

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 III

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 accommodate my expert, is it possible that we can -
2 - can we convene with him first tomorrow? I
3 understand we're in your case in chief.

4 BY MR. JOHNSON:

5 No, that's fine. I have no objection.

6 BY MR. TAROKH:

7 Okay.

8 BY THE COURT:

9 Well, that suits me.

10 (COURT ADJOURNED @ 5:14 P.M.)

11 (MAY 26, 2022 @ 8:57 A.M. - DAY FOUR OF TRIAL

12 BY THE COURT:

13 All right, here's what I suggest we do and it's a
14 little bit different than what we talked about, but
15 I'd like to finish up with Mr. Merlo's testimony
16 first.

17 BY MR. TAROKH:

18 Yes, sir.

19 BY THE COURT:

20 And so then we'll go to your expert and I'll get
21 him out of here as soon as we can. So if Mr. Merlo
22 will resume his place on the witness stand and I'll
23 remind you, you are still under oath. And I
24 believe Mr. Johnson had a few little remaining
25 items he wanted to deal with and then I've got a

1 couple of things also, but go ahead.

2 TESTIMONY OF CHRISTOPHER J. MERLO CONTINUED

3 REDIRECT EXAMINATION RESUMED BY MR. JOHNSON:

4 Q. Thank, Your Honor, may it please the Court? Mr.
5 Merlo, in your examination by Mr. Tarokh you
6 mentioned an inspection report from the City of
7 Seneca?

8 A. Yes.

9 Q. Would you identify this document?

10 BY COURT REPORTER:

11 78.

12 (DEFENDANT'S EXHIBIT 78 MARKED FOR IDENTIFICATION)

13 Q. Are you familiar with that document?

14 A. Yes, I am.

15 Q. And what is that document?

16 A. That's the inspection report for the house.

17 Q. Okay. And what item are you referring to on that
18 inspection report in your testimony?

19 A. Number 8, the deck didn't pass inspection.

20 Q. And that was related to whose work?

21 A. IBI's.

22 Q. And you engaged Joy Construction to repair that
23 work?

24 A. Pardon me?

25 Q. You engaged Joy Construction to repair that work?

1 A. Yes, uh-huh (affirmative).

2 BY THE COURT:

3 Can you give the date of that report?

4 A. April 8th, 2020.

5 BY THE COURT:

6 All right, thank you.

7 BY MR. TAROKH:

8 Your Honor, and the objection I make, I don't know
9 what these documents are, but they purport to be
10 text messages with a Bates stamp number that are
11 not legible and then there's another one without --
12 I mean, if saying if I produced that, then that's
13 fine. But again, I think what was shown to you was
14 a smaller version, so there should be more texts.
15 And what I mean by that is this may only deal with
16 him because if there's a Bates stamp number I
17 believe we already got in text messages between Mr.
18 Grissinger and Mr. Merlo. Why don't we see if we
19 can first find those documents and introduce
20 another one? It seems to be ---

21 BY MR. JOHNSON:

22 It wasn't in the -- I'm pretty it wasn't in the
23 previous, Your Honor.

24 BY THE COURT:

25 Now, I thought we were talking about this

1 inspection report. What is that?

2 BY MR. JOHNSON:

3 This is the next exhibit, Your Honor.

4 BY THE COURT:

5 So you're not to put in the Inspection Report in as
6 an exhibit?

7 BY MR. JOHNSON:

8 I would like to move that in as Defendant's 78,
9 Your Honor.

10 BY MR. TAROKH:

11 No objection.

12 BY THE COURT:

13 All right. So that's Defendant's Exhibit 78,
14 Inspection Report, April 8th, 2020 without
15 objection. All right.

16 (DEFENDANT'S EXHIBIT 78 ADMITTED INTO EVIDENCE)

17 (MR. TAROKH & MR. JOHNSON DISCUSS DOCUMENT OFF RECORD)

18 BY MR. TAROKH:

19 I guess the perfect way to enter this, Your Honor,
20 is for him to ---

21 BY MR. JOHNSON:

22 Your Honor, it printed out very faint and so I just
23 was bringing in a copy that Mr. Tarokh produced to
24 me, it's the same text message.

25 BY MR. TAROKH:

1 Your Honor, this is not legible.

2 BY THE COURT:

3 Why not?

4 BY MR. TAROKH:

5 If I may approach?

6 BY MR. JOHNSON:

7 That's why this one was brought in, Your Honor.

8 BY THE COURT:

9 Well, I agree that's not legible and that can't be
10 used.

11 BY MR. JOHNSON:

12 I agree, Your Honor, that's why I brought in this
13 identical one that they produced back to us.

14 BY THE COURT:

15 Well, what about that, Mr. Tarokh?

16 BY MR. TAROKH:

17 Well, Judge, it seems -- well, this is the text,
18 the blue text was "I believe I can have the house
19 done in 45 days" and then below it says, Wednesday,
20 May 29th 3:37 p.m. and it starts with "Do you have
21 any pictures of". When I find that same text which
22 on top here, I don't find, I don't see this part
23 which tells me this could be, the text could have
24 been deleted is what I'm saying. Your Honor, can
25 we at least see if we can find that Bates stamp

1 number? I think maybe that would be.

