr. Johnson?

24 BY MR. JOHNSON:

25 Yeah, it will be fine.

1 BY COURT REPORTER:

2 Replace this exhibit?

3 BY MR. JOHNSON:

4 Yeah.

5 BY THE COURT:

6 And that's going to be Defendant's Exhibit 36
7 admitted without objection and that's from the
8 deposition of Mr. Merlo.

9 (DEFENDANT'S EXHIBIT 36 REMARKED AND ADMITTED INTO
10 EVIDENCE)

11 BY MR. TAROKH:

12 And, Your Honor, just to clarify, it's the one that
13 I just handed counsel, correct, not the one ---

14 BY THE COURT:

15 That's supposed to be the new one, isn't it?

16 BY MR. JOHNSON:

17 Yes.

18 BY THE COURT:

19 All right, so you've got that marked as 36?

20 BY MR. JOHNSON:

21 It's marked, Your Honor.

22 BY THE COURT:

23 All right. So that's admitted without objection.

24 Q. All right, Mr. Merlo, so we were talking about the
25 amounts that you paid to Joy Construction?

1 A. Yes.

2 Q. And from your records how much did you pay Joy
3 Construction?

4 A. I think it was roughly maybe \$130,000.

5 Q. So you have a list of checks?

6 A. The first one was check number 4834 paid in
7 November 13, 2019 and that check was for 15,000; it
8 looks the second one was check number 4842 on
9 December 18th, 2019 for 15,000; the third one was
10 for 35,000, check number 4843, January 8th, 2020;
11 next one was check number 4846, January 22nd, 2020
12 for \$20,000; the next one was check number 4847,
13 January 29th, 2020 for \$15,000; the next one was
14 check number 4848, February 6th, 2020 for \$15,000;
15 and then there was one for March 3rd, 2020, check
16 number 4857 for \$12,000; and then there was a final
17 check April the 1st, 2020, check number 4868 for
18 \$13,000. That may have been returned to me because
19 I know there was an overpayment on the account and
20 that might have been the check that came back to
21 us.

22 Q. Was there also a check on March 12th of 2020?

23 A. Yes, there was. Yes, check number 4867 for
24 \$10,000.

25 Q. So you have ---

1 A. And I think that's why there was a discrepancy in
2 your list and the other list because that check
3 that came back to us I believe was taken off of
4 there, off to make it accurate.

5 Q. And so you have a 15, a 15, a 35, so that's 65,000?

6 A. Correct.

7 Q. Okay. Then you have a 20?

8 A. 85.

9 Q. That's 85. And then you have a 15 and a 15 and
10 then you have a 12?

11 A. 127, is that right?

12 Q. And then you have 10, is that correct.

13 A. 137 sounds about right. Yeah, I think the contract
14 might have been 150. With some overpayments I
15 think we gave them made it 137, that sounds right.

16 Q. And you incurred additional costs outside of those
17 payments to Joy Construction?

18 A. Yes, sir, that is correct. There's cash receipts
19 for everything else that was taken care of.

20 (DEFENDANT'S EXHIBIT 37 MARKED FOR IDENTIFICATION)

21 BY MR. TAROKH:

22 Your Honor, for the record I'm going to be
23 objecting to that exhibit.

24 BY THE COURT:

25 Well, what does it show? I can't see it.

1 BY MR. JOHNSON:

2 These are receipts that Merlo that had that were
3 produced in full production.

4 BY MR. TAROKH:

5 Hearsay, Your Honor, hearsay, Judge.

6 BY THE COURT:

7 Well, I'm going to overrule that. I mean he
8 testified that he paid some and got a receipt for
9 it, that's firsthand information from his point of
10 view. So I'm going to allow that. So that's
11 Defendant's Exhibit 37?

12 BY MR. JOHNSON:

13 Yes, sir, Your Honor.

14 (DEFENDANT'S EXHIBIT 37 ADMITTED INTO EVIDENCE)

15 Q. So, Mr. Merlo, tell us about that document you're
16 holding.

17 A. Well, as I stated earlier, a lot of the doors on
18 the cabinets were damaged or missing and so it
19 became kind of an effort to go and find places that
20 sold those exact same doors in the exact same
21 colors, and so my wife tracked this one down to
22 Cashiers, North Carolina and ordered some cabinetry
23 doors for the cabinets to match them.

24 Q. And how much was that invoice?

25 A. It looks like \$2,014.75.

1 Q. And is that on your spreadsheet?

2 A. I don't see it on the one we're working off of
3 because it was revised later on because the work
4 was ongoing.

5 Q. Okay.

6 BY THE COURT:

7 Now, is this a transaction that Mr. Merlo was a
8 party to or was it his wife?

9 Q. Tell us, Mr. Merlo, how did this transaction go?

10 A. Well, the house was left in a state of disarray so
11 when the new contractor came in, Joy Construction,
12 ---

13 BY THE COURT:

14 I mean, I want to ask this, did you go talk with
15 these people in Cashiers, North Carolina about the
16 doors, and then buying those doors, paying them
17 \$27,000 or was that done by someone else?

18 A. No, sir, I paid this by Visa \$2,014 and then when
19 the doors came in two or three months later my wife
20 drove up and just picked up the doors, but I paid
21 this out of my own cash account.

22 BY THE COURT:

23 Any objection or any further objections?

24 BY MR. TAROKH:

25 So, Your Honor, the document purports to show

1 customer, and it is not Mr. Merlo or Nikki Merlo,
2 it's dated September 3rd, 2020, and the only thing
3 is he was purportedly using a credit card he still
4 -- I don't see how he can have direct knowledge of
5 this document.

6 BY THE COURT:

7 Well, I mean I don't know. I mean he used his
8 credit card to pay for it.

9 BY MR. TAROKH:

10 That's his testimony, Your Honor.

11 BY THE COURT:

12 That's his testimony. Now, I mean the cost of
13 damages, but we're going to allow it for now.

14 Q. So that invoice would be in addition to the costs
15 that are shown on the spreadsheet?

16 A. I believe so. The work was ongoing, like I said,
17 so it was hard to total the costs because when the
18 work was ongoing all the invoices hadn't come in
19 yet.

20 (DEFENDANT'S EXHIBIT 38 MARKED FOR IDENTIFICATION)

21 Q. Tell us what's marked as Defendant's 38?

22 A. This is an invoice with Vinyl Services.

23 BY THE COURT:

24 Any objection?

25 BY MR. TAROKH:

1 You've brought up the same objection, hearsay
2 unless his testimony is going to be that he was
3 involved in the transaction.

4 BY THE COURT:

5 Well, how about it, Mr. Johnson? Lay the
6 foundation.

7 Q. Mr. Merlo, what was your involvement with ---

8 A. I actually sourced this contractor personally and
9 contracted with them to fix the work of IBI. I
10 wrote the check myself and this came out of our
11 cash account.

12 Q. And how much is that invoice?

13 A. \$4,135.

14 BY THE COURT:

15 All right. Based on that, I'm going to overrule
16 the objection and allow the admissibility of that
17 exhibit. It will be admitted as Defendant's
18 Exhibit Number 38.

19 (DEFENDANT'S EXHIBIT 38 ADMITTED INTO EVIDENCE)

20 Q. Yes, Your Honor. And what was the amount of that
21 invoice again, Mr. Merlo?

22 A. \$4,135.

23 Q. And is that listed on your spreadsheet?

24 A. I don't see it on here, the Vinyl Services, I don't
25 see it.

1 Q. So that would be in addition to those amounts that
2 are shown there?

3 A. I'm just not certain about that undated list
4 because it has, it has everything by vendor and
5 check number.

6 (DEFENDANT'S EXHIBIT 39 MARKED FOR IDENTIFICATION)

7 Q. Mr. Merlo, I hand you a document that's labeled
8 Defendant's Exhibit 39. Are you familiar with that
9 document?

10 A. Yes, I am.

11 Q. Tell us about that document.

12 BY THE COURT:

13 Is there any objection to admissibility?

14 BY MR. TAROKH:

15 Yes, Your Honor, hearsay. I mean this is another
16 company, if this is a business records which it
17 purports to be, it should comply with South
18 Carolina Code 19-5-520 and have all the predicate
19 requirements for the business records exception.

20 BY THE COURT:

21 Well, I mean, Mr. Johnson, how about laying a
22 foundation for admissibility first.

23 Q. Sure, Your Honor. So, Mr. Merlo, did you engage,
24 personally engage Gregorio Sanchez to do any work
25 on your home?

1 A. Yes, I did, yes.

2 Q. And did he invoice you for that work?

3 A. Yes, he did. I paid him out of my cash account.

4 Q. Is that a true and correct copy of the invoice that
5 he invoiced you for?

6 A. Yes, sir, it is.

7 Q. And what's the amount of that invoice?

8 A. The initial invoice was \$9,800, but we actually
9 ended up paying \$10,500. I think there was maybe
10 some additional work there.

11 BY MR. TAROKH:

12 Same objection, Your Honor. Now, he's testified
13 that, you know, he engaged Mr. Sanchez for the
14 amount of 9800 and there's the handwriting that
15 says 10,500. It's hearsay and without the business
16 record exception, somebody from ---

17 BY THE COURT:

18 Well, I'm going to allow the document to be
19 introduced and, you know, for the 9800, which
20 apparently I haven't seen it but it's printed on
21 there as far as the receipt. Now, as far as the
22 additional whatever it is, \$700, would that be the
23 difference of the amount, that won't be, that will
24 not be accepted as proof of that amount. Now, he
25 testified he paid that, so that's evidence to that

1 effect and it is what it is. But as the exhibit
2 itself, only, only establishing the 9800.

3 (DEFENDANT'S EXHIBIT 39 ADMITTED INTO EVIDENCE)

4 (DEFENDANT'S EXHIBIT 40 MARKED FOR IDENTIFICATION)

5 Q. I hand you a document that's ---

6 BY THE COURT:

7 Mr. Johnson, before you move on, that Number 39,
8 now who was that?

9 A. Gregario Sanchez.

10 BY THE COURT:

11 Sanchez?

12 A. Yes, sir.

13 BY THE COURT:

14 And that was for what?

15 A. \$9,800.

16 BY THE COURT:

17 I mean what was the product that he was providing?

18 A. This was painting the entire exterior of the home.

19 BY MR. TAROKH:

20 Judge, if I may read briefly on Exhibit 39, like on
21 its face it says "Note: Once payment has been
22 received, a receipt will be provided for your
23 records." It seems to conflict with -- that's my
24 objection, same objection, Your Honor, I just
25 wanted to point it out for the record.

1 BY THE COURT:

2 I'm not sure I understand your point. I mean he's
3 got a receipt so I assume he paid money on it.

4 BY MR. TAROKH:

5 Well, there hasn't been a receipt produced for
6 \$9,800 and his records says it's an invoice and
7 then on its face it says "Once payment has been
8 received, a receipt will be provided for your
9 records." So I would think an actual ---

10 BY THE COURT:

11 But I mean then it's an invoice, it's not a
12 receipt. So that means you've got a bill for it;
13 now whether he paid it or not, I don't know. I
14 mean he can testify about that or he can produce
15 some additional documents. I mean he got a bill
16 for \$9800 and payment.

17 Q. And so that bill for \$9800 was paid; you testified
18 that you paid how much?

19 A. I paid \$10,700.

20 Q. The document you're holding, Defendant's Exhibit
21 40, are you familiar with that document?

22 A. Yes, I am.

23 Q. Okay. Tell us about that document.

24 A. This is an invoice from an engineer that helped us
25 remediate the deck that was built by IBI. It was

1 structurally unsound. It failed inspection and so
2 we had to hire an engineer to come in and help us
3 rebuild it and this is a bill to Tommy Hood
4 Engineering for \$400 dated April 12th, 2020.

5 Q. And you paid that invoice?

6 A. Yes, sir, I did.

7 BY MR. TAROKH:

8 Well, same objection, Your Honor. I understand
9 your ruling.

10 BY THE COURT:

11 Well, I still don't understand your objection. He
12 says he got a bill for \$400 and he paid it. The
13 bill says 400 and he says he paid it.

14 BY MR. TAROKH:

15 I understand, I understand what he testified to,
16 Your Honor. That's not my objection; my objection
17 is the factual document that doesn't comport with
18 business records exception to hearsay, number 29-5
19 -- excuse me, 19-5-520, the same objection I had
20 earlier.

21 BY THE COURT:

22 Okay, your objection is noted.

23 (DEFENDANT'S EXHIBIT 40 ADMITTED INTO EVIDENCE)

24 (DEFENDANT'S EXHIBIT 41 MARKED FOR IDENTIFICATION)

25 Q. I hand you a document that's been marked as

1 Defendant's 44.

2 BY THE COURT:

3 41.

4 Q. 41, excuse me, Your Honor. Are you familiar with
5 that document?

6 A. Yes, I am, yes.

7 Q. And what is that document?

8 A. This is a repair invoice for the tile work that IBI
9 installed improperly. The tile started coming up
10 and breaking up and it got to the point where it
11 was a tripping hazard in the bathroom, and so the
12 tile had to be taken up and new tile had to be put
13 down. So this invoice is for \$400 because we had
14 some leftover tile and we utilized that.

15 Q. And who is the invoice from?

16 A. First Oconee Granite and Tile.

17 Q. And did you pay that invoice?

18 A. I did, on September 26th of 2000.

19 BY MR. TAROKH:

20 Objection, Your Honor, hearsay. This doesn't
21 appear to be an invoice per se. It appears to be a
22 photocopy of business card with some handwriting
23 and I didn't hear any foundation as to whose
24 handwriting this is or what.

25 A. Your Honor, if I may? This is my handwriting. The

1 gentleman that came and did the work didn't provide
2 an invoice so I made a copy of his card and put the
3 details down so I could ---

4 BY THE COURT:

5 I'm going to sustain the objection on that one
6 because, you know, you can't create an invoice on
7 anything you claim he sent to you by the guy that
8 did the work. So that's not going to be admitted.

9 Q. The next one is going to be marked as Defendant's
10 42 for identification.

11 (DEFENDANT'S EXHIBIT 42 MARKED FOR IDENTIFICATION)

12 Q. Are you familiar with that document, Mr. Merlo?

13 A. Yes, I am, yes. When IBI installed the pump to
14 irrigate the landscaping they installed it
15 improperly, and this gentleman here came out and
16 did the work to make everything right. This was
17 WAV's Electric Services.

18 Q. And what is the amount of that invoice?

19 A. \$3,488. Wait a minute, wait a minute. No, I
20 apologize. This invoice, they did some work on the
21 pump, but this invoice here is for them replacing
22 the breaker box, the entire meter box. It says,
23 "Includes outdoor meter base with 8 breaker spaces,
24 200 amp indoor breaker panel." This is when they
25 replaced the meter box. There was a lot of

1 electrical that was upside down and these guys come
2 just to fix it.

3 Q. Okay. And tell us, tell us why the breaker box
4 needed to be replaced?

5 A. Well, when we moved into the house and started
6 turning lights on, we noticed that the breakers
7 were popping left and right and so we went outside
8 and felt the breaker box and realized that it was
9 overheating. I didn't know what was causing it. I
10 called two or three independent electricians and
11 they came out and looked at it. They took the
12 cover off, they pulled wires out, and they couldn't
13 really figure it out and they just said something
14 is done improperly and so they recommended we
15 replace the panel box before it caused a fire. I
16 also called Seneca Light and Power, they came out
17 at that time. They were not able to go inside and
18 look at the box specifically, but they did look at
19 the meter and they told me the meter was pulling
20 about 18 amps ---

21 BY MR. TAROKH:

22 Objection, hearsay.

23 BY THE COURT:

24 Sustained.

25 A. When they first told me go inside ---

1 BY MR. TAROKH:

2 Objection, hearsay.

3 BY THE COURT:

4 Now, you can't testify about what somebody told
5 you.

6 A. See, you know, at the end of the day the thing was
7 a fire hazard and we decided rather than sleep with
8 one eye open we would replace this meter to the
9 cost of \$3,488 and that's what we did.

10 Q. And was the breaker box hot to the touch?

11 A. You could not lay your hand on the breaker box,
12 period, and I would leave the door open on the
13 breaker box and I would leave a fan blowing on it
14 24 hours a day to try to cool it down.

15 Q. And you took some temperature readings in the
16 breaker box?

17 A. You know, I didn't know at what temperature the
18 thing was going to combust and my family is
19 sleeping inside the house, so I went to Lowe's and
20 bought a heat gun and I just aimed it at the box
21 and took some temperature readings, yes.

22 Q. And I know we'll get into that with the picture
23 tomorrow. Do you recall in memory what the
24 readings were?

25 A. I want to say like 140 or 150 degrees. I mean you

1 literally could not touch it, it was burning hot.

2 BY THE COURT:

3 Any objection to Exhibit Number 42?

4 BY MR. TAROKH:

5 Yes, Your Honor, the same objection, it's not
6 certified under 19-5-520, hearsay.

7 BY THE COURT:

8 Did he testify about payments and who paid this
9 bill or not?

10 A. I paid this invoice personally, Your Honor.

11 BY THE COURT:

12 Then I'm going to allow it.

13 (DEFENDANT'S EXHIBIT 42 ADMITTED INTO EVIDENCE)

14 (DEFENDANT'S EXHIBIT 43 MARKED FOR IDENTIFICATION)

15 Q. I'm going to hand you a document that's marked,
16 pre-marked Defendant's 43, and ask you if you're
17 familiar with that document?

18 A. Yes, I am. This is a pressure washing invoice.
19 When IBI completed work on the house they didn't
20 clean the stone. You know, it would come in dirty
21 and when they installed the stone they let the red
22 mud kind of splash up on it and so all the stone
23 was discolored all the way around the house and so
24 this was for cleaning the stone. This was from Sea
25 to Summit Pressure Washing dated April 4, '20 and

1 the total for service looks to be \$1,494.20.

2 Q. Okay. Did you pay that invoice?

3 A. Yes, I did.

4 BY THE COURT:

5 It will be admitted.

6 BY MR. TAROKH:

7 Objection, Your Honor, the same objection, that
8 doesn't comport with 19-5-520 South Carolina Code.

9 In addition this is the, it says on its face
10 'Service Estimate', not invoice.

11 BY THE COURT:

12 Well, it's an instrument by what it says. But's
13 just like other things, bills, estimates, he says
14 he paid them, that's his testimony, okay, so we're
15 going to allow it.

16 (DEFENDANT'S EXHIBIT 43 ADMITTED INTO EVIDENCE)

17 (DEFENDANT'S EXHIBIT 44 MARKED FOR IDENTIFICATION)

18 Q. I'm going to hand you a document that's been marked
19 as Defendant's 44. Are you familiar with that
20 document?

21 A. Yes, I am.

22 Q. Okay. Tell us about that document.

23 A. This has to do with the pump. IBI installed a pump
24 down at the water to bring lake water up to
25 irrigate the plants. When they did it, it just

1 wasn't installed properly. So Rolling Ridge
2 Landscaping came out and did a bunch of work. It
3 was \$1,465.00 and this was dated May 18th of 2020.

4 Q. And did you pay that invoice?

5 A. Yes, I did. I paid it, yes.

6 BY THE COURT:

7 Any objection?

8 BY MR. TAROKH:

9 Same objection, Your Honor, hearsay. It doesn't
10 have business records certification, predicated
11 under 19-5-520.

12 BY THE COURT:

13 Well, I'm going to allow it.

14 (DEFENDANT'S EXHIBIT 44 ADMITTED INTO EVIDENCE)

15 (DEFENDANT'S EXHIBIT 45 MARKED FOR IDENTIFICATION)

16 Q. Mr. Merlo, I'm going to hand you a document that's
17 numbered Defendant's 45.

18 A. Yes, I recognize this. When IBI built the boulder
19 wall they built it on my neighbor's property and it
20 had to be moved, so I contracted with Bob Hawkins
21 Residential Services on March 30th of 2000 (sic) and
22 it looks like I paid him \$500 to take the boulder
23 wall down and to move it to my side.

24 BY THE COURT:

25 What was that, what was the name of that?

1 A. Bob Hawkins.

2 BY THE COURT:

3 Hopkins, H-O-P-K-I-N-S?

4 A. No, H-A-W-K-I-N-S.

5 BY THE COURT:

6 All right, Hawkins, okay. And did he pay that?

7 BY MR. JOHNSON:

8 I believe he testified he did, Your Honor.

9 A. Yes, sir, I paid Bob Hawkins out of my cash
10 account.

11 BY MR. TAROKH:

12 No objection.

13 BY THE COURT:

14 I beg your pardon?

15 BY MR. TAROKH:

16 No objection, Your Honor. The reason being this is
17 a copy of a certified copy of a City of Seneca
18 document so this invoice is actually -- so I have
19 no objection to this one.

20 BY THE COURT:

21 All right. That's Defendant's Exhibit 45 admitted
22 without objection.

23 (DEFENDANT'S EXHIBIT 45 ADMITTED INTO EVIDENCE)

24 (DEFENDANT'S EXHIBIT 46 MARKED FOR IDENTIFICATION)

25 Q. What I'm showing you is marked as Defendant's

1 Exhibit 46. Are you familiar with that document?

2 A. Yes, I am. This one is from Vinyl Services dated
3 April 27th, 2020 for \$2,000.

4 Q. Okay. And did you pay that invoice?

5 A. Yes, I did. I paid this out of my cash account.

6 BY THE COURT:

7 And what was that for?

8 A. This here was to fix work that IBI mishandled on
9 the screen porch. They came and rebuilt the screen
10 porch.

11 BY THE COURT:

12 Any objection?

13 BY MR. TAROKH:

14 Same objection, Your Honor, hearsay.

15 BY THE COURT:

16 I'm going to allow it.

17 (DEFENDANT'S EXHIBIT 46 ADMITTED INTO EVIDENCE)

18 (DEFENDANT'S EXHIBIT 47 MARKED FOR IDENTIFICATION)

19 Q. I hand you a document that's been identified as
20 Defendant's 47. Are you familiar with that
21 document?

22 A. Yes, I am.

23 Q. Okay. Tell us about it.

24 A. This is an invoice from Fowler Electric Systems
25 dated June 16th, 2020.

1 Q. Okay. How much is the invoice?

2 A. The invoice is for \$3,050, however, this invoice is
3 for fixing some of the work IBI did and also
4 several new lights that I installed.

5 Q. Okay.

6 A. So this invoice is not comprehensive of 100% re-
7 work, this is a split invoice. He just didn't send
8 two invoices.

9 Q. Okay. And you paid the \$3,050?

10 A. Yes, sir, I did, yes.

11 BY THE COURT:

12 Well, he's obviously saying that all of that 3,050
13 wasn't, it didn't have anything to do with fixing
14 all -- wait a minute, how much is it?

15 A. That's correct. What happened was IBI didn't wire
16 the lights in the backyard correctly so they blew
17 out the transformer so ---

18 BY THE COURT:

19 No. What I'm saying, which portion, what portion
20 of the \$3,050 would be attributable to what you say
21 were problems caused by IBI versus new stuff?

22 A. Okay, let me look it over. I'm not sure if this
23 invoice should be inside of the re-work here. This
24 looks to be something extracurricular.

25 Q. Okay.

1 A. It's extracurricular. I know they fixed the well
2 lights in the back of the house and perhaps it's on
3 another invoice, but it does not look like it's on
4 this invoice.

5 BY THE COURT:

6 So that's not going to be admitted.

7 (DEFENDANT'S EXHIBIT 48 MARKED FOR IDENTIFICATION)

8 Q. Okay. I hand you a document that's marked as
9 Defendant's 48 and ask if you're familiar with that
10 document?

11 A. Yes, sir, I am, yes.

12 Q. Okay. Tell us about that document.

13 A. Well, when IBI did the electrical work on the house
14 and they wired plugs, all the plugs were, they
15 weren't level with the wall, so some of them sunk
16 in, some of them poked out; and this gentleman was
17 hired to come in and straighten out all those
18 outlets and all the plates and he also put a light
19 in a closet that I guess by code had to have light
20 so that was the 425 and then 300. So the total was
21 725 and the contractor, I'm trying to look for his
22 name, Devoted Electric, and the invoice is dated
23 April 23rd of 2020 and I paid him personally out of
24 my cash account.

25 BY THE COURT:

1 Any objection?

2 BY MR. TAROKH:

3 Objection, hearsay, Your Honor. It fails to comply
4 with 19-5-520.

5 BY THE COURT:

6 I'm going to allow it in.

7 (DEFENDANT'S EXHIBIT 48 ADMITTED INTO EVIDENCE)

8 BY THE COURT:

9 That light in the closet, that was something that
10 you contend IBI should've provided?

11 A. Well, we needed it to meet code, to pass the
12 inspection and they didn't install an outlet inside
13 of the closet area, yes, sir.

14 (DEFENDANT'S EXHIBIT 49 MARKED FOR IDENTIFICATION)

15 Q. I hand you a document that's been marked as
16 Defendant's 49 and ask if you're familiar with that
17 document?

18 BY THE COURT:

19 Wait a minute. Defendant's 49?

20 Q. 49, Your Honor. Are you familiar with that
21 document?

22 A. I just simply can't recall what this one was for to
23 be honest with you, I can't recall.

24 BY THE COURT:

25 So that's not admitted.

1 BY MR. TAROKH:

2 Just for clarification, is that the one that looked
3 like it had a ship steering wheel on it?

4 BY MR. JOHNSON:

5 Yes.

6 BY THE COURT:

7 Well, he said he couldn't authenticate that so it's
8 not admitted. Just let me ask you, Mr. Johnson,
9 how many more have you got to do because it's
10 getting to be 4:40 and these ladies need to get out
11 of here before 5.

12 BY MR. JOHNSON:

13 We have a lot, Your Honor. I mean I plan to put
14 each invoice in.

15 BY THE COURT:

16 Well, how many more have you got?

17 BY MR. JOHNSON:

18 Probably 50.

19 BY MR. TAROKH:

20 Your Honor, if I may make objection? I need
21 counsel to represent to me these were documents
22 produced to me in Plaintiff's Fourth Request for
23 Production and it seems to me, and I can look it up
24 rather quickly, that the documents that were
25 produced were not this voluminous and specifically

1 if the Court will give me a minute or two, I can
2 count exactly how many documents that were produced
3 in the link that Townes, excuse me, Mr. Johnson
4 sent me in response. So to the extent he didn't
5 produce these documents to me, we would object.

6 BY THE COURT:

7 Well, I agree they're not admissible. But I don't
8 have any way of knowing that. So if you've got
9 cause, you've got to show me.

10 BY MR. TAROKH:

11 Your Honor, I mean can we take a brief two-minute
12 recess?

13 BY THE COURT:

14 Well, we can but then it's going to be getting
15 closer to 5:00 but ---

16 BY MR. TAROKH:

17 One minute.

18 BY THE COURT:

19 You've got the photograph issue and now you've got
20 this issue, so that's two different things about
21 whether or not stuff was produced or not so.

22 BY MR. JOHNSON:

23 Well, Your Honor, I can easily get to those, too.
24 These were all produced and I will get Bates stamp
25 pictures tomorrow that were produced.

1 BY THE COURT:

2 All right. You're going to have to convince Mr.
3 Tarokh of that. I mean if they've been produced
4 and he doesn't have any objection at this point on
5 that basis. Now, he's got this other objection
6 that he's entered and you'll have to deal with
7 that. But we're not going to get through this
8 whole stack in the next 15 minutes.

9 BY MR. JOHNSON:

10 No, Your Honor.

11 BY THE COURT:

12 So it may be wise for us to go ahead and knock off
13 for the day and give Mr. Tarokh time to do his
14 research and give you time to do your research, and
15 then when y'all come back in the morning all set
16 and ready to go in a speedy and efficient fashion.
17 It's a whole new concept. All right, does that
18 suit?

19 BY MR. TAROKH:

20 Yes, Your Honor, that's fine.

21 BY THE COURT:

22 Now, just from a timing standpoint tomorrow, it's
23 Thursday and it is day three and y'all wanted three
24 days, so are you going to be able to finish your
25 cross examination -- I mean your direct examination

1 within a reasonable period of time?

2 BY MR. JOHNSON:

3 I hope so, Your Honor.

4 BY THE COURT:

5 Well, I want a little bit more than hope.

6 BY MR. JOHNSON:

7 Well, I'll do my best.

8 BY THE COURT:

9 Well, how long do you estimate it's going to take?

10 BY MR. JOHNSON:

11 Well, I've got a lot of pictures to put into
12 evidence and these documents, Your Honor. The
13 pictures relate to the work that was done by IBI
14 and the work that was done subsequent to that.

15 BY THE COURT:

16 Okay, that's fine. But I mean I can tell right now
17 cross examination of Mr. Merlo is probably going to
18 take longer than direct. But we may not finish
19 tomorrow and if that's the case, y'all may have to
20 come back Friday or Saturday or Sunday or all
21 three. If y'all want to do that ---

22 BY MR. TAROKH:

23 Yes, Your Honor, I can ---

24 BY THE COURT:

25 --- y'all need to expedite it.

1 BY MR. TAROKH:

2 Yes, Your Honor, yes. Right now, we can reserve.

3 Yes, I'm available on Friday and I'm available
4 Saturday. I blocked off the whole week for this
5 case and my clients have, too. We're ready to
6 roll, Your Honor.

7 BY THE COURT:

8 Well, I'm not available Saturday.

9 BY MR. TAROKH:

10 Oh.

11 BY THE COURT:

12 Y'all can come up if you want to but I won't be
13 here.

14 BY MR. TAROKH:

15 But if Your Honor is available on Friday and we
16 need to roll in Friday, that's ---

17 BY THE COURT:

18 Well, I mean we may have to, but we may have to
19 adjust the time on Friday because I've got some
20 other things I've got to do that I hadn't planned
21 on being involved in this on Friday.

22 BY MR. TAROKH:

23 I understand, Your Honor. I think a lot of this
24 will stem on whether those documents were produced
25 and whether there's evidence to demonstrate these.

1 I would like the pictures that were produced.

2 BY THE COURT:

3 Are you planning on at this time calling any
4 additional witnesses?

5 BY MR. JOHNSON:

6 We're still waiting to hear back from Mr.
7 Culbertson, Your Honor.

8 BY THE COURT:

9 Well, did you ever get your position clarified on
10 getting Mr. Culbertson here so that ---

11 BY MR. TAROKH:

12 Yes, Your Honor. I think we object, I'm going to
13 object on the basis of, you know, I don't think I
14 can be able to effectively cross examine Mr.
15 Culbertson via video. It's very -- well, we've
16 seen the IT related issues so far and I'm not
17 professing to be an expert on that, and I don't
18 want to have, number one, I don't know how I could
19 present documents and things of that nature via
20 video so we would object. I believe he should be
21 here testifying.

22 BY THE COURT:

23 Well, I tend to agree with you. It's going to very
24 difficult to show him a document and ask him
25 questions about it.

1 BY MR. JOHNSON:

2 Your Honor, I mean it would be a singular document,
3 it would just be the surveys showing the
4 encroachment.

5 BY THE COURT:

6 Well, I mean I don't know what he's going to ask
7 him about. I mean you're going to say it's one
8 document. He might have 10 or 20 he wants to ask
9 him about, I don't know, but he's not going to be
10 able to hand him something and tell him, you know,
11 I need to ask you a question about this. How are
12 you going to get around that?

13 BY MR. JOHNSON:

14 Your Honor, we do it in Zoom depositions all day,
15 every day.

16 BY MR. TAROKH:

17 Your Honor, this is a trial. There's been plenty
18 of time to Subpoena this witness and bring this
19 witness here.

20 BY THE COURT:

21 Well, I agree with that, too. So I'm inclined not
22 to allow the video. Now, I'll take a look at it
23 overnight and see what it looks like, but I do
24 think it would put the Plaintiff at a disadvantage
25 at this late date.

1 BY MR. JOHNSON:

2 Well, we will seek to get him here.

3 BY THE COURT:

4 You could've taken his deposition.

5 BY MR. JOHNSON:

6 We could've, Your Honor.

7 BY THE COURT:

8 All right, let's go ahead and y'all figure out what
9 you're going to do about these exhibits and
10 production and all that stuff and then we'll get
11 back stated and start back in the morning at 10:00.

12 BY MR. TAROKH:

13 Thank you, Judge.

14 BY THE COURT:

15 All right, Mr. Merlo, you may step down and be
16 prepared to resume tomorrow.

17 (COURT ADJOURNED AT 4:50 P.M.)

18 (MAY 26TH, 2022 @ 10:45 A.M - DAY THREE OF TRIAL)

19 (DEFENDANT'S EXHIBITS 50 - 66 MARKED FOR IDENTIFICATION)

20 BY THE COURT:

21 I remind you're still under oath (speaking to Mr.
22 Merlo). All right, for the record we are back on
23 now and this is a continuation of civil action
24 numbers 2019-CP-37-00687 and 2020-CP-37-00188.
25 This is day three of the trial in this matter. On

1 the witness stand at this is Mr. Christopher Merlo,
2 the Defendant, and he was in the process of
3 responding to direct examination by Mr. Johnson
4 yesterday when we adjourned for the day. At this
5 point, yesterday he was presenting a series of
6 exhibits that related to payments Mr. Merlo says
7 were made by him or bills he received for work that
8 was done on the house by other contractors than IBI
9 after they were terminated apparently. So now
10 we're going to deal with, the Defendant has
11 additional exhibits marked for identification only,
12 and those are exhibits, Defendant's Exhibits 50
13 through 65 which are similar type documents
14 apparently and Mr. Tarokh, the Plaintiff's
15 attorney, has reviewed those items that are going
16 to be submitted and all this is subject to proper
17 authentication by the witness before they're
18 admitted into evidence. But Mr. Tarokh, are you
19 ready to put your objection on the record as to
20 this batch of exhibits?

21 BY MR. TAROKH:

22 I am, Your Honor.

23 BY THE COURT:

24 All right.

25 BY MR. TAROKH:

1 Your Honor, I'd like first again, after we left
2 Your Honor yesterday the issue was whether those
3 documents were produced in discovery, and I had an
4 opportunity to go back and it looks like they were
5 produced in discovery, so my objection isn't that
6 issue. My objection, Your Honor, in addition to
7 the evidentiary objections I made yesterday, was on
8 September 3rd of last year I propounded Plaintiff's
9 Fourth Set of Requests for Production. Now, I had
10 to file a Motion to Compel for Production of those
11 documents. Those documents seem to be the same
12 documents that were produced, the same documents
13 counsel was, the stack of documents that counsel
14 was attempting to produce yesterday at trial. We
15 were before Your Honor, I believe it was December
16 9th, on that Motion to Compel and it was from the
17 hearing date that the Court ordered that Mr. Merlo
18 compel those documents, the documents I requested
19 in my Fourth Request for Production. And in
20 addition, we had a status conference and the Court
21 set the trial for today, you know, for this past
22 Tuesday through today, so with that as a factor,
23 Your Honor, that was I believe the second, at least
24 the second time we've had to seek redress from the
25 Court for discovery issues. And in my Fourth

1 Request for Production, Your Honor, I was very
2 specific as to what I wanted. I was very specific
3 as to certain items that were based upon the
4 document that we reviewed in the depositions. One
5 of those documents was admitted yesterday. In
6 fact, basically it was Defendant's Exhibit 36 which
7 was admitted and I'm fine with that, but
8 Defendant's Exhibit 36 is what I understand was Mr.
9 Merlo's damages and, you know, that document, and
10 there's a Plaintiff's exhibit number from the
11 deposition, that document was dated December 23rd,
12 2021 and it has the amount, there's two amounts,
13 but what I understand the amount they're seeking is
14 \$215,000, \$215,523.20 for remediation of defects.
15 So I understand there's different categories of
16 damages he'd be seeking, but specifically I
17 understand that that figure in this document went
18 to that category of damages. The issue is, Your
19 Honor, when Your Honor heard the scheduling order,
20 when we were before you on the Motion to Compel
21 there was also a Scheduling Order that followed
22 within a week or two later when we picked the
23 dates, and paragraph two of that Scheduling Order
24 states that, number two, "Discovery shall be
25 completed by no later than April 13th, 2022",

1 roughly six weeks ago if my math is correct. "All
2 discovery requests shall be served in time for
3 responses to be served by this date." And it also
4 states that, "Depositions shall also be completed
5 by this deadline." And so after the entry of that
6 Order, Your Honor, I received on April 12, 2022,
7 and this is one day before the Court's deadline for
8 discovery, I received Defendant's, Mr. Merlo's,
9 Defendant's Supplemental Answers to Plaintiff's
10 First Set of Interrogatories and Responses to
11 Plaintiff's First Set of Requests for Production,
12 and in there, Your Honor, on the second from the
13 last page there's what appears to a supplement for
14 the Request for Production I made a long time ago.
15 And to give you some more background, I've been
16 propounding discovery right when this case began,
17 roughly in early 2020 I believe or maybe even
18 before that, but I believe one of those discovery
19 requests also called for a Motion to Compel. So in
20 the facts of this case there's been the need on
21 behalf of my client to seek redress from the Court
22 for discovery rule violations. The point being on
23 April 12th, 2022 he supplements it, supplements his
24 Request for Production consistent with the
25 Scheduling Order which is the day before the

1 deadline and he states, and says number 2, that's
2 incorrect, but the Request for Production is "all
3 exhibits, documents or materials Defendant intends
4 to use or introduce at trial or use in any way in a
5 hearing on this matter." There's a response, the
6 response is, "In addition to Merlo 0001 (and
7 there's a dash) -4851" (0001-4581), so that's a
8 universe of 4,581 documents, "See Merlo 4582
9 provided herewith". So that's a universe total
10 that he's represented that he's going to use at
11 trial 4,582 documents and he attaches the document,
12 the extra document. The problem with the stack of
13 documents he intended to get in and the documents
14 that are set before Your Honor, the series that
15 Your Honor just spoke about, those aren't Bates
16 stamped, those aren't Bates stamped, and the whole
17 problem is this is inconsistent, that stack is
18 inconsistent with the Scheduling Order and it's
19 inconsistent with his discovery responses, so the
20 whole point being if he wanted those documents to
21 come in he should've included those documents
22 specifically on this document. Now, that's my
23 first argument because it's not Bates stamped that
24 universe does not include the documents for which
25 he seeks entry today. Those documents are not

1 Bates stamped and, you know, the whole purpose of
2 discovery is to prevent ambush, things of that
3 nature, and I'll just quote a case for the record,
4 Scott versus Greenville Housing Authority, 353
5 South Carolina 639, quote, "The gist in gravamen of
6 the discovery rules mandates full and fair
7 disclosures within the trial from becoming a
8 guessing game or one of ambush for either party."
9 And, Your Honor, the clock shows almost 11:00, we
10 were here early, we've just got finished sorting
11 out those exhibits. That's my objection. This has
12 gone, it's gone on too long, it's prejudicial to my
13 client. I want an opportunity to finish trial
14 today because we agreed upon a three-day trial date
15 and for opposing side not to be ready and to try to
16 include documents that weren't disclosed and
17 pursuant to a supplemental discovery response that
18 was in response to a Scheduling Order which was,
19 which existed because I had to move the Court to
20 compel. Ironically, those same set of documents is
21 prejudicial to my client, so we would ask that
22 those documents be excluded, anything that doesn't
23 have a Bates stamp number on it be excluded.

24 BY THE COURT:

25 Mr. Johnson?

1 BY MR. JOHNSON:

2 Your Honor, some were scrivener's error. The
3 damages that we're discussing here have been in
4 this case for two plus years. Mr. Tarokh deposed
5 by client about it, he knew that the damages that
6 were being claimed were the damages that we're
7 talking about today. It was a scrivener's error, I
8 was simply trying to add the survey to ---

9 BY THE COURT:

10 What do you mean by "scrivener's error"? I mean
11 you sent him Bates stamp numbers 1 through 4500
12 plus this other thing and that was the additional
13 document?

14 BY MR. JOHNSON:

15 You're right, Your Honor. These were not Bates
16 stamped and so that's why it was a scrivener's
17 error I'll just say.

18 BY THE COURT:

19 Well, I don't think it's a scrivener's error I
20 mean.

21 BY MR. JOHNSON:

22 Well, it was a mistake on my part.

23 BY THE COURT:

24 Omission of some kind, but not a scrivener's error.

25 BY MR. JOHNSON:

1 Mistake on my part to not contemplate this other
2 set of documents. But, Your Honor, these have been
3 in the case the entire time and Mr. Tarokh knows --
4 -

5 BY THE COURT:

6 So you're saying that, well, he had copies of all
7 these documents that you're trying to put in now
8 and they had Bates stamp numbers on them, and the
9 ones you're trying to put in now don't have Bates
10 stamp numbers?

11 BY MR. JOHNSON:

12 That's correct, Your Honor, and that's why the
13 error in my relaying that information. But, Your
14 Honor, these documents, this set of document when
15 we laid out our first set of damages, these were
16 listed in there as what we're seeking. And, Your
17 Honor, that would be highly prejudicial. I mean
18 he's known about this, it's not like we haven't had
19 discovery about this. I mean just for the simple
20 fact that ---

21 BY THE COURT:

22 Don't you think it's a little insufficient when you
23 say, here are my documents, it's all the documents
24 that we've talked about in the whole case, all the
25 documents have been Bates stamped and that's going

1 to be my evidence?

2 BY MR. JOHNSON:

3 Your Honor, Mr. Tarokh, didn't Bates stamp, ---

4 BY THE COURT:

5 That's not a very specific answer.

6 BY MR. JOHNSON:

7 --- he did not Bates stamp a single document in
8 this entire case.

9 BY THE COURT:

10 Do what now?

11 BY MR. JOHNSON:

12 Mr. Tarokh did not Bates stamp a single document in
13 this entire case. I'm the only party who Bates
14 stamped anything.

15 BY THE COURT:

16 So?

17 BY MR. JOHNSON:

18 Well, I understand, Your Honor, but, you know, ---

19 BY THE COURT:

20 I'm just saying that, you know, when you're dealing
21 with that volume of documents then it's misleading
22 and unfair to respond to what are you going to use
23 at the trial? Oh, I'm going to use any one of
24 these 4500 documents that I will choose to use.
25 That's not responsive to the question. The

1 question is what are you going to use at trial?
2 Now I mean it doesn't mean Bates stamp 0 through
3 4500, it means Bates stamp 20, Bates stamp 47,
4 Bates stamp 100, that would be an efficient answer
5 or an appropriate answer. But I mean just to give
6 this blanket, that's like saying what documents are
7 you going to introduce at trial? I'm going to
8 introduce all, any of the documents that we've had
9 during discovery. That doesn't respond to the
10 question.

11 BY MR. JOHNSON:

12 Your Honor, I believe I got the same response to
13 discovery.

14 BY THE COURT:

15 I don't know, but that's not what we're talking
16 about right now. It's to your response.

17 BY MR. JOHNSON:

18 Your Honor, obviously in trial it's subject to, you
19 know, bringing in documents as need be.

20 BY THE COURT:

21 No, it's not. The trial is subject to what's been
22 produced during discovery. If you don't produce it
23 during discovery, you don't use it in trial because
24 it's not fair to the other side and it creates a
25 surprise ambush. That's why we have discovery

1 rules, that's the whole purpose.

2 BY MR. JOHNSON:

3 Your Honor, Your Honor, none of this -- all of this
4 is in discovery.

5 BY THE COURT:

6 Well, it's in there somewhere is like a needle in a
7 haystack. They're asking which documents you're
8 going to use at trial and you say, well, I'm going
9 to use some of the ones that we talked about, you
10 know, I'm not going to tell which ones, I'm just
11 going to tell it's this many, I mean it's among
12 this numerous worldwide universe of documents, I'm
13 going to pick and choose what I want to use at
14 trial. That is totally unethical and it's totally
15 against the spirit and meaning of discovery. I
16 mean the whole purpose of discovery as you well
17 know is to prevent ambush trials, and you're just
18 taking that process and convoluting it, but it's
19 the same thing by saying, you know, I'm going to
20 use some of it, I'm going to pick and choose from
21 among 4500 documents what I'm going to use at
22 trial. That doesn't tell him anything.

23 BY MR. JOHNSON:

24 Your Honor, I was simply trying to add the new
25 document, that one singular document to the charge

1 documents. If I hadn't updated it, it would have
2 been back to my initial response ---

3 BY THE COURT:

4 Well, what was the initial response?

5 BY MR. JOHNSON:

6 My initial response was ---

7 BY THE COURT:

8 Did it say 0 through 4500?

9 BY MR. JOHNSON:

10 It was, Your Honor, but that was three years ago.

11 How would we know what's going to be used at trial?

12 Mr. Tarokh didn't know when he responded to that
13 either.

14 BY THE COURT:

15 Well, that's three, you've asked the question and
16 then you supplement it before trial, and once you
17 get to the point where you do know, then you
18 supplement and you say here's the ones I'm actually
19 going to use right here, but you didn't do that.

20 BY MR. JOHNSON:

21 Your Honor, at trial we have the liberty to use ---

22 BY THE COURT:

23 No, you don't have the liberty to use everything in
24 the world.

25 BY MR. JOHNSON:

1 I mean I'll go through, I mean we can put in all
2 4500 documents if I, on this ---

3 BY THE COURT:

4 No, you can't.

5 BY MR. JOHNSON:

6 But we can, Your Honor.

7 BY THE COURT:

8 No, you can't.

9 BY MR. JOHNSON:

10 I understand ---

11 BY THE COURT:

12 The rules clearly say that, you know, evidence that
13 may be relevant can be excluded if it's delay, if
14 it's unnecessary, undue, unfair and so on, and
15 that's Rule 403 of the Evidence Rules.

16 BY MR. JOHNSON:

17 I understand it might not be admissible but I mean
18 I ---

19 BY THE COURT:

20 Well, that isn't what you just got through saying,
21 that you could admit anything you wanted to.

22 BY MR. JOHNSON:

23 That's a poor choice of words, Your Honor. I can
24 introduce ---

25 BY THE COURT:

1 You can try, but I mean it's subject to objection.

2 BY MR. JOHNSON:

3 Your Honor, the simple fact is this would be highly
4 prejudicial to my client. These documents were
5 produced to ---

6 BY THE COURT:

7 Well, I think it's highly un-prejudicial to the
8 other side when you do it this way, and you well
9 know that and the problem I have with you, Mr.
10 Johnson, is that there's been issues with your
11 responses to discovery from day one in this case
12 for one reason or another and I mean I know I had
13 one hearing on Motion to Compel, and I think maybe
14 Judge Sprouse or somebody else had another hearing
15 before that, both dealing with your failure to
16 abide by the discovery rules.

17 BY MR. JOHNSON:

18 Your Honor, I've provided more discovery, more
19 thorough discovery in this case than I have in any
20 case in my entire career.

21 BY THE COURT:

22 Well, that doesn't speak too well for your prior
23 experience.

24 BY MR. JOHNSON:

25 I mean this is a massive amount of documents.

1 BY THE COURT:

2 Well, it's a massive amount of documents if you
3 make it a massive amount of documents. But the
4 whole purpose of the trial is to isolate in on what
5 is relevant and what is necessary to prove your
6 case, and just throwing everything but the kitchen
7 sink up against the wall isn't that.

8 BY MR. JOHNSON:

9 Your Honor, ---

10 BY THE COURT:

11 But I mean I'm just telling you right now, I see so
12 far an effort to delay and drag out the trial by
13 you, and I mean I know you asked for a continuance
14 a week or two or ago because, for whatever reason,
15 you couldn't get a witness here or something and,
16 you know, it's one thing after another. The case
17 was filed in 2019, that's three years ago. It's
18 long been past time to get this case resolved.

19 BY MR. JOHNSON:

20 Your Honor, the witness at his deposition testified
21 to having schizophrenia and that was the basis for
22 that motion. Obviously, I mean per your Order, we
23 rescheduled, I mean we took deposition ---

24 BY THE COURT:

25 Well, you know, I can't wave a magic wand and cure

1 his schizophrenia, so I mean ---

2 BY MR. JOHNSON:

3 No, I understand that, Your Honor. I'm not here
4 making any excuses ---

5 BY THE COURT:

6 No, I'm just saying, that's what I see so far in
7 the history of this case is that you've drug your
8 feet and ignored a lot of things and failed to
9 respond timely and so on and so forth and that's
10 simply not the fair way to do it in dealing with
11 the other side.

12 BY MR. JOHNSON:

13 Your Honor, he's had these documents. When did you
14 say you had them?

15 BY MR. TAROKH:

16 Since, I remember it was December 9th, 2021, the
17 date of the hearing, and there was an email at 6:31
18 a.m. and I remember I was talking about a pizza
19 receipt that was in there so I ---

20 BY THE COURT:

21 All right, all right. Here's the point, I mean you
22 knew what the claims were and he's claiming all
23 these defects and he had to spend money to fix all
24 these things. Now, you know, I'm going to let him
25 go ahead and put in the selected portions of these

1 things that you had. Now, he might not have
2 identified them by number, but you had them and you
3 knew about it so you knew this was coming; and
4 you're going to have every opportunity to cross
5 examine him and it will be subject to your
6 objection, you know, it will be admitted over your
7 objections.

8 BY MR. TAROKH:

9 Your Honor, if I may just for purposes of the
10 record and I'll be brief and I'll go to the second
11 part of my second objection.

12 BY THE COURT:

13 All right.

14 BY MR. TAROKH:

15 Thank you, Judge.

16 BY THE COURT:

17 We're wasting a lot of time, but I mean go ahead.

18 BY MR. TAROKH:

19 I understand, Your Honor. But it's not my fault
20 and it's not my client's fault. We've been here,
21 we've been early, we've been prepared the entire
22 time and just I'll be very quick. On February 14th,
23 2020 Mr. Merlo responds to my First Set of
24 Interrogatories. And these are the Interrogatories
25 and I'll show you the context in these documents,

1 Your Honor. "Interrogatory Number 4. Set forth an
2 itemized statement of all damages claimed to have
3 been sustained by the Defendant." Mr. Merlo
4 responds and I believe these were under oath, these
5 were under oath, February 14th, 2020 he responds,
6 "The Defendant is still investigating all of his
7 damages, but currently his damages are" and there
8 are a couple of categories. Now, as to these
9 documents, this is relevant to this allegation of
10 remediation and defects, they're talking about,
11 invoices, receipts, things that they are claiming
12 that they remedy my client's work, remediation of
13 defects \$150,000. So as of February 14th, 2020 his
14 remediation of defects was \$150,000 but he also
15 says "currently". So currently he's saying his
16 damages in February, as of Valentine's Day of 2020,
17 \$150,000. That was verified under oath. Then he
18 filed a Supplemental Answer to the Plaintiff's
19 First Set of Interrogatories and as of the date,
20 May 25th, 2020, it specifically is directed to
21 supplementing 1, that same interrogatory they have
22 already put in before, "Set forth an itemized
23 statement of all damages the Plaintiff has
24 sustained by this Defendant." Response, and I'm
25 going into the different category, I'm going over

1 to remediation of defects and again this is
2 relevant to these documents, \$215,523.20. So by
3 that, that's not my gripe. My gripe is the
4 document that was admitted yesterday is where --
5 and I don't want to object to the Defendant's
6 Exhibit 36, this is the same one that I deposed him
7 on, that matches up to \$215,523.20. So as of
8 5/25/20 his damages are \$215,523.20. Four days
9 later that's not the same amount for the same
10 interrogatory. The same thing, the Defendant
11 supplements its damages and its current its damages
12 as of remediation and defects \$215,523.20, and it
13 looks like that was under oath as well. That was
14 it, right? So that, so if he never supplemented
15 that interrogatory after that, he never changed his
16 interrogatory that was made under oath, to update
17 it; and that's what he's trying to do today is try
18 to prove, you know, I don't know how much he's
19 claiming that's going to over and above that.

20 BY THE COURT:

21 Okay. So your solution to all that is cross
22 examination and you can certainly bring all that up
23 and include it, you know, ask questions of him, put
24 it in the record and, you know, it's a perfectly
25 legitimate question to ask. But I mean he said

1 initially my damages for remediation is 150
2 currently, and then later on he said, no, it's 215
3 so that's, that's what he went with.

4 BY MR. TAROKH:

5 Well, Your Honor, ---

6 BY THE COURT:

7 And, you know, whatever all this adds up to, maybe
8 it's more than 215; if it is, you've got a
9 legitimate question.

10 BY MR. TAROKH:

11 Well, my issue, Your Honor, just for purposes of
12 the record and Your Honor touched upon it, in Rule
13 26 I believe there's a continuing duty to
14 supplement discovery and that's as to the
15 Interrogatories and Request for Documents, he
16 didn't do that. So my argument is, Your Honor, the
17 documents, well, first we want them excluded and,
18 Your Honor, they don't have exclude all of them.
19 We want them, at least the ones that are dated
20 after 5/25/20 because he should have supplemented
21 that. So any, any document that's after, excuse me
22 5/29/20 and he didn't supplement should be excluded
23 because obviously with that amount it was
24 impossible for that amount to be added to that
25 \$215,000 figure. And then why is it impossible;

1 because how in the world can he now claim that
2 these documents support that \$215,000 figure when
3 those documents came after, they manifested after
4 that 5/29/20 date? Therefore, Your Honor, we would
5 ask Your Honor if you aren't going to exclude all
6 of them, to at least exclude the ones that were
7 after 5/29/20.

8 BY THE COURT:

9 All right. Mr. Johnson, what you got to say about
10 that?

11 BY MR. JOHNSON:

12 Your Honor, I think the documents we're going to
13 introduce are going to be less than the 216,000
14 that ---

15 BY THE COURT:

16 Well, are some of them after 5/29/20?

17 BY MR. TAROKH:

18 I'll represent to the Court when I was helping
19 counsel collate and organize documents so we can
20 hurry up and move on, and it appears, yes, Your
21 Honor, that there were several documents that came
22 after 5/29/20.

23 BY THE COURT:

24 All right.

25 BY MR. TAROKH:

1 Multiple.

2 BY THE COURT:

3 I think he's got a legitimate point on that, Mr.
4 Johnson. I mean if it came after 5/29/20 and you
5 haven't supplemented your responses to reflect
6 that, then I think those should not come in. So
7 I'll sustain his objection as to those that are
8 dated after 5/29/20. The others, subject to
9 authentication at some point we're going to let
10 them come in over the objection and will be subject
11 to your objection, of course, we'll put it in the
12 record. Now, I understand you also objected
13 yesterday on the basis of it's not in compliance
14 with the Business Records Act or something. Did
15 you want to state that, too?

16 BY MR. TAROKH:

17 Yes, Your Honor, and just to clarify for the
18 record, it's hearsay. So under Rule 8036 there's a
19 business records predicate, at or near the time of
20 the event by someone with knowledge or anyone of
21 that nature, obviously by a person. He's using,
22 he's using other people's documents and so my
23 objection as to those documents were it doesn't
24 fill the hearsay business records predicate.
25 Another way to get that in, Your Honor, is under I

1 think -- whatever statute I cited, the Business
2 Records Certification Statute which says, my
3 summary, in lieu of a testifying witness, you can
4 have a certification which is basically a document
5 which includes the 8036, you know, the predicate
6 for the business ---

7 BY THE COURT:

8 Okay. I mean I wanted to get your objection and I
9 assume that would apply to all of these you're
10 talking about in this batch?

11 BY MR. TAROKH:

12 Correct, Your Honor.

13 BY THE COURT:

14 I am going to overrule that part of it because I
15 think the Business Record Act deals with when
16 somebody has a record that he doesn't have any
17 direct knowledge of and, you know, he is a
18 custodian of the records for the company and he
19 says, you know, the company keeps this sort of
20 record in the normal course of business and dah,
21 dah, dah, and therefore this record should be
22 admitted, and it would be. But in this case so far
23 the testimony has been on each one that he had
24 personal knowledge of, that he had knowledge of the
25 contract or the dealings with these people and this

1 represented a bill or an invoice that he received
2 and he paid in one way or the another, and I mean I
3 think that's sufficient authentication to get it
4 into the record. Now, what I means after that, we
5 don't know, okay?

6 BY MR. TAROKH:

7 I understand, Your Honor.

8 BY THE COURT:

9 All right. So now, Mr. Johnson, I want you to
10 start with Number 50 and I want to go through each
11 one and very briefly let Mr. Merlo identify what it
12 is and the date and any necessary authentication as
13 far as his personal knowledge of it and so on.

14 TESTIMONY OF CHRISTOPHER J. MERLO CONTINUES

15 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

16 Q. Thank you, Your Honor, may it please the Court?

17 Mr. Merlo, if you will state the vendor, the date
18 and the purpose and the amount of that invoice?

19 A. Yes, this is dated November 5th, 2019 and this is
20 from Glass Doctor and this was for the mirrors that
21 were not provided by IBI so we had to go behind and
22 purchase all the mirrors.

23 Q. Okay. And do you have personal knowledge of the
24 payment of that invoice?

25 A. Yes, I do. The total says \$2,755.

1 Q. Okay. We'd offer that as Plaintiff's Exhibit 50,
2 Your Honor.

3 BY THE COURT:

4 Well, you don't need to do that on each one.

5 BY MR. JOHNSON:

6 Okay.

7 BY THE COURT:

8 They've already been offered in effect, so just
9 through them and get the same information, go to
10 Exhibit Number 51 and get the same information and
11 we'll admit them all at that time.

12 Q. So vendor, date, purpose and amount?

13 A. The vendor is Lowe's, the date is January 23rd, 2019
14 and I believe this was for the bathtub.

15 Q. Okay. And the amount?

16 A. The total was \$2,052.50.

17 Q. Okay. Your Honor, 52 was a composite exhibit with
18 multiple invoices and some of them extend beyond
19 your timeline so I'm going to break it up into each
20 one. Exhibit 52?

21 A. Yeah, you know, we kept very accurate records and
22 tried to detail all this stuff, so these are just
23 every Lowe's receipt basically that was kept. This
24 is for Lowe's, 170.52, dated February 2nd of '20.
25 It's all coded and it's hard for me to tell what it

1 is really.

2 Q. But that was for the house?

3 A. Yes, every Lowe's receipt which you have. I have
4 an original copy sitting on my desk right there.
5 This here is ---

6 BY THE COURT:

7 Is this still part of 52?

8 BY MR. JOHNSON:

9 No, Your Honor. I'm going to move all the Lowe's
10 receipts separately just so ---

11 BY THE COURT:

12 Well, I mean is this part of Exhibit 52?

13 BY MR. JOHNSON:

14 No, this is part of 53, Your Honor.

15 BY THE COURT:

16 This is 53?

17 BY MR. TAROKH:

18 Your Honor, just to clarify, I thought we were on
19 52 and it was Lowe's receipt but he didn't really
20 explain that.

21 BY THE COURT:

22 He said the Lowe's receipt, February 2, 2020 for
23 \$170.52 but he couldn't tell us what it was for.

24 BY MR. TAROKH:

25 And, Your Honor, I don't want to stall this. But

1 obviously in addition to those other objection, I'd
2 object on authentication because he doesn't know
3 what it's for.

4 BY THE COURT:

5 I agree. That's not admitted. All right. Go to
6 53.

7 A. Fort Hill Natural Gas \$350 dated April 9th, 2020.

8 BY THE COURT:

9 What was that for?

10 Q. What was the purpose of that?

11 A. I believe that was to hook up the gas meter I
12 guess.

13 BY MR. TAROKH:

14 Objection on authentication. He's got to have that
15 personal knowledge, not just "I believe".

16 BY THE COURT:

17 I agree. I mean we're not guessing here. You need
18 to definitively know what it was for.

19 A. Well, I know the gas was not hooked up at the time
20 that we moved in the house.

21 BY THE COURT:

22 That's going to be admitted.

23 A. Number Exhibit 54, Pittman Heating and Air, \$964,
24 dated April 20, 2020. This was for moving the air
25 handler that was positioned in the wrong location.

1 It would not pass code.

2 Q. Exhibit 55 ---

3 BY THE COURT:

4 Did you pay that bill?

5 A. Yes, sir.

6 BY THE COURT:

7 You need to get your authentication in, Mr. Merlo.

8 A. Yes, sir, I did pay that bill.

9 BY THE COURT:

10 All right. We're moving to 55.

11 Q. Vendor, amount, date and purpose?

12 A. It says Sound Scapes and this was for rewiring.

13 I'm not sure this will apply. Yeah, I'm not sure
14 on this one.

15 BY MR. TAROKH:

16 Objection, authentication.

17 BY THE COURT:

18 I agree, it's not admitted.

19 Q. 56?

20 A. Smucker's Mechanical, April 16th, 2020, \$150,
21 install and extend gas line and that was for the
22 exterior porch. I did pay that, Your Honor.

23 Q. Skipping 57 and 58 per your earlier ruling, Your
24 Honor, skipping 59. Was is 60:

25 A. This is from Lamps Plus, \$106.95 dated ---

1 BY THE COURT:

2 Lance, what is that?

3 A. Lamps Plus.

4 BY THE COURT:

5 Lamps Plus?

6 A. Yes, sir, this is for lighting and the date looks
7 to be November 16, 2019 and I did pay this.

8 Q. Number 61?

9 A. This is from Greenville Cabinets, \$150, dated
10 November 6th, 2019. These folks came out to the
11 property to take a look at the cabinet doors that
12 were missing and that was what the charges were.

13 BY THE COURT:

14 What was that amount?

15 A. \$150.

16 Q. And that's a paid invoice?

17 A. Yes, sir, I paid that invoice.

18 Q. And Exhibit 62?

19 BY THE COURT:

20 They came out and looked at the cabinets?

21 A. Yes, sir, that was their fee to come and look to
22 see if they could order the cabinet doors that were
23 missing for us, maybe 6, 10, 12 doors missing.
24 This next invoice, Exhibit 62, is from WAV's
25 Electrical Services, the date is April 23rd of 2020,

1 \$825, repair electrical.

2 BY MR. TAROKH:

3 Your Honor, objection on authentication. We don't
4 know what it was for?

5 BY THE COURT:

6 He said to repair electrical.

7 BY MR. TAROKH:

8 Oh, sorry. Withdraw the objection.

9 BY THE COURT:

10 What about payment?

11 A. Yes, sir, I did pay that invoice.

12 BY THE COURT:

13 All right.

14 Q. And is marked on the document as paid?

15 A. Yes, it is, it was my Bank of America ending in
16 317, and I apologize, I read the number before tax,
17 it looks like 825, \$85 and maybe \$910 on the
18 invoice.

19 BY MR. TAROKH:

20 Objection on authentication. He's saying "maybe",
21 unless he has personal knowledge that shouldn't
22 come in.

23 BY THE COURT:

24 Well, what does the thing say?

25 A. It says \$910.

1 BY THE COURT:

2 Well, if that's what the document says, that's what
3 it says.

4 A. The next invoice is More Space Place.

5 BY THE COURT:

6 Is this 63?

7 A. Yes, Your Honor.

8 BY THE COURT:

9 All right. What's the name on it?

10 A. More Space Place.

11 BY THE COURT:

12 All right. Date?

13 A. The date is, let me find it, April 29th of 2020.

14 BY THE COURT:

15 What's it for?

16 A. This is for closet cabinetry.

17 BY THE COURT:

18 The amount?

19 A. It says \$878.

20 BY THE COURT:

21 All right. 64?

22 A. Highland Cabinetry, the date is, let's see, the
23 total is \$1,533.14 and it looks like 4/22/2020.

24 BY MR. TAROKH:

25 Your Honor, I may have missed it, but I didn't hear

1 the witness testify whether he paid it.

2 A. I did pay it.

3 BY THE COURT:

4 I didn't hear him testify what it was for.

5 A. I did pay it and it was to repair the cabinetry
6 that was left by IBI.

7 BY MR. TAROKH:

8 And, Your Honor, the exhibit before, Exhibit 63, I
9 don't believe he testified what it was for either.

10 BY THE COURT:

11 He said closet cabinets.

12 A. Correct.

13 BY THE COURT:

14 Now, Defendant's Exhibit 65?

15 BY MR. JOHNSON:

16 That was 65, Your Honor.

17 BY THE COURT:

18 No, that was 64.

19 BY MR. JOHNSON:

20 Oh, 65 was skipped, Your Honor, per your earlier
21 ruling.

22 BY THE COURT:

23 So that's out of date?

24 BY MR. JOHNSON:

25 65, the date? There's three different dates, Your

1 Honor. July 8th, July 9th, July 24th.

2 BY THE COURT:

3 So that's after May?

4 BY MR. JOHNSON:

5 Yes, sir.

6 BY THE COURT:

7 All right, so that's not admitted.

8 BY MR. JOHNSON:

9 Skipping 66 and marking 67.

10 (DEFENDANT'S EXHIBIT 67 MARKED FOR IDENTIFICATION)

11 BY THE COURT:

12 Well, I had 65 is all we had?

13 BY MR. JOHNSON:

14 Your Honor, I broke up Exhibit 52 with all the
15 Lowe's ones since some of them didn't comply with
16 your ruling.

17 BY THE COURT:

18 Well, how many more have you got?

19 BY MR. JOHNSON:

20 Maybe 10 more real quick.

21 A. You said 67 is Lowe's.

22 BY THE COURT:

23 66 please?

24 BY MR. JOHNSON:

25 We skipped 66. 66 was marked, Your Honor.

1 BY THE COURT:

2 65 is the one you said a minute ago y'all couldn't
3 find a date.

4 BY MR. JOHNSON:

5 Yeah, but we marked 66, too, and we're not using it
6 per the witness.

7 BY THE COURT:

8 So what is 66?

9 BY MR. JOHNSON:

10 66 was a Lowe's invoice.

11 A. I couldn't tell what it was for so I just said
12 don't use it.

13 BY THE COURT:

14 Oh, okay, never mind. Defendant's Exhibit 66 is
15 not admitted.

16 A. 67, Lowes, April 4, 2020, \$377.02, for landscape.

17 BY THE COURT:

18 That's April what?

19 A. April the 4th 2020.

20 BY THE COURT:

21 Landscaping?

22 A. Yes, sir, and I did pay this.

23 BY THE COURT:

24 Okay.

25 Q. Okay. And this will be 68.

1 (DEFENDANT'S EXHIBIT 68 MARKED FOR IDENTIFICATION)

2 A. Also a Lowe's receipt dated April 9th, 2020 for
3 \$310.09 and this is one where he had to correct the
4 deck and I did pay this.

5 Q. I hand you what's going to be marked as 69.

6 (DEFENDANT'S EXHIBIT 69 MARKED FOR IDENTIFICATION)

7 A. 69 looks like two Lowe's receipts, one was dated
8 April 19th 2020 and that one is for \$64.04 and one
9 was dated March 6th 2020 and that one was for
10 \$55.62.

11 Q. The purpose?

12 A. There's multiples items on here, it looks like wood
13 repair products.

14 BY MR. TAROKH:

15 Objection, lack of personal knowledge for
16 authentication.

17 BY THE COURT:

18 I agree, it won't be admitted.

19 (DEFENDANT'S EXHIBIT 70 MARKED FOR IDENTIFICATION)

20 Q. I'm going to hand you what is ID'd as 70.

21 A. Also a Lowe's receipt dated May 19th 2020 for \$79.80
22 for concrete materials.

23 BY THE COURT:

24 And you paid that?

25 A. Yes, sir, I did pay that.

1 Q. Are all of those Lowe's receipts credit card
2 receipts from checkout?

3 A. Yes, they are.

4 (DEFENDANT'S EXHIBIT 71 MARKED FOR IDENTIFICATION)

5 A. Let's see, Lowe's receipt dated May 20, '20 ---

6 BY THE COURT:

7 Exhibit 71?

8 Q. Yes, Your Honor.

9 BY THE COURT:

10 All right. Go ahead.

11 A. Lowe's dated May 20th 2020, \$20.12 and this was a
12 box fan.

13 BY THE COURT:

14 A box fan?

15 A. Yes, sir, to dry out the project.

16 (DEFENDANT'S EXHIBIT 72 MARKED FOR IDENTIFICATION)

17 Q. Number 72?

18 A. Let's see, this is a Lowe's receipt dated April 1st,
19 2020 for \$42.34, decking materials.

20 BY MR. TAROKH:

21 So I don't believe we heard he paid for that.

22 BY THE COURT:

23 What?

24 BY MR. TAROKH:

25 I don't believe he testified whether he paid that

1 or not.

2 BY THE COURT:

3 He said a minute ago all these Lowe's were paid for
4 by a credit card.

5 (DEFENDANT'S EXHIBIT 73 MARKED FOR IDENTIFICATION)

6 A. This is also a Lowe's receipt dated May 3rd 2020 for
7 \$91.98, it looks like concrete.

8 BY MR. TAROKH:

9 Objection, "looks like" is different from having
10 personal knowledge.

11 BY THE COURT:

12 I agree.

13 BY MR. JOHNSON:

14 All right. We will conclude with those, Your
15 Honor.

16 BY THE COURT:

17 All right. So we've got that batch done. All
18 right, Mr. Tarokh made his objections to all those
19 that are remaining after the ones that were
20 eliminated and not being admitted, so I'm going to
21 admit as evidence 50, 51, 54, 60, 61, 62, 63, 64,
22 67, 68, 70, 71 and 72 over the objections of the
23 Plaintiff's attorney. All right, admitted.