2 BY THE COURT?

3 Well, yeah, I mean I think you're going to have to
4 be sure to tie it to something that was produced
5 and it needs to be fully ---

6 BY MR. JOHNSON:

7 Well, Your Honor, they didn't Bates stamp anything.

8 BY MR. TAROKH:

9 Your Honor, that's not my objection. My objection
10 is that is not legible and I believe we had already
11 admitted the texts between Mr. Grissinger and Mr.
12 Merlo, so it would just be an easy reference to the
13 Bates stamp number in that compilation.

14 BY THE COURT:

15 Well, y'all get it figured out. Daylight is
16 approaching somewhere.

17 BY MR. TAROKH:

18 I guess my complaint is it's not, it's not legible.

19 BY THE COURT:

20 I agree. I mean I'm not going to let him put in a
21 blank piece of paper.

22 BY MR. JOHNSON:

23 And I wasn't intending to, Your Honor.

24 BY THE COURT:

25 I know, I understand, I understand. Y'all just see

1 if you can get this thing worked out and move on.
2 I mean there's already been testimony about that
3 particular fact, that 45-day statement that was
4 some kind of a -- I know you talked about one of
5 them was a hopeful guess I think is the way it was
6 described by I guess from probably Mr. Montgomery,
7 I think. I mean I don't know what this is really.

8 BY MR. TAROKH:

9 Your Honor, I believe the witness has the document
10 I'm referencing. If we can check that?

11 BY THE COURT:

12 Sure.

13 BY MR. TAROKH:

14 Mr. Merlo, do you mind if I check that? Thank you.
15 Your Honor, I'm not trying to be difficult but it
16 looks like there should be -- if he's trying to get
17 this piece in it should be legible.

18 BY MR. JOHNSON:

19 I'm not trying to get that in. I was moving this
20 that you provided to me because it's readable, you
21 know, from the printer.

22 BY THE COURT:

23 Well, he said he's not using those, he's using this
24 other one.

25 (MR. TAROKH AND MR. JOHNSON HAVE OFF RECORD DISCUSSION)

1 BY MR. TAROKH:

2 I withdraw my objection, Your Honor.

3 BY THE COURT:

4 Good. All right, so this is going to moving on and
5 we're going to get to another exhibit?

6 BY MR. JOHNSON:

7 Yes, Your Honor.

8 BY THE COURT:

9 And this is going to be Exhibit 79?

10 BY COURT REPORTER:

11 Yes, sir.

12 (DEFENDANT'S EXHIBIT 79 MARKED FOR IDENTIFICATION)

13 BY THE COURT:

14 All right. It will be admitted without objection
15 at this point.

16 (DEFENDANT'S EXHIBIT 79 ADMITTED INTO EVIDENCE)

17 Q. Are you familiar with that document?

18 A. Yes, I am, yes.

19 Q. What is that document?

20 A. A text message between Greg and myself.

21 BY THE COURT:

22 What's the date on it?

23 A. May the 29th, 2019.

24 Q. And in that text message what is represented to
25 you?

1 A. Well, that the house would be finished in 45 days.
2 I could read it, "I believe I could have the house
3 done in 45 days if we can get the granite worked
4 out. I need that to go in the house so we can get
5 all the subs to come back for trim out."

6 Q. And did that occur?

7 A. No, it did not.

8 Q. Your Honor, that's all the questions I have.

9 BY THE COURT:

10 All right. Well, hold a minute, Mr. Tarokh. I
11 want to revisit two things with Mr. Johnson from
12 yesterday.

13 BY MR. JOHNSON:

14 Yes, sir.

15 BY THE COURT:

16 And you had two exhibits that we dealt with and one
17 was this code provision of some kind about the
18 panel box and the temperatures. Do you have that?
19 And the other one that I want to talk about and
20 revisit is the document, I think it's some kind of
21 spreadsheet document and purportedly it came from
22 Rampy to Mr. Merlo and it had something to do with
23 the \$13,000 figure. Have you got that?

24 BY MR. JOHNSON:

25 I do have that, Your Honor.

1 BY THE COURT:

2 Well, let me see both of those.

3 BY MR. JOHNSON:

4 Your Honor, the spreadsheet was not allowed into
5 evidence.

6 BY THE COURT:

7 I beg your pardon?

8 BY MR. JOHNSON:

9 You didn't allow the spreadsheet.

10 BY THE COURT:

11 I know that. But we're going to revisit whether it
12 should be admitted or not and I want to look at it.

13 BY MR. JOHNSON:

14 Okay.

15 BY THE COURT:

16 I thought you'd be happy?

17 BY MR. JOHNSON:

18 I'm very pleased, Your Honor. That was identified
19 as Defendant's 78.

20 BY THE COURT:

21 Defendant's what?

22 BY MR. JOHNSON:

23 It was identified as Defendant's 78, Your Honor.

24 BY THE COURT:

25 Well, now we just got 78 as the Inspection Report.

1 Q. Okay. Well, I guess we'll identify it as a
2 different number now, Your Honor.

3 BY COURT REPORTER:

4 We'll do it as 80.

5 (DEFENDANT'S EXHIBIT 80 MARKED FOR IDENTIFICATION)