24 (DEFENDANT'S EXHIBITS 50, 51, 54, 60, 61, 62, 63, 64,
25 67, 68, 70, 71 & 72 ADMITTED INTO EVIDENCE)

1 BY THE COURT:

2 All right. What's next?

3 Q. Mr. Merlo, did you suffer any other damages related
4 to your contract termination of IBI?

5 A. Yes, we did.

6 Q. What were those damages?

7 A. Outside of the costs that we paid to Joy
8 Construction and the cash that we spent, we also
9 had some supplemental damages. At the time we
10 terminated IBI, they filed a mechanic's lien and
11 once the filed the lien the funding was stopped at
12 GrandSouth Bank, and so we had to devise a plan to
13 pay the new contractor.

14 Q. Okay. So how did you come up with the capital to
15 finish your project?

16 A. We had a house that was a rental house in Myrtle
17 Beach and that project was immediately put on the
18 market and sold.

19 Q. And was that house located at ---

20 BY MR. TAROKH:

21 Objection, leading.

22 Q. Where was that house located?

23 A. 2416 Pointe Marsh Lane.

24 Q. Okay. And how much rental income did you get per
25 year for that?

1 A. That house generated about \$50,000 in annual
2 income.

3 Q. And how much did you sell it for?

4 A. Roughly 350,000.

5 Q. Are you seeking damages for respective rents that
6 you lost out on?

7 A. Yes, we are.

8 Q. And what, what are those damages?

9 A. The damages from?

10 Q. The prospective rents?

11 A. Okay. You know, in my business when he buy
12 properties we like to hold them indefinitely, so
13 this house would have been held for 20, 30 years,
14 and I approximate that the rental income on that
15 would have went up over that time.

16 BY MR. TAROKH:

17 Objection, all speculative.

18 BY THE COURT:

19 Agreed.

20 BY MR. TAROKH:

21 So we would ask the Court to strike that testimony.

22 BY THE COURT:

23 Well, I'm going to go ahead and let the testimony
24 stay in up to that point, but as far as far
25 speculating on how many years and all that sort of

1 thing, that's total speculation. I think it's very
2 remote and commonly not recoverable anyway, but
3 we'll leave it at that.

4 Q. Mr. Merlo, did you suffer any other damages related
5 to the delay in getting your home?

6 A. Yes, I did. We ended up taking an additional 18
7 months, so I had to cover the debt service to
8 GrandSouth Bank in addition to my residence in
9 Oakmont.

10 Q. Okay. I'm going to hand you a document to be
11 marked for identification as Number 74.

12 (DEFENDANT'S EXHIBIT 74 MARKED FOR IDENTIFICATION)

13 Q. Is that your mortgage statement?

14 A. Yes, it is.

15 BY MR. TAROKH:

16 Object, Your Honor. It doesn't have the Bates
17 stamp number.

18 BY MR. JOHNSON:

19 It was produced in the Fourth Set of discovery,
20 Your Honor.

21 BY THE COURT:

22 All right. Your objection is on the record and I'm
23 going to go ahead and allow him to proceed and note
24 your objection. Again, I think this is probably
25 not recoverable.

1 Q. How much was your monthly?

2 A. \$1,589, sir, that was just the principal and
3 interest payment, that didn't include a lot of the
4 other payments that includes in the insurance,
5 upkeep, things of that nature.

6 BY THE COURT:

7 Now, what was that figure about, what was that for,
8 1,000 and?

9 A. \$1,589 is for the loan payment on the house that I
10 was delayed in moving out of because my new house
11 was not completed.

12 BY THE COURT:

13 So that's the monthly payment?

14 A. Yes, sir.

15 BY THE COURT:

16 For 18 months on your debt?

17 A. Yes, Your Honor.

18 BY THE COURT:

19 Did you subsequently sell the Oakmont house?

20 A. 30 months after we started building with IBI we
21 did, yes, Your Honor.

22 BY THE COURT:

23 I don't see how you're going to get that in.

24 Q. Mr. Merlo, when you terminated IBI what did you do
25 next as far as the construction?

1 A. Once IBI was terminated I found Joy Construction.

2 BY THE COURT:

3 Now, we covered this yesterday I believe.

4 BY MR. TAROKH:

5 We did, Your Honor.

6 Q. We did, Your Honor. What was your arrangement with
7 Joy Construction?

8 A. Joy Construction was hired to come in and correct
9 the work that IBI did not correct.

10 BY MR. TAROKH:

11 Objection, we've gone through this.

12 Q. Was it on a cost-plus basis?

13 BY MR. TAROKH:

14 Your Honor, objection, we've gone through this.

15 BY THE COURT:

16 Well, I agree, you're getting repetitive, Mr.
17 Johnson.

18 BY MR. JOHNSON:

19 Your Honor, we didn't cover the nature of the
20 contract.

21 BY THE COURT:

22 Well, I'm going to let you cover it, but let's move
23 on.

24 A. It was flat rate pricing.

25 Q. So we've gone through some of this so I'm going to

1 make it brief. Tell us about ---

2 BY THE COURT:

3 Wait a minute, let me write that down, Mr. Johnson
4 is going to be brief. All right, the clock is
5 running.

6 Q. The clock is running, yes, sir. So, Mr. Merlo,
7 tell us about any, tell us about under the sunroom
8 portion ---

9 BY MR. TAROKH:

10 Objection, leading.

11 BY THE COURT:

12 Well, he's asking a question, I don't think that's
13 leading. He said tell him about the sunroom; tell
14 me about it.

15 A. Well, we knew that that was a problem point of the
16 house because there was water coming in on the
17 bottom side, water coming in on the top side, and
18 so I asked Joy Construction to give that priority.

19 Q. Okay.

20 A. Of course, they did.

21 Q. And was that problem throughout the project?

22 A. Yes, it was.

23 Q. Okay. How many times did it leak to your
24 knowledge?

25 A. Just when it rained.

1 Q. Just when it rained. And was that during
2 construction and during finish work?

3 A. Yes, the entire time.

4 Q. Okay. I'm going to show you a picture of this
5 Bates stamp Merlo 1726.

6 BY MR. TAROKH:

7 Your Honor, he hasn't introduced those pictures.

8 BY THE COURT:

9 Now, he's starting to get to a series of pictures?

10 BY MR. TAROKH:

11 It looks like it, Your Honor, and that's not ---

12 BY THE COURT:

13 And if we're going to do that, we're going to do it
14 the same way we just got through doing, we're going
15 to mark them all and then go through them.

16 BY MR. TAROKH:

17 I agree, Your Honor, that was my understanding,
18 too.

19 BY THE COURT:

20 We're not going to sit there all day and talk about
21 pictures. Now, we had a conversation before we
22 came in here today ---

23 BY MR. JOHNSON:

24 We did, Your Honor. I ---

25 BY THE COURT:

1 --- about narrowing the scope of these exhibits
2 down to what is germane to the issue ---

3 BY MR. JOHNSON:

4 That's, that's ---

5 BY THE COURT:

6 --- and not being repetitive and redundant.

7 BY MR. JOHNSON:

8 That's what I was trying to do, Your Honor.

9 BY THE COURT:

10 And so when I see a stack sitting there that
11 doesn't fall into that category ---

12 BY MR. JOHNSON:

13 No, sir. I'll ---

14 BY THE COURT:

15 --- and that doesn't fall into the category of
16 brief by any stretch of my imagination.

17 BY MR. JOHNSON:

18 That is why I'm trying not to ---

19 BY THE COURT:

20 So get the pictures that you absolutely have to
21 have in here, and get them numbered, and then we'll
22 let Mr. Tarokh look at them, and then you'll go
23 through them.

24 BY MR. JOHNSON:

25 May I suggest that we break for lunch?

1 BY THE COURT:

2 No, we're not going to break for lunch. Y'all get
3 that stuff done and we'll take a break while y'all
4 do that, but we ain't breaking for lunch. We may
5 not break for lunch at all today.

6 BY MR. TAROKH:

7 Thank you, Judge.

8 BY THE COURT:

9 I find that lawyers work a lot better when they're
10 hungry. They seem to go faster especially about
11 4:00.

12 BY MR. JOHNSON:

13 Well, I made it without lunch yesterday, Your
14 Honor, so I'll make it fine.

15 BY THE COURT:

16 All right, we'll take about a two-minute break.

17 (OFF THE RECORD)

18 (BACK ON RECORD AT 12:20 P.M.)

19 BY THE COURT:

20 All right, back on the record. Mr. Johnson, I
21 believe you were about to present a stack of
22 photographs. I believe those photographs, do you
23 have a count on how many it is?

24 BY MR. JOHNSON:

25 44, Your Honor.

1 (DEFENDANT'S EXHIBIT 75 MARKED FOR IDENTIFICATION)

2 BY THE COURT:

3 All right. So you've got 44 photographs and each
4 has a Bates stamp number on it so they will be
5 lumped together as Defendant's Exhibit 74, is that
6 correct?

7 BY COURT REPORTER:

8 I've got 75.

9 BY THE COURT:

10 What was 74? I don't have a 74.

11 BY COURT REPORTER:

12 74 was the mortgage statement from Wells Fargo
13 Bank.

14 BY THE COURT:

15 I don't think that was ever introduced into
16 evidence.

17 BY MR. JOHNSON:

18 Okay, I thought we offered it.

19 BY COURT REPORTER:

20 Okay. So it was not admitted.

21 BY THE COURT:

22 Okay. So are you going to put that in or not?

23 BY MR. JOHNSON:

24 Sure, Your Honor. Any objection?

25 BY THE COURT:

1 Now, hold on.

2 BY MR. TAROKH:

3 Your Honor, we'd object to it, hearsay.

4 BY THE COURT:

5 Well, we don't know what it is yet, he hasn't said
6 anything.

7 BY MR. TAROKH:

8 I'm sorry, Your Honor. As to 74 I thought was the
9 mortgage statement.

10 BY THE COURT:

11 Yeah, that's what he said but it hasn't been
12 admitted, it hasn't been identified. If it has
13 been, I don't know if it has. But he can identify
14 his own mortgage statement, can't he?

15 BY MR. JOHNSON:

16 I thought he did identify it, Your Honor, but ---

17 BY THE COURT:

18 Okay. Well, tell me what it is, the date of it and
19 we'll just get it in and move on then.

20 A. Yes, Your Honor, this is August 1st 2019. This is
21 my mortgage statement from my previous residence,
22 the total amount is \$1,589.

23 BY THE COURT:

24 That's the Oakdale property?

25 A. 500 Oakmont Drive.

1 BY THE COURT:

2 Oakmont?

3 A. Yes, sir.

4 BY THE COURT:

5 All right, that will be admitted as Defendant's
6 Exhibit Number 74.

7 (DEFENDANT'S EXHIBIT 74 ADMITTED INTO EVIDENCE)

8 BY THE COURT:

9 Now, the photographs are 75, Defendant's Exhibit 75
10 as a group of 44 photos and each photo has a Bates
11 stamp number on it so if you need to refer to a
12 particular one of those photographs you need to
13 include the Bates stamp number on it. So, Mr.
14 Johnson, ask him to identify those and get them
15 authenticated.

16 Q. All right. I'm handing you a batch of pictures.

17 A. Yes.

18 Q. If you would review those and advise if those are
19 your pictures?

20 A. These are all pictures that I took personally while
21 IBI was on the project at my home.

22 BY THE COURT:

23 So they would all be pre October 12, 2019?

24 A. Yes, Your Honor, that's correct.

25 BY THE COURT:

1 And no objection?

2 BY MR. TAROKH:

3 None, Your Honor.

4 BY THE COURT:

5 Okay. So those will be admitted as Defendant's
6 Exhibit Number 75 without objection.

7 (DEFENDANT'S EXHIBIT 75 ADMITTED INTO EVIDENCE)

8 Q. Mr. Merlo, I'm going to let you give commentary as
9 you see fit to the pictures and just stack them
10 facedown.

11 BY THE COURT:

12 Now, hold on a minute. We're not going to go
13 through these pictures and just let him rattle on.
14 If you have questions you want to ask him, then ask
15 him.

16 Q. Okay, I can do that, Your Honor. Mr. Merlo ---

17 BY THE COURT:

18 I mean I'm not talking about going through each
19 picture; I'm talking about ask him about what these
20 pictures supposedly depict in terms of the category
21 of the issue that you're dealing with.

22 Q. Sure, sure. Mr. Merlo, with regard to Merlo 830?

23 A. Yes, that was the tankless water heater that IBI
24 placed on one side of the house and they placed all
25 the mechanical lines on the other side of the

1 house. So on one end of the house there was a gas
2 line, water lines and on the other end of the house
3 was the water heater. So we had to move all the
4 mechanical lines to the opposite end of the house
5 and Joy Construction completed that process for us.
6 I think it just kind of shows a lack of oversight.
7 Usually you'd run the mechanical lines to where the
8 water heater is going to go, yeah.

9 Q. Okay. With regard to Merlo 1025?

10 A. Yes, this the chimney that actually was supposed to
11 be on the residence. Greg and I had a text
12 discussion back and forth, he said do you want the
13 chimney, I indicated we did want the chimney. He
14 said we had to paid extra for it, and we indicated
15 we would pay extra for it. He did not communicate
16 that with the contractors on site and they ripped
17 the chimney and threw it the yard.

18 Q. Look at Merlo 1067, Merlo 1726 and Merlo 1205.

19 BY MR. TAROKH:

20 Will you give me those numbers again please?

21 Q. Yes, sir, 1726, 1067 and 1025 (sic).

22 A. And this here is just evidence of the water damage
23 that was coming into the house. You notice 1726 is
24 after the flooring was put down and water was still
25 pouring into the house.

1 Q. With regard to Merlo 1205?

2 A. Yes.

3 Q. Where was that water coming from?

4 A. That was coming from the opposite side of the house
5 where they did not put the poured wall, that was
6 the opposite end of the house. So it was leaking
7 on both sides in the basement and coming down from
8 the ceiling both as evidenced by that picture.

9 BY THE COURT:

10 Do you know what date those pictures were taken?

11 A. Those were taken during IBI's tenure.

12 BY THE COURT:

13 Well, it's been there for that long of time?

14 A. Yes, sir, that went from November of 2017 ---

15 BY THE COURT:

16 No, I mean I know what that is, but I mean when
17 were these pictures taken?

18 A. They would have been during my on-site visit. I
19 tried to visit the site at least ---

20 BY THE COURT:

21 I'm talking about dates, do you know what date they
22 were taken? If you don't know, that's fine.

23 A. Not specifically, Your Honor.

24 BY THE COURT:

25 Okay.

1 Q. And looking at Merlo 799 and 1219?

2 A. Yes. The 1219 was evidence of craftsmanship. They
3 ordered windows that were ordered incorrectly.
4 When the windows came in we were told that they had
5 a find a craftsman ---

6 BY MR. TAROKH:

7 Objection, hearsay.

8 BY THE COURT:

9 Yeah, you can't testify what somebody else told
10 you; you can testify what you know.

11 A. That was the end product with IBI, that's they
12 basically just hacked up all the windows, threw
13 some trim molding on there and said, you know, they
14 were done.

15 Q. Okay.

16 A. That was the ceiling that they initially put up.
17 They did not place the lights in the appropriate
18 spots or the vents and so when they hung the
19 pendant lights they weren't centered and they tried
20 to just kind of rig them up there I guess.

21 BY THE COURT:

22 When you say "they" are you referring to IBI?

23 A. IBI, yes, Your Honor.

24 Q. This is Merlo 789.

25 A. This is the tilework in the master bathroom. All

1 of that had to be ripped out by the new contractor,
2 Joy Construction, and redone correctly.

3 Q. Looking at Merlo 1691 and 1694?

4 A. This was just evidence of the mold that was inside
5 the wall from the water damage, this was downstairs
6 in the residence.

7 Q. And did you engage Joy Construction to do anything
8 with that?

9 A. They remediated all the mold, they cut out all the
10 walls, they took down all the trim and remediated
11 all the mold downstairs.

12 Q. Tell us about Merlo 2051?

13 A. When the inspector came out and took a look at the
14 wiring, he wasn't real pleased. It failed
15 inspection and that's a picture that I took in the
16 attic of the box. He said we had a big problem,
17 that ---

18 BY MR. TAROKH:

19 Objection, hearsay.

20 BY THE COURT:

21 Sustained.

22 A. That was the wiring that IBI performed in the
23 attic. If you'll notice, there's about 20
24 junctions in that one box and he said he prefers
25 not seeing over ---

1 BY MR. TAROKH:

2 Objection, hearsay.

3 BY THE COURT:

4 Sustained.

5 A. I'd think historically you'd look for maybe two
6 junctions in a box I guess.

7 Q Is it your understanding that that's in violation
8 of code?

9 A. Yes, that's correct.

10 Q. Tell us about Merlo 845?

11 A. Yeah, this doesn't look like a very intriguing
12 picture but this is actually the septic containment
13 system that's located behind the house. When IBI
14 put the system in, they put it in in a manner that
15 it did not operate I guess. You know, this is
16 basically where all the sewer goes from the house
17 into this containment system, it's designed to pump
18 it up to the road, and that did not work. The
19 alarm was going off on the system. We called
20 someone out to take care of it and they opened up
21 the top and went down in there I guess and rebuilt
22 all the components they did incorrectly.

23 BY MR. TAROKH:

24 Objection, strike that. He said he guessed that
25 they went in and rebuilt all that, I think that was

1 it, and when you guess I think that's all
2 speculative.

3 BY THE COURT:

4 Okay. Well, I mean he said what he said and, you
5 know, it's worth whatever it is. You know, I mean
6 I understand. You don't have a jury here, you've
7 just got me.

8 BY MR. TAROKH:

9 I understand.

10 BY THE COURT:

11 I'm just one.

12 BY MR. TAROKH:

13 I understand, Judge.

14 BY THE COURT:

15 And so my job is to sift through all of this vast
16 amount of information and try to make some sense
17 out at some point. So I'll let that go ahead and
18 he's a layperson but he can give his opinion about
19 certain things and that's what he was doing.

20 Q. Looking at Merlo 2037?

21 A. Yes, this is the flooding and that was about six to
22 eight inches deep in the garage and that's what we
23 had to contend with throughout IBI's tenure.

24 Q. And would that drain properly?

25 A. No, it would not. It doesn't drain properly today.

1 Q. Merlo 2029, tell us about this picture?

2 A. Yes, we talked about that just a little bit
3 yesterday. That was the boulder wall that needed
4 to be moved. IBI placed it on my neighbor's
5 property. You can see the survey stake on that
6 picture. And at the time they placed it on the
7 property I informed Greg that it was on their
8 property. He said they'd come and take a look at
9 it and I guess they never did. That ended up being
10 moved, relocated.

11 Q. Tell the Court about Merlo 1987.

12 A. Yeah, so I went out to the house one day just to do
13 a cursory inspection and I got into the house and
14 walk through the house, get on the back porch and
15 there's three 15-year-olds working on the back
16 porch unsupervised, unattended. Greg is not on
17 site, John is not on site. And I attempted to
18 speak to them, they did not speak any English, they
19 just spoke Spanish only. So I called Oconee County
20 PD and they came out to the house and, you know,
21 told them they couldn't work there ---

22 BY MR. TAROKH:

23 Objection, hearsay.

24 BY THE COURT:

25 Sustained. How you know they were 15?

1 A. Well, I told the officer they looked awfully young
2 and the officer asked them how old they were, and
3 they each indicated they were 15 years old. They
4 did not have transportation there. They were
5 dropped off in the morning with just a little
6 lunchbox and they had to call transportation to
7 come pick them up. And that kind of goes along
8 with the deck picture I guess which is coming up.
9 The deck failed inspection and I think you'll
10 understand why.

11 Q. We'll have to come back to that picture. Tell us
12 about Merlo 1471.

13 A. This is just representation of all the doors and
14 windows that were put in the house. They were not
15 level. That's why a lot of them did not close. It
16 doesn't look significant in the picture, but one
17 window was up an inch and a half over the other
18 window, you know, within a 12-inch span.

19 Q. Okay. And is that similar to 1716?

20 A. Yeah, I think we talked about that yesterday. That
21 was the ceiling that was a couple of inches off and
22 we ended up taking care of that.

23 Q. Tell us about Merlo 2018.

24 A. Yeah, this is the driveway that's placed on Wayne
25 Culbertson's lot, in addition to the landscape and

1 also the irrigation system. You know, I'm not sure
2 what we'll do with that, that could become a legal
3 issue though.

4 Q. And so you are encroaching on both sides?

5 A. That's correct, the boulder wall on one side, the
6 driveway on the other side.

7 Q. Did you have any issues with the stonework on the
8 home?

9 A. Boy, we did, yes. The stone mason that was hired
10 obviously gave them a discount because he, doesn't
11 look like he had ever stoned a house before.

12 BY MR. TAROKH:

13 Objection, strike that as speculative unless he
14 meant that.

15 BY THE COURT:

16 All right, that will be stricken.

17 A. Yeah, I took just a couple of snaps of some of the
18 stonework they did. Everything was gapped and they
19 came back in and put mortar everywhere, it was
20 quite a disaster. Joy Construction took care of
21 all of that and they made it all right.

22 Q. Okay. We're looking at Merlo 1912 and Merlo 1858.
23 In addition to the water intrusion that we've
24 discussed, were there also leaks in the home?

25 A. There were, yes. Not only was water coming in

1 underneath the walls, coming in the top floor from
2 the deck, but also from the roof. Yeah, that was
3 one of the pictures that the water was coming in
4 from the roof. We asked, you know, if it would be
5 okay if water sat on the floor for extended amounts
6 of time and the contractors told us ---

7 BY MR. TAROKH:

8 Objection, hearsay.

9 BY THE COURT:

10 Sustained.

11 A. At times, you know, water sat on the subfloor for
12 days and days and what happened was, it warped all
13 the subfloors and so when they put the hardwood
14 down directly over the top of it the floors were
15 not level, the floors squeaked and it became a very
16 expensive project to fix.

17 BY MR. TAROKH:

18 What exhibit was that?

19 Q. 1400, Merlo 1400. Tell us the story behind Merlo
20 710.

21 A. Yeah, so initially we had the lot surveyed and I
22 think that marker right there shows where the pin
23 was that was on the top side of the lot. So the
24 lot was clearly marked, but with no supervision
25 that didn't help a whole lot because -- there

1 should be another picture in there.

2 BY MR. TAROKH:

3 Your Honor, I want to strike that relevance, I
4 really didn't understand him.

5 A. It kind of compliments the other picture of the
6 grate.

7 BY THE COURT:

8 Well, I mean he said what he said, I mean the
9 pictures are relevant and have already been
10 admitted so. Now, whether they amount to anything
11 meaningful then that's -- I'm going to allow it.

12 Q. Tell us about 1507.

13 A. 1507, that's representation of the, I think that's
14 the bottom of the door for lack of a better way to
15 explain it. Ideally your screens will sit in on
16 those tracks and slide back and forth to open and
17 close your screens. They broke out all the groove
18 work in there and so, you know, none of the screens
19 will sit in any of those track so.

20 Q. And that's shown right here in the middle?

21 A. That's correct, yeah.

22 Q. On Merlo 1884, tell us about the chimney.

23 A. Yeah, the fireplace and the chimney was just a
24 wreck from day one. They framed it so that it was
25 not square and when they framed it they told us

1 don't worry about it, that they would come and put
2 sheetrock on it and everything would be fine. And
3 so they tried to do that and it was even more
4 apparent that it was not square. So then they told
5 we could buy shiplap and wrap it in shiplap and
6 that would make it look square. We ended up doing
7 that with the new contractor, Joy Construction. He
8 took care of all that for us. The tile at the top
9 front in front of that fireplace, if you look at
10 it, the bottom row they put a gray tile on the
11 bottom row and all the rest of the tile is beige,
12 so you have different colored tiles on there. And
13 so I had to text Greg, you know, you need to use
14 the same color throughout the entire tile.

15 Q. Tell us about 1327 and Merlo 1338.

16 A. Just more evidence of water coming in, mold just
17 coming in all over the place.

18 Q. Did that sit and fester?

19 A. For quite a while, yes.

20 Q. Tell us about Merlo 1816.

21 A. Yeah, this basically is just showing where the
22 floor was gapped and there was a piece of vinyl
23 that was missing in there. It was very consistent
24 with all the flooring that was throughout the
25 house, I mean it was gapped everywhere. We came

1 back and put new pieces of vinyl in there.

2 Q. Merlo 1853?

3 A. Yeah, I think we talked about that just a little
4 bit yesterday. When the doors came they were
5 cracked on the top and on the bottom and outside of
6 ordering a new door system for several thousand
7 dollars, there's just not much you can do with
8 that. I think they tried to glue it back together.

9 Q. Tell us about Merlo 1416.

10 A. Yeah, this was the deck the 15-year-olds were
11 building and you can see that the deck boards
12 aren't staggered, they all kind of meet right there
13 together, they weren't level, it just wasn't done
14 properly, and if you think the top looks bad you
15 just have saw underneath. When the inspector
16 walked across the deck it actually kind of gave a
17 little bit of a spring and then when he went
18 underneath and looked the joists for the deck were
19 cut an inch to two inches short all the way across
20 the entire bottom of the deck, and so he just said
21 we just had to replace the entire ---

22 BY MR. TAROKH:

23 Objection, hearsay.

24 BY THE COURT:

25 Sustained.

1 Q. Due to the leaks, did you have to do anything to
2 the baseboards?

3 A. Yeah, all that was remediated by the new
4 contractor. He took out all the baseboards and cut
5 out all the sheetrock and they did some kind of
6 spray or something in there and dried everything
7 out. Yeah, so that was in the downstairs area of
8 the home, that's correct.

9 BY THE COURT:

10 What's the Bates number on those?

11 Q. That's Merlo 1656 and 1688. In any areas did they
12 have remove drywall and insulation?

13 A. Yes.

14 Q. Who did all that work?

15 A. Joy Construction.

16 Q. Tell us a little bit about just the general trim
17 work in the home.

18 A. Well, the trim work was, in my opinion, was very
19 poorly done. And I'm not a builder, I'm not a
20 craftsman by any manner, but I do know the basis
21 for judging that and we entered into a contract
22 with IBI to complete this home for \$625,000. At
23 the time behind my primary residence at 500 Oakmont
24 Drive they were building 90 homes that were priced
25 at \$250,000. So after I finished work, one of

1 those houses were unlocked and I was able to walk
2 through those houses and see the craftsmanship in a
3 \$250,000 house and it was superior to the
4 craftsmanship of the \$625,000 house that I was
5 building, and I wanted to make sure that I didn't
6 set my expectation too high, but I felt like mine
7 should be at least equal to the quality of a
8 \$250,000 house and it was not.

9 Q. And, Mr. Merlo, throughout the course of this you
10 saw some correspondence with the re-work reports.
11 Do you have other correspondence with IBI during
12 the course of construction?

13 A. Yes, we most certainly did. Most of the
14 correspondence with IBI was on the phone with him,
15 so there's obviously no record or documentation of
16 it. But I would continually call them when I got
17 out to site because neighbors that were building
18 around me had multiple contractors on site, you
19 know, Monday through Friday working hours and I
20 would get out to my site and no one was there, and
21 that happened, you know, more often than not, I
22 would call up Greg and say, hey, Greg, you know
23 this house is not going to build itself, nobody is
24 here, I'm the only person here. And he would
25 assure me that, you know, the subs were on the way

1 or they were running behind or they needed a crew
2 somewhere else. At the time that we hired IBI, I
3 was told they build about four to six houses a
4 year, and then once we got into having all the
5 issues on the house I came to find out that they
6 were building over 20 houses at the same time as
7 mine, and I just find it hard to believe that two
8 guys can, you know, build 20 houses effectively at
9 one time. My house probably just got pushed to the
10 bottom of the list I guess.

11 BY MR. JOHNSON:

12 Your Honor, would you like for me to pre-mark the
13 correspondence?

14 BY THE COURT:

15 I don't know. What all you've got there?

16 BY MR. JOHNSON:

17 It's the correspondence related to ---

18 BY THE COURT:

19 How much correspondence are we talking about?

20 BY MR. JOHNSON:

21 It's text messages between Mr. Merlo and the
22 Plaintiffs regarding these issues throughout the
23 course of the construction.

24 BY THE COURT:

25 Well, as long as you can get it all marked and then

1 we'll going to do it like we did everything else.

2 BY MR. JOHNSON:

3 Okay.

4 BY THE COURT:

5 Pick out what you want to put in, show it to Mr.

6 Tarokh and then get it marked for identification.

7 BY MR. JOHNSON:

8 Would you want batches as well?

9 BY THE COURT:

10 Well, I mean you said it's all correspondence. I

11 assume, do they have Bates number on them?

12 BY MR. JOHNSON:

13 I believe they all do, Your Honor.

14 BY THE COURT:

15 Will that work?

16 BY MR. TAROKH:

17 That's fine, Your Honor. I have no objection to

18 this cumulative kind based upon Mr. Merlo's

19 testimony.

20 BY THE COURT:

21 Well, I mean I tend to agree based on what I've

22 heard so far. I mean he's testified about numerous

23 conversations that he had with Mr. Montgomery and

24 Mr. Grissinger, and we don't need to go down --

25 what is this going to be? Is this going to be just

1 correspondence by way of text messages or what?

2 BY MR. JOHNSON:

3 Yes, Your Honor. But it shows the course of the
4 project and how Mr. Merlo got to the stage of where
5 he was to terminate them. So that's ---

6 BY THE COURT:

7 Well, then put it all together and put it in an
8 exhibit and then we'll go from there. We're not
9 going to go through each conversation he had, I
10 hope that's not the plan.

11 BY MR. TAROKH:

12 And, Your Honor, this purports to show
13 correspondence from August 2018 to November of
14 2018, so it's like a small sliver of time ----

15 BY THE COURT:

16 Just that one thing, but I thought you had a whole
17 bunch of them.

18 BY MR. TAROKH:

19 Can we put it in?

20 BY THE COURT:

21 I mean I would suggest you put into evidence and
22 then, you know, you let him testify about in
23 general his discussions and so forth, that's fine.
24 But I can tell where I'm coming from, it's Rule 403
25 and I'm going to read it to you, "Although

1 relevant, evidence may be excluded if it's
2 appropriate value is substantially outweighed by
3 the danger of unfair prejudice, confusion of the
4 issue or misleading of the jury or by
5 considerations of undue delay, waste of time or
6 needless presentation of accumulative evidence",
7 that's Evidence Rule 403.

8 BY MR. TAROKH:

9 And that's my objection, Your Honor.

10 BY THE COURT:

11 So that's what I'm attempting to try to curtail
12 here.

13 BY MR. JOHNSON:

14 Sure, Your Honor.

15 BY THE COURT:

16 I mean I get the tenor of what you're saying. You
17 know, I don't need a verbatim replay of every
18 conversation that was ever had between Mr. Merlo
19 and anybody else in the world.

20 BY MR. JOHNSON:

21 No, Your Honor.

22 BY THE COURT:

23 So let's go ahead and get in what you need to get
24 in. You've got your conversations, get them marked
25 and get them numbered or do them all as one batch I

1 would say.

2 BY MR. JOHNSON:

3 I'll do them all in one batch, Your Honor.

4 BY THE COURT:

5 Then get them into evidence if you can, and then if
6 you need to ask any additional questions to clarify
7 any of them then do that but you've got the
8 evidence in the record at that point.

9 (OFF RECORD DISCUSSION BETWEEN ATTORNEYS)

10 BY MR. TAROKH:

11 Your Honor, he's handing me ---

12 BY MR. JOHNSON:

13 Your Honor, we're just going to put in the record.

14 BY MR. TAROKH:

15 But again, 403, cumulative, repetitive, delays.

16 BY THE COURT:

17 My thought is if you put this in the record, he's
18 got in the record. He really doesn't have to ask
19 any questions about it because it's there and I
20 just read it just as good as if somebody had read
21 it to me. So it protects him on the record, gets
22 the information in there, and I think counsel
23 should move on.

24 BY MR. TAROKH:

25 Withdraw the objection.

1 (DEFENDANT'S EXHIBIT 76 MARKED FOR IDENTIFICATION)

2 BY THE COURT:

3 So that's going to be 76 and describe what this is,
4 Mr. Johnson.

5 A. Mr. Merlo, I'm going to hand you series of text
6 messages.

7 BY THE COURT:

8 Text messages between Merlo and IBI?

9 BY MR. JOHNSON:

10 Merlo and IBI. I believe there's one text message
11 with Merlo and Mr. Rumpy.

12 BY THE COURT:

13 Mr. who?

14 BY MR. JOHNSON:

15 Mr. Rumpy.

16 BY THE COURT:

17 Rumpy and all this was provided in discovery?

18 BY MR. JOHNSON:

19 It's all Bates number and provided in discovery,
20 Your Honor.

21 BY MR. TAROKH:

22 Your Honor, if I may, I'm not objecting because
23 they were produced in discovery by the original
24 Bates stamp number, but it's hearsay if they're
25 including a text message to a third party as Mr.

1 Rampy.

2 BY THE COURT:

3 Okay. If he called them on the phone a third party
4 I think that's true. But Mr. Merlo can certainly
5 testify that he sent a text message to somebody.

6 BY MR. TAROKH:

7 That's correct, but there are text messages from
8 Rampy and Merlo and that's hearsay.

9 BY THE COURT:

10 Well, I agree with you. Well, I agree, I think
11 text messages from Rampy and Merlo would be hearsay
12 so that wouldn't be included.

13 BY MR. TAROKH:

14 And then I don't know the Bates stamp number of
15 that.

16 BY THE COURT:

17 Just take it out wherever it is.

18 BY MR. JOHNSON:

19 Okay, I'll take it out, Your Honor.

20 Q. Mr. Merlo, obviously this is a substantial number
21 of text messages that are included in Defendant's
22 Exhibit 76. Is this representative of your course
23 of dealing with IBI?

24 A. I think so. I think, you know, we just went out to
25 the house and saw what we saw. We saw what was

1 taking place at the house, we documented it with a
2 picture. We sent it to IBI and said, hey, can you
3 help us, can you fix this, these are issues that
4 need to be addressed, some of them obviously more
5 important than the others with the water issue
6 coming in. But we communicated with them
7 effectively and they ignored the communication and
8 just, you know, they did not respond like you would
9 expect a contractor to respond.

10 BY THE COURT:

11 Has there been a number put on that?

12 A. 76, Your Honor.

13 BY THE COURT:

14 How about clip all that together, do you have a
15 clip to put it together? All right. So that will
16 be admitted without objection; is that correct?