6 BY THE COURT:

7 All right. That will be 80.

8 BY MR. JOHNSON:

9 And Your Honor would like to see this?

10 BY THE COURT:

11 Yes. All right, so is Defendant's Exhibit 80
12 marked for identification only at this point and it
13 appears to be a list of items. It doesn't really
14 say who prepared this list. All right, so you
15 wanted to introduce this I think for the sole
16 purpose of establishing that it shows somewhere on
17 here -- well, I thought it said something about the
18 \$13,000, but I don't see anything about that on
19 here.

20 BY MR. JOHNSON:

21 Your Honor, the purpose of it was that it shows the
22 job cost for the project was \$124,000 and some
23 change and Mr. Merlo paid them 137. That
24 difference is 13,000, Your Honor, and that's what
25 Mr. Merlo was basically ---

1 BY THE COURT:

2 Well, I mean he testified what he paid out of his
3 pocket ---

4 BY MR. JOHNSON:

5 Sure, Your Honor.

6 BY THE COURT:

7 --- and I mean he testified what he paid to Joy. I
8 mean he's already done that, he said paid them
9 \$137,000.

10 BY MR. JOHNSON:

11 Yes, Your Honor.

12 BY THE COURT:

13 I don't see who prepared the document and I'm going
14 to stick with not allowing this one in.

15 BY MR. JOHNSON:

16 Well, and the only thing that I would say is it's
17 not the truth of the matter only ---

18 BY THE COURT:

19 Well, I understand that.

20 BY MR. JOHNSON:

21 It's his mindset of where he got the \$13,000 from.

22 BY THE COURT:

23 No, sir, it's still a document that's prepared by
24 an unknown source and there's no way to cross
25 examine whoever did this. This could be something

1 that Mr. Merlo prepared for all we know. I'm not
2 saying he did that, I'm saying he could do that.

3 BY MR. JOHNSON:

4 I understand.

5 BY THE COURT:

6 I mean I could prepare or you could.

7 BY MR. JOHNSON:

8 I understand about the ruling.

9 BY THE COURT:

10 You're going to get the document, but now you've
11 already gotten testimony or he can testify that --
12 you know, he's already testified he paid Joy
13 \$137,000, and you talked about the \$13,000 issue
14 very -- you completed you that, and so you're
15 saying now that -- I don't understand what you're
16 saying, but the \$137,000 was paid and you made some
17 distinction about what he paid out of pocket and
18 what he paid. Where did the other money come from?

19 BY MR. JOHNSON:

20 Your Honor, from the context of that document we
21 were talking, Mr. Merlo's testimony was that he got
22 a report that ---

23 BY THE COURT:

24 That's \$124,194.

25 BY MR. JOHNSON:

1 That was what the project had cost to date, but he
2 had already paid \$137,000, that's what his
3 testimony was.

4 BY THE COURT:

5 Okay. Well, he's already testified to that.

6 BY MR. JOHNSON:

7 I agree.

8 BY THE COURT:

9 Okay. We don't admit it, but I'm going to stick
10 with my decision on that end, so that's not
11 admitted.

12 BY MR. JOHNSON:

13 Okay.

14 BY THE COURT:

15 All right. Now, what about this other code
16 provision thing?

17 BY MR. JOHNSON:

18 Your Honor, Universal Laboratories UL, UL 489.

19 BY THE COURT:

20 Are you representing to me that this is part of the
21 Oconee County Building Codes?

22 BY MR. JOHNSON:

23 Yes, Your Honor, the Oconee County Building Code.

24 BY THE COURT:

25 Was that ever identified by a number?

1 BY MR. JOHNSON:

2 It was not, I was asking the Court to take judicial
3 notice of it.

4 BY THE COURT:

5 Okay.

6 BY MR. JOHNSON:

7 Your Honor, under the Oconee County Code of
8 Ordinances, Section 6-40, the mandatory code is
9 under Section 8, the National Electrical Code. The
10 National Electrical Code incorporates ---

11 BY THE COURT:

12 I mean have you got something that has an
13 electrical code saying it incorporates something
14 else?

15 BY MR. JOHNSON:

16 Your Honor, the "UL" which you see on every
17 electrical device is created.

18 BY THE COURT:

19 Oh, I know the UL is well known but it's also
20 extremely widespread in all kinds of areas. I mean
21 UL doesn't mean much at all really in and of
22 itself, so it's a vast enterprise.

23 BY MR. JOHNSON:

24 It's the standard for all electrical components,
25 Your Honor, and ---

1 BY THE COURT:

2 Well, I don't know nothing about that, whether it
3 is or not, but go ahead.

4 BY MR. JOHNSON:

5 But anyway, UL 489 as to, remember, the breakers
6 and that provision was to simply in regard to heat
7 tolerance of blowing the breakers.