17 BY MR. TAROKH:

18 Yes, Your Honor. With the exception of Merlo,
19 Rampy text message.

20 BY THE COURT:

21 That's been taken out of there.

22 BY MR. TAROKH:

23 No objection then.

24 BY THE COURT:

25 So it's only texts from Mr. Merlo to IBI?

1 BY MR. JOHNSON:

2 That's correct, Your Honor.

3 BY THE COURT:

4 And he's testified they were his texts and so on
5 and there's no objection. And now let's proceed.

6 (DEFENDANT'S EXHIBIT 76 ADMITTED INTO EVIDENCE)

7 Q. So, Mr. Merlo, tell how this culminated in the
8 termination of IBI?

9 A. Well, the termination of IBI was no surprise on
10 their side, I guarantee you that. We had been
11 talking them back and forth for months and months
12 about getting the re-work taken care of, about
13 getting the correct subs on site that would make
14 the house whole, about taking care of the project
15 and finishing it up. I remember several emails
16 that I had over the course of, you know, the last
17 six months that said, hey, let's get this thing
18 done. I think they realized the importance of it
19 towards the end because they asked Greg's dad to
20 come in and assist with the project and to try to
21 clean up some of the mess that they had made. And
22 it was kind of a running joke with us when I saw
23 him every week I would say, you know, this a week.
24 So I don't think there was any surprise at the end
25 if the project was terminated after 23 months. The

1 initial contract was only 12 months. We gave them
2 23 months to make everything right and they just,
3 they refused to, they just simply ignored us. We
4 had no choice but to terminate the contract, hire
5 someone that could come in and remediate the
6 defects of IBI and that's what Joy Construction
7 did.

8 Q. Okay.

9 A. And I think, you know, surrounding the issue of
10 money that we try to defraud IBI, nothing could be
11 farther from the truth. We actually gave them, you
12 know, an additional year to complete the house and
13 make the issues right. It was not our intent to do
14 anything to break the contract that we had already
15 signed. We felt like we had a commitment to them.
16 Despite everything that was going on at this house,
17 we felt like we needed to honor that commitment and
18 it just got to the point where we just couldn't go
19 on any farther. I think they, I think they pushed
20 us beyond the breaking point. I mean it wasn't
21 just the water coming, you know, the chimney that
22 was leaning, the 15-year-olds building the deck, my
23 driveway is one neighbor's lot, my boulder wall is
24 on another's neighbor's lot, and then when we've
25 got to move the boulder wall. I get a call from

1 Seneca Light and Power that says, hey, they ran
2 your power down to the neighbor's lot. I said
3 there's no way they can, they went back four feet.
4 He said the power ---

5 BY MR. TAROKH:

6 Objection, hearsay.

7 BY THE COURT:

8 Sustained.

9 A. The power was placed 10 feet onto my neighbor's lot
10 and the water lines from my house was an additional
11 two feet beyond that.

12 BY MR. TAROKH:

13 Objection, Your Honor, this is a narrative. He's
14 not answering specific questions.

15 BY THE COURT:

16 That's okay. He can testify in a narrative
17 fashion. Overruled.

18 A. So, you know, IBI has testified that there was
19 supervision; there just was absolutely no
20 supervision. And when I hired Joy Construction,
21 the new builder, and he came in I understood what
22 supervision was because he actually showed up in
23 the morning at 9:00 and he worked with his subs for
24 two or three hours and then he left and the next
25 day he showed up and he worked with the subs two or

1 three days and then he left. And every day, Monday
2 through Friday 9 to 5 those subs were on the site
3 and for four months they came every single day and
4 remediated the defects of IBI and I've got a
5 receipt for every single dollar I spent. You know,
6 whether I spent with the money with IBI or with Joy
7 Construction, it was indifferent to me. I had to
8 spend the money to get the house fixed. My
9 preference would have been to engage IBI to correct
10 the defects and simply pay them to complete the
11 project. It would've been a lot easier, it
12 would've been a lot simpler. I'm in real estate,
13 I'm very conservative. I don't like legal issues,
14 I don't like litigation. I do everything I can to
15 try to stay away from these types of issues.
16 Fortunately I documented the project and we've got
17 pictures and, you know, a lot of evidence.

18 BY THE COURT:

19 Have you got any other questions, Mr. Johnson?

20 BY MR. JOHNSON:

21 Yes, sir. And I don't know if you want to us to
22 pre-mark these, Your Honor?

23 BY THE COURT:

24 What is it?

25 BY MR. JOHNSON:

1 These are the pictures of the remediation work by
2 Joy Construction?

3 BY THE COURT:

4 We haven't already got those into there?

5 BY MR. JOHNSON:

6 No, Your Honor. We just discussed IBI's pictures.

7 BY THE COURT:

8 All right. Get them sorted out and we're going to
9 do the same thing, we're going to present them as a
10 batch and then, of course, show them to Mr. Tarokh
11 and see what he says. Now, we've had a lot of
12 testimony about remediation work.

13 BY MR. JOHNSON:

14 We have, Your Honor, and this will be, this will be
15 ---

16 BY THE COURT:

17 Is that going to brief, is that the word you're
18 looking for?

19 BY MR. JOHNSON:

20 I didn't want to use that word again, Your Honor.

21 BY THE COURT:

22 Well, you're scared to use that now?

23 BY MR. JOHNSON:

24 No, I just wanted to find a synonym, Your Honor.

25 BY THE COURT:

1 All right. So what you got? You've got pictures
2 or remediation work you say was done by Joy?

3 BY MR. JOHNSON:

4 We, Your Honor, and some of the Bates stamp numbers
5 are so small because the files were so big that
6 they didn't reproduce in the actual print. I can
7 show Your Honor what was produced.

8 BY MR. TAROKH:

9 It looks like these are -- I'm just guessing but it
10 looks like these were blown up and without the
11 Bates stamp number I would object.

12 BY MR. JOHNSON:

13 I can, I can write the Bates stamp number on them
14 so you can reference them.

15 BY THE COURT:

16 Well, I mean that's going to be necessary if you're
17 going to use it as an exhibit. I mean all this
18 stuff should've been done before you got here
19 today.

20 BY MR. JOHNSON:

21 Your Honor, we intended to introduce the originals.

22 BY THE COURT:

23 Well, I know what you intended but it will take
24 about five days, but we ain't got that much time.

25 BY MR. JOHNSON:

1 Well, I will make this two exhibits and Mr. Merlo
2 can start with the ones that has the larger Bates
3 number on them.

4 BY THE COURT:

5 What do you mean start with them?

6 BY MR. JOHNSON:

7 Well, so he can, he can ---

8 BY THE COURT:

9 We're not going to go through each picture.

10 BY MR. JOHNSON:

11 No, sir, but he ---

12 BY THE COURT:

13 He's already extensively testified about the
14 remediation work by Joy. All those pictures does
15 is just sort of say, here's a picture of what we've
16 been talking about for the last day. I mean if we
17 go through each picture it's going to be
18 repetitive, that's what he's already testified to
19 unless there's something in there that has not been
20 testified to.

21 BY MR. JOHNSON:

22 No, Your Honor, we're just trying to establish that
23 Mr. Merlo did actually do this work ---

24 BY THE COURT:

25 Well, I mean that's been established. I mean all

1 you've got to do, all this does is give you a
2 visual picture of what he's testified to for most
3 of the day today and a lot of yesterday.

4 BY MR. TAROKH:

5 For the record, objection, 403, Your Honor.

6 BY THE COURT:

7 Well, I mean that's what I'm trying to eliminate.
8 But your objection is noted. I'm going to let him
9 put them in as a batch just to put in the record,
10 protect the record, but they do need to have the
11 Bates stamp numbers on there so that they can be
12 identified and admitted if need be at some point.

13 BY MR. JOHNSON:

14 Your Honor, if we could discuss four of the
15 pictures that are ---

16 BY THE COURT:

17 Well, just get them all numbered in one batch. Why
18 can't we do that?

19 BY MR. JOHNSON:

20 No, we can, Your Honor. I was just going to mark
21 the Bates on the ones that are so small that can't
22 be seen.

23 BY THE COURT:

24 Well, we can do that. You're not going to need to
25 refer to those, are you?

1 BY MR. JOHNSON:

2 Those were the three ones I was going to refer to,
3 Your Honor.

4 BY THE COURT:

5 Oh, well, put the Bates number on them right quick.
6 Identify which of the photographs out of the vast
7 numbers you have is the ones that you're dealing
8 with now because the Bates stamp number doesn't
9 show and there's no way and tie to a particular one
10 in all the 4500 pictures. Is that right?

11 BY MR. JOHNSON:

12 Your Honor, no, sir, I had it. It's just the file
13 is extremely large and so the Bates number is
14 extremely tiny and it's hard to read it.

15 BY MR. TAROKH:

16 So if we can exclude those and move on for the sake
17 of time.

18 BY THE COURT:

19 I agree. I mean how many do you have that you
20 can't see the numbers?

21 BY MR. JOHNSON:

22 Just one, Your Honor.

23 BY THE COURT:

24 Well, then take that out and get the rest of them
25 in and if you want to come back later and try to

1 get that in some other way, you can try that, but
2 for now let's go with the others. The ones you say
3 now is going to be a repetition of the testimony
4 we've already got anyway so.

5 BY MR. JOHNSON:

6 It's the one picture we probably haven't testified
7 about, Your Honor, so ---

8 BY THE COURT:

9 Well, you can ask him questions about the stuff
10 then.

11 BY MR. JOHNSON:

12 So this will be?

13 BY COURT REPORTER:

14 77.

15 (DEFENDANT'S EXHIBIT 77 MARKED FOR IDENTIFICATION)

16 BY MR. JOHNSON:

17 77.

18 BY THE COURT:

19 77 will be photos. Do you know how many?

20 Q. I will count while he testifies. Mr. Merlo, tell
21 us about ---

22 BY THE COURT:

23 Now, whoa, whoa, whoa, count them.

24 BY MR. JOHNSON:

25 22 pictures, Your Honor.

1 BY THE COURT:

2 22 photographs, and those all have legible Bates
3 stamp numbers on them?

4 BY MR. JOHNSON:

5 Two of them have handwritten.

6 BY THE COURT:

7 Okay, that's fine.

8 BY MR. JOHNSON:

9 The rest ---

10 BY THE COURT:

11 Are legible?

12 BY MR. JOHNSON:

13 Yes, sir.

14 BY THE COURT:

15 All right. Now we've put that in as one exhibit.

16 Any objections?

17 BY MR. TAROKH:

18 No, Your Honor.

19 BY THE COURT:

20 All right.

21 Q. Mr. Merlo, tell us about what's Bates stamped Merlo
22 4001.

23 A. That's ---

24 BY THE COURT:

25 Wait a minute, whoa. Get him to just say that he

1 took pictures and when they were taken ---

2 BY MR. JOHNSON:

3 Yes, yes.

4 BY THE COURT:

5 --- and that sort of thing, ---

6 BY MR. JOHNSON:

7 My apology, Your Honor.

8 BY THE COURT:

9 ---- and get it admitted.

10 BY MR. JOHNSON:

11 I was trying to speed up the process, I apologize.

12 BY THE COURT:

13 No, you were going to go one by one and that what

14 we're trying to avoid.

15 Q. Yes, sir. Well, I was going to ask them about a

16 couple. Mr. Merlo, are these photographs, tells us

17 about these photographs.

18 A. These are pictures that I took personally at the

19 time of Joy Construction.

20 Q. Okay.

21 BY THE COURT:

22 So that would all be after October 12, 2019?

23 A. That would be actually after the time I signed the

24 contract with them I guess.

25 BY THE COURT:

1 Well, I won't allow that in ---

2 Q. But ---

3 BY THE COURT:

4 After October?

5 A. Yeah, after, after that date, yes, Your Honor.

6 BY THE COURT:

7 It's after October 12 ---

8 A. Yes, Your Honor.

9 BY THE COURT:

10 --- of 2019 and after you hired and entered into a
11 contract with Joy?

12 A. Yes, sir.

13 BY THE COURT:

14 All right. Those are admitted as Defendant's
15 Exhibit 77 without objection.

16 (DEFENDANT'S EXHIBIT 77 ADMITTED INTO EVIDENCE)

17 Q. So, Mr. Merlo, tell us what's shown on Bates
18 stamped Merlo 4001?

19 A. That was the water that pouring into the downstairs
20 level that Joy remediated.

21 Q. And is that -- were there any leaks related to the
22 front door?

23 A. Yes, that was underneath the front door. IBI did
24 not water seal in the front alcove and when rain
25 blows in from the south side into that front porch

1 it leaks underneath into the level below. It did
2 until they took care of everything.

3 Q. Okay. And looking at Merlo 3990?

4 A. We talked about this just a moment ago, that's the
5 joists underneath the deck that was cut an inch to
6 two inches short. The deck failed inspection and
7 that deck had to be replaced.

8 Q. I'm looking at Merlo 2427?

9 A. That's correct. That's water sealing along the
10 entire back of the house because when it rained the
11 water came down the back of the house and ran in
12 the back of the house. So all the stone was taken
13 off and it was water sealed along the entire back
14 of the house, this is separate from the wall area
15 we talked about earlier.

16 Q. But the wall area you waterproofed as well?

17 A. It was waterproofed as well. But that stone is on
18 both areas, so it could look confusing in the
19 picture.

20 Q. And have you had any water intrusion issues since
21 the waterproofing was done?

22 A. None whatsoever.

23 Q. Do you remember, you testified yesterday about
24 taking a temperature of the ---

25 A. Yes.

1 Q. --- of the electrical?

2 A. Yes, when the panel box was overheating I went to
3 Lowe's and just got a little temperature gun just
4 to see what the temperature was. It was I think
5 beyond 140 degrees, you couldn't put your hand on
6 it, it was very warm.

7 Q. It shows 141?

8 A. That is correct, that is me taking the temperature
9 of the panel box, 141 degrees.

10 Q. Your Honor, I'd like the Court to take judicial
11 notice that under the United Listing Standards for
12 circuit breakers it is an unsafe hazard for a
13 breaker box to be above 140 degrees under, this UL
14 489, this is section 7.1.4.1.6 and it says, the
15 maximum temperature of handles, knobs and other
16 surfaces subject to user contact during normal
17 operation shall not exceed 60 degrees Celsius which
18 is 149 degrees Fahrenheit on metallic and 85
19 degrees Celsius and 185 degrees Fahrenheit on
20 nonmetallic surfaces.

21 BY THE COURT:

22 Any objection?

23 BY MR. TAROKH:

24 Yes, Your Honor. I don't believe it's known in the
25 territorial jurisdiction and I don't believe it's

1 relevant. I believe it's a matter for an expert to
2 opine.

3 BY THE COURT:

4 Well, I agree. I don't think there's a basis for
5 me to take judicial notice of some publication that
6 hasn't been presented in that fashion.

7 BY MR. JOHNSON:

8 Your Honor, Oconee County uses the Residential
9 Builder's Code ---

10 BY MR. TAROKH:

11 Objection, Your Honor, that's not in evidence.

12 BY THE COURT:

13 Well, that's a whole different ballgame.

14 BY MR. JOHNSON:

15 Well, that incorporates the National Electrical
16 Code which incorporates ---

17 BY THE COURT:

18 Well, I have no idea but ---

19 BY MR. JOHNSON:

20 Well, I'm asking the Court to take judicial notice
21 of it.

22 BY THE COURT:

23 Well, how am I going to take judicial notice if I
24 don't know it?

25 BY MR. JOHNSON:

1 Because it's a learning treatise and it's easily
2 reviewable.

3 BY THE COURT:

4 Well, I don't know what that is you've got in your
5 hand right there.

6 BY MR. JOHNSON:

7 Well, that's why I'm asking you, I mean it's
8 publically available, searchable and I think it
9 would pass the muster for judicial notice?

10 BY THE COURT:

11 Well, I'd have to do some research on that and see
12 if does. You need to ---

13 BY MR. TAROKH:

14 That's my objection, Your Honor. It's not well-
15 known in the territorial jurisdiction and it's a
16 matter of scientific opinion. This time ---

17 BY THE COURT:

18 What rule are you going under?

19 BY MR. TAROKH:

20 Yes, Your Honor. Was that directed at me or my
21 objection ---

22 BY THE COURT:

23 You state judicial notice, so what rule are you
24 talking about here? There's a rule on it somewhere
25 in the Evidence Rules?

1 BY MR. TAROKH:

2 It's Rule 201, Your Honor.

3 BY THE COURT:

4 Well, Rule 201, let's see what it says.

5 BY MR. TAROKH:

6 It says, Rule 201. My objection is based upon
7 201(d) Kinds of Facts. "A judicially noticed fact
8 must be one not subject to reasonable dispute in
9 that it is either, one, generally known within the
10 territorial jurisdiction of the trial court; or
11 two, capable of accurate and ready determination by
12 resort to sources whose accuracy cannot originally
13 be questioned."

14 BY THE COURT:

15 There's another rule somewhere about ---

16 BY MR. TAROKH:

17 The learning treatise thing he mentioned, that's
18 hearsay so we object on hearsay grounds and because
19 of fact of evidence is our objection.

20 BY THE COURT:

21 Well, is it a learning treatise or not?

22 BY MR. JOHNSON:

23 And on the second point, I'm move to one that's
24 correctly said, Your Honor. I mean it's generally
25 accepted that the Residential Builder Code complies

1 with the National Electrical Code as a subset of
2 that electrical, and references that you have
3 listing requirements and incorporates that.

4 BY MR. TAROKH:

5 There's no evidence of that before Your Honor.

6 BY MR. JOHNSON:

7 But it plainly says you can review it.

8 BY THE COURT:

9 I don't know. Which rule you talking about?

10 BY MR. JOHNSON:

11 Well, it's the one I just read.

12 BY THE COURT:

13 Well, I'm looking at the learning treatise under
14 80318 and it says to the extent called to the
15 attention of an expert witness on cross examination
16 or relied upon by expert in direct examination, but
17 you're not doing that here.

18 BY MR. JOHNSON:

19 Well, I'll go with Rule 201, Your Honor.

20 BY MR. TAROKH:

21 Same objection.

22 BY THE COURT:

23 Well, now are you disputing the validity of what he
24 read?

25 BY MR. TAROKH:

1 Your Honor, I don't know what that document is
2 except what he said that it purports to be.

3 There's no expert testimony regarding the --

4 BY THE COURT:

5 Well, I agree that 201(b) says, "a judicially
6 notice fact must be one that is not subject to
7 reasonable dispute and that is either, one,
8 generally known within the territorial jurisdiction
9 of the trial court or capable of accurate and ready
10 determination by resulting to sources whose
11 accuracy cannot be reasonably be questioned." So
12 the question I have is, are you disputing the
13 validity of what he's presenting?

14 BY MR. TAROKH:

15 Yes, Your Honor. And he's referring to, if I'm not
16 mistaken, Oconee County Building Code or something
17 of that nature that's probably was within the City
18 of Seneca, you know, I think that could be another
19 issue. But I think he needs to establish the
20 foundation for that document like if there's an
21 ordinance or something or building code, he needs
22 to show the Court and put that in the record before
23 he puts a copy of what he's claiming this document
24 to be. And initially, Your Honor, I thought he, I
25 may have misheard but he may have misspoke, but the

1 gun, the temperature gun appeared or purports to
2 read 141 roughly, but do you know what that ---

3 BY THE COURT:

4 No, the document says 149.

5 BY MR. TAROKH:

6 Exactly, and that was my point, so then I have an
7 objection based on relevance. How is that
8 relevant?

9 BY MR. JOHNSON:

10 The document ---

11 BY THE COURT:

12 What you read said 149.

13 BY MR. JOHNSON:

14 No, Your Honor.

15 BY THE COURT:

16 Yeah, it did.

17 BY MR. JOHNSON:

18 I'll hand it to you.

19 BY THE COURT:

20 Well, I heard what you said when you read it.

21 BY MR. TAROKH:

22 And that's my point, Your Honor. This is ---

23 BY MR. JOHNSON:

24 "Rule 7.1.4.1.6, The maximum temperature of
25 handles, knobs and other surfaces subject to user

1 contact during normal operation shall not exceed 60
2 degrees Celsius which is 140 degree Fahrenheit on
3 metallic and 85 degrees Celsius ---

4 BY THE COURT:

5 It was 140 then.

6 BY MR. TAROKH:

7 Okay. So I guess I misspoke. But again, Your
8 Honor, these are just -- I don't know what this --
9 we have a big authentication issue with this group
10 of documents. They appear to be screenshots of a
11 computer screen that hasn't ---

12 BY MR. JOHNSON:

13 I'm not trying to admit it.

14 BY THE COURT:

15 Okay. Well, I'm going to exclude it. I'm going to
16 rule it's not admissible at this time. If you want
17 to shore that up with some better foundation later
18 on you can, but right now I mean you've got
19 testimony this temperature on the thing was 141 and
20 so that speaks for itself in a way. Let's move on.

21 BY MR. JOHNSON:

22 Your Honor, may I take a bathroom break?

23 BY THE COURT:

24 What else have you got to go?

25 BY MR. JOHNSON:

1 I think I'm going to wrap up with Mr. Merlo.

2 BY THE COURT:

3 Well, wrap up then.

4 BY MR. JOHNSON:

5 Well, I need to speak to him.

6 BY THE COURT:

7 No.

8 BY MR. TAROKH:

9 Your Honor, objection.

10 BY THE COURT:

11 You're not going to do that. That's totally
12 improper.

13 BY MR. JOHNSON:

14 Well, it was regarding calling his wife.

15 BY THE COURT:

16 No. He can call her after he gets off the witness
17 stand.

18 Q. Okay, one last thing that we can discuss. Was
19 there any flashing issues with any doors?

20 A. Yes, there was. Several of the doors were not
21 flashed properly. I'm not sure we have a picture
22 of that, but that was taken care of by Joy
23 Construction. They did all the flashing at the
24 same time they took the siding off and the stone.

25 Q. All right. I think that's all the questions I

1 have.

2 BY THE COURT:

3 All right. Now we'll take a 10-minute break.

4 BY MR. TAROKH:

5 Thank you, Judge.

6 BY THE COURT:

7 And then we'll commence with cross examination.

8 (OFF THE RECORD)

9 BY THE COURT:

10 Proceed with cross examination.

11 CROSS EXAMINATION BY MR. TAROKH:

12 Q. Good afternoon, Mr. Merlo.

13 A. Good afternoon.

14 Q. Mr. Merlo, can I point you to Defendant's Exhibit
15 43, one of the blue stickers?

16 A. Sure.

17 Q. And you testified about that document yesterday,
18 correct?

19 BY THE COURT:

20 Excuse me, Defendant's 43?

21 Q. Yes, Your Honor.

22 A. 43, yes.

23 Q. And for the record what is that document again?

24 A. This looks like a pressure washing invoice from Sea
25 to Summit Pressure Washing.

1 Q. Well, isn't it true yesterday you testified that
2 wasn't an invoice?

3 A. It says "Service Estimate" on the paperwork here.

4 Q. Isn't it true that you testified yesterday you paid
5 \$1,494.20 for pressure washing?

6 A. I believe so.

7 Q. I'm going to show you a document which will be
8 marked as ---

9 BY COURT REPORTER:

10 70.

11 Q. --- Plaintiff's Exhibit 70 for identification.

12 (PLAINTIFF'S EXHIBIT 70 MARKED FOR IDENTIFICATION)

13 Q. I hand you what's been marked as Plaintiff's
14 Exhibit 70 and please take a moment and review that
15 document.

16 BY THE COURT:

17 Is that going to be offered? If it is, is there
18 any objection?

19 BY MR. JOHNSON:

20 No objection, Your Honor.

21 BY THE COURT:

22 We'll go ahead and admit that without objection,
23 Plaintiff's Exhibit 70.

24 (PLAINTIFF'S EXHIBIT 70 ADMITTED INTO EVIDENCE)

25 Q. What does that document purport to be?

- 1 A. Well, it also says "Service Estimate" and it looks
2 like there was a discount given I guess, \$784.86.
- 3 Q. So what's true, did you pay the \$1400 amount or the
4 number you just stated?
- 5 A. It looks like after the discount perhaps it was
6 \$784.86.
- 7 Q. You said "perhaps", do you know that for a fact?
- 8 A. Without reconciling with my check, I really don't I
9 guess. I'd have to see my check.
- 10 Q. You were put under oath yesterday, correct?
- 11 A. Correct.
- 12 Q. Do you know what that means?
- 13 A. Yes.
- 14 Q. What does that mean?
- 15 A. I testify the truth.
- 16 Q. Was your testimony true as it relates to Exhibit 43
17 yesterday?
- 18 A. It looks like perhaps there was a discount given on
19 this one invoice here.
- 20 Q. I understand that. But was your testimony true as
21 it relates to Exhibit 43?
- 22 A. There may be an inaccuracy if this was discounted
23 to \$784.86 like it appears to be.
- 24 Q. So you want to change your testimony and say that
25 you paid the \$700 figure for pressure washing

1 instead of the \$1400 figure?

2 A. I'd rather see a copy of my check first.

3 Q. How many times have you been deposed before?

4 A. Just once by you, sir.

5 Q. That's not true, is it?

6 A. I don't follow you, at the time.

7 Q. You weren't deposed in the Montgomery Holdings/Don
8 Gardner litigation?

9 A. Not that I'm aware of.

10 Q. I'm going to show you another document.

11 (PLAINTIFF'S EXHIBIT 71 MARKED FOR IDENTIFICATION)

12 A. I don't think this is in this litigation.

13 Q. I'm pretty sure it was, I can confirm that.

14 BY THE COURT:

15 Well, it's also being used for impeachment purposes
16 which falls as an exception.

17 Q. Thank you, Judge.

18 BY THE COURT:

19 So that would be Plaintiff's Exhibit 71?

20 BY COURT REPORTER:

21 Yes, sir.

22 BY THE COURT:

23 Admitted.

24 (PLAINTIFF'S EXHIBIT 71 ADMITTED INTO EVIDENCE)

25 Q. This is a copy of your deposition in the Don

1 Gardner versus Montgomery Holdings, LLC case, it
2 was a U.S. District Court case, and it looks like
3 you were deposed on December 10th, 2020; do you
4 agree?

5 A. Were you conducting the deposition here?

6 Q. I'm not going to answer any questions. I need you
7 to answer my questions please, sir.

8 A. Yeah, like I said I did a deposition with you and
9 that's the only one I've ever done.

10 Q. But you testified just now you only were deposed
11 one time, correct?

12 A. Yeah, one day with you under oath and it was about
13 12 hours.

14 Q. When was that?

15 A. Well, I guess maybe it was December 10th, 2020.

16 Q. When was our deposition, the one you just
17 described, you said a deposition with me?

18 A. Yeah, it was for IBI.

19 Q. Correct. So this case?

20 A. Correct.

21 Q. Not the case I just handed you the transcript of,
22 correct?

23 A. Yeah, I don't recall this here.

24 Q. What's the date of that again?

25 A. December 10th, 2020.

1 Q. When did I take your deposition in this case?

2 A. I don't recall.

3 Q. You will agree that I took your deposition roughly
4 three months later on February 25th, 2021?

5 A. If you say so.

6 Q. Do you remember when I asked you if you had been
7 deposed before in your deposition on February 25th,
8 2021?

9 A. I don't recall.

10 Q. I'm going to show you a document.

11 BY MR. JOHNSON:

12 No objection.

13 (PLAINTIFF'S EXHIBIT 72 MARKED FOR IDENTIFICATION)

14 BY THE COURT:

15 We're marking that as an exhibit?

16 BY MR. TAROKH:

17 Yes, Your Honor.

18 BY THE COURT:

19 Plaintiff's Exhibit 72.

20 Q. Now, Mr. Merlo, let me point you to ---

21 BY THE COURT:

22 Mr. Tarokh, hold on. That's the deposition in this
23 case that you took of Mr. Merlo?

24 Q. That's correct.

25 BY THE COURT:

1 All right, and there's no objection?

2 BY MR. JOHNSON:

3 No objection, Your Honor.

4 BY THE COURT:

5 All right, that's admitted.

6 (PLAINTIFF'S EXHIBIT 72 ADMITTED INTO EVIDENCE)

7 Q. I'm going to point you to page 6, line 17 where I
8 ask you, "Mr. Merlo, have you been deposed before"
9 and on line 18 your answer is, "No, never"; does
10 that refresh your recollection?

11 A. Well, I suppose so.

12 Q. So, in fact, you were deposed in December of 2020?

13 A. Yeah, I just simply do not recall this here.

14 Q. How can you not recall something that happened,
15 when I took your deposition how is it you don't
16 recall something roughly three months prior?

17 A. Well, obviously, I had a lot of stuff going on and
18 I just simply don't recall this, but I'm looking at
19 it so I guess it happened.

20 Q. And how is it you're able to recall all the
21 testimony about these alleged defects that happened
22 years ago?

23 A. I wrote them down so I wouldn't forget. I wrote
24 modules of each and everything because I knew I
25 would forget. I've got them with me if you'd like

1 to see them. I don't have a great memory.

2 Q. You testified earlier you were conservative and you
3 don't like to do litigation or something of that
4 nature, correct?

5 A. Correct.

6 Q. So wouldn't you agree that being deposed in two
7 cases in a span of three months would be a
8 memorable event?

9 A. I would imagine so.

10 Q. But it wasn't for you for some reason?

11 A. I just don't recall this here.

12 Q. You testified earlier yesterday about a \$13,000
13 overpayment; do you remember that?

14 A. Yes, I do.

15 Q. What payment was that in?

16 A. Pardon me?

17 Q. What was that \$13,000 overpayment?

18 A. That was an overpayment to Joy Construction.

19 Q. And what do you mean by "overpayment"?

20 A. I paid more than we owed him and he refunded that
21 \$13,000.

22 Q. But that's not true, is it? That \$13,000 wasn't an
23 overpayment; isn't that true?

24 A. He sent the money back to me.

25 Q. It was part of the settlement you had with Mr.

1 Rampy and Joy Construction, wasn't it?

2 A. I think at the same time there was a settlement
3 agreement.

4 Q. For how much?

5 A. I don't recall the specific amounts.

6 Q. And speaking of that, why did you have settlement
7 agreement with Rampy and Joy Construction?

8 A. Well, Mr. Rampy did an excellent job on the house,
9 he was a spectacular builder for months and months,
10 and a couple of issues kind of come to light
11 towards the end of his tenure. One, I got Covid
12 really bad; and, two, I think he was suffering from
13 some mental health issues. He informed me that he
14 was going to be moving away to Georgia, and I
15 instructed him that I couldn't in good conscious
16 continue to employ him if he was living out of
17 state trying to monitor my project from an out of
18 state residence, and so we agreed it would be best
19 to come to some type of arrangement and that's what
20 we did.

21 Q. Is that the only reason the relationship between
22 you and Mr. Rampy and Joy Construction terminated?

23 A. I have no animosity towards Dustin Rampy.

24 Q. That's not my question.

25 A. In my opinion he's a phenomenal builder.

1 Q. I'm not asking an opinion, I'm asking you if the
2 fact that he was moving away, which I believe you
3 just testified about, was that the only reason you
4 entered into a settlement agreement with Mr. Rampy?

5 A. I preferred him to actually stay here and finish
6 the project so I ---

7 Q. You're not answering my question.

8 A. --- I would, I would assume so, yeah, the primary
9 reason, yeah.

10 Q. So there's other reasons?

11 A. It sure wasn't for the work, he did phenomenal
12 work.

13 Q. So why is it, Mr. Merlo, that we have a Settlement
14 Agreement here where it states, "WHEREAS, disputes
15 have arisen between Merlo, Joy Construction and
16 Rampy related to the work performed, the project
17 management associated therewith and the amounts due
18 and owing Joy Construction for their work."

19 A. Well, that might have been the phrasing, but the
20 work that Joy Construction performed at my house
21 was exceptional. I mean I had no complaint with
22 the work that he did to remediate the defects of
23 IBI.

24 Q. I'm going to show you a document which we'll marked
25 as Plaintiff's 73.

1 (PLAINTIFF'S EXHIBIT 73 MARKED FOR IDENTIFICATION)

2 BY THE COURT:

3 Is that the Settlement Agreement?

4 Q. Yes, Your Honor.

5 BY THE COURT:

6 Any objection?

7 BY MR. JOHNSON:

8 No objection.

9 BY THE COURT:

10 All right, it shall be admitted.

11 (PLAINTIFF'S EXHIBIT 73 ADMITTED INTO EVIDENCE)

12 Q. Your signature is on that document, correct?

13 A. Yes, it is.

14 Q. And it references in paragraph one of the first
15 page that "In consideration of Merlo's release and
16 understanding herein, the receipt and sufficiency
17 of which is hereby acknowledged, Joy Construction
18 shall return to Merlo Check No. 4871, dated April
19 4th, 2020 in the amount of \$13,000.00."

20 A. That's correct, yes.

21 Q. Is that the overpayment?

22 A. Yes, sir, that's correct. Well, my records
23 indicate it was an overpayment. I guess they just
24 put it as a return of payment here but I think it's
25 the same thing, isn't it?

1 Q. Well, how can that be when the check number you
2 testified to about yesterday, and if it point you
3 to it, it's Defendant's Exhibit 26?

4 A. Yeah, I'm familiar with it and that was revised
5 afterwards because the check came back to us.

6 Q. It was revised? What does that even mean it was it
7 was revised afterwards, what was revised?

8 A. At the time that list was comprised it was
9 accurate, but then the check came back to us and it
10 was taken off the list. We're not, we're not
11 falsely overinflating what we paid Joy
12 Construction. I'm testifying right now we paid
13 them \$137,000.

14 Q. But you are falsely overinflating, aren't you,
15 because I have an Affidavit here.

16 Q. And if I can point you to Exhibit 26 please,
17 Defendant's Exhibit -- excuse me, Defendant's
18 Exhibit 36 which is already in evidence?

19 A. Okay, I've got it.

20 Q. Okay. Yesterday you testified, remember, as to the
21 April 1st, 2020 entry, check number 4868 to Joy
22 Construction for \$13,000; do you see that?

23 A. Correct, I did.

24 Q. And your testimony was that was an overpayment?

25 A. Yeah. I think Mr. Johnson tried to update this so

1 you have the updated one. This is not accurate
2 because that \$13,000 was returned to him.

3 Q. But remember I asked you about this exhibit, this
4 exhibit what's now been admitted Defendant's
5 Exhibit 36, do you remember when I asked you about
6 in that in your deposition? Do you see where it
7 says Plaintiff's Exhibit 22, do you remember that?

8 A. I just don't recall. That dates back quite a
9 while.

10 BY MR. JOHNSON:

11 No objection.

12 (PLAINTIFF'S EXHIBIT 74 MARKED FOR IDENTIFICATION)

13 Q. I'm going to show you another exhibit which will be
14 marked as 74.

15 BY THE COURT:

16 And that's without objection, it will be admitted.

17 (PLAINTIFF'S EXHIBIT 74 ADMITTED INTO EVIDENCE)

18 Q. Take a look at line three please. What does line
19 three, please state it for the record?

20 A. It says, "Check #4868 as requested was miswritten
21 and destroyed."

22 Q. What else does it say?

23 A. "It was not remitted and was mistakenly included in
24 the accounting of my costs to remediate and
25 complete IBI's scope of work."