8 BY THE COURT:

9 Well, I understand that's what you're saying and
10 they're very -- I mean there's a UL document about
11 everything in the world dealing with building of
12 some kind. So what I'm saying is if you can
13 establish that that provision is part of the Oconee
14 County Building Codes, been adopted by Oconee
15 County and are the law of Oconee County, then I'll
16 let you put it in. But unless you can establish
17 that, then I think it's not allowed if we take
18 judicial notice but it is not easily verifiable?

19 BY MR. JOHNSON:

20 Your Honor, no, the way the actual electrical code
21 works ---

22 BY THE COURT:

23 I don't want you, you know, telling me how it
24 works, I want to know whether it's an Oconee County
25 Building Code that's been adopted by Oconee County.

1 BY MR. JOHNSON:

2 It is, Your Honor, through that ordinance I just
3 read, Section 6-48.

4 BY THE COURT:

5 Do you have a copy of the -- did you track it from
6 the ordinance that Oconee County has adopted and
7 right within that ordinance it says, we incorporate
8 UL such and such, such and such?

9 BY MR. JOHNSON:

10 It requires listing components, Your Honor, and
11 that's easily reviewable.

12 BY THE COURT:

13 How is that easily reviewable? I mean if we sit
14 here and talk about it and I have no way of knowing
15 how?

16 BY MR. JOHNSON:

17 It's easily verifiable in the ---

18 BY THE COURT:

19 How is it easily verifiable?

20 BY MR. JOHNSON:

21 I mean from a simple search you can see that ---

22 BY THE COURT:

23 A simple search of what?

24 BY MR. JOHNSON:

25 Of a code itself or any commentary thereof, I mean

1 it requires listing ---

2 BY THE COURT:

3 Well, I mean how do you get that? I mean I know
4 how to work a computer pretty good, I'm not as good
5 as you younger people, but I can probably search
6 for three days and not find what you're talking
7 about. Now, you might be able to find it in five
8 minutes, but I'm sure you are very much more
9 skilled in that area that I am.

10 BY MR. TAROKH:

11 Your Honor, as an issue and this will probably help
12 clarify it, the Inspection Report was with the City
13 of Seneca, not Oconee County. It's in the City of
14 Seneca's jurisdiction.

15 BY THE COURT:

16 Well, I guess it's for building codes for the City
17 of Seneca.

18 BY MR. TAROKH:

19 And that's what we need to establish and that's why
20 the Court shouldn't take judicial notice of this --
21 -

22 BY THE COURT:

23 Well, I'm trying to give him every opportunity to
24 provide information that would enable me to
25 judicial notice and the rule says that he has that

1 opportunity and I'm going to give that opportunity.
2 But he can't do it, then he can't do it. I don't
3 think it makes a whole lot of difference. I mean
4 there's testimony that temperature showed 141, but
5 there's also testimony there was a lot of
6 electrical work was done after IBI left the scene.
7 And so you don't know what the cause of this was.
8 We have no expert testimony that would identify
9 what caused this problem. So like I say, I don't
10 know that it's all -- it's undisputed that the
11 temperature showed on that thing 141. Now the
12 temperate gauge may not have been accurate.
13 There's all kind of questions about it, did it show
14 that, and you saw in this evidence, and I heard
15 from testimony from Mr. Merlo is that somebody went
16 in and replaced the panel box and so on, but that's
17 all I know at this point. So I'm just trying to
18 give you an opportunity, Mr. Johnson, to establish
19 that that is part of the Building Code for the City
20 of Seneca.

21 BY MR. JOHNSON:

22 Your Honor, I think the -- I don't know of any
23 other electrical code other than the National
24 Electrical Code and it's incorporated by the IRC.

25 BY THE COURT:

1 Okay. Well, that's not going to get it.

2 BY MR. JOHNSON:

3 I understand, Your Honor.

4 BY THE COURT:

5 I'm sorry, I'm just trying to give you every
6 opportunity. Based on that, I mean I don't think
7 there's sufficient information that's been provided
8 to maybe me take judicial notice of some, you know,
9 isolated UL provision about the temperatures of a
10 panel box. Unless you can tie it all back into the
11 City of Oconee's Building Codes, then I can't take
12 judicial notice. All right, so that matter has
13 been taken care of. Now, before we proceed --
14 well, let's see, we can go back in a minute and I'm
15 let you go back and do your recross.

16 BY MR. TAROKH:

17 Yes, Your Honor, very limited.

18 BY THE COURT:

19 Very limited to things that were brought up in
20 redirect.

21 RE CROSS EXAMINATION BY MR. TAROKH:

22 Q. Yes, Your Honor. Mr. Merlo, would you hand me
23 what's been admitted as Plaintiff's Exhibit 78,
24 excuse me Defendant's Exhibit 78, the Inspection
25 Report.