1 Q. And it also has a Bates stamp number, doesn't it?

2 A. It does, "Merlo 3903-4".

3 Q. And that's Defendant's Exhibit 36, isn't it?

4 A. Let me see, that says "3903" on it.

5 Q. You'd agree when your Affidavit says "Merlo 3903-
6 4", correct?

7 A. Yes, it does.

8 Q. So how is that it can be an overpayment, the same
9 check number for the same amount for \$13,000, and
10 then in your Affidavit you're saying it was
11 miswritten and destroyed; how can you explain that
12 discrepancy?

13 A. I think it was just a clerical error that ---

14 Q. A clerical error?

15 A. At the end of the day we paid Joy Construction
16 \$137,000. We've documented that with all the
17 checks and the numbers right here.

18 Q. Well, how are we supposed to believe you with these
19 inconsistencies in your testimony?

20 A. I don't feel like there's any inconsistency. What
21 happened was we sent them the check and they sent
22 it back to us, I mean it was overpayment.

23 Q. That's what you're testifying to about today,
24 right? But this Affidavit doesn't say that, does
25 it? It says again, "it was miswritten and

1 destroyed", it was not remitted and was mistakenly
2 included in the accounting of my costs to remediate
3 and complete." That's not what you're testifying
4 to about today, is it?

5 A. At the end of the day we paid Joy Construction
6 \$137,000. I'm not misrepresenting what we paid
7 them.

8 Q. That Affidavit is false, isn't it?

9 A. Well, I don't know what happened, if there's some
10 type of clerical error here, but we paid them 137
11 Grand to correct the defects of IBI.

12 Q. You were put under oath when you signed this
13 Affidavit?

14 A. I don't recall.

15 Q. Well, can you look at page two of the Affidavit,
16 doesn't it say "Sworn to and subscribed before",
17 etc.; doesn't it say that?

18 A. It does, yes, sir.

19 Q. But this was testimony, this was your testimony,
20 correct?

21 A. Okay.

22 Q. And we're supposed to believe that you didn't?

23 A. Well, I'm admitting it could have been a clerical
24 error. We did pay them, you know, \$137,000.

25 Q. Do you remember when I explored that topic in your

1 deposition; do you remember?

2 A. Not specifically, it's been quite a while back.

3 Q. I'll refresh your memory. Do you remember -- if I
4 can point you in your deposition in the transcript.

5 A. Yes.

6 Q. Not the Affidavit, but the transcript.

7 A. Yes.

8 Q. If I can point you to page 25.

9 A. Okay.

10 Q. Line 6.

11 A. "Do you agree with this statement?" "I don't.
12 It's a little misleading." Is that it?

13 Q. That's correct. And continue.

14 A. "He actually sent me money back after this letter
15 went out."

16 Q. What letter was he referencing, do you remember
17 that?

18 A. I don't recall.

19 Q. Do you recall if it was the letter that Rampy had
20 sent on April 6th, 2020 to City of Seneca notifying
21 the City of Seneca that you breached a contract
22 with him? Do you remember that?

23 A. I think, was that his resignation letter? Is that
24 what you're referring to when he resigned from the
25 project?

1 Q. I'll show you.

2 (PLAINTIFF'S EXHIBIT 75 MARKED FOR IDENTIFICATION)

3 Q. I show you what's been marked as Plaintiff's
4 Exhibit 75.

5 BY MR. JOHNSON:

6 No objection.

7 BY THE COURT:

8 It will be admitted without objection.

9 (PLAINTIFF'S EXHIBIT 75 ADMITTED INTO EVIDENCE)

10 Q. You've seen 75 before, haven't you, Plaintiff's
11 Exhibit 75?

12 A. Yes, I have.

13 Q. And that's the statement that I'm referencing on
14 page 25 around line 6, correct?

15 A. It seems to be. Mr. Rampy accused me of breaching
16 the contract for nonpayment and then he sent me
17 \$13,000 back.

18 Q. And do you remember when I asked in your deposition
19 do you agree with that statement in reference to
20 Rampy's letter to the City of Seneca, remember, and
21 you say on page 25, line 7, "I don't. It's a
22 little misleading. He actually sent me money back
23 after this letter went out." And I asked you, "How
24 much did he send you?" Answer, "\$13,000. So I
25 think that was from an overpayment, actually." I

1 asked you again, "So that was a credit?" Answer,
2 "It was an overpayment." So why did you testify
3 that the \$13,000 was an overpayment and then
4 testifying in the Affidavit that it was mistakenly
5 written and destroyed?

6 A. In my records it was showing as an overpayment and
7 so in the Settlement Agreement he decided that he
8 would go ahead and send it back and that's what
9 happened.

10 Q. And do you remember testifying that you believe
11 Rampy had sent that back to you because it was
12 overpayment, do you remember stating that?

13 A. Yes, uh-huh (affirmative).

14 Q. But that wasn't true, was it?

15 A. In my records it was an overpayment so I guess that
16 people characterize it differently.

17 Q. But how is that same amount, \$13,000, also stated
18 in the Settlement Agreement?

19 A. I'm not certain of the question.

20 Q. How is that Mr. Rampy, as you testified, sent you a
21 \$13,000 check for overpayment, but there's a
22 Settlement Agreement which says he's going to
23 return \$13,000 to you as consideration for you
24 releasing him of claims related to his work on the
25 project?

1 A. We had no issue with his work on the project. The
2 only issue was he decided, you know, to move to
3 another state and I didn't feel like he'd be
4 capable of completing my house in Seneca, South
5 Carolina from another state. I was showing it as
6 an overpayment of \$13,000 and I guess he agreed to
7 send it back and we signed the Settlement
8 Agreement, and everything seemed to be copacetic at
9 the time.

10 Q. But you were fraudulently trying to account for
11 that \$13,000 against my client, weren't you?

12 A. No, I was not, no.

13 Q. You weren't?

14 A. No, I wasn't.

15 Q. Even if you look at Exhibit Number 36, isn't it
16 strange that you included, on Defendant's Exhibit
17 36 that you include that same check number for
18 \$13,000 as being for remediation ---

19 A. Well, this list, ---

20 Q. --- against my client?

21 A. --- this list was actually updated and this was not
22 a project that was static I guess, so there was
23 other costs that are added to the house that aren't
24 even shown in here.

25 Q. Well, we'll get to this in detail. But my question

1 is, don't you find rather suspicious that you take
2 the same amount that you had settled with Rampy
3 before, so the 137, so is it your testimony you
4 paid Rampy a total of, when I say "Rampy", Joy
5 Construction, a total of \$137,000; is that your
6 testimony?

7 A. I believe that's what the checks total, yes.

8 Q. And I don't want you to believe, you're under oath
9 and I want you to tell me exactly and specifically
10 how much you paid Joy Construction to remediate
11 defects?

12 A. I don't have all the accounting in front of me of
13 me but we can add up the checks here.

14 Q. You don't know, do you?

15 A. I'll just, I'll add up the checks.

16 Q. Let's add them up.

17 A. Okay. It looks to be a \$137,000.

18 Q. Right. But that same check was for, excuse me,
19 that same amount was for the settlement, correct?

20 A. I'm not certain.

21 Q. Now, you just testified that you had no, and I
22 don't want to misstate your testimony but I believe
23 I understood that you had no problems with Rampy on
24 the project, correct?

25 A. Well, I didn't say we didn't have any problems. We

1 didn't have problems with his craftsmanship.

2 Q. So why did you call the police on him? Didn't you
3 call the police or law enforcement?

4 A. At the end of project?

5 Q. Yeah.

6 A. Well, my accounting was showing he was overpaid and
7 then I come to find out, you know, he moved out of
8 state.

9 Q. And what did you do next when you found out? So
10 how did that come, how did that come to be? So one
11 day you decided to see how much you were paying
12 Rampy and then you thought you were overpaying him,
13 and you're claiming he had moved out state, so you
14 called law enforcement?

15 A. I'll be honest with you, I was fighting a very bad
16 strand of Covid at the time and I made a poor
17 decision calling the law enforcement on him. He,
18 he was an excellent contractor. I probably
19 overreacted.

20 Q. Okay. When you said you would be honest with me, I
21 want you to be honest throughout this entire trial,
22 okay, because what you're seeking against my client
23 you'd agree is inflated; isn't that true?

24 A. Not one bit, no, sir.

25 BY MR. JOHNSON:

1 No objection.

2 (PLAINTIFF'S EXHIBIT 76 MARKED FOR IDENTIFICATION)

3 BY COURT REPORTER:

4 Plaintiff's 76.

5 BY THE COURT:

6 Plaintiff's Exhibit 76?

7 BY COURT REPORTER:

8 Yes, sir.

9 BY THE COURT:

10 It will be admitted without objection.

11 (PLAINTIFF'S EXHIBIT 76 ADMITTED INTO EVIDENCE)

12 Q. I'm going to show you a document that's been
13 admitted as Plaintiff's Exhibit 76. If you can
14 take a look at the email in the middle, April 8,
15 2020 at 7:31 p.m., you'd admit that that's an email
16 from you to Rampy, correct?

17 A. That is correct.

18 Q. You're asking for a refund amount, correct?

19 A. For the overpayment, yes, that's correct.

20 Q. But that's not true, is it?

21 A. Well, my accounting was showing that I was overpaid
22 for the project.

23 Q. Didn't you send him an email that said, hey, let's
24 both take a haircut on this one, return the check
25 of \$30,000 for me or to me? Do you remember that

1 email?

2 A. I don't remember asking him for 30,000.

3 Q. Or excuse me, 13,000?

4 A. I could have. Like I said, I'm am not big on
5 litigation so we tried to wrap it up amicably at
6 the end. I was battling Covid and it was very
7 severe. He had neurological issues; he was moving
8 out of state. There was just a lot going on.

9 Q. When did you find out? That's a good point. So
10 you hired Rampy to finish my client's work?

11 A. That's correct, yeah, well, to remediate, to rip
12 out what they had done and do it properly.

13 Q. Well, which one, to complete after you terminated
14 them or to remediate because you said two things
15 just now?

16 A. Yeah. The majority of it I would say was to fix
17 the defects of the IBI.

18 Q. The majority, okay. So this \$215,000 figure on
19 Defendant's 36, the 215,523.20, how much that was
20 to complete the project, or how much of that stuff
21 was for new stuff and how much of it was, as you
22 claim, remediation or repair work?

23 A. Well, if you're insinuating that I put a pool in or
24 added square footage or maybe added hot tub, I did
25 nothing of the sort. There was no upgrades to the

1 property, it was simply to remediate what IBI had
2 done.

3 Q. An EZ Breeze porch system is not an upgrade?

4 A. I don't believe so. When we priced it out dollars
5 for dollars, by the time they had to go back in and
6 reframe the entire porch from IBI's mishaps it was
7 just as cost-effective to do the EZ Breeze system.

8 Q. But that's not true either, isn't it? I mean ---

9 A. It is because the porch failed inspection. They
10 wouldn't let us leave it the way it was, we had to
11 tear it all out.

12 Q. But the reason you claim you tore off the porch was
13 so you could fit in the EZ Breeze system? That's
14 the only reason why you didn't do anything to the
15 porch; isn't that true?

16 A. That's not accurate. It failed inspection and I
17 have an inspection report showing where the porch
18 failed. What they did, did not suffice. It
19 wouldn't pass Code, somebody would've got hurt.

20 Q. That's all speculative, right?

21 A. Perhaps.

22 Q. And let me ask you, if you go back to the email I
23 just had.

24 A. Yes, to Dustin?

25 Q. Yes. You state when you figure in the refund

1 amount "consider the EZ Breeze was not installed,
2 the kitchen tile needs re-worked, the grill tops
3 much be 10 inches & you installed eight inches (see
4 below), the framing for the EZ Breeze is incorrect,
5 grill & hood not installed, the house failed
6 inspection miserably on electrical, structural,
7 there is a \$500 fine for personal items inside
8 residence, inspector was shocked onsite, floors
9 never finished & Clint won't return calls. This
10 project now has my undivided attention and that may
11 not be a good thing. In the interest of full
12 disclosure, be advised I have spoken to a
13 governmental agency & a criminal complaint is being
14 considered. The ball is now in your court, proceed
15 with caution." Those are your statements.

16 A. That's correct, yes.

17 Q. And what date was that email again?

18 A. April the 8th 2020.

19 Q. And this is the same guy you said saved the
20 project, correct?

21 A. He did.

22 Q. But yet his work failed inspection?

23 A. Well, just a couple of the items there.

24 Q. But it failed inspection. How can he save the
25 project when his work failed inspection?

1 A. He saved the project. Without Dustin Rampy and Joy
2 Construction remediating my home over the course of
3 four months, it might have just been a dumpster
4 fire and we might have just had to burn it down.

5 Q. So what I'm curious about is did you actually call
6 the police on him? Did you actually call law
7 enforcement against him? I mean did you actually
8 do that?

9 A. I can't remember how all that originated. They
10 were at the house for some reason.

11 Q. For some reason? It wasn't because ---

12 A. Perhaps, I called, I just don't recall. It's been
13 years ago, but I did speak with them about Mr.
14 Rampy.

15 Q. And what happened after you spoke with him? Was he
16 ---

17 A. Nothing, just nothing.

18 Q. Did you bring a complaint ---

19 A. No, I didn't do nothing.

20 Q. --- against his license with the LLR like you did
21 with Mr. Grissinger?

22 A. Absolutely not, I would never do that. He's a
23 phenomenal builder.

24 Q. Okay.

25 A. I filed no complaint with the County, nothing. The

1 officer that came on site asked me if I wanted to
2 file a complaint and I said, no, I didn't, I just
3 wanted to talk with someone.

4 Q. So you're just threatening him, isn't that true?

5 A. Well, maybe I was encouraging him to reach a
6 settlement agreement I guess.

7 Q. Well, you not only threatened him, you also bribed
8 him, isn't that true, for this case?

9 A. I don't feel like I did.

10 Q. You intended to bribe him.

11 (PLAINTIFF'S EXHIBIT 77 MARKED FOR IDENTIFICATION)

12 BY MR. JOHNSON:

13 No objection.

14 BY THE COURT:

15 Plaintiff's Exhibit 77 admitted without objection.

16 (PLAINTIFF'S EXHIBIT 77 ADMITTED INTO EVIDENCE)

17 Q. I'm going to show you a document which has been
18 admitted as Plaintiff's Exhibit 77. That's an
19 email you sent to Mr. Rampy on March 21st, 2021,
20 correct?

21 A. It looks to be.

22 Q. And that was after your deposition in this case,
23 correct?

24 A. I believe so.

25 Q. And that was also after your deposition in the Don

1 Gardner case, correct?

2 A. I believe so.

3 Q. What are you trying to do in this email to Mr.
4 Rampy?

5 A. Well, I felt like we left things on very poor terms
6 between the two of us and I'm trying to reconcile
7 that relationship.

8 Q. Well, can I point you to the fourth paragraph where
9 it says "Fast forward" and can you read that to the
10 Court?

11 A. Let's see, "Fast forward to last week & IBI's
12 attorney is accusing you of convincing me to fire
13 them. He insisted the house was in perfect
14 condition & no work was needed. He insinuated IBI
15 was a model builder & together we were trying to
16 defraud them. I don't agree with them & I don't
17 think you do either."

18 Q. What else do you say in that paragraph?

19 A. Then it says, "Without your factual testimony, my
20 attorney told me we will surely lose the case."
21 That wasn't, you know, that was just me trying to
22 convince him to testify on my behalf, right,
23 because he's the one that came in and did all the
24 work. Yeah, his testimony basically would
25 substantiate everything I've already put into -- I

1 mean everything I've put into evidence and
2 everything I've said, it would substantiate it.

3 Q. I believe you testified earlier about Mr. Rampy,
4 that he was having some either mental or cognitive
5 issues, something of that nature?

6 A. That is correct.

7 Q. Was that around the time you guys entered into the
8 Settlement Agreement?

9 A. Well, I experienced that, yeah. Yeah, he was tough
10 to deal with.

11 Q. So is it your testimony that you were aware Mr.
12 Rampy -- so Mr. Rampy had to your understanding had
13 cognitive or mental issues ---

14 A. I didn't know at the time. Come to find out later
15 on.

16 Q. Oh, okay. So you're going to change your testimony
17 that, you know, when you were leading me down the
18 road that at the time of the \$13,000 payment that
19 he was moving out state and he was having cognitive
20 issues, that the cognitive issues ---

21 A. I wasn't aware --

22 Q. --- I thought that you meant ---

23 A. Yeah, I was not aware of that.

24 Q. Oh, okay.

25 A. But as I look back now and I know what he's been

1 diagnosed with, I can see that in my dealings with
2 him.

3 Q. Kind of make it up as we go along, correct?

4 A. That's not my intention one bit.

5 Q. But that's what you're forced to do in this case,
6 right?

7 A. I'll be honest with you, I think Dustin Rampy was
8 the savior of this project. Had he not come in and
9 did what he did and helped me and felt bad for me,
10 you know, he saved the project.

11 Q. Okay.

12 A. I mean I feel conflicted the way that, you know,
13 our relationship ended. I was not making good
14 decisions, as I spoke, you know, I had a lot of
15 health issues, I was in and out of the doctor, they
16 had me on a lot of different stuff. I made a poor
17 decision calling Oconee County PD. I might have
18 made a poor decision with this Settlement
19 Agreement, you know, I didn't want it to end like
20 that with him.

21 Q. Is that document, if you can go up one paragraph
22 where it says "Soon afterwards I was trying to
23 coerce you to complete \$300,000 worth of re-work to
24 fix IBI defects for half the price."

25 A. I was, I was always trying to get him to fix one

1 more thing, can you throw this in, can you help me
2 here, can you do that, and he really honestly did
3 everything he could.

4 Q. But let's focus on that \$300,000 worth of re-work,
5 like where did that come from?

6 A. Well, I spent, I spent 217,000 or 218,000, I'll be
7 more precise I guess, \$215,523, and there's still
8 issues that, you know, needs to have work. I mean
9 the driveway, if my neighbor says, hey, I'm not
10 going to make an agreement with you, I've got to
11 essentially crush up the driveway and have it re-
12 poured and that could be fairly costly I guess.

13 Q. And you honestly believe that the evidence that
14 you've testified to about alleged defects on the
15 part of my client, do you really believe that that
16 was around \$300,000?

17 A. I think cumulatively, yes. I do, yes.

18 Q. Well, if you had, let's say in theory if you not
19 only add what you paid Mr. Rumpy for completing the
20 project, correct? You didn't pay him just to
21 repair it, you paid him to complete the project;
22 isn't that true?

23 A. Well, most of it was repair. You know, I don't how
24 you would say complete repair, the majority of it
25 was repair work. I've got 4,500 pictures I can

1 show you, you know, of items that were defective,
2 items that weren't done properly. Since the time
3 of this build, you know, my neighbor has built
4 beside me and I've been able to watch them for six
5 months, I understand how this thing works now.
6 They just, you know, they took advantage of me.

7 Q. That same email, what is the subject of that email?
8 What does it say?

9 A. "Builder Referrals" is that what you mean?

10 Q. That's right, yeah. Why did you send him an email
11 that says "Builder Referrals" on March 21st 2021 and
12 talking about "without your factual testimony, my
13 attorney told me we will surely lose the case"?
14 What was your intent there?

15 A. I was trying to solicit his testimony, his
16 deposition.

17 Q. In exchange for business, correct?

18 A. Well, perhaps, yeah, I mean if I told him I had
19 builder referrals perhaps. I would've referred
20 Dustin Rampy. He's quite a builder, that's why he
21 was the President of the Homeowner's Association,
22 the Homebuilder's Association.

23 Q. Mr. Rampy responded to your email, correct?

24 A. I don't recall.

25 Q. I'll point you to it, it's on the very top of that

1 same document.

2 A. Okay.

3 Q. When is it dated?

4 A. Yes, he did, yes. Saturday, April 3rd, "Chris,
5 Thank you for the email. I'm sorry to hear that
6 your family has gone and is going through health
7 challenges. I enjoyed working with Derrick and
8 doing our best to give him a great room. I
9 received a call from a neighbor that was
10 recommended by you. Thank you for the kind words
11 that you have spoken about us recently."

12 Q. What else does he say?

13 A. "However, I'm not comfortable engaging in your
14 lawsuit with IBI. I have come to terms with how
15 Christa and I were treated by you last year.
16 However, no email or kind words to others can amend
17 the hardship and honestly slander that was bestowed
18 upon us by you last year. Your actions led to
19 multiple phone calls by the Seneca PD..."

20 Q. "Following"?

21 A. --- "...accusations that I stole \$30,000", I remember
22 he said that, "from you and left the state. When
23 the truth was, I told you 45 prior to moving that
24 my intentions were and you informed me that you
25 were comfortable to continue on your project. But

1 later accused me of moving abruptly and abandoning
2 your project."

3 Q. Keep going.

4 A. "Then I was berated by your attorney with threats
5 of lawsuit over the same \$30,000. When things
6 finally ended, I ended up being unpaid almost
7 \$13,000. That's \$13,000 paid by us personally to
8 ensure no liens were put on your house by
9 subcontractors and almost sent us into bankruptcy."
10 I doubt that. "I understand the distress you were
11 under, but you chose your actions and we were
12 ultimately the victims." Obviously his opinion.

13 Q. You're a successful real estate professional,
14 correct?

15 A. I hope so.

16 Q. You're a broker in charge?

17 A. Correct.

18 Q. What does that mean?

19 A. That means I supervise agents in the selling of
20 real estate.

21 Q. And you're licensed by the State of South Carolina
22 to do that, correct?

23 A. That's correct, yes.

24 Q. And how long have you been a broker in charge?

25 A. Probably 10, 12 years I guess.

1 Q. Do you regret what you did to Mr. Rampy?

2 A. I do 100%, yeah. I don't -- like I said, I was
3 experiencing health issues, I had Covid in a bad
4 way. I was not making great decisions at that time
5 and I regret the way that this relationship ended
6 100%.

7 Q. And isn't it the same way you treated my clients?

8 A. Not one bit.

9 Q. Do you remember in your deposition when I asked you
10 if it was unfair to terminate my client the way you
11 terminated them?

12 A. They knew it was coming. I have emails dating back
13 six months prior to terminating them saying, hey,
14 we're thinking about terminating them, and them
15 responding back, if you want to terminate us that
16 will be okay.

17 Q. Then why didn't you take them up on the offer, in
18 fact it was around May 16, 2019, right?

19 A. That's correct.

20 Q. So why didn't you take them up on the offer to part
21 ways amicably? Those were Mr. Montgomery's words
22 if I remember, correct, or something of that
23 nature?

24 A. That's correct.

25 Q. Well, why didn't you take them up on the offer?

1 A. That's correct. I felt like I had an obligation to
2 them because I had signed the contract, and while
3 we were beyond the 12 months they kept promising
4 me, Chris, four more weeks and we'll get you in,
5 Chris, six more weeks and we'll get you in, Chris,
6 we're going to get all the subs out there tomorrow,
7 we're going to get all the re-work fixed, we're
8 going to make this right. I believed them, I
9 believed them. I've got emails to that effect. I
10 just simply believed them and I believed them all
11 the way until the day I terminated them and I
12 guess, you know, I just looked back and said I
13 can't do this any longer, 23 months and they're
14 just are making promises upon promises.

15 Q. So why were you asking my client to request a
16 Certificate of Occupancy leading up, within a week
17 or so leading up to the day you terminated them?

18 A. That's a great question because had they fixed the
19 items that were not right I had every intention of
20 paying IBI. I did not want to leave them unpaid.
21 I don't sleep well at night when I don't pay
22 somebody, that's just my nature.

23 Q. But you'd admit by virtue of terminating them, you
24 never gave them the opportunity to finish these re-
25 work lists, correct?

1 A. That's correct, I feel like 23 months to build a
2 house that's the size of my house is more generous
3 than anybody out there would have been. I feel
4 like they mistook my kindness for weakness because
5 they ---

6 Q. They didn't -- I'm sorry, I'll let you finish. I'm
7 sorry.

8 A. Do you feel like 23 months was ample time when I
9 had neighbors that built houses that are half my
10 size house in six months and seven months with no
11 issues, with power lines that are run on their lot,
12 with basements that water sealed and don't leak,
13 with chimneys that lean, right, without having to
14 call the police because IBI was stealing power from
15 a neighbor five doors away. It just was
16 ridiculous. I have 15-year-olds building the deck
17 and you wonder why the house turned out the way it
18 did.

19 Q. I remember your testimony about that on direct
20 examination. But I'd like to know specifically
21 like why were you telling the bank that -- I'll
22 show you.

23 A. The bank controlled all the funding for the
24 project, so I knew if the bank was not pleased they
25 would shut all the funding off for the project.

1 Q. Right, but you had the right to delay the work.
2 The way it worked at the bank was you would request
3 draw payments, correct?

4 A. Correct, yes.

5 Q. So if you were so unhappy with their work and you
6 were so unhappy with delay, why were you
7 continuously asking the bank to pay them?

8 A. What happens then? What happens if I stop their
9 money? Then they stop working for sure. I mean
10 they were taking a five-month break already. Then
11 what happens if I stop paying them? Then they stop
12 work altogether. I was trying to pay them to
13 fulfill my obligation in the contract so hopefully
14 they would hear our cries and finish the house and
15 remedy the defects.

16 Q. So in this time element you would admit that you
17 were telling the bank like, for example, the
18 weather impacted the progress, correct? You admit
19 that? If you don't remember I can show you the
20 email. I mean it's clear, but I know we've been
21 here for a long so I can show you were it was
22 submitted.

23 A. I'll be honest with you, it was embarrassing to me
24 as a homeowner to go back to the bank and say, you
25 know, my builder can't complete this project in 12

1 months, we need another two months, we need another
2 two months, we need another two months to the tune
3 of 23 months. I was really embarrassed and I was
4 trying to encourage the bank to continue to fund
5 the project so I could continue to pay IBI.

6 Q. So the way I interpret that is, I lied to the bank
7 to keep them on the hook, to keep the bank on the
8 hook?

9 A. No, I wouldn't say I lied to them.

10 Q. You weren't telling them the truth then based on
11 what you just said, correct?

12 A. Perhaps I massaged it a little.

13 Q. Are you massaging all your prior testimony
14 regarding these defects today, not even a little?

15 A. I am not. I am just embarrassed that we didn't get
16 to present our entire case because I could go on
17 for five days about the defects. We've got the
18 pictures, we've got invoices, we've got everything.
19 I was very specific and very meticulous in
20 detailing how that works so that I could present
21 it.

22 Q. I'm going to show you a document.

23 BY MR. JOHNSON:

24 No objection.

25 (PLAINTIFF'S EXHIBIT 78 MARKED FOR IDENTIFICATION)

1 BY THE COURT:

2 Plaintiff's Exhibit 78 admitted without objection.

3 (PLAINTIFF'S EXHIBIT 78 ADMITTED INTO EVIDENCE)

4 Q. I'm going to show you an email, excuse me, a
5 document that's been admitted as Plaintiff's 78.
6 You can look on the bottom where it says March 13th,
7 2019 at 7:35. That's an email from you to the
8 bank, right, correct, to Laura Thompson?

9 A. It looks to be, yes.

10 Q. Okay. And can you read that email?

11 A. It says, "Laura - I approve the \$75,000 draw and
12 please send it via wire."

13 Q. Okay. On the next page what do you say?

14 A. "I was at the house today & more contractors are
15 showing up." And this in relationship to ---

16 Q. I don't want you to explain it right now. I don't
17 need you to explain it, just what did you say?

18 A. "I was at the house today & more contractors are
19 showing up. The dryer weather will definitely
20 benefit us."

21 Q. So you're acknowledging that the weather impacted
22 the progress of construction, isn't that true, or,
23 or were you lying to Laura Thompson; which one is
24 it?

25 A. Yeah, so at the time that was my opinion, and once

1 I saw my neighbors build their houses beside me, I
2 realized that IBI did everything wrong. They just,
3 they didn't cut the driveway in right, they didn't
4 grade the site properly and they were under
5 exclusive control of the project. They were
6 pulling all the strings. They were hiring all
7 their own subcontractors. Had they done what
8 needed to be done properly, they could've work
9 throughout the rain.

10 Q. So how does -- and so it was raining a lot during
11 the construction? You just said it, right?

12 A. Well, I mean there were a couple of days that we
13 had some rain, yeah.

14 Q. And so like when you state "the dryer weather will
15 definitely benefit us"?

16 A. Well, that's what they were telling me and I just
17 kind of regurgitated that to Laura to try to pacify
18 her I guess.

19 Q. You didn't realize if it was raining or not during
20 the time? Come on?

21 A. Well, I mean it obviously was, right, or I wouldn't
22 have put that on it?

23 BY THE COURT:

24 What was the date on Number 78?

25 Q. Your Honor, that's dated March 13th, 2019. And let

1 me ask you this, Mr. Merlo, March 13th, 2019 is
2 actually more than 12 months since the contract was
3 signed; isn't that true?

4 A. Yes, that is correct.

5 Q. So why didn't you threaten to terminate or do
6 something with my client then and there, right?
7 Why did you wait after a year? If this whole
8 timeline was so important to you, why didn't you do
9 anything about it right then and there after a
10 year? Why did you wait? Why did you wait until
11 you were requesting for a CO from my client, after
12 had put ---

13 A. Because they were ---

14 Q. --- a ton of money to get the boulder wall,
15 landscaping and all these other elements, all these
16 other add-ons, all these other change orders, why
17 did you wait until the finish line to terminate my
18 client?

19 A. Well, it really wasn't a finish line, and why
20 you're calling it a finish line, it wasn't because
21 after they were terminated we came back in and did
22 over \$200,000 worth of work. The reason that the
23 contract was extended for 23 months is, you know,
24 your clients are excellent negotiators. They kept
25 telling me give us four more weeks, give us six

1 more weeks and we'll get you in, we'll get you in.
2 I've got email after email where that happened and
3 I just had faith in them that they were going to
4 pull the rabbit out of the hat, fix the re-work,
5 get the contractors on site that needed to be done.
6 I was watching my neighbors after they had houses
7 framed in, you know, and they'd move in three
8 months later. So I thought if those contractors
9 can do it, IBI could surely do it. It just never
10 came to pass.

11 Q. Do you remember telling the bank, and I'll find it
12 if I need to but I'm trying to save time, but do
13 you remember, do you remember telling Laura
14 Thompson with the bank, it was sometime in August
15 2019, right before you terminated my client in
16 October, where you said the house now exceeds our
17 initial expectations though; do you remember that?

18 A. I do recall, yes.

19 Q. Okay. That was true, wasn't it?

20 A. It wasn't ---

21 Q. Go ahead.

22 A. Well, I was talking about things like, you know,
23 natural light.

24 Q. That's not, come on, Mr. Merlo, ---

25 A. There was a lot of natural light in the house.

1 Q. Why do you say those words then? Why do you say
2 "the house now exceeds our initial expectations"
3 though instead of, hey, water in the house, natural
4 light is great? Explain that, explain what you
5 said.

6 A. Yeah, I guess in my mind, you know, I just -- I
7 like a lot of natural light, I'm kind of that guy
8 and, you know, I was kind of referring to issues
9 like that. I guess it could be misconstrued.

10 Q. So I want to be clear, it's important when you're
11 under oath to tell the truth especially when so
12 much is at stake as it for my client. Were you
13 telling Laura Thompson the truth when you emailed
14 her and said "the house now exceeds our initial
15 expectation"?

16 A. Well, in some respects it did, yeah, in some
17 respects it did.

18 Q. But you're in this Court and you're wanting this
19 Court, you're trying to convince this Court that
20 the house was so riddled of defects so bad that you
21 had run out and hire another contractor; isn't that
22 true?

23 A. Well, that's what transpired because the work was
24 numerous, there was a lot of things that needed to
25 be remedied. So I don't think you would've moved

1 your family into a house that had water leaks and
2 mold, correct?

3 Q. I mean who would, right? But the thing is, you'd
4 admit these pictures, these pictures that you
5 testified to, and for the sake of time I'll
6 describe them and if you need your memory refreshed
7 I'll refresh it, but most of those pictures of
8 water entry and things of that nature, mud on the
9 ground, mud in the garage, those pictures that's
10 historically progress of construction, right? That
11 was in the early stages, isn't that true?

12 A. The pictures aren't representative of the narrative
13 of what happened at that house under IBI's total
14 control for 23 months. It was, it was a nightmare.
15 I've only probably talked about 10 to 15% of the
16 defects. I mean I could go on and we could talk
17 about more if you'd like to.

18 Q. Well, what you consider defects aren't true
19 defects, correct?

20 A. I guess it all depends on how you feel about water
21 coming into your house and creating mold in there.
22 I mean if you don't feel like that's a defect maybe
23 I'm mistaken.

24 Q. But Joy Construction worked on your house after my
25 client; isn't that true?

1 A. Joy did come work on it, correct.

2 Q. And they didn't do the work as great as you just
3 testified. Obviously those issues are related to
4 Joy Construction; isn't that true?

5 A. No, Joy Construction did nothing but remediate
6 defects. They didn't create any defects. They
7 solved a lot of problems.

8 Q. Okay. That's your testimony?

9 A. Yes.

10 Q. I'm going to show you another document.

11 BY MR. JOHNSON:

12 Objection, hearsay.

13 BY THE COURT:

14 Let's get it marked for identification as 79.

15 (PLAINTIFF'S EXHIBIT 79 MARKED FOR IDENTIFICATION)

16 BY MR. TAROKH:

17 Your Honor, I think I can make this easier.

18 (MR. TAROKH AND MR. JOHNSON CONVERSE ABOUT EXHIBIT)

19 BY MR. TAROKH:

20 We fixed it, Your Honor.

21 BY THE COURT:

22 So that solves your objection?

23 BY MR. JOHNSON:

24 It does, Your Honor.

25 BY THE COURT:

1 All right. So that's Plaintiff Exhibit 79 now will
2 be admitted without objection.

3 (PLAINTIFF'S EXHIBIT 79 ADMITTED INTO EVIDENCE)

4 Q. I show you what's been admitted as Plaintiff's
5 Exhibit 79. You'd agree that's an email dated
6 April 13th 2020?

7 A. Yes.

8 Q. From you to Mr. Rampy with Joy Construction,
9 correct?

10 A. Yes.

11 Q. Read through that email.

12 A. "Dustin - A full accounting and invoices from each
13 sub-contractor is required at this time. I will
14 make certain each invoice is paid and 20% for the
15 builder fee is included. The costs for the
16 hardwoods should be zero. They were left bubbled
17 in every room by your sub-contractor and the cost
18 estimates to repair them is considerable. I would
19 like to resolve the situation amicably but will not
20 turn a blind eye to your breach of trust on the
21 project. To resolve this dispute immediately,
22 provide full accounting with each sub-contractor's
23 invoice", which he did, yeah.

24 Q. Okay. So explain to me if Mr. Rampy did such a
25 great job for you, then how in the world are you

1 sending him an email talking about bubbled floors
2 throughout the house?

3 A. Well, this was really simply not the accounting
4 issue.

5 Q. But it's not, is it? Why did you mention the
6 bubbled floor? That's a major issue I would
7 imagine, correct?

8 A. I mean it was, the floors were bubbled, yeah.

9 BY MR. JOHNSON:

10 Objection, Your Honor.

11 BY THE COURT:

12 What grounds?

13 BY MR. JOHNSON:

14 The witness is not copied on the email and has no
15 personal knowledge of it.

16 BY THE COURT:

17 We don't know that yet.

18 BY MR. TAROKH:

19 I'll have him it him authenticate it, Your Honor.

20 I know that for certain ---

21 BY THE COURT:

22 Well, get it marked for identification and then if
23 you can get it authenticated, we'll deal with the
24 objection.

25 (PLAINTIFF'S EXHIBIT 80 MARKED FOR IDENTIFICATION)

1 Q. I hand you what's been marked for identification as
2 Plaintiff's Exhibit 80. Do you recognize that
3 document? And I'm looking at what now purports to
4 be the first email from April 22nd 2020 from you to
5 Townes with Dustin copied. It looks like you're
6 addressing it to Dustin though; do you recognize
7 that?

8 A. Let's see, this may looks like an email I
9 forwarded.

10 BY THE COURT:

11 What was the date on that?

12 Q. April 22nd 2020.

13 A. Yes, I'm familiar, yes.

14 Q. And that email was sent during the course of this
15 litigation, correct?

16 A. Yes, uh-huh (affirmative).

17 Q. It kind of makes sense now, doesn't it, that you
18 would delay the progress of this case so that you
19 could hurry up and get what you needed to get from
20 Rampy, correct, during this litigation? Because
21 you admit this case has been pending since 2019,
22 isn't that true?

23 A. With IBI?

24 Q. Yes.

25 A. I believe so.

1 Q. So I'm going to point you specifically to ---

2 BY THE COURT:

3 Now, hold on. Are you offering this as an exhibit
4 at this point?

5 BY MR. TAROKH:

6 Yes, Your Honor, I believe it's been properly
7 authenticated.

8 BY THE COURT:

9 Well, what is your objection?

10 BY MR. JOHNSON:

11 Well, let me look at it again. Nothing, I withdraw
12 then.

13 BY THE COURT:

14 All right. So it's been admitted, Plaintiff's
15 Exhibit 80 without objection.

16 (PLAINTIFF'S EXHIBIT 80 ADMITTED INTO EVIDENCE)

17 Q. You state, and correct me if I'm wrong, in that
18 email, in part you state, "Return the check for
19 \$13,000 and let's both take a haircut on this
20 project", correct?

21 A. Yeah, that's what it says.

22 Q. But yet you're trying to include that \$13,000 in
23 your alleged accounting against my client?

24 BY MR. JOHNSON:

25 Objection, Your Honor, he did not say that during

1 this trial.

2 Q. Your Honor, this ---

3 BY THE COURT:

4 Well, this is cross examination and I'm going to
5 allow some leeway just like I did you when you were
6 on cross examination.

7 A. The check from Dustin Rampy for \$13,000 was
8 returned, so it should not be in our accounting.
9 But we already paid Dustin Rampy \$137,000, we
10 didn't pay him anymore.

11 Q. Do you remember in your deposition when I asking
12 you how much you paid Mr. Rampy and again you were
13 stating, and correct me if I'm wrong, you were
14 stating \$150,000; do you remember that?

15 A. Or thereabouts.

16 Q. Or thereabouts. Do you believe a \$13,000
17 differential is a huge one?

18 A. I'm not misrepresenting that the check did not come
19 back to us. The check did come back to us, so we
20 only paid Dustin Rampy \$137,000, not any more.

21 Q. Right. But my problem with that is you testified
22 that \$13,000 to Mr. Rampy was an overpayment.

23 A. Because ---

24 Q. And that's not true, it was part of the Settlement
25 Agreement because you were having issues with the

1 way he was performing his work on your house after
2 you terminated my client; isn't that true?

3 A. On our accounting schedule it was showing as
4 overpayment, and that's just how we termed it, it
5 was overpayment.

6 Q. On your accounting schedule?

7 A. Yeah, I think we had a little schedule that he gave
8 us, like a five or six page thing, and we added it
9 all up and it was showing his overpayment.

10 Q. You testified yesterday, correct me if I'm wrong,
11 that after you terminated my client you had, I
12 don't want to use the wrong word but you had
13 interviewed like two dozen builders; is that
14 correct?

15 A. I might have called two dozen builders, but they
16 were not interested in coming in and correcting the
17 work of another builder.

18 Q. Okay. So help with the timeframe here. So on
19 October 12th, 2019 you terminated my client?

20 A. Correct.

21 Q. So it's true then that you started to vet potential
22 new contractors before you terminated them, isn't
23 that true?

24 A. That is incorrect. No, I did not.

25 Q. So how can you ---

1 A. I fired them with no inclination of where I was
2 going from there. I didn't want to fire them. I
3 wanted them to make the project right, I pay them,
4 everybody leaves peacefully. That was my
5 intention, but I couldn't convince them to save my
6 life to make the project right; I tried. And when
7 I fired them, I had no idea of, you know, who was
8 going to come in and do this project, I had no
9 idea.

10 Q. You were actually pleased with my client's work
11 during the course of construction; is that true?

12 A. Not the majority of it, no. They were a few things
13 they did right, but the majority of it, no.

14 Q. So why did you give them a gift? Do you remember
15 that, on Valentine's Day, February 14th 2019, you
16 gave them a gift; do you remember that?

17 A. I was trying to keep good relations so they would
18 complete the project.

19 Q. But you not only gave them a gift, you actually
20 send a text message that said you're very -- Mr.
21 Montgomery responds, "Thank you for the gift. Nice
22 surprise" to which you respond, "You're very
23 welcome. Nikki and I appreciate you and Greg on
24 the house. Enjoy."

25 A. Yeah, trying to encourage them to finish the

1 project, right.

2 Q. But that was over a year after the contract began,
3 right?

4 A. I don't have the date of the text.

5 Q. Well, I'll help you. If the contract was entered
6 into November 2017, and then you send them a gift
7 in appreciation of the house and their progress and
8 their work on it over a year later, right?

9 A. Correct, yeah. I think they had sent me a gift
10 maybe for Christmas and maybe I was just
11 reciprocating.

12 Q. For Valentine's Day?

13 A. I don't remember anything for Valentine's Day but
14 if you say I did, then maybe I did.

15 Q. Well, I'm not saying, I'm not going to testify.
16 I'll just show you ---

17 BY MR. JOHNSON:

18 No objection.

19 A. My wife might have recommended we send them
20 something and perhaps we did.

21 (PLAINTIFF'S EXHIBIT 81 MARKED FOR IDENTIFICATION)

22 BY THE COURT:

23 All right. This going to be Plaintiff's Exhibit 81
24 admitted without objection.

25 (PLAINTIFF'S EXHIBIT 81 ADMITTED INTO EVIDENCE)

- 1 Q. You see that, you admit it's a text, you get them
2 and then say, "You're very welcome - Nikki & I".
3 Mr. Montgomery texts you, "Thank you for the gift!
4 Nice surprise!" "You're very welcome - Nikki & I
5 appreciate you & Greg on the house. Enjoy."
- 6 A. And we honestly wanted to keep good relations, yes,
7 that's why we did that.
- 8 Q. You also made a bond claim against my client's
9 construction bond; isn't that true?
- 10 A. Yes, that is correct.
- 11 Q. And what was the result of that bond claim?
- 12 A. I was denied because I didn't have any type of
13 corroboration from Dustin Rampy I guess.
- 14 Q. Do you know that?
- 15 A. I believe if I remember correctly it was.
- 16 Q. Well, I don't know. I mean ---
- 17 A. No, I apologize. I'm confusing that with the LLR,
18 I apologize. The bond claim, go ahead with the
19 question. This dates back a couple of years.
- 20 Q. Do you remember sending a letter to Ginger Barnes
21 with Western Surety Company?
- 22 A. Yes, I do.
- 23 Q. And do you remember stating in that letter Mr.
24 Grissinger was not able to secure an occupancy
25 permit, is that what you mean by "CO"?

1 A. Yes.

2 Q. Because the house was a disaster and riddled with
3 building code violations?

4 A. Yes.

5 Q. And do you remember sending that email on August
6 14th 2020?

7 A. I'm not sure what the date was but ---

8 BY MR. JOHNSON:

9 No objection.

10 (PLAINTIFF'S EXHIBIT 82 MARKED FOR IDENTIFICATION)

11 BY THE COURT:

12 So Exhibit 82 is admitted without objection.

13 (PLAINTIFF'S EXHIBIT 82 ADMITTED INTO EVIDENCE)

14 Q. My question again is do you remember, I hand you
15 what's been identified or admitted as 82,
16 Plaintiff's 82, do you remember sending that letter
17 on August 14th 2020?

18 A. Yes, I do.

19 Q. And that was after your relationship with Dustin
20 Rampy and Joy Construction terminated, correct?

21 A. Yes, yes, uh-huh (affirmative).

22 Q. So I want to focus you on the sentence where you
23 state, the sentence I just read, "Mr. Grissinger
24 was not able to secure an occupancy permit because
25 the house was a disaster and riddled with building

1 code violations." I want to focus on the words
2 where it says "because the house was a disaster and
3 riddled with building code violations", that wasn't
4 true, was it? That wasn't true?

5 A. Yeah, at the time they were fired it was a
6 disaster.

7 Q. No, no, it wasn't true. I don't mean to cut you
8 off, but it wasn't true that the reason why Mr.
9 Grissinger wasn't able to secure an occupancy
10 permit was because the house was a disaster, et
11 cetera, that wasn't true because your contract with
12 IBI said in your guarantee that you have to make
13 full payment before a CO is requested; isn't that
14 true?

15 A. I mean I don't remember the specific wording in the
16 contract if that's what you're asking me.

17 Q. Sure, let's take a look at it. Let's look at the
18 guarantee briefly.

19 BY THE COURT:

20 I believe it's Plaintiff's Exhibit 33.

21 Q. Yes, Your Honor, thank you. Plaintiff's Exhibit 33
22 with a Plaintiff's yellow sticker.

23 A. Yes.

24 Q. Now, can you please find where it talks about full
25 payment and a CO will be requested, something along

1 where it ties that a CO requests the full payment,
2 can you find that part?

3 A. Yeah. It says, "Full payment of this obligation
4 will be made prior to move in completion of home
5 and/or Certificate of Occupancy request."

6 Q. Okay. So the truth is the reason why the house
7 didn't get the CO when Mr. Grissinger was on the
8 project was because you didn't pay them, isn't that
9 true?

10 A. No, they never applied for a CO.

11 Q. But then you're making it sound to his bond company
12 that the reason why, you're implying that they
13 actually tried to get a CO; isn't that true?
14 You're being misleading; isn't that true?

15 A. That was not my intention. That's not the way I
16 understand it. Yeah, that was not my intention.

17 Q. You're being misleading in this trial, isn't that
18 true?

19 A. Not at all.

20 Q. Do you remember when I was taking your deposition
21 and I was asking you, the amount you paid Joy
22 Construction, was that amount remediation, just for
23 remediation and defects and I believe you testified
24 yesterday and some today that, you know, the amount
25 you paid to Dustin Rampy and Joy Construction that

1 was repairs and remediation, correct? Would you
2 agree you testified to that effect?

3 A. Yes.

4 Q. But again, that's not everything you paid for; you
5 paid for it to be completed, isn't that true?

6 A. Well, I mean the cabinets didn't have handles on
7 them so they bought handles. If you're counting
8 that as, you know, finishing the project I guess,
9 right.

10 Q. So is it your testimony then that the only items
11 that Joy Construction and Dustin Rampy did that was
12 not to repair at least little miniscule type
13 aspects like a door handle?

14 A. Well, can you repeat the question please?

15 Q. You know, let me try that question, let me go with
16 this. Did the original plan for my client include
17 a wine cellar or a wine room?

18 A. I don't believe so, I don't believe so.

19 Q. Okay. So you never -- and when I say original
20 plans, I'm also talking about the last plans that
21 you guys agreed to and you guys, the last -- your
22 agreement -- strike that. Your agreement with my
23 client never called for the installation of a wine
24 room?

25 A. I agree.

1 Q. Okay. But yet you contracted with Joy Construction
2 to install a wine room in your house?

3 A. I did not. Joy Construction did not install any
4 type of wine cellar in my house.

5 Q. Are you sure?

6 A. I'm positive.

7 Q. Maybe you're playing games. So when I say "wine
8 cellar" what does that mean?

9 A. I guess some shelves where you store wine. Are you
10 talking about the door in the cellar? Because I
11 did ---

12 Q. Oh, you said "cellar", okay. What do you call that
13 cellar, just a cellar? You don't call it wine
14 cellar?

15 A. Well, we don't put much wine in there. I don't
16 really drink a lot, so I guess just a cellar it is.

17 Q. But, Mr. Rumpy, you're being, excuse me, Mr. Merlo,
18 you are being misleading because you knew what I
19 was talking about, right, when I mentioned wine
20 cellar?

21 A. Are you talking about the space underneath the
22 front porch?

23 Q. There's a lot of space underneath the front porch.
24 I mean, I'll show you what I'm referencing.

25 A. Okay.

1 BY MR. JOHNSON:

2 No objection.

3 (PLAINTIFF'S EXHIBIT 83 MARKED FOR IDENTIFICATION)

4 BY THE COURT:

5 All right. This is going to be Plaintiff's Exhibit

6 83 admitted without objection.

7 (PLAINTIFF'S EXHIBIT 83 ADMITTED INTO EVIDENCE)

8 Q. I'm going to show you what's been admitted as

9 Plaintiff's Exhibit 83.

10 A. Yes, okay.

11 Q. What is that? I'm looking at the email in the

12 middle. What is that document?

13 A. It looks like an email to Dustin from me.

14 BY THE COURT:

15 What's the date?

16 A. December 2nd, 2019.

17 Q. And to clarify you mean it's an email from you to

18 Dustin Rumpy?

19 A. Yes.

20 Q. And read it?

21 A. "Thank you for the update. On the pantry door, can

22 we see if it comes in seeded glass. The barn rail

23 kit is black. For the wine cellar, the idea is in

24 my head but I need to articulate it. See the

25 picture attached and notice the aluminum behind the

1 tv."

2 Q. And then you go on and, and keep going please?

3 A. "Wrap the walls in aluminum, build an arched inset
4 on the back wall with lower cross members to hold
5 wine bottles. Shelving on adjacent wall. Run
6 power down 3 walls for lighting & wood ceiling,
7 repurposing lumber from kitchen. I'm sure that is
8 clear as mud so we can discuss tomorrow." But
9 Dustin Rampy never did this, he didn't do any of
10 this.

11 Q. He never had anything to do, he didn't do anything?

12 A. Nothing in the cellar whatsoever, he never touched
13 it.

14 Q. He didn't drop three electrical wires for lighting?
15 I mean you need to tell the truth? If you're not
16 certain, ---

17 A. They may have, they may have dropped the wires and
18 that's it because they didn't, all this work that
19 was mentioned here, this was not done by Dustin
20 Rampy.

21 Q. Well, it didn't get fixed?

22 A. This would have been in additional to the original
23 plan. We didn't have him do any extra side work,
24 it was just remediation work.

25 Q. And that's your testimony?

1 A. Yes.

2 BY MR. JOHNSON:

3 I will object to the first part of the email.

4 BY MR. TAROKH:

5 That's fine. Your Honor, we can limit the scope.

6 I'm just going to ask him about Mr. Merlo's email
7 that's on the bottom and I'll get to that. But
8 other than that.

9 BY THE COURT:

10 That will be Plaintiff's Exhibit 84 for
11 identification at this point.

12 (PLAINTIFF'S EXHIBIT 84 MARKED FOR IDENTIFICATION)

13 Q. If you'll look at the email from you to -- well,
14 you tell me who it's from and if you could give us
15 the date?

16 A. Yes. January 17th 2020. It looks like it's to
17 Farris from me.

18 Q. Who is Farris?

19 A. That was somebody on Mr. Rampy's staff.

20 Q. Okay. With Joy Construction?

21 A. Yes. "Thank you for the update. The wine cellar
22 should have power run to 3 walls from the light up
23 top. Have a great weekend."

24 Q. Okay. So you just testified that Rampy at Joy had
25 nothing to do, didn't do anything with the wine

1 cellar, but there's an email where you're
2 instructing them to run power?

3 A. I don't even remember if they did this. I don't
4 even think they did this. They could have though,
5 so don't let me confuse things. If they did drop
6 the electrical plugs, that's all they did in the
7 cellar. They didn't do anything else, they didn't
8 build out anything.

9 BY THE COURT:

10 Has the part that you objected to been deleted from
11 that document?

12 BY MR. TAROKH:

13 I can. If you want me to, I can "X" it. I mean,
14 however you want to limit the scope, Your Honor.
15 The top part is what he's objected to.

16 BY THE COURT:

17 Can you redact that portion of it?

18 BY MR. TAROKH:

19 Yes, but I mean I can -- I don't have any, you
20 know, white-out or anything or tape, but ---

21 BY THE COURT:

22 You want a black pen?

23 BY MR. TAROKH:

24 I have a blue pen. But if Your Honor wants to mark
25 the exhibit, you know, or I can, just however you

1 would want to do it.

2 BY THE COURT:

3 Well, I'm just saying that he's objected. Now, I
4 assume there's some response from Joy back to him,
5 right?

6 BY MR. TAROKH:

7 Yes, Your Honor. The only reason I want to get to
8 this, like I don't care about this part, I just
9 want that part.

10 BY THE COURT:

11 Well, I mean I'll sustain his objection to that
12 part of it but I will allow the other part be
13 admitted but you just need to get that cleaned up.

14 BY MR. TAROKH:

15 I'll do it right now, Your Honor.

16 BY THE COURT:

17 So he's marking through the part you object to; is
18 that okay?

19 BY MR. JOHNSON:

20 Yes.

21 BY THE COURT:

22 Do you withdraw your objection now?

23 BY MR. JOHNSON:

24 That's fine.

25 BY MR. TAROKH:

1 And, Your Honor, for the second time would you
2 mind? Can they redact that part or I can just tear
3 it and put it on another sheet of paper? I marked
4 it out.

5 BY THE COURT:

6 Well, I mean we've got some black pens back in the
7 office back there, just strike through the part
8 you're going to amend.

9 BY MR. TAROKH:

10 Okay.

11 BY THE COURT:

12 All right, so just strike that and that part will
13 be redacted, the portion that he's objected to.

14 (MR. TAROKH STRIKES OUT REDACTED PART ON PLAINTIFF'S
15 EXHIBIT 84)

16 BY THE COURT:

17 All right, I think that's probably sufficient. So
18 it will now be admitted in its redacted form.

19 (PLAINTIFF'S EXHIBIT 84 ADMITTED INTO EVIDENCE)

20 Q. So you testified in your direct examination
21 yesterday I believe that, and let's go and explore
22 this, that you had vetted like a dozen or two dozen
23 builders, and then you narrowed it down to twelve,
24 and then you narrowed it down to six; do you
25 remember that?

1 A. Yes, that's correct.

2 Q. Tell me about that timeframe?

3 A. This was prior to hiring IBI, prior to hiring IBI.

4 Q. Okay, okay. What about from the time you
5 terminated my client, and I think you're right, I
6 do remember that, what about from the time you
7 fired my client until the date you contacted Mr.
8 Rampy, what was that timeframe?

9 A. From the time that they were terminated until the
10 time that I contacted Mr. Rampy?

11 Q. Yes. Do you remember?

12 A. I hope it would be soon after because somebody had
13 to come in and take care of all the work. I would
14 imagine it would've been soon after.

15 Q. Like days or weeks or what?

16 A. I just simply don't recall how soon. I remember it
17 was a humbling experience because when I called him
18 he didn't remember who I was and I had to identify
19 myself as the homeowner that was stealing power
20 from the house that he was building about five
21 doors down, and then when I said that, you know, he
22 remember who exactly it was. One of IBI's
23 subcontractors had run an extension cord several
24 hundred feet across the cul-de-sac and they were
25 stealing power from a house that he was building,

1 and I think he called the police there and they
2 came out.

3 Q. When is the first time that you ever contacted --
4 well, was that, what you just described, the first
5 time you ever had known about Mr. Rumpy?

6 A. That's the first time I ever met Dustin Rumpy
7 because when I got on site the police were there,
8 they called me and said, you know, your house is
9 stealing power and I had the pleasure of meeting
10 him then, that's correct.

11 Q. And when was that roughly? If you don't remember,
12 But like I guess it's hard to remember dates ---

13 A. It was during IBI's tenure, I just don't remember.

14 Q. So was it in 2018?

15 A. I honestly don't recall. I just don't remember
16 when exactly when it was.

17 Q. But you kept up with him obviously, right? After
18 that incident you just described, the allegation
19 that someone had stolen power from Rumpy's job site
20 and was running it to your project?

21 A. I did not keep up with Dustin Rumpy. I didn't
22 contact him again until after IBI was fired. We
23 didn't have any type of relationship if that's what
24 you mean.

25 Q. Okay. So you're telling me that you coincidentally

1 meet this contractor and I believe your testimony
2 yesterday was he was the former head of ---

3 A. He was the President of the Homebuilder's
4 Association in Oconee County, he was a third-
5 generation builder, he was a U.S. Veteran. I felt
6 like, you know, once I found out who he was, he was
7 overqualified. He had actually built several
8 houses in our neighborhood.

9 Q. Okay. And when did you find out all those facts
10 about him? The facts you just described, when did
11 you find all that out, around the time of the power
12 stealing episode?

13 A. No. Actually I wasn't looking a builder then. I
14 wasn't searching for a builder. I had IBI and I
15 was in the boat with them all the way till
16 termination day. There was no type of intent other
17 than to do pray that they finished it.

18 Q. See, it sounds to me like what happened was and,
19 you know, we're obviously not admitting there was
20 any power stolen, but it sounds like what happened
21 was early on in the construction and correct me if
22 I'm wrong, you met Mr. Rampy, he was the head of
23 the local building commission or whatever, you
24 know, someone who had a good reputation in the
25 industry, and that was always in the back of your

1 mind; isn't that true?

2 A. At the time I didn't realize his accolade, his
3 accolades. When I met him on site that day I just
4 thought he was the guy across the cul-de-sac
5 building a house and we were stealing his power. I
6 didn't, I didn't even realize who he was. It
7 wasn't until I had fired IBI and started looking
8 for other contractors that I became aware of him
9 and what he had done.

10 Q. How long did it take you from the day you
11 terminated my client until the day you reached out
12 to Mr. Rampy?

13 A. Well, I would hope soon after because I was
14 actively searching for someone. I don't know the
15 exact day though.

16 Q. Okay. So your term is you were "actively
17 searching". After you terminated them you were
18 actively searching for a new contractor?

19 A. Yes, absolutely.

20 Q. Tell me about this active search, like what
21 specifically did you do?

22 A. Well, I was driving through my neighborhood getting
23 names and numbers off of signs of builders that
24 were building in my neighborhood and also
25 neighboring neighborhoods and I was calling and

1 having conversations with those contractors.

2 Q. Okay. So it makes it sound like you didn't know
3 where to turn?

4 A. I didn't honestly.

5 Q. And you really expect us to believe that as a
6 broker in charge in the real estate industry?

7 A. I had never built a house in my entire life. This
8 was the first house I've built and ---

9 Q. I know, but this is the same industry, right,
10 residential real estate and builder, it seems to
11 go, to seem to dovetail, right?

12 A. Not really. All we did was sell houses and
13 commercial buildings; we don't build houses.

14 Q. What's your house worth now?

15 A. I have no idea. I haven't had it appraised.

16 Q. What were you telling the bank that you believe the
17 house would appraise for during the construction?

18 A. I think the tax assessed value ---

19 Q. I'm not asking about tax assessed value, I'm asking
20 what you thought that it would appraise for during
21 the time that they were working on your house?

22 A. Did I say 950, is that the figure I gave?

23 Q. If I remember correctly you did state in the email
24 that you believed the appraisal should back at like
25 1.2 million, you remember?

1 A. Might have been overly optimistic a couple of years
2 ago.

3 Q. Okay. So let's go back to the active search. So
4 you terminated them and you actively searched, and
5 the way it sounds like to me and correct me if I'm
6 wrong, you didn't know where to turn, you were
7 desperate, you were so desperate you had to go and
8 get in your car and drive through the neighborhood
9 and find, literally jump house to house to find
10 signs, correct?

11 A. Yes, yes.

12 Q. And how long did that take, that process?

13 A. I don't recall. I mean it's been a while back.

14 Q. I'm going to show you an email.

15 BY MR. JOHNSON:

16 The same objection to the email from Mr. Rampy to
17 Mr. Merlo.

18 Q. I acknowledge that and I'll redact, Your Honor.
19 What I want is, if I can ask him about that and
20 redact that. I'm going to show you what will be
21 marked as Plaintiff's Exhibit ---

22 BY THE COURT:

23 85.

24 Q. --- 85.

25 (PLAINTIFF'S EXHIBIT 85 MARKED FOR IDENTIFICATION)

1 BY MR. JOHNSON:

2 No objection.

3 BY THE COURT:

4 All right. Plaintiff's Exhibit 85 admitted without
5 objection in its redacted form.

6 (PLAINTIFF'S EXHIBIT 85 ADMITTED INTO EVIDENCE)

7 Q. What's that email? Excuse me, what is that
8 document?

9 A. It looks like an email from to Dustin dated October
10 13th 2019.

11 Q. Okay.

12 A. Oh, this says, "I fired my builder yesterday", so I
13 contacted him the day after, that's correct.

14 Q. Right. So let's explore this active searching you
15 testified about. So when did you actively search
16 so ---

17 A. I started the very next day, I was out looking.

18 Q. Okay. So the very next day would have been that
19 day of the email, correct, October 13th 2019?

20 A. That's correct, yes.

21 Q. Okay. What time did you start that day?

22 A. I don't recall that.

23 Q. Well, I'm asking because you agree you sent the
24 email on a Sunday afternoon, right, 2:22 p.m.?

25 A. Yes, that's accurate. Maybe in the morning?

1 Q. You usually go to -- and this is asking because I'm
2 just trying to get a timeframe here, but do you go
3 to church on Sundays?

4 A. I do usually at 8:00, yes. I'm home by 9:30, come
5 home, eat a little bite, and then by 11:00 I'm
6 doing something.

7 Q. Okay. So ---

8 A. So I might have had a couple of hours to drive
9 around.

10 Q. Okay. So that counts as the active searching
11 you've talked about, you were testifying about?

12 A. I believe so.

13 Q. Okay. You believe so or do you know or are you
14 just guessing?

15 A. I mean I don't recall that specific day I guess.

16 Q. Well, I mean you weren't actively searching, right?

17 A. I was actively searching for a replacement builder,
18 yes, I was.

19 BY MR. JOHNSON:

20 With the redaction, we have no objection.

21 (PLAINTIFF'S EXHIBIT 86 MARKED FOR IDENTIFICATION)

22 BY THE COURT:

23 All right. So that will be Plaintiff's Exhibit 86,
24 redacted, will be admitted without objection.

25 (PLAINTIFF'S EXHIBIT 86 ADMITTED INTO EVIDENCE)

1 Q. I'm going to show you what's been admitted as
2 Plaintiff's Exhibit 86. I'm going to point you to
3 the email in the middle dated December 22nd 2019.

4 A. Yes.

5 Q. Do you remember, and with that in mind do you agree
6 yesterday you were talking about that my clients
7 did not drop a light in a storage closet or
8 something in your office or something of that
9 nature; do you remember that?

10 A. Yes.

11 Q. Okay. Well, you state to Mr. Rampy, don't you,
12 quote, "When I looked into the storage area in the
13 office, I noticed there was no light. Is it
14 possible to have the electrician install an attic
15 type light there?"

16 A. Yes, it did not work. I think it might have been
17 something that just got overlooked because when we
18 came down to the inspection they told me to put one
19 in there, and I had another contractor come and put
20 it in. Dustin didn't do that work.

21 Q. Was that part of my client's scope?

22 A. I would think so if it's ---

23 Q. Wait, I don't want you to think, I just want you to
24 tell me the truth. Do you ---

25 A. I mean if it's required by code to have a light in

1 there, I would think they would have to put a light
2 in there.

3 Q. That's your answer?

4 A. I believe so.

5 Q. Are you familiar with Glass Doctor?

6 A. Yes, I contracted with them.

7 Q. What is Glass Doctor?

8 A. I believe they did they mirrors if I'm not
9 mistaken.

10 Q. The mirrors?

11 A. Yes.

12 BY MR. JOHNSON:

13 Same objection, Your Honor, to portions of it.

14 Q. I won't -- I don't have to admit any documents.

15 There's too much redact on all this, I'll just ask
16 him. You paid Joy Construction/Rampy to install
17 custom mirrors from Glass Doctor; isn't that true?

18 A. I don't think they were custom mirrors, they were
19 just mirrors above the bathroom vanities. I mean
20 it was basically so you could see yourself, you
21 know.

22 Q. I understand. But the cost of the Glass Doctor and
23 mirrors, those were included against my client,
24 isn't that true?

25 A. I believe they were on the initial plan, mirrors,

1 weren't they?

2 Q. But you didn't let them finish the work.

3 A. I gave them 23 months, I had hoped that was enough
4 time for them to finish in some capacity.

5 Q. I understand. So your logic was they didn't finish
6 the work in time, I'm going to terminate them, and
7 then I'm going to buy mirrors, I'm going to get Joy
8 Construction to buy mirrors, and I'm going to
9 include it as part of my damages against them;
10 isn't that true?

11 A. Well, I felt like the bathrooms had to have mirrors
12 to be complete I guess.

13 Q. But you are sitting here testifying in Court today
14 that those mirrors are my client's responsibility?

15 A. I understood them to be under the initial scope of
16 the house. I thought they would provide the
17 mirrors. It was supposed to be a turnkey project
18 where, you know, everything was provided I guess.

19 Q. So explain to me how having Dustin Rampy purchase
20 mirrors for you from the Glass Doctor is
21 remediation or repair defects. It's not, do you
22 agree?

23 A. Well, it was completing what they had started I
24 guess, right.

25 Q. Okay. So I hear remediation and I hear completion.

1 Are you saying that you hired Dustin Rampy and Joy
2 Construction to remediate?

3 A. The majority of all the costs were remediation.
4 Was there a cabinet handle here and there? Yes.
5 Was there a mirror here and there? Perhaps. Did I
6 build a wine cellar? No. But did they install,
7 you know, did they hard wire three lines down in
8 there because they were working around that area?
9 Perhaps. You know, the house was just, it was an
10 absolute disaster trying to iron out all these
11 details at once. It took everything, my wife and
12 I, Dustin Rampy and his wife had, I mean we were
13 working around this clock on this thing for four
14 months straight.

15 Q. You had the house repainted, didn't you, with Joy
16 Construction?

17 A. Can you repeat that?

18 Q. Yes, sir. Did you have the house repainted by Joy
19 Construction; isn't that true?

20 A. That is correct, it needed repainted, yes.

21 Q. Well, is that just because you had a change of mind
22 regarding the color; isn't that true?

23 A. I would say that's not the case. We have pictures
24 documenting the work that IBI did. They sprayed
25 one coat on the outside that wasn't even a clear

1 coat. I mean it had areas that were dark and white
2 and they failed to water seal the outside, the
3 painters didn't even caulk the outside, and when we
4 got to the inside, it was just, it was tough, it
5 was atrocious.

6 Q. So I'm trying to save time obviously and I can find
7 this email, I believe I can find it, so you're
8 telling me there's no documents where you state
9 something to the effect of somebody from Joy
10 Construction, one of those subs convinced you to
11 change the paint color; is that ---

12 A. You know, if we changed the color, we changed the
13 color. I don't know that the color would have any
14 bearing on the cost though I guess, right? I mean
15 if the wall needs ---

16 Q. Who would you expect ---

17 A. If the wall needs reconditioned and the wall needs
18 sanding down and the wall needs made level, you
19 know, you've got to put paint on it. So I don't
20 know that it costs, any difference to buy a blue
21 can of paint than it does a red can of paint I
22 guess.

23 Q. Is that true what you just said?

24 A. The work we had done.

25 BY MR. JOHNSON:

1 Object, Your Honor.

2 BY THE COURT:

3 What's your objection?

4 A. I mean they cut out, you know, they cut out above
5 the walls so once the walls go put back in they had
6 to be painted there.

7 Q. Now, this retention wall issue or the -- I say the
8 retention all, the boulder wall, are you familiar?

9 A. Yes, yes. We were told to move the house all the
10 way down the hill. We initially thought we'd put
11 the house in the middle of the lot; IBI convinced
12 us to take it all the way down to ---

13 Q. Let me just stop you. I have a question. I did
14 ask the question, but my question is, my question
15 is presuming it's true that the boulder wall was
16 placed on the neighbor's property, to remediate
17 that was only 500 bucks, isn't that true?

18 A. Yes, that's correct. I think we provided the
19 invoice from Bob Hawkins, Bob Hawkins I believe.

20 Q. That's not a material defect, is it? That's not a
21 material thing, is it?

22 A. It was to my neighbor. I mean he wasn't having it.

23 Q. But it's 500 bucks?

24 A. Right, and that's not something we did; IBI, you
25 know, encroached on my neighbor's lot.

1 Q. You would admit that the EZ-Breeze system is an
2 upgrade from the screened-in porch that my clients
3 installed?

4 BY MR. JOHNSON:

5 Asked and answered, Your Honor.

6 A. I do not believe that ---

7 BY THE COURT:

8 That's on cross examination and he's entitled to go
9 into it. I mean there's been some discussion about
10 it but not definitive, so I'm going to allow him to
11 proceed. Overruled.

12 A. When they did the cost analysis and we looked at it
13 both ways, everything had to be reframed inside of
14 that porch and so when they had to take out all the
15 framing and reframe it, it was just as cost-
16 effective to do the EZ-Breeze system and that's the
17 direction we went. We didn't want to spend extra
18 capital that didn't need to be spent.

19 Q. So your testimony is it cost the same to install a
20 porch, screened-in porch, as an EZ-Breeze system?

21 A. Well, the porch system that they had put in did not
22 pass inspection, so it all had to be taken out so
23 we had to start from scratch.

24 Q. Well, it's true that when Dustin Rampy put in the
25 EZ-Breeze system it didn't pass inspection,

1 correct?

2 A. I don't recall.

3 Q. I mean you remember this, do you remember those
4 emails I showed you where, you know, you were
5 threatening Mr. Rampy and your admission about
6 things not passing inspection, one of those aspects
7 was and tell me if I'm wrong, was the EZ-Breeze
8 system on that porch?