1 A. Uh-huh (affirmative).

2 Q. And it was two pages, correct? Your Honor, may I
3 staple this so the pages stay together?

4 BY THE COURT:

5 Beg your pardon?

6 Q. May I staple these? This was 78, can I staple
7 these?

8 BY THE COURT:

9 Yes, that's fine with me.

10 Q. Now, what's the date of this document 78 that you
11 just testified about?

12 A. April 8th, 2020.

13 Q. And that was two days after Mr. Rampy had
14 terminated his relationship with you, correct?

15 A. That's correct, yes.

16 Q. Okay. And didn't you previously testify that Mr.
17 Rampy and Joy Construction had removed all the
18 decking?

19 A. Not all the decking.

20 Q. Well, because if you look at item number 8, what
21 does item number 8 say?

22 A. "Deck framing not correct and must be corrected or
23 third party sign off."

24 Q. So isn't that issue Mr. Rampy's issue and not my
25 client's?

1 A. No, this was created by IBI. No, Mr. Rampy didn't
2 do anything to the back side of the deck; he just
3 corrected the side that had the wall that was done
4 in concrete.

5 Q. So I'm very confused because yesterday if I
6 remember correctly you testified to the effect of
7 Joy Construction had to completely replace the
8 decking, correct?

9 A. Well, they replaced the decking on the other side
10 of the deck, not this specific element here on the
11 back side of the deck.

12 Q. So it says, "deck framing not correct and must be
13 corrected or third party sign off", that's what
14 this document says, correct?

15 A. Yes. We had to get an engineer. I presented the
16 letter yesterday for the engineer.

17 Q. Well, let me finish and then this was, this is
18 dated is April 8, 2020, two days after Mr. Rampy
19 terminates his relationship with you, correct?

20 A. Yes, that's correct.

21 Q. And so I just want to understand, you're saying
22 that this reference "deck framing not correct and
23 must be corrected or third party sign off" was not
24 work that Mr. Rampy performed?

25 A. That's correct.

1 Q. And how, how do you know that?

2 A. Because he had been terminated by the time that
3 work was corrected.

4 Q. But there's only one -- how many decks do you have?

5 A. One, but it wraps all the way around.

6 Q. So you have one deck?

7 A. Yes.

8 Q. Okay. And the deck that you testified under oath
9 yesterday that Mr. Rampy had removed, was that the
10 same deck?

11 A. It was the side that had the concrete wall, he
12 removed that side of the deck, tore down the wall,
13 rebuilt the wall, and then replaced the decking
14 boards on that side.

15 Q. So that, this reference in number 8, that's in
16 reference to what Mr. Rampy did, correct?

17 A. No, that's not. This is, this is the actual back
18 side of the deck.

19 Q. Well, Mr. Merlo, you remember the text messages
20 toward the end between you and Mr. Rampy where
21 you're saying something, the decking failed
22 inspection? Do you remember that, something of
23 that nature? Do you remember that?

24 A. Yes, I was alerting him to the fact that the deck
25 did fail inspection, but the part that he did, no.

1 Q. Is that what -- is that true? Are you being honest
2 because it sounds like in that couple of exchanges
3 you were placing the blame on the decking on him?

4 A. I was just basically informing him that that was
5 one of the items that failed inspection.

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

7 BY MR. JOHNSON:

8 No objection.

9 (PLAINTIFF'S EXHIBIT 92 MARKED FOR IDENTIFICATION)

10 Q. This is Plaintiff's Exhibit Number 2, excuse me 92.

11 BY THE COURT:

12 That's a little different. All right, 92 is
13 admitted without objection, Plaintiff's Exhibit 92.

14 (PLAINTIFF'S EXHIBIT 92 ADMITTED INTO EVIDENCE)

15 Q. I'm going to show you what has been admitted as
16 Plaintiff's Number 92, this is a City of Seneca
17 certified document. Do you see that?

18 A. Yes.

19 Q. Okay. And it looks like there's checkmarks after
20 each item, correct?

21 A. Yes.

22 Q. Okay. And do you remember when those checkmarks
23 were put on?

24 A. I don't recall when they were put on.

25 Q. Okay. And it's dated the same day, right, April

1 8th, 2020?

2 A. Yes, it looks to be, yes.

3 Q. Okay. So how did, how did this decking pass
4 inspection?

5 A. No, the decking did not pass inspection.

6 Q. There's a checkmark on it though, right?

7 A. These were all items that had to be corrected as of
8 April the 8th, 2020. All these items failed
9 inspection and had to be addressed and then there
10 was another re-inspection after that.

11 Q. When was that?

12 A. I don't recall specifically but all these items
13 failed inspection and they were corrected.

14 Q. How did you have it corrected? Who corrected it?
15 Who did you hire to correct this decking issue that
16 you're blaming my client for?

17 A. Well, there was a lot of contractors that were
18 hired ---

19 Q. Specifically as to the deck, as to the decking
20 because yesterday your testimony was, Rampy had to,
21 this is my summary of it, had to go there and
22 remove the deck and replace the deck. And now your
23 testimony today is, oh, it was just a portion of
24 the deck, we have only have one deck, just a
25 portion. So my question is how did that portion

1 become corrected and by whom?

2 A. Are you specifically referring to number 8?

3 Q. I am.

4 A. I remember going to Lowe's myself and purchasing
5 all the lumber and then we had guys on site that
6 were hired to correct it.

7 Q. Who?

8 A. I think one of the invoices was ---

9 Q. No, who? Not the invoices, who?

10 A. I believe it was McCall Remodeling.

11 Q. You believe or you know for a fact? I'll remind
12 you you're under oath.

13 A. I know for a fact that McCall Remodeling helped do
14 the decking and also ---

15 Q. When?

16 A. After this inspection report took place and also my
17 father-in-law was also on site and he helped do
18 some of the decking as well.

19 Q. How much did you spend at Lowe's for the material?
20 It doesn't sound like a big job, right?

21 A. We replaced all the joists and all the decking
22 boards, I have a receipt for everything that was
23 done.

24 Q. I'm going to show you another document. When the
25 City of Seneca approved number 8 regarding the

1 decking, okay, if I'm following your testimony, the
2 City of Seneca approved it; did you get an engineer
3 involved?

4 A. We had to, yes, we had to get an engineer's letter
5 and sign off on it.

6 Q. Okay. And ---

7 A. We presented that I think yesterday.

8 (PLAINTIFF'S EXHIBIT 93 MARKED FOR IDENTIFICATION)

9 Q. I'm going to show you what will admitted as
10 Plaintiff's Exhibit Number 93. It's a City of
11 Seneca certified document and it looks like it's a
12 letter from Thomas Hood, PE?

13 A. Yes.

14 Q. Dated April 12th, 2020, correct?

15 A. Yes.

16 BY THE COURT:

17 Now, is this a new exhibit?

18 BY MR. TAROKH:

19 Yes, Your Honor.

20 BY THE COURT:

21 93, is there any objection.

22 BY MR. JOHNSON:

23 No objection, Your Honor.

24 BY THE COURT:

25 So that's admitted without objection. What is it

1 again, Mr. Tarokh?

2 (PLAINTIFF'S EXHIBIT 93 ADMITTED INTO EVIDENCE)

3 BY MR. TAROKH:

4 Your Honor, it's a letter, copy of letter, City of
5 Seneca, excuse me, a certified letter from the City
6 of Seneca, I'm sorry that came out confusing, it's
7 a letter dated April 12th, 2020 signed by Thomas
8 Hood, PE and it's a City of Seneca certified
9 document.

10 BY THE COURT:

11 All right.

12 Q. And it says, "I, Thomas Hood, a registered
13 professional engineering in South Carolina,
14 examined the rear deck at 548 Marina Bay Drive.
15 The deck is constructed with 2 x 10 floor joists at
16 a combination of spans that range from 2 feet to 12
17 feet. The ends of the joists are supported with 2
18 X 10 hangers at the ledger board and at the beam at
19 the outside of the deck. Several of the floor
20 joists were not flush against the exterior beam and
21 were not completely connected to the hanger. To
22 correct this, a double 2 x 10 hanger was placed
23 along with a 10 inch piece of 2 x 10 that was
24 connected to the existing 2 x 10 floor joist with
25 Headlock structural screws (see diagram 1)." Then

1 it says "The ledger board was connected to a 1 1/8
2 inch rim board with a 2 7/8 inch Headlok structural
3 screws and the joints were connected to the rim
4 board with DTTZ lateral load connectors within 2
5 feet of the ends of the deck and at 2 other
6 locations along the rear of the deck. At the two
7 locations on the rear of the deck (see diagram 2),
8 additional support was added in order for the beams
9 to have full support of the deck posts. Additions
10 or changes to the structure of the deck would
11 invalidate this report." So it appears to me that,
12 well, first there's a question as to whether Rampy
13 caused or whether my client caused this. My
14 question to you is, would you agree that the remedy
15 for this decking issue was six Headlok screws and
16 some additional 2 x 10s?

17 A. I don't know all the technicalities behind it, but
18 at the time that it failed inspection we were
19 anxious to move into the house and the inspector
20 told us all these joists had to be replaced, and I
21 went to Lowe's and bought all new joists and they
22 started taking it all down. The engineer was
23 called within a day or two and he came out and
24 looked at it and I don't -- you know, they put
25 everything together and made it acceptable to pass

1 inspection. But at the time I got out there, the
2 joists had been taken down, all the new ones were
3 on site and, you know, they're doing their thing
4 out there.

5 Q. So your testimony is after Merlo was terminated
6 somebody you hired had to take out all the joists?

7 A. Yes.

8 Q. So tell me how ---

9 A. We have a picture of that in evidence if you'd like
10 to view that.

11 Q. So how is the roof supported?

12 A. I think by the columns I guess.

13 Q. No further questions, Your Honor.

14 BY THE COURT:

15 All right. Let me ask, I need to ask some
16 questions of Mr. Merlo and I'm asking everybody, I
17 just want to clarify some information for me and so
18 they're not being directed at Mr. Merlo
19 specifically but he's on the stand. First of all I
20 want to ask about the encroachment issue. Now,
21 we've got testimony that the boulder wall was
22 encroaching on a neighbor and that was resolved for
23 \$500. We also have some testimony that some
24 utility lines were placed on the neighbor's
25 property. Now, my question is, were those utility

1 lines, who put them in? Was it by the utility
2 company or who?