9 A. I remember the work was still going on then.

10 Q. And it's true that Mr. Rampy had his own
11 electricians and subcontractors there after you
12 terminated my client, correct?

13 A. That is correct.

14 Q. And you still had electrical issues, correct?

15 A. Absolutely, yeah.

16 Q. And the picture that we saw, that 141 temperature
17 gun that you claimed, that was after Rampy was
18 working on your project; isn't that correct?

19 A. Yes, it was, yes.

20 Q. So it's true that it was Rampy? If there were any
21 defects, it was not my clients but it was Rampy;
22 isn't that true?

23 A. The fact of the matter is Joy Construction did
24 nothing but correct defects. They correct ---

25 Q. I'm asking about the electrical?

1 A. They corrected so much electrical that ---

2 Q. So I just want you to explain to the Court how
3 you're complaining to my clients about the
4 electrical system ---

5 A. Right.

6 Q. --- when you just testified that Rampy and his
7 folks got in there and had their own electricians,
8 how is that my clients' fault?

9 A. They didn't work. That I'm aware of, they did
10 nothing inside the panel box, that was where the
11 issue was.

12 Q. That you're aware of, right? But you testified
13 today about this electrical issue, remember?

14 A. Yes.

15 Q. When your counsel was showing you pictures?

16 A. Yeah, the electrical boxes overheated, yeah.

17 Q. And you testified that, the way I understood your
18 testimony was that you pointed to these guys, that
19 it was their fault?

20 A. They installed the box. I mean I have the box
21 sitting right over there on the floor. I mean we
22 can pull it out and look at it. I mean that's the
23 box that I took out and spent \$3,500 to put a brand
24 new one in.

25 Q. But that was after you had hired Rampy to deal with

1 electrical aspects?

2 A. That's correct, that was just work that he did not
3 get to.

4 Q. Oh, he didn't? He didn't get to any electrical
5 work?

6 A. He didn't replace the panel box.

7 Q. Isn't it true that his electricians were the ones
8 that caused these electrical issues as you've
9 alleged?

10 A. They did nothing but remediate the work of IBI on
11 the project. They did not cause any type of
12 electrical issues whatsoever, they simply did not.

13 Q. You don't know, do you?

14 A. I know 100% and then when we moved in the house and
15 started turning on all the lights, you know, the
16 thing just overheated.

17 Q. Mr. Merlo, ---

18 A. I'm sorry. They didn't -- IBI wired that panel
19 box; Joy Construction did not wire that panel box.

20 Q. I remember that maybe, and correct me, there was a
21 lot of documents in this case, but wasn't there
22 communication of some sort, a text or an email
23 between you and Dustin Rampy and you're complaining
24 about them being absentee, you guys feel like
25 you're getting into a dispute and don't you mention

1 something about the electrical?

2 A. The panel box specifically?

3 Q. Yeah, the electrical system. You'd agree the panel
4 box is just one aspect of the electrical system,
5 correct?

6 A. Yes.

7 Q. So it's possible that whatever they did to the
8 electrical system caused the issues that you were
9 having?

10 A. (Negative nod)

11 Q. It's not possible?

12 A. Well, it could be possible, but it's not probable.

13 Q. And the reason you don't have Rampy in Court today
14 and the reason you're not suing them for defects is
15 because you were involved in this litigation and
16 you guys had entered into a Settlement Agreement
17 during this litigation, isn't that true?

18 A. Well, we did reach a Settlement Agreement.

19 Q. You have no idea of when those pictures were taken,
20 the ones you testified about, the big stack of
21 documents that your attorney had to go through and
22 look for the Bates stamp? Do you remember that
23 earlier today in the direct in those pictures and
24 you testified you had taken?

25 A. We had two sets. We divided them into an IBI

1 tenure and a Joy Construction tenure, so they were
2 either taken at the time IBI was on the project or
3 when Joy Construction was remediating their work.

4 Q. But you can't testify specifically as to -- I mean
5 that's a huge stack, period, right? So if you take
6 from, you know, you'd agree -- what day I guess
7 generally when was these pictures taken because I
8 think what we did was in the very beginning when
9 obviously, I could be wrong, obviously, any
10 construction project is going to look like a mess
11 because that's the nature of it, right; isn't that
12 true?

13 A. I was expecting a project that was neat and clean
14 like the one they took me to and I saw. I wasn't
15 expecting for my project to be a complete dumpster
16 fire day after day after day for 23 months. My
17 project was neglected, it was put on the bottom of
18 the list. They're building 20 plus houses, I'm
19 number 25. I got forgotten.

20 Q. Right. But remembering May 2019 you sent my client
21 an email and I think you start complaining about, I
22 think the word you used was craftsmanship or
23 something of that nature. Do you remember that,
24 generally what I'm talking about?

25 A. Yes, I remember, yeah.

1 Q. And Mr. Montgomery emailed you back and said, hey,
2 let's part ways amicably?

3 A. Yes, I do, yes.

4 Q. So if it was in such bad condition, why did you
5 wait until October after asking them to call for a
6 Certificate of Occupancy before you terminated them
7 if it was so bad?

8 A. Because, because he told me that within 45 days I'd
9 be living in the house.

10 Q. He told you that?

11 A. Well, I have it in a text or an email. There was a
12 continual promise that, hey, we're going to finish,
13 we're going to finish. You're only a month away,
14 you're only two months away. Unfortunately, I
15 couldn't really gauge how far they were away. I
16 didn't have the acumen to do that.

17 Q. Right. But that was contingent on you having a
18 decision about the boulder wall, wasn't it?
19 Weren't they waiting on you to make a decision
20 about this big money item before they could move
21 forward?

22 A. Yeah, I don't, I don't think the boulder wall
23 slowed us down that much. While I think there may
24 have been a little bit of a delay, you know, they
25 initially told me move the house down the hill,

1 drop it three feet in the ground and we can
2 probably get away without a boulder wall, and so
3 that was my expectation early on. And then they
4 come to me months later and say, hey, you're going
5 to have to do a boulder wall and it's going to cost
6 you money, and I said well, how much money, they
7 said \$15,000, it's in a text or an email. I said,
8 well \$15,000 is a lot of money, is there a way
9 around it? We'll try to mitigate it, we'll try to
10 figure it out, we'll try to push dirt and we'll try
11 to get it hauled off. So we went back and forth
12 for months and months and then it came to the point
13 where they said, hey, we absolutely got to have a
14 boulder wall for us to move forward, it's over
15 \$40,000, what do you want to do? And I said, well,
16 I want to help this project, let me go out and
17 contact three or four other guys that build boulder
18 walls. I did that and I got a price that was half
19 of what their guys supposedly charged for it.

20 Q. From Tennessee, right, it was a Tennessee vendor?

21 A. Tennessee Boulder.

22 Q. Around \$22,000?

23 A. Yeah.

24 Q. Okay.

25 A. And here's why I didn't go with that independent

1 contractor, I wasn't sure of the grade work that
2 IBI did in front of my house. I was afraid that
3 whole wall was going to wash down into my house.

4 Q. But they ---

5 A. And when they told me that they wouldn't be
6 responsible if I got somebody else on the project,
7 I was scared to death, I thought that whole wall
8 might come down and wash my house away. I didn't
9 know what to do. They trapped me into spending,
10 you know, \$46,000 on a wall that I shouldn't have
11 had to buy to begin with because they positioned
12 the house the way they wanted to.

13 Q. They trapped you into paying, I'm trying to
14 remember your testimony just now. You just
15 testified they trapped you into paying for a wall,
16 but isn't it true that you had the option to
17 purchase a wall, a significantly cheaper wall that
18 you sent -- I'm trying to avoid documents for the
19 sake of time, but isn't it true?

20 A. No, they sent me an email that said, hey, you go
21 ahead and contract with that independent
22 contractor, we don't know him, we don't believe
23 him, we don't trust him, and we'll take no
24 responsibility for anything that happens afterwards
25 on that landscape. And so at the end of the day,

1 you know, that's them saying that all the grade
2 work that they did in that front yard, if that
3 whole land comes down and, you know, washes my
4 house away, they're not going to be responsible. I
5 didn't feel comfortable with that.

6 Q. So that was around April or May of 2019?

7 A. That sounds accurate.

8 Q. Okay. So in other words you trusted them to put
9 the boulder wall in, in April?

10 A. I did, yes.

11 Q. And that was after a year of the contract at that
12 point?

13 A. Yes, yes.

14 Q. Okay. You eventually asked Greg, is it not true,
15 that -- excuse me, you asked Greg to put the
16 boulder wall on the balance sheet, remember that?

17 A. Well, I was trying to keep everything on the
18 balance sheet because when the bank funded, it was
19 much simpler if it just goes to one person, so
20 everything is on the balance sheet. If they were
21 to complete the project, make the project right, my
22 intention was to fund everything that they were
23 requesting, that was my intention.

24 Q. Right. But you terminated before they were given
25 an opportunity to address the issues you had, you

1 have to admit, right?

2 A. Well, after 23 months it was, it was a challenge
3 for me to commit to another year or two years with
4 IBI. I gave them two years of my life; I couldn't
5 give them three, I couldn't give them four, it's
6 too much to ask.

7 Q. I'm going to show you a document and this will be
8 in the yellow pile. It's Plaintiff's Exhibit 37.

9 A. Yes, I have it.

10 Q. And you'd agree that the first email on that
11 document, that's the termination email, correct?

12 A. Yes, it is, yes.

13 Q. Okay. Now, in that email, if I remember correctly,
14 you say something about my client's quality, do you
15 remember, do you see that? Is that true? I think
16 you specifically state, "while your team is very
17 qualified", don't you say that?

18 A. You know at the end of the day ---

19 Q. Answer the question first and then you can explain
20 it.

21 A. Yes, yes, yes.

22 Q. Now, go ahead.

23 A. You know, at the end of the day they build other
24 houses for folks that are obviously satisfied.

25 They chose to neglect my house for some reason. I

1 don't know why they chose to not supervise my house
2 for some reason. I don't know why, I can't explain
3 that. But at the end of the day, you know, I know
4 they build other houses.

5 Q. So the day before you sent that email, you sent
6 that on a Saturday morning, right, like around 7:45
7 in the morning?

8 A. 7:24 a.m., yes.

9 Q. 7:24, okay, okay. If I'm not mistaken, and correct
10 me if I'm wrong, when you flip the page there's
11 another email from you to them, from you to Mr.
12 Montgomery talking about trying to schedule a
13 meeting to discuss how you were going to pay the
14 balance; isn't that true?

15 A. Yes, I see it, yes.

16 Q. Okay. And you'd agree that anyone reading your
17 email to them on October 11th 2019 would believe
18 that you were honestly trying to schedule a meeting
19 to discuss how you were going to pay for the
20 project; isn't that true?

21 A. That was my intention to pay for everything if they
22 would make the project right. That was always my
23 intention. I have no intention of defrauding
24 anyone.

25 Q. Okay. So how could they, quote "make the project

1 right" to use your own words just now, when you
2 terminate them the very next day in the morning;
3 can you explain that?

4 A. Well, I just, I came to my senses after 23 months I
5 guess.

6 Q. Okay. So, so that night, so what time did you send
7 that email on Friday?

8 A. On Saturday?

9 Q. No, on Friday?

10 A. On Friday? Let me see.

11 Q. October 11, it was in the afternoon, it was late
12 after 5 or 6 if I remember correctly?

13 A. Friday, October 11th, 11:47.

14 Q. Is that p.m.?

15 A. I'm sorry, 5:14 p.m.

16 Q. Okay. So it was past quitting time and then you
17 send an email and then what specifically do you
18 state?

19 A. In the email?

20 Q. Yes.

21 A. Let's see, "while I encouraged the lender to move
22 forward, they are requesting a c/o as evidenced in
23 their last email."

24 Q. Okay. But then how does Mr. Montgomery respond?

25 A. "Let's plan to meet at our office next week" he

1 says.

2 Q. And then how do you respond?

3 A. Well, then the termination came through after that.

4 Q. May I see that document? I'm talking about this
5 email right here.

6 A. Oh, okay.

7 Q. So October 11th 2019 at 3:56 and just read that to
8 the next one please, sir.

9 A. Okay. "Friday will not work. Will be best to do"
10 -- Oh, I'm sorry, that's John. "Sounds like a
11 plan, let me know if next Friday will work & we'll
12 pencil it in."

13 Q. Okay. And then something happened that night, I
14 think you testified you came to your senses?

15 A. Yeah, I came to my senses.

16 Q. Well, explain, explain what went on Friday which
17 caused you to wake up and pull the trigger and
18 terminate them?

19 A. Yeah, I started taking accounting of what had
20 transpired over the last 23 months and it was
21 incredible, I mean it just was like nothing I've
22 ever experienced.

23 Q. And then it's true then that email followed a
24 subsequent that day or maybe the day before, it's
25 in that email chain, it's in that exhibit, where

1 Mr. Montgomery reminds you that a CO, you know, is
2 not going to be requested unless full payment is
3 made or something to that effect; isn't that true?

4 A. Yes.

5 Q. Okay. So you terminated them because you were
6 ticked off, you were upset about that; isn't that
7 true?

8 A. Well, not that specifically. It had to do with the
9 23 months prior really. It was leading up to that,
10 it was the culmination I guess.

11 Q. You were also upset that Mr. Montgomery forwarded
12 you an email from -- well, let me back up. Are you
13 familiar with Sound Scapes?

14 A. Yes.

15 Q. What is Sound Scapes?

16 A. I think they do audio, visual.

17 Q. Home theater type equipment?

18 A. Yes, yes.

19 Q. Okay. Is it true that Mr. Montgomery either that
20 day or a couple of days beforehand sent you an
21 email that to the effect it was from -- are you
22 familiar with Randy Lively?

23 A. Yes.

24 Q. Okay. So Randy Lively with Sound Scapes sent you
25 an email that said, or John sent you an email which

1 purports to be from Randy Lively to him that said,
2 hey, these are my words, you know, there's roughly
3 \$5700 worth of equipment here that Mr. Merlo is
4 telling me to put on the account?

5 A. Right.

6 Q. Okay. And Mr. Montgomery forwards you that and
7 says, hey, we don't pay for this kind of stuff?

8 A. Not a big deal, I mean I'll pay for it, I paid for
9 it out of my own capital account.

10 Q. But you got upset about that, right? That's why
11 you terminated my client because you couldn't add
12 something extra to their account?

13 A. Not at all really. It had to do with the last 23
14 months of what had transpired. It had to do with
15 the defects on the house and it had to do with time
16 delays. It had do with the craftsmanship and the
17 money that I was going to have to spend with
18 another contractor to correct it.

19 Q. Earlier that week you had arranged to -- briefly
20 are you familiar with Allen White?

21 A. Yes.

22 Q. With White's Appliances?

23 A. Yes.

24 Q. He's an appliance supplier vendor?

25 A. Yes.

1 Q. And isn't it true that you corresponded with him in
2 writing, in an email, about insuring the appliances
3 were going to be installed?

4 A. Yes, I believe I did.

5 Q. And that was around the date of termination of my
6 client, correct?

7 A. Perhaps.

8 Q. Okay. And isn't it true that the appliances were,
9 in fact, installed?

10 A. IBI didn't install them, I think they were just
11 simply delivered.

12 Q. Excuse me, delivered. Weren't they delivered the
13 day before you terminated them?

14 A. Perhaps.

15 Q. If the house was so bad, why did you request the
16 Certificate of Occupancy days before you terminated
17 them?

18 A. I didn't request that, the lender was asking for
19 that as a prequalification for getting the
20 refinance to get the funds.

21 Q. So it's your testimony that you never asked my
22 client to call for a Certificate of Occupancy
23 toward the end?

24 A. Well, I apologize. If I requested it, it's because
25 the lender asked for it. I mean, of course, I

1 wanted the Certificate of Occupancy but, you know,
2 they just weren't close to that, they weren't
3 anywhere near that.

4 Q. You'd admit that in some of your emails with Mr.
5 Rampy after you terminated them, your main goal was
6 to get a CO; isn't that true?

7 A. I was planning on building a house and moving in in
8 12 months and, you know, it took 30 months. So was
9 I anxious at the end to actually move in the house?
10 I was, I was anxious. I think anybody in my
11 position probably would've been.

12 BY MR. JOHNSON:

13 No objection.

14 BY MR. TAROKH:

15 This is Plaintiff's Exhibit 87.

16 (PLAINTIFF'S EXHIBIT 87 MARKED FOR IDENTIFICATION)

17 BY THE COURT:

18 Plaintiff's Exhibit 87 will be admitted without
19 objection.

20 (PLAINTIFF'S EXHIBIT 87 ADMITTED INTO EVIDENCE)

21 Q. And so you'd admit that Plaintiff's 87 is a
22 certified document from the City of Seneca for Joy
23 Construction Homes or to -- I guess what is this
24 document, you'd admit it's a Building Permit,
25 correct?

- 1 A. Yeah, it says "Building Permit Application", yeah.
- 2 Q. Okay. And it's permitting Joy Construction to do
- 3 work on your house, correct?
- 4 A. I guess, I've never seen this document.
- 5 Q. Okay. This is dated November 14th 2019?
- 6 A. It is, correct.
- 7 Q. Okay. And it says, well, it doesn't say anything
- 8 about repair or remediation; what does it say? It
- 9 says stuff about finishing up. But I mean what,
- 10 and so you'd agree it says, "Finishing project
- 11 started by previous builder", correct?
- 12 A. Correct, that's what they put on it.
- 13 Q. And what's the total cost of the job on there?
- 14 A. Well, it says total job cost 100,000. I've never
- 15 seen this before. This is the first time I've ever
- 16 seen it.
- 17 Q. Does it say anything about remediation or defects
- 18 or repairs or anything of that nature, correct?
- 19 A. Well, he didn't put that on there. His scope of
- 20 work I think speaks clearly about the remediation.
- 21 Q. Did you get Mr. Rampy to install a Coyote? Are you
- 22 aware of the Coyote brand grill and hood?
- 23 A. Yeah, that was the one I think that was on the
- 24 initial order with IBI, right.
- 25 Q. And so did you have Mr. Rampy order this, a Coyote

1 grill and hood, and are you attempting to capture
2 that cost against my client?

3 A. I think there was a grill included on the screened
4 porch and that's what was always intended to be
5 there, and so we simply moved forward with that
6 grill, the same exact grill. That was the one that
7 Allen, or that was the one that the appliance
8 vendor failed to deliver, and then we had to go to
9 another vendor and get it, the exact same grill,
10 nothing changed.

11 Q. But the cost of that grill you included as part of
12 your, as part of, the grill that Joy purchased for
13 you, you included in damages against my client?

14 A. Well, I believe IBI had that on the appliance order
15 and maybe it was backordered I guess and didn't
16 come.

17 Q. You aren't answering my question though. Did that
18 cost, you incurred costs to have Rampy get this
19 grill for you?

20 A. Correct.

21 Q. And you've included that cost of that grill against
22 my client?

23 A. Perhaps because it was on the original appliance
24 order, that exact grill. We didn't change any
25 specification, we didn't upgrade anything.

1 Q. How is that remediation of defects?

2 A. Well, they didn't provide the grill.

3 Q. What about bronze or oil, oil-rubbed bronze
4 recessed canned lighting, do you know anything
5 about that?

6 A. Yes, for the kitchen, yes.

7 Q. Okay. You ordered through Joy and you're trying to
8 stick that against my client; isn't that true?

9 A. They were supposed to be bronze from the beginning
10 and IBI bought them as white.

11 Q. And there's nothing wrong with the kitchen ceiling;
12 isn't that true?

13 A. There's isn't now, but there was the time IBI was
14 there.

15 Q. But did he take like wood from the kitchen ceiling
16 and put it in like a bottom floor?

17 A. It was repurposed in another area, yes.

18 Q. And didn't Mr. Rampy even install like a crows --
19 do you know what a crows foot is?

20 A. Yes.

21 Q. Okay. And it's like a crows foot, it's a?

22 A. On the back deck, yeah.

23 Q. It looks like, you know?

24 A. Well, it failed the structural inspection, so he
25 had to use that to shore it up structurally I

1 guess.

2 Q. And he also put a big cedar column for esthetic
3 purposes, right, near the crows foot; didn't Joy do
4 that?

5 A. I don't recall, I just don't recall that.

6 Q. And you put epoxy, do you know what epoxy is?

7 A. Yes.

8 Q. And you put epoxy all in that basement of the
9 little area when we did our site visit?

10 A. Correct.

11 Q. You put it all down there, right?

12 A. The floor was cracked.

13 Q. What?

14 A. The floor was cracked.

15 Q. From Rumpy, right?

16 A. No, Dustin Rumpy didn't pour that floor down there;
17 IBI poured that floor down there.

18 Q. But that's another example of the costs you're
19 charging against my client, correct?

20 A. Well, that was, rather than, you know, dig the
21 floor up or I guess jackhammer the floor up, they
22 said why don't you just try epoxying over the top
23 of it? We did the same thing in the garage I think
24 to try to eliminate some of the water from leaking
25 in downstairs. So rather than jackhammer up the

1 entire floor in the garage, which would've been
2 very expensive, we simply epoxy'd over it to try to
3 contain the water.

4 Q. So how much did it cost you to repair the deck?
5 You testified the deck, that my clients messed up
6 the deck and you had to incur costs; how much did
7 that cost you?

8 A. I don't recall specifically.

9 Q. You don't recall, okay. And it's true on that
10 document that I showed you, in Defendant's Number
11 36 where it shows the \$215,523.20, that one, okay,
12 so it's true -- so if I can kind of look over your
13 shoulder real briefly? So you have -- if I may
14 take it just really quickly? So you have like
15 Security Complete, okay, well, I mean what is that?

16 A. Yeah, that was, on that document but on the revised
17 version that was taken off there.

18 Q. Why was it taken off?

19 A. Because those were for the security cameras and
20 that wasn't part of the agreement with IBI, but ---

21 Q. What, but you included as your figure, remember,
22 \$215,523.20? This is what I asked you back in your
23 deposition as far as your damages, remember?

24 A. But what happened was Security Complete went into
25 the house and prewired everything and then when

1 IBI's contractors came in, they cut all the wires
2 and yanked all the wires out, so there was an
3 expense with Security Complete to come back and
4 rewire it again.

5 Q. But before trial and after your deposition you
6 thought to yourself, uh-oh, I better take that one
7 out?

8 A. Well, that was removed because it should not have
9 been included to begin with.

10 Q. Okay.

11 A. There is one from them, but it's much less.

12 Q. Who is Theo Galloway?

13 A. I don't recall.

14 Q. I'm just reading. Do you know who Theo Galloway is
15 because it appears you wrote a check to him for
16 \$400?

17 A. I think that was for the dock, for fixing the stuff
18 on the dock.

19 Q. But the dock was never part of my client's scope of
20 work?

21 A. It wasn't, but when their guy dropped a tree on the
22 gangplank and destroyed it, John said he would make
23 the gangplank right and so when they brought it out
24 it just wasn't finished so we had to pay somebody
25 to put the extra pieces on. Had it not been for

1 IBI, the gangplank never would have been replaced.

2 Q. Highland Cabinet?

3 A. We saw that invoice yesterday.

4 Q. For \$1,586?

5 A. Yeah, that was.

6 Q. Is your testimony that that cabinetry went into
7 your house, went to the subject project or did it
8 go to another one of your houses?

9 A. I have pictures of it going into my house. I've
10 got pictures of contractors installing it. That
11 surrounds the refrigerator inset. They delivered
12 the refrigerator that was on the initial order. We
13 gave the guys the specs for the opening, and then
14 when the refrigerator got out there it wouldn't fit
15 in the opening.

16 Q. That was completion, so would that be a completion
17 item or remediation of defect? So your logic is
18 the refrigerator ---

19 A. Well, they had to take ---

20 Q. Let me please finish. The refrigerator wouldn't
21 fit in this area?

22 A. Right.

23 Q. So you had to tear out the cabinets and put brand
24 new ones in?

25 A. We didn't put brand new ones in. We just cut them

1 up about eight inches and that was the work, that
2 was the invoice for that.

3 Q. Sound Scapes \$1300, what was that about? On
4 February 6th 2020, \$1300, Sound Scapes, was is that?
5 That's a sound system like a speaker system?

6 A. That wouldn't have been included in the work. I
7 don't recall specifically ---

8 Q. But it's included here, I mean it says ---

9 A. There should be an invoice to substantiate it, an
10 invoice.

11 Q. You have no idea what they did, right? You were
12 just putting numbers on this list to try to offset
13 my client's lien; isn't that true?

14 A. Not the case, no, uh-uh (negative).

15 Q. Okay. What about White Harbour \$278.32, what was
16 that about?

17 A. Yeah, that was one of the invoices when they came
18 out to move the water line from being on my
19 neighbor's lot, to move it back to our lot, White
20 Harbour Plumbing.

21 Q. So help me with this, we just talked about
22 cabinetry, you have a line here that says cabinetry
23 revisions, \$6,530?

24 A. Correct, and on the updated version of that it's
25 broken down and every single contractor has an

1 exact amount on the updated version.

2 Q. Why didn't you give me the updated version before
3 yesterday?

4 A. I'm not sure. I'm not sure why.

5 Q. Don't you think it prejudices my client to have
6 that kind of information proffered at the trial?

7 A. I think it's a higher amount, but it is updated
8 with everything perfectly.

9 Q. But that's not my question. Don't you think it's
10 prejudicial? Don't you think I should have been
11 entitled, my client should have been entitled to
12 those updated damages before trial?

13 A. I would think so.

14 Q. So what was the \$3,370, that's the epoxy?

15 A. Yes.

16 Q. And it's your testimony that was necessary because
17 if you didn't put this epoxy on it they would have
18 to tear up the whole floor; is that your testimony?

19 A. Well, it was cracking and separating and it wasn't
20 old.

21 Q. And that was the only way to fix that? Presumably
22 that was the only to put this fancy epoxy on it,
23 right?

24 A. We thought it was the cheapest, least expensive
25 way, and then in the garage like I said, the garage

1 floor is sloped so that when you pull a vehicle in
2 all the water goes in the basement. So rather than
3 jackhammering up the garage floor, we just spent
4 \$1,000 and epoxy'd it and it actually seals it
5 where the water doesn't go in there.

6 Q. The EZ-Breeze system, Mr. Rampy with Joy
7 Construction, he installed that for you, correct,
8 because he was in the process of doing that in the
9 area?

10 A. I believe so.

11 Q. Okay. So these checks that say, you know, these
12 big money checks, 15,000, 15,000, 35,000, 20,000,
13 et cetera to Joy Construction, did that include the
14 cost of the EZ-Breeze installation?

15 A. I don't recall specifically on that.

16 Q. But it should have, right? I mean why else, I mean
17 what were those checks for if not for a big money
18 item like an EZ-Breeze system?

19 A. Well, we have a detailed accounting of every single
20 thing and he has invoices that he provided.

21 Q. But then you also include a separate line item,
22 labor for deck 2,000, labor for EZ-Breeze 2,000,
23 and it's kind of suspicious, you'd agree, that
24 these are all even numbers, right?

25 A. We have an invoice for every single one of those.

1 Q. And then it says EZ-Breeze framing \$3500 and this
2 looks like it happened after April 3rd of 2020 so
3 that means -- and let's go back in time. So if Mr.
4 Rampy terminated the contract because you didn't
5 pay him as he said to the City of Seneca on April
6 6th 2020?

7 A. There were still items that were unfinished.

8 Q. Okay. So Mr. Rampy couldn't install the EZ-Breeze
9 system correctly, so you were trying to take that
10 cost and pin it to my client; isn't that true?

11 A. Well, that was, that was the results of the failed
12 inspection on the porch and all that had to be
13 ripped out.

14 Q. But we saw a document, did we not, where you're
15 telling Mr. Rampy the place failed inspection,
16 correct?

17 A. It did, yes, sir.

18 Q. Okay. And so you're taking the cost of the EZ-
19 Breeze remediation that appears to have been caused
20 by someone else and you're taking that and pinning
21 it against my client to offset the lien amount;
22 isn't that true?

23 A. Not at all. Dustin Rampy was simply trying to
24 correct the work of IBI, and had the porch been
25 done professionally in a craftsman-like manner, it

1 wouldn't have failed inspection and we wouldn't
2 have had to do anything to it.

3 Q. Did you ever call the police back and say, hey, you
4 know the complaint against Mr. Rampy ---

5 A. I never filed a complaint against Mr. Rampy.

6 Q. Or did you ever call the police after you called --
7 did you ever call the police on Mr. Rampy? I
8 thought you did? I thought you did?

9 A. Perhaps. I just, it's been a long time ago.

10 Q. Okay. So I believe your testimony was you did?

11 A. If you say I did, yeah.

12 Q. My question is, did you ever call him back and say,
13 hey, you know what, I shouldn't have done that and
14 forget about investigating Mr. Rampy?

15 A. Well, I never filed a complaint. They asked me was
16 I ---

17 Q. That's not my question. Did you ever call them?
18 Did you ever call them and say, when I say
19 "complaint" I'm not saying the filing of a legal
20 document, but I'm just saying did you ever like
21 follow-up with the police and say, hey, this Dustin
22 Rampy guy, never mind?

23 A. I did not, no, never. I did not.

24 Q. But you're singing his accolades right now or
25 you're singing his praises right now?

1 A. Well, without Dustin Rampy on this project for four
2 months, it would've been an absolute disaster.

3 Q. But you have say that, right? You have to say that
4 in this case? That's why you were so desperate to
5 try to get his testimony, right?

6 A. Well, that's the truth to be honest with you. I
7 wanted his testimony to corroborate everything that
8 happened in this case. He saw the defects in that
9 house when he walked in from day one and he saw
10 stuff that I didn't even recognize.

11 Q. So here's something, you know, we saw an email or a
12 text message that talks about the floors being
13 bubbled, remember?

14 A. Yeah.

15 Q. And you're telling Rampy, hey, it's bad, you know,
16 you're referring to this and that; why do you have
17 Phillip Broom Floors on here for \$1300 after April
18 3rd 2020?

19 A. He's the one that came in and did the floors.

20 Q. Okay. After Rampy was terminated, after Rampy
21 terminated the contract, correct?

22 A. Yes.

23 Q. And you're taking that cost and you're sticking it
24 to them; isn't that true?

25 A. Well, that was the result of the floors not being

1 level and the floors being squeaky throughout. He
2 fixed all of that and the only thing that they
3 didn't finish was that final top coat because it
4 bubbled up just a little bit and that was the cost
5 of remediating that.

6 Q. Well, why did you include the cost of an Oconee
7 Building Permit for \$850 against my client? Like
8 how is that remediation? I mean you'd admit that's
9 unfair, right, when you terminated them and now
10 you're going to stick them with the cost of getting
11 another permit? Why did you do that? It's right
12 here, it says Oconee Building Permit \$850; can you
13 explain why you did that?

14 A. Well, once Dustin Rampy was off the project I had
15 to get a permit to complete the project.

16 Q. So you decided to stick that cost to my client? I
17 want to know, like what was your logic with that?
18 Why didn't you stick it to Rampy? I guess you
19 couldn't because you had a release, right? So you
20 couldn't do anything with Rampy so you decided to
21 take that amount, and stick it on here to try to
22 offset the lien amount; isn't that true?

23 A. Is that not a cost of finishing what IBI began?

24 Q. But how is fair that they be charged for your
25 permit after you fire the subsequent contractor,

1 when you terminated them you didn't give the
2 opportunity to do anything?

3 A. Like I said, I gave them 23 months of my life, I
4 felt like that was sufficient.

5 Q. Now, you gave them no notice of these defects after
6 you terminated them, correct? So correct me I'm
7 wrong, so you terminated them on October 12th 2019?

8 A. Correct.

9 Q. My clients file a lien, a lawsuit is instituted, is
10 started and initiated, and you never send my client
11 anything in writing about defects or anything of
12 that nature? You never give them the opportunity
13 to cure these alleged defects?

14 A. We sent them our re-work list every single month
15 for a year; they just ignored it.

16 Q. So the answer is, no, you did not send them any
17 notice of these defects after you terminated them?

18 A. Not after termination, no, sir, uh-uh (negative).

19 Q. Isn't it true epoxy is a decorative thing and
20 hasn't nothing to do with leveling or anything of
21 that nature?

22 A. It seemed to solve the problem on both fronts.

23 Q. It seemed to. Okay, so I guess my question is, was
24 it necessary to put epoxy on the floor, and you
25 don't know that for a fact, do you?

1 A. Well, where the floor was cracking, you know,
2 somebody was going to walk through there and trip.
3 Upstairs the water was leaking downstairs and it
4 seemed to solve the problem on both fronts and it
5 seemed to be an efficient solution.

6 Q. Your Honor, may I take five minutes? It's a been a
7 while and I just need a break.

8 BY MR. JOHNSON:

9 That's fine.

10 BY THE COURT:

11 We'll take about a 10-minute break.

12 (OFF THE RECORD)

13 BY THE COURT:

14 All right, we're back here on the record and Mr.

15 Tarokh was finishing up his cross examination.

16 CROSS EXAMINATION RESUMED BY MR. TAROKH;

17 Q. Yes, Your Honor. Mr. Merlo, if you can go the
18 yellow pile and pull Exhibit 40 please?

19 A. Yes, got it.

20 Q. That's an email from you to Mr. Montgomery about a
21 pricing out a lot in Powdersville; isn't that true
22 and I think it was like 15,000 square feet?

23 A. It was more a solicitation to find out a price per
24 square foot on a flex building.

25 Q. So you weren't being honest with him, right?

1 A. Well, I was simply trying to get the average per
2 square foot on a flex building.

3 Q. So why didn't you simply -- well, just so we're
4 clear, can you start at the bottom and it's a brief
5 email and just kind of work your way up and if you
6 can tell me the date and time and who said what to
7 who I guess?

8 A. Yeah. From me to Mr. Montgomery, "We would be
9 looking" -- let me see, okay, start that bottom. I
10 said, "John - I have a lot in Powdersville & I'm
11 thinking about building a small 15,000 square foot
12 flex building kind of like the one pictured. Is
13 this something you guys may want to consider
14 building? Interested to see what a square foot
15 price might be."

16 Q. Okay, you can stop right there. So you just
17 testified this was more like, and I mean this my
18 words, but like you were fishing for a square foot?

19 A. Yeah, just what they build flex space for per
20 square foot.

21 Q. So why do you say would you be interested in
22 building this? Why didn't you just simply say,
23 hey, what do you think the square footage is? Like
24 why did you have to reference would you be
25 interested in building; why did you do that?

1 A. Well, at this point I obviously was not going to
2 hire them to do another project.

3 Q. So you were being dishonest with them?

4 A. I don't think I was being dishonest, I was just
5 trying to see what they price a flex building for
6 per square foot.