3 A. Well, the project was supposed to be managed by
4 IBI, so we trusted them to take care of putting in
5 the utilities. At the time I didn't have anything
6 to do with the installation of the utilities.
7 Later on, I come to find out that the power line
8 was on the neighbor's lot and the water line was
9 also on the neighbor's lot. We called Seneca Light
10 and Power and they came out and moved the power
11 line and then we had to pay the water line moved,
12 and I believe that was an invoice supported by
13 White Harbour Plumbing. I believe they were the
14 contractor that moved the water line for us.

15 BY THE COURT:

16 And the water line and electric line, is there some
17 type of utility easement that goes down the side
18 lines?

19 A. No, sir, no, there's not really a utility easement,
20 it's just a property line.

21 BY THE COURT:

22 Do you recall how much you paid to have the water
23 line relocated?

24 A. We should have produced that invoice. I don't
25 recall specifically, Your Honor.

1 BY THE COURT:

2 But you didn't have to pay for the electric lines?

3 A. Not that I'm aware of.

4 BY THE COURT:

5 All right. Then finally, on the other side there
6 was I believe some testimony about the driveway and
7 some shrubbery, I believe there was a photograph
8 where it encroaches on the neighbor's adjoining
9 property; is that correct?

10 A. Yes, sir, Your Honor.

11 BY THE COURT:

12 And that has not been resolved?

13 A. My neighbor is close to finishing his house,
14 probably about 75% and I've been trying not to have
15 that discussion with him to be honest with you.

16 BY THE COURT:

17 Okay. And at the time that your house was being
18 built, for most of that time or all that time the
19 adjoining lots were vacant?

20 A. Yes, sir, that's correct, Your Honor.

21 BY THE COURT:

22 All right. Going to some of these financing
23 questions, related to financing, there was a series
24 of exhibits that were put in by the Plaintiffs,
25 specifically 62 through 68, detailed emails from

1 you to GrandSouth Bank regarding financing and
2 these I think they ranged in dates to, some date
3 sometime in September or October of '19. But
4 anyway my question is, in those emails you were
5 contacting GrandSouth and exploring possibilities
6 of some permanent financing and so on and so forth.
7 So did that ever get resolved in any fashion?

8 A. No, sir, Your Honor. We still have the same
9 financing on the house that we did when we started,
10 so nothing transpired there. I know we had talked
11 about a 30-year fixed and we had talked about Heloc
12 one, but to date we're just paying interest only on
13 the project, no principal.

14 BY THE COURT:

15 Okay. And was there ever any additional financing
16 of things on the property?

17 A. No, sir, Your Honor.

18 BY THE COURT:

19 All right. And then going to the GrandSouth loan,
20 I believe there was a stipulation that that loan
21 amount is \$752,000, and what I'm trying to get in
22 my mind the representative of the bank testified
23 that there was \$45,000 remaining in that loan which
24 has been frozen.

25 A. That's correct.

1 BY THE COURT:

2 And then there was also a payment of \$127,000 to
3 the Bank of Travelers Rest to pay off another
4 mortgage on the property?

5 A. Yeah, that was the initial mortgage on the lot,
6 that's correct. So GrandSouth is the only lien
7 outside of the mechanic's lien.

8 BY THE COURT:

9 All right. So they took 127,000 out of this loan
10 and paid off the Bank of Travelers Rest?

11 A. Yes, Your Honor.

12 BY THE COURT:

13 And then that leaves, I mean I've got a figure of
14 \$581,250 that was paid to IBI in draws. Is that a
15 correct figure? If you add those three up, it
16 comes up to according to my addition \$753,250.
17 That would be over the amount of the loan. Maybe I
18 added it wrong, I don't know, I did it fairly
19 quickly. Is there any explanation for that?

20 BY MR. TAROKH:

21 Your Honor, the 127,000 is for the payoff the ---

22 BY THE COURT:

23 I know. I'm saying there's three elements
24 involved, one is to pay off Travelers Rest and
25 they've got 45,000 left, and then they paid draw

1 payments, nine draw payments to IBI and the total
2 figure I had was 581,250; if you add those three
3 up, you come out a little bit over than \$752,000.
4 I don't know why but I mean it's not that much,
5 it's about \$1250 it looks like?

6 BY MR. TAROKH:

7 Your Honor, our calculations are that based upon
8 the GrandSouth Bank Request for Admissions where,
9 you know, one, it displayed very clearly the total
10 and then how each payment was made and that \$27,000
11 not going to my clients, but going to the prior
12 mortgagee.

13 BY THE COURT:

14 Well, now, I believe there was also, there was some
15 payments, at least one that I remember that was
16 made out of pocket and didn't come out of draw, and
17 that was \$10,000. Now, were there others?

18 BY MR. TAROKH:

19 Yes, yes, Your Honor, and that's reflected on the
20 balance sheets.

21 BY THE COURT:

22 Well, how much was the total that he paid out of
23 his pocket?

24 BY MR. TAROKH:

25 If I may grab the balance sheet I can show you,

1 it's admitted into evidence.

2 BY THE COURT:

3 Yeah, I need to get it straight in my mind now, you
4 know. I'm not trying -- I don't think there's any
5 real dispute about any of these things, but if I
6 just kind of?

7 BY MR. TAROKH:

8 Yes, Your Honor. I can just pull the balance sheet
9 really quickly, the final balance, I just need to
10 see the exhibit list and do some quick math.

11 BY THE COURT:

12 Well, while you're doing that I want to ask a
13 couple of other things. How much did you pay for
14 the lot, Mr. Merlo?

15 A. Initially, Your Honor, I want to say it was about
16 215 I believe.

17 BY THE COURT:

18 Well, is that an accurate figure or you don't know
19 how much you paid for your lot?

20 A. I want to say 215, 220, right in that area.

21 BY THE COURT:

22 Okay. And where did you get the \$137,000 you paid
23 to Joy Construction?

24 A. We sold the house that was located 2416 Pointe
25 Marsh Lane, and the rest of it I just took out of

1 my cash account or kind of like my retirement
2 account I guess.

3 BY THE COURT:

4 And the house you sold was in Myrtle Beach, right?

5 A. Yes, sir, that's correct, North Myrtle Beach.

6 BY THE COURT:

7 Okay, good. Now, if we get that other, that other
8 question answered, I'll be through.

9 A. I've got right here.

10 BY THE COURT:

11 Well, he's going to give to me.

12 BY MR. TAROKH:

13 It's another one, it's the final balance sheet on
14 this one.

15 BY THE COURT:

16 It will be Exhibit 39 I believe.

17 BY MR. TAROKH:

18 Yes, 39. Thank you, Judge. So, Your Honor, if you
19 recall my client testified that the "CM" and the
20 "H. Holland" denote Christopher Merlo to indicate
21 that those were payments, those were not draw
22 payments, they were direct payment to Mr. Merlo.
23 And I'll do the math really quickly. So we have
24 one \$10,000 payment, plus 5,000, plus 7,500, plus
25 3,200 for a total of 25,700.

1 BY THE COURT:

2 25,700?

3 BY MR. TAROKH:

4 If you don't mind let me do this one more time just
5 to make sure?

6 BY THE COURT:

7 I mean that's what I get.

8 BY MR. TAROKH:

9 25,700.

10 BY THE COURT:

11 All right. I'm just trying to, I haven't had a
12 chance to study all those spreadsheets, so in time
13 I will do, but I mean it's time to save myself some
14 time.

15 BY MR. TAROKH:

16 Your Honor, as your question regarding the
17 easement, there's a line easement, and obviously
18 more of pictures of those, but I would ask the
19 power company and the utility company are the ones
20 that set, you know, the power. You know, that just
21 makes sense, you know, it's electrical and utility
22 lines, and I believe I have a plat that shows that
23 easement if I'm not mistaken.

24 BY MR. JOHNSON:

25 There's no basis for that. There's no basis for

1 judicial notice on this one ---

2 BY MR. TAROKH:

3 We can cover it with my expert.

4 BY THE COURT:

5 Well, that's fine. I mean it's common knowledge
6 that the utility is going to need to put in their
7 lines, I mean that's no big secret. But anyway,
8 this plat that you refer to, is that the Culbertson
9 or is that a different plat?

10 BY MR. TAROKH:

11 I think that was the one that you'd asked whether,
12 we were talking about maybe putting it in and if I
13 can look at it, maybe I can -- if counsel will put
14 it in, I think I can answer your question. I don't
15 know if you want testimony from this, Your Honor,
16 but ---

17 BY THE COURT:

18 Well, I mean is it going to be admitted as an
19 exhibit?

20 BY MR. TAROKH:

21 Yes, sure. Yes, Your Honor, I can stipulate ---

22 BY THE COURT:

23 So it's going to be Defendant's Exhibit what?

24 BY COURT REPORTER:

25 Defendant's 81.

1 (DEFENDANT'S EXHIBIT 81 MARKED FOR IDENTIFICATION)

2 BY THE COURT:

3 All right. Defendant's 81 is admitted without
4 objection and that's a plat. What's the date on
5 that plat?

6 BY MR. TAROKH:

7 September 14th, 2020.

8 (DEFENDANT'S EXHIBIT 81 ADMITTED INTO EVIDENCE)

9 BY THE COURT:

10 All right. So now you say there's something on
11 there that answers the question?

12 BY MR. TAROKH:

13 Yes, Your Honor. Well, my client is telling me if
14 I can put in evidence that these dotted lines are
15 your easements. So you can kind of see these up
16 and down dotted lines.

17 BY THE COURT:

18 Well, I mean generally, and I mean I don't know
19 about this particular, is this a subdivision lot of
20 some kind?

21 BY MR. TAROKH:

22 I believe so, Your Honor.

23 BY THE COURT:

24 I mean generally subdivisions have utility
25 easements running down the side and the rear lines

1 on each side and that's a, I'd say normally there's
2 five feet on each side, so 10 feet corridor, and
3 that's why I was asking the question.

4 BY MR. TAROKH:

5 15 feet