7 Q. Why?

8 A. Well, we had somebody that was looking to build
9 one.

10 Q. To benefit yourself, right?

11 A. Well, no, it was for someone else.

12 Q. But to ultimately benefit yourself, right?

13 A. I guess if we represented the client perhaps,
14 perhaps.

15 Q. What's the date of that email?

16 A. July 11th, 2019.

17 Q. And that was, August, September, October, roughly
18 three months before you terminated them?

19 A. Correct, yeah.

20 Q. And you're in that business, right? You're in the
21 commercial?

22 A. Yeah, we don't build though, remember.

23 Q. Don't you think that an email like that would be
24 received by my clients as an indication of your
25 pleasure with them, your satisfaction with this

1 performance?

2 A. Well, I'm not sure how they received it, I'm not
3 sure.

4 Q. I want to show you another document.

5 BY MR. JOHNSON:

6 No objection.

7 (PLAINTIFF'S EXHIBIT 88 MARKED FOR IDENTIFICATION)

8 BY THE COURT:

9 That will be 88?

10 BY MR. TAROKH:

11 Yes, Your Honor.

12 BY THE COURT:

13 Admitted without objection.

14 (PLAINTIFF'S EXHIBIT 88 ADMITTED INTO EVIDENCE)

15 Q. This is City of Seneca, a certified City of Seneca
16 copy of the Building Permit Application that you
17 signed on April 6th 2020, right?

18 A. Yes, it appears to be.

19 Q. That's the same date that Mr. Rampy sent his
20 resignation to the City of Seneca, that he sent
21 correspondence saying that he's no longer your
22 builder, right?

23 A. Yes.

24 Q. Okay. And what's value, the total cost you put on
25 the job? It's like 262,500, right?

1 A. Yes.

2 Q. Where did that number come from?

3 A. I'm not sure, that's not my handwriting. I'm not
4 sure.

5 Q. Is the part that says "house is finished/just needs
6 c/o" your handwriting?

7 A. Yes, it is, yes.

8 Q. You have no idea what that \$262,500 cost job came
9 from?

10 A. I have no idea, I didn't write that. That's not my
11 handwriting.

12 BY THE COURT:

13 What's that number again?

14 Q. 262,500.

15 BY THE COURT:

16 Okay, 262,500, and that's dated when, April 6th?

17 Q. 4/6/2020.

18 A. That could have been, you know, to complete the
19 project that Rampy started I guess because my
20 building permit might have been tied to his, I
21 don't know.

22 Q. But remember when we saw in the Rampy permit it
23 said finishing job of previous builder \$100,000?

24 A. Right.

25 Q. Rampy does a bunch of stuff?

1 A. Yeah, I don't think he ---

2 Q. But he terminates it and ---

3 A. I don't think ---

4 Q. Let me finish. Then he terminates it, and then you
5 say that he terminates the contract and tells the
6 City of Seneca he did because I believe that's in
7 evidence. You go to the City, City of Seneca, and
8 pull your own Building Permit Application and
9 somehow the value of that cost gets put on that
10 document, right, obviously, you'd agree?

11 A. But this not my handwriting here.

12 Q. So you just walked into the City of Seneca and
13 said, hey, you know, ---

14 A. I need to get a building permit, this is my
15 address, that's what I did, and they did everything
16 else, and I signed the bottom and I was off.

17 Q. Where do you think they got -- where you do you
18 think -- I guess how do you think that figure made
19 its way on that document?

20 A. They probably pulled it from his previous permit I
21 guess. I didn't write that number in there though.

22 Q. Well, I have two pictures and I'll be very, very
23 brief with the pictures. These are pictures that
24 were admitted in like the Rampy, the Rampy
25 compilation pictures that you testified about, do

1 you have those?

2 A. Perhaps here maybe?

3 Q. May I see this? Thank you.

4 BY THE COURT:

5 Mr. Tarokh, Defendant's 75, is that it?

6 BY MR. TAROKH:

7 It looks to be, Your Honor, per line.

8 BY THE COURT:

9 Wait a minute, no, 77.

10 Q. Would you also find for me Plaintiff's Exhibit 51
11 and that should be the, that should be a Draw
12 Inspection Report Number 9?

13 A. Yes, got it.

14 Q. Okay. May I see that document please? Okay, thank
15 you. It was your testimony earlier that
16 Defendant's Exhibit Number 77, these documents,
17 were pictures of remediation work that Mr. Rampy
18 performed, correct?

19 A. Correct.

20 Q. Okay. I'm going to point to a specific document
21 here.

22 A. Okay.

23 Q. Merlo 002499; do you see that?

24 A. That was the one that was supposed to be concreted
25 and they framed, yes.

1 Q. Okay. And you said that Rampy did this remediation
2 work?

3 A. He did, yeah, he cut out the whole wall.

4 Q. So why isn't the house painted? Excuse me, why
5 aren't the walls painted in that picture?

6 A. They haven't painted, yeah. I guess they haven't
7 repainted, maybe they just touched them up.

8 Q. But that's not true, is it, because if you look at
9 Plaintiff's Exhibit 51, the pictures in the final
10 inspection report shows that the walls were painted
11 throughout the house; isn't that true?

12 A. Well, those walls are actually painted.

13 Q. They are?

14 A. Yeah, it's gray.

15 Q. What are these white strip things?

16 A. That was them correcting all the sheetrock defects
17 and getting ready for a paint. Yeah, so that room
18 is gray, those are already painted.

19 BY THE COURT:

20 What number was that exhibit?

21 BY MR. TAROKH:

22 51, Plaintiff's 51, Defendant's 77 and it was Merlo
23 2499.

24 A. That wall was actually cut out three times.

25 Q. Oh, really?

1 A. Yeah.

2 Q. Why?

3 A. Well, because it was supposed to be concrete and it
4 was it was not framed and it leaked. It was cut
5 out a total of three times.

6 Q. How much did that cost to repair?

7 A. I'm not sure what it should be, Dustin Rampy did
8 most of that.

9 Q. Did it cost \$137,000 to repair?

10 A. No, it was a very small portion of it.

11 Q. A very small portion of it. Are you just talking
12 about a couple of hundred dollars like the boulder
13 wall?

14 A. I'm not certain of the specifics.

15 Q. But probably around there?

16 A. I don't know. It was kind of a flat rate pricing
17 on complete project thing.

18 Q. The truth is you don't know how much it cost?

19 A. To replace just that one wall?

20 Q. Yeah.

21 A. I'm not positive of just the one wall.

22 Q. Now, when you testified earlier that the project
23 was like nowhere near the finish line; do you
24 remember that? Do you remember when I was asking
25 about?

1 A. Yes.

2 BY MR. JOHNSON:

3 Your Honor, reserving objection based on
4 production.

5 BY THE COURT:

6 Do what?

7 BY MR. JOHNSON:

8 I'm going to reserve an objection based on the
9 production. It doesn't have a Bates number on it,
10 so I'm ---

11 BY MR. TAROKH:

12 We're just going to -- I ask the Court's
13 indulgence? I'm just going to verify that I had
14 sent this to him.

15 (MR. TAROKH AND MR. JOHNSON - OFF RECORD CONVERSATION)

16 BY MR. JOHNSON:

17 No objection, Your Honor.

18 (PLAINTIFF'S EXHIBIT 89 MARKED FOR IDENTIFICATION)

19 BY THE COURT:

20 So this is going to be Plaintiff's Exhibit 89
21 admitted without objection.

22 (PLAINTIFF'S EXHIBIT 89 ADMITTED INTO EVIDENCE)

23 Q. You'd agree that this document -- what's the number
24 again, I'm sorry?

25 A. 89.

1 Q. 89, Plaintiff's Exhibit 89 is an email from you to
2 Mr. Montgomery on June 4th 2019?

3 A. Yes, uh-huh (affirmative).

4 Q. And you specifically to him, "Thanks again for the
5 diligence on getting this one to the finish line."

6 A. I assumed they would get to the finish line at this
7 point. I still had full confidence in them.

8 Q. But you were also telling him about how impatient
9 you were, right? "It's been a journey &
10 admittedly, my impatience has gotten the best of me
11 at times."

12 A. I mean I spent 30 months building a house, right.

13 Q. So you testified you are the finish and we have
14 evidence in the email you sent on June 4 2019 that
15 talks about the finish line?

16 A. I had full confidence they were going to remedy the
17 defects and they were given another, you know, four
18 or five months after that, yes.

19 Q. I'm going to show you another email or document.

20 BY MR. JOHNSON:

21 No objection.

22 (PLAINTIFF'S EXHIBIT 90 MARKED FOR IDENTIFICATION)

23 BY THE COURT:

24 That will be Plaintiff's Exhibit 90 admitted
25 without objection.

1 (PLAINTIFF'S EXHIBIT 90 ADMITTED INTO EVIDENCE)

2 Q. Mr. Merlo, you'd admit that's what been admitted as
3 Plaintiff's Exhibit 90, look toward the middle,
4 February 19th, you'd agree that's February 19 2019,
5 correct?

6 A. Yes.

7 Q. And ---

8 A. This is when John tells me the house was going to
9 be done by May 1st.

10 Q. But he doesn't tell you that.

11 A. He said "if I had to guess May 1st."

12 Q. But it's a guess?

13 A. Yeah, it was a guess. He wasn't close though, was
14 he? Well he's off about a year, a year.

15 Q. So he's not telling you the house will be done by
16 May 1st, he's telling you on February 19th 2019 that
17 his hopeful guess was it would be done by May 1st,
18 isn't that true?

19 A. Yeah, and he was misleading me so that ---

20 Q. Well, that's ---

21 A. --- I would keep my contract with IBI and continue
22 to fund them, and I did, it worked, I kept going.
23 I mean he kept me on the hook for 23 months, he's a
24 hell of a salesman, excuse me, he's a heck of a
25 salesman, Your Honor.

1 Q. But you didn't rely his statement, did you? He
2 knew it was a guess, you just testified to that,
3 right?

4 A. At this point I mean I was pretty deep in. I mean
5 I was hoping and praying he could pull it off.

6 Q. And what does he tell you? Correct me if I'm
7 wrong, he tells you, quote, "I would love to tell
8 you tomorrow. But with the weather we have had and
9 projected forecast, cannot get anything in regard
10 to exterior done. Most important the power... As
11 well as inspections, selections being made, et
12 cetera. If I had to guess" and he underlines
13 guess, "May 1st? Hopeful guess." And that's in
14 response to you asking for a guesstimate?

15 A. Completion date, yeah.

16 Q. And you still haven't picked the boulder wall at
17 that time, right?

18 A. I don't recall. This was in February, I don't
19 recall when we selected it.

20 Q. I've got one last document I want to show you. I
21 believe that and I will stop.

22 BY THE COURT:

23 Is that a hopeful guess?

24 BY MR. JOHNSON:

25 No objection, Your Honor.

1 (PLAINTIFF'S EXHIBIT 91 MARKED FOR IDENTIFICATION)

2 BY THE COURT:

3 All right. Plaintiff's Exhibit Number 91 without
4 objection will be admitted.

5 (PLAINTIFF'S EXHIBIT 91 ADMITTED INTO EVIDENCE)

6 Q. I show you what's been admitted as Plaintiff's
7 Exhibit 91. Now, you'd admit this is an email you
8 sent two days after you terminated my client
9 October 14th 2019 to Laura Thompson with GrandSouth
10 Bank, correct?

11 A. Yes.

12 Q. Okay. And you state in part, "A new GC has been
13 interviewed, vetted, & hired." And that's in
14 reference to Rampy, right?

15 A. Yes.

16 Q. "I will ensure the project completes quickly & with
17 top quality craftsmanship." But then you also go
18 on "Moving forward, please place IBI on your
19 internal list of restricted builders. None of your
20 future clients should be subject to the process I
21 have endured." Isn't that true?

22 A. Absolutely.

23 Q. You were trying to punish them, weren't you?

24 A. I was trying to protect future home builders.

25 Q. You are trying to harm my clients, weren't you?

1 A. More so to protect a home builder.

2 Q. No further questions, Your Honor.

3 BY THE COURT:

4 All right. I hesitate to say this, but do you have
5 any redirect?

6 BY MR. JOHNSON:

7 I do, Your Honor.

8 BY THE COURT:

9 Well, I'm just going to tell you right now, it's
10 4:41 and we're going to -- these ladies have got to
11 leave at 5:00 so proceed. But you'll be dealing
12 with matters on cross examination in redirect if
13 that's possible.

14 REDIRECT EXAMINATION BY MR. JOHNSON:

15 Q. Yes, Your Honor. Mr. Merlo, there was a lot of
16 discussion regarding this accounting from Joy
17 Construction and the \$13,000; do you recall that?

18 A. Yes, I do, yes.

19 Q. And your testimony was that the accounting record
20 showed you were owed \$13,000?

21 A. Yes, which is overpayment, correct.

22 Q. I'd like to offer this.

23 BY COURT REPORTER:

24 78.

25 BY MR. TAROKH:

1 Objection, Your Honor, hearsay. I don't believe
2 that's his document.

3 BY MR. JOHNSON:

4 Your Honor, it is a job cost detail that was sent
5 to Mr. Merlo to pay invoices based off of it.

6 BY THE COURT:

7 Sent by who?

8 BY MR. JOHNSON:

9 Sent by Joy Construction.

10 BY MR. TAROKH:

11 It's hearsay, Your Honor.

12 BY THE COURT:

13 I don't think you're going to be able to get that
14 in.

15 BY MR. JOHNSON:

16 Your Honor, this is what he used in the course of
17 the ---

18 BY THE COURT:

19 Yeah, but you're asking him to introduce a document
20 prepared by somebody that's not here today to cross
21 examine and we're not going to ---

22 BY MR. JOHNSON:

23 This is the basis of the accounting that he's
24 referencing.

25 BY THE COURT:

1 Well, I don't know what it's the basis of but it's
2 hearsay.

3 BY MR. JOHNSON:

4 I'm not offering it for the truth of what's on this
5 form; I'm offering it for the truth of him making a
6 decision about the \$13,000 is ---

7 BY THE COURT:

8 Well, that's also, I mean it's still got to be an
9 authenticated document.

10 BY MR. JOHNSON:

11 Well, he can authenticate that he received it.

12 BY THE COURT:

13 This is an accounting type document apparently that
14 was prepared by somebody who is not here to be
15 cross examined.

16 BY MR. JOHNSON:

17 Your Honor, it's not for the truth of anything on
18 there, it's for how he digested ---

19 BY MR. TAROKH:

20 I disagree, Your Honor. It goes directly to the
21 truth of the matter and so that's why he ---

22 BY MR. JOHNSON:

23 It does not.

24 BY THE COURT:

25 Well, I think it does, too. So I'm going to

1 sustain the objection.

2 Q. Mr. Merlo, the accounting that you received from
3 Mr. Rampy, where were you on the accounting with
4 Mr. Rampy in April 2020?

5 A. From my recollection we were paid in advance; we
6 were paid ahead, we were overpaid.

7 Q. And you were overpaid by how much?

8 A. Approximately \$13,000.

9 Q. Do you remember if the job cost report from Mr.
10 Rampy or from Joy Construction reflected that as
11 well?

12 A. I believe it probably did.

13 Q. Okay. And ---

14 BY MR. TAROKH:

15 Objection. He has no personal knowledge, he's
16 speculating. When he says he believes, he doesn't
17 know, he doesn't have personal knowledge to testify
18 is my point.

19 BY THE COURT:

20 Well, I would agree. I didn't hear the question
21 but he said I believe so. Well, repeat the
22 question.

23 Q. Your Honor, I don't know if I remember the
24 question.

25 BY THE COURT:

1 It must not be very important then. I'm going to
2 let you repeat the question if you can, as close as
3 you can.

4 Q. The accounting report that you received from Mr.
5 Rampy, it showed that you had overpaid Mr. Rampy;
6 that's what you testified to, correct?

7 A. Yes, that's correct, yes.

8 Q. And was that the basis of you requesting the check
9 back?

10 A. Yes, it was, yes.

11 Q. And so this \$13,000 figure?

12 A. It was money that we overpaid, and he sent back,
13 and the Settlement Agreement was all at the same
14 time, yes.

15 Q. Okay. And his records would have reflected that,
16 right?

17 A. Yes.

18 Q. Not yours?

19 A. That's correct, he sent me the accounting, not
20 mine. Mine reconciled with his though. Mine said
21 I was overpaid and his said I was overpaid and
22 that's what happened.

23 Q. What involvement did you have in putting together
24 the Settlement Agreement which is I think
25 Plaintiff's ---

1 BY MR. TAROKH:

2 Your Honor, I would object on the grounds of
3 relevance. I don't see how that's even relevant.
4 I mean he testified he signed the document. What
5 involvement he had in putting it together doesn't
6 go to anything.

7 BY MR. JOHNSON:

8 Your Honor, he cross examined him on the verbiage
9 within the Settlement Agreement.

10 BY THE COURT:

11 Well, I mean you asked him what his involvement
12 was, I'm going to let you ask that and let him
13 answer it. But, you know, I'm fully aware of the
14 Settlement Agreement and what it says and I'm fully
15 aware of the testimony we've already had that
16 explains exactly how that came to pass, and we get
17 into arguments about was there an overage or was
18 there a similar payment or whatever, but I
19 understand all that. So I don't know what you're
20 trying to get to. But go ahead, you asked him what
21 his involvement was in preparing that Agreement,
22 and I assume you're going to argue that he didn't
23 have any involvement so he's not responsible for
24 anything in there.

25 BY MR. JOHNSON:

1 No, Your Honor.

2 BY THE COURT:

3 Well, go ahead. I'm going to overrule his
4 objection to a point.

5 Q. Despite things that occurred on the construction
6 project, at the end of the day you were very
7 pleased with Dustin Rampy's work, were you not?

8 A. I was very pleased. I was disappointed that our
9 engagement ended the way it did. Like I said, I
10 had some demons I was battling with, health issues;
11 he had some issues he was battling with. But we
12 both came to a consensus at the end and the
13 Settlement Agreement was it, that summarized it I
14 guess. I've referred him to other folks since
15 then.

16 Q. And there was a lot of testimony about mistakes or
17 clerical errors and errors that Mr. Tarokh was
18 trying to say that you were ---

19 BY MR. TAROKH:

20 Objection, leading.

21 BY THE COURT:

22 I agree. You can't lead the witness when you're on
23 redirect examination, Mr. Johnson.

24 Q. Do you recall the Zoom deposition that we had with
25 Don Gardner?

1 A. It's been a while back, not specifically. I mean I
2 do a lot of Zoom stuff, just not specifically.

3 Q. Sure. And is that just an oversight mistake you
4 think?

5 A. I think so, I just simply didn't recall, yeah.

6 Q. Is there any of your testimony in that case that
7 was inaccurate?

8 BY MR. TAROKH:

9 Objection, leading.

10 BY THE COURT:

11 No, that's not leading. Go ahead.

12 A. I wouldn't think so.

13 Q. I mean has there been any allegation that the
14 testimony in that deposition was misleading in any
15 way?

16 A. Not that I'm aware of.

17 Q. What was the subject matter of that case; do you
18 know?

19 A. Was that IBI versus Don Gardner; is that correct?

20 Q. Or Don Gardner versus IBI?

21 A. Yeah, uh-huh (affirmative), yeah.

22 Q. I mean do you know what that case was about?

23 A. Yeah, that was surrounding them taking my plans and
24 building the other house fraudulently I guess. I
25 think that case, I guess they got it resolved. I

1 don't know.

2 Q. You just looked at an email of your response where
3 Mr. Montgomery made a hopeful guess about a
4 completion date?

5 A. Yes, May the 1st, yes.

6 Q. Were there other times in the project where IBI
7 made expectations for you for completion dates?

8 BY MR. TAROKH:

9 Objection, leading.

10 BY THE COURT:

11 No, sir, that's not leading and I'm going to
12 overrule his objection.

13 A. Yeah, I was told continually they were six weeks
14 out, they were eight weeks out, if they could just
15 get their subs on site the project would be
16 completed and finished, I was told that
17 continually.

18 BY MR. TAROKH:

19 A couple of objections, Your Honor. Number one, my
20 first objection, it's is an isolated text.

21 BY MR. JOHNSON:

22 It was the only copy we had from the ---

23 BY MR. TAROKH:

24 And's it's handwritten.

25 BY THE COURT:

1 One at a time. Mr. Tarokh?

2 BY MR. TAROKH:

3 I would first object, Your Honor, you know, I've
4 seen this particular text, but it was in, there
5 were other texts with it. So it should be
6 isolated, the context should be stated and to have
7 the Bates stamp number handwritten, I mean why
8 don't you just produce the document as it exists?
9 And my second objection is it's beyond, it's beyond
10 the scope of cross examination because this is a
11 text message from Mr. Grissinger and it's just the
12 quality is very poor, so those are my objections.

13 BY THE COURT:

14 Well, I understand that second part about it's not
15 in discovery would be correct. I mean I don't know
16 it says.

17 BY MR. TAROKH:

18 Well, it purports to be a text message from Mr.
19 Grissinger but it doesn't indicate who it's sent
20 to, the date, the date is barely, I mean the date
21 is barely legible and it's handwritten. And I've
22 seen this type, this document with all the other
23 stuff on it.

24 BY THE COURT:

25 Where's the other document with all the other stuff

1 on it?

2 BY MR. JOHNSON:

3 Your Honor, this is the only one I had in my file
4 for redirect. I mean it's five till five right
5 now. The first thing in the morning ---

6 BY THE COURT:

7 I mean I'm just saying you've got a legitimate
8 point that if you want to publish part of a
9 document, then he has the right to have all of it
10 published.

11 BY MR. JOHNSON:

12 And I agree, I ---

13 BY THE COURT:

14 And so that puts things into context and that's not
15 what you've got there.

16 BY MR. JOHNSON:

17 No, Your Honor, and can I reserve it for the
18 morning and we just ---

19 BY THE COURT:

20 Well, you can reserve whatever, if we get here in
21 the morning you can reserve.

22 BY MR. JOHNSON:

23 Well, I mean are we wrapping up, it's five till
24 five?

25 BY THE COURT:

1 Yeah, it's five to five and we've got five more
2 minutes.

3 BY MR. JOHNSON:

4 Five more minutes, there you go. Well, I'll pocket
5 that.

6 REDIRECT EXAMINATION RESUMBED BY MR. JOHNSON:

7 Q. Mr. Merlo, there was a lot of discussions regarding
8 the timing of when you decided to terminate IBI,
9 and the Plaintiff gave you some, I believe the
10 appliances that come in and whatnot or whatever.
11 Explain in your words how you got to that point and
12 why and when?

13 A. Well, I think I just sat down that night and took
14 stock of what had transpired for the previous 23
15 months, and it was incredible, you know, with what
16 the builders have done on this project and some of
17 the things they've failed to do. And in looking at
18 the information holistically I that the risk of
19 firing them and hiring a new builder, you know, I
20 thought that was the best case scenario versus
21 trying to stick with them another year, maybe
22 another 18 months.

23 BY THE COURT:

24 And everything he said you've already testified to,
25 but go ahead.

1 BY MR. JOHNSON:

2 Your Honor, I would like to reserve that when
3 there's a picture that he referenced ---

4 BY THE COURT:

5 I'm not sure what you're talking about.

6 BY MR. JOHNSON:

7 He referenced a picture regarding Highland
8 Cabinets. I would like to pull that out, pull that
9 document back out?

10 BY MR. TAROKH:

11 Objection, Your Honor. There's been plenty of time
12 to do that.

13 BY MR. JOHNSON:

14 This is in redirect, Your Honor.

15 BY THE COURT:

16 I understand, but I'm not going to -- you said it's
17 on redirect, but now what's that in response to?

18 BY MR. JOHNSON:

19 It's in response to Mr. Tarokh said they did that
20 work at a different location, and Mr. Merlo
21 testified that they did at the house and had a
22 picture of it.

23 BY THE COURT:

24 Okay. So he's testified as to it. What else you
25 need to know?

1 BY MR. JOHNSON:

2 I mean I would like to put the picture in evidence
3 to support his testimony.

4 BY MR. TAROKH:

5 403, Your Honor, objection.

6 BY THE COURT:

7 Well, how is that picture going to support his
8 testimony? I mean is it a picture of cabinets in
9 the house or what, I mean I don't know?

10 BY MR. JOHNSON:

11 There's a gentleman that has a Highland Cabinetry
12 sweatshirt on doing work.

13 BY THE COURT:

14 Well, that's fine. I mean it doesn't necessarily
15 mean that that's the only work he ever did but, you
16 know.

17 BY MR. JOHNSON:

18 And I'd like to reserve to put that on record and
19 then the inspection report regarding the failed
20 porch where he had to put the EZ-Breeze system.

21 BY THE COURT:

22 What inspection are you talking about?

23 BY MR. JOHNSON:

24 The inspection report that resulted in the porch
25 having to be rebuilt.

1 BY THE COURT:

2 Okay. And who is going to get that in for you?

3 BY MR. JOHNSON:

4 We have certified records from the City.

5 BY THE COURT:

6 And why wasn't that put in earlier?

7 BY MR. JOHNSON:

8 Your Honor, this is in redirect with examination
9 regarding the EZ-Breeze system.

10 BY THE COURT:

11 Well, he testified during your direct examination
12 the porch that IBI built didn't meet code and they
13 had to go in and tear it out and then put in a EZ
14 Breeze system and it didn't cost a penny more
15 basically. He's already testified to that so. But
16 I'll let you put it in next time we convene or I'll
17 let you try to get it in. But you need to go ahead
18 and let's just go ahead and -- I'm just saying I'm
19 not trying to cut you off and I want you to be able
20 to present whatever is necessary, but we've covered
21 this things pretty good, and y'all, both lawyers
22 did a good job getting all this stuff in. And so,
23 I mean there's only so long you can beat that horse
24 and after it dies until the Humane Society gets
25 onto you and I'm the Humane Society.

1 BY MR. JOHNSON:

2 Your Honor, I understand. I mean a document in
3 real time obviously carries a certain amount of
4 weight that ---

5 BY THE COURT:

6 Go ahead. But I mean like I said I'm going to let
7 you try to get that in in the morning if we come
8 back in the morning or whenever we come back. But
9 that's fine you can reserve the right to try to do
10 that. And I mean this thing to try to get it in,
11 we've got to get the full, full picture of that,
12 then and that's fine.

13 BY MR. JOHNSON:

14 Yes, sir.

15 BY THE COURT:

16 Instead of taking it out and isolating it out of
17 context.

18 BY MR. JOHNSON:

19 Yes, sir.

20 BY THE COURT:

21 And that picture, I mean if you want to try to get
22 that in, that's fine. The inspection report, you
23 can try to get that in. That's three things.

24 BY MR. JOHNSON:

25 Three things in the morning, Your Honor, or

1 whenever.

2 BY THE COURT:

3 Well, I mean whenever. I mean we're going to talk
4 about that. So other than that, you're finished?

5 BY MR. JOHNSON:

6 I believe that's it, that's the only redirect I
7 will have, Your Honor, isolated on those three
8 things.

9 BY THE COURT:

10 All right. Well, that's fine. The next time we
11 come you can talk about those things. Now, I'm
12 going to tell Mr. Tarokh right now if that's all he
13 does, I'm going to limit you on any kind of recross
14 to just those things.

15 BY MR. TAROKH:

16 I understand, Your Honor. I understand.

17 BY THE COURT:

18 And I mean that's it, you know, I give you two
19 bites on the apple each and that's enough.

20 BY MR. TAROKH:

21 I understand.

22 BY THE COURT:

23 And we've still got other people. I don't know
24 who, did you have another witness after this one?

25 BY MR. JOHNSON:

1 Yes, Your Honor. I have Ms. Merlo, she needs to
2 testify regarding the actual checks that would go
3 with it.

4 BY THE COURT:

5 Well, just get all the checks together, get them
6 marked and numbered and be ready to go. I'm not
7 going to sit here and fool around with that stuff.

8 BY MR. JOHNSON:

9 We are not, Your Honor. No, we did that this
10 morning.

11 BY THE COURT:

12 Is that your last witness then?

13 BY MR. JOHNSON:

14 I don't know yet. I don't know, Your Honor.

15 BY THE COURT:

16 Well, I mean why not? I'm asking you now?

17 BY MR. JOHNSON:

18 Well, because I need to talk to my client.

19 BY THE COURT:

20 Well, you're the lawyer. What's the other
21 possibilities?

22 BY MR. JOHNSON:

23 Well, Wayne Culbertson is still a possibility and
24 then I want to talk to my client, Your Honor.

25 BY THE COURT:

1 You're going to talk to him about finding some more
2 witnesses?

3 BY MR. JOHNSON:

4 No, sir, no, sir.

5 BY THE COURT:

6 Well, tomorrow morning, if we come back tomorrow
7 morning, you're going to be limited to those three
8 things. Now if you talk to Mr. Merlo tonight and
9 he comes up with 20 other things he needs to talk
10 about we're not doing that.

11 BY MR. JOHNSON:

12 No, I understand that, Your Honor.

13 BY THE COURT:

14 And you had the chance to do all that today.

15 BY MR. JOHNSON:

16 Yes, sir.

17 BY THE COURT:

18 And so, you know, that's fine. But if you intend
19 to call another witness, they need to be ready to
20 go and we need to have every document ready they're
21 going to deal with and get them marked and ready to
22 go before we start.

23 BY MR. JOHNSON:

24 Yes, sir.

25 BY THE COURT:

1 And then we've got ---

2 BY MR. TAROKH:

3 I probably will have one more witness, my expert.

4 BY THE COURT:

5 All right. Now, going back to the other guy, the
6 name, what was the name, Culbertson?

7 BY MR. JOHNSON:

8 Yes, Your Honor.

9 BY THE COURT:

10 Now, you said he's out of town and ---

11 BY MR. JOHNSON:

12 He was when we began the trial.

13 BY THE COURT:

14 I mean the only thing from what I understand, and I
15 may be wrong, but you're talking about he's the
16 neighbor that had some of this, something was
17 encroaching on his side, the driveway or whatever?

18 BY MR. JOHNSON:

19 The driveway, Your Honor.

20 BY THE COURT:

21 And you've got a plat that he had prepared and sent
22 to Mr. Merlo or what?

23 BY MR. JOHNSON:

24 Yes, sir.

25 BY THE COURT:

1 I mean can't you get that plat in through Mr.
2 Merlo, just to say, you know, you want to identify
3 it and say here's the plat I received from Mr.? I
4 mean I don't think that there's a whole lot of
5 dispute about is whether or not he's over the line
6 or not. The question is whose fault is that and
7 that's the question?

8 BY MR. JOHNSON:

9 But, Your Honor, I see the survey the same as I see
10 this accounting report. I mean he has personal
11 knowledge of both and I think we should be able to
12 get it in.

13 BY THE COURT:

14 Well, we've already talked about the accounting
15 report.

16 BY MR. JOHNSON:

17 No, I understand.

18 BY THE COURT:

19 But I mean the survey is a one page document that
20 speaks for itself. It's not an accounting that's
21 got hundreds of entries and calculations in it,
22 that's a whole different thing. The plat really
23 speaks for itself and the surveyor is not going to
24 be required to be able to cross examine it.

25 BY MR. JOHNSON:

1 Well, I mean if Mr. Tarokh will consent to it, I'll
2 put that in in the morning, you know, that's fine.

3 BY THE COURT:

4 Well, I'm going to give him an opportunity to
5 respond to it one way or the other, but I'm just
6 trying help you get that information into the
7 record. I mean it's been testified to, but the
8 plat would certainly be germane as to exactly that
9 that shows. I mean I don't know what it shows,
10 whatever it is wherever it is, and it's done by a
11 licensed surveyor and the seal and that stuff, then
12 I think that's probably good enough. But I'm going
13 to give him every opportunity to get to it, I mean
14 have you got any objection to that?

15 BY MR. TAROKH:

16 Your Honor, probably not if it's the same just for
17 the sake of getting this thing moving along. If
18 it's the same one I have in my mind ---

19 BY THE COURT:

20 Well, that's a scary thing.

21 BY MR. TAROKH:

22 --- then probably not.

23 BY THE COURT:

24 I don't want to go there now.

25 BY MR. JOHNSON:

1 I mean I can pull it up ---

2 BY THE COURT:

3 Well, that's all right, we'll deal with that.

4 Let's talk about when we're going to come back now.

5 I'm trying to get a handle on how much time we need
6 to finish this thing up.

7 BY MR. TAROKH:

8 Not much from my side, Your Honor. I mean I don't
9 anticipate much recross.

10 BY THE COURT:

11 Now, Mr. Johnson, you're talking about Ms. Merlo
12 testifying, and I assume the only thing she really
13 needs to testify to is about these check; is that
14 right?

15 BY MR. JOHNSON:

16 Yes, Your Honor.

17 BY MR. TAROKH:

18 And we have the same objection, so any checks after
19 May 29, '20 should be excluded.

20 BY MR. JOHNSON:

21 And I'll try to make that an exhibit ---

22 BY THE COURT:

23 I mean I think that's -- now if they weren't
24 produced, they can't come in. But, okay, let's
25 see, so how long do you estimate you're going to

1 take to finish your side?

2 BY MR. TAROKH:

3 In addition to closing, probably an hour or so.

4 I'm imagining calling Mr. LaPlante, my expert, and

5 going through that, so and that's not counting

6 cross examination but I guess an hour or less with

7 that because I think he's going to be brief.

8 BY MR. JOHNSON:

9 Mr. Johnson, how long is it going to take you to

10 get Ms. Merlo and get her through and do these

11 other three or four things?

12 BY MR. JOHNSON:

13 Subject to objections, Your Honor, 20 minutes.

14 BY THE COURT:

15 Okay. Well, we can handle the objections pretty

16 quickly. All right. So what time y'all want to

17 come back in the morning?

18 BY MR. TAROKH:

19 Any time that pleases the Court, I mean 10:00 works

20 well.

21 BY THE COURT:

22 Well, I think we can start say about 9:00 tomorrow

23 just to make sure we get through this thing. We're

24 not going to go until 5:00, I'll tell you, because

25 this is Friday before Memorial Day weekend and I'm

1 sure some of these people have got plans and if we
2 don't finish by lunchtime, then we're going to have
3 a problem. And you were talking about closing,
4 which closing arguments are fine, I mean I don't
5 mind doing it but ---

6 BY MR. TAROKH:

7 I'm probably not going to spend much time, if any,
8 you know, there's no jury here so ---

9 BY THE COURT:

10 Well, that's right.

11 BY MR. TAROKH:

12 --- five minutes.

13 BY THE COURT:

14 Well, that's right. But as long as it's five
15 minutes, that's fine, I don't have a problem with
16 that. But you don't have to elaborate on it; I
17 actually paid pretty close attention to what we've
18 been doing. So we'll see back about 9:00 tomorrow
19 morning.

20 BY MR. TAROKH:

21 Thank you, Judge.

22 BY MR. JOHNSON:

23 Thank you, Your Honor.

24 BY MR. TAROKH:

25 Your Honor, just very quickly, I'm sorry. Just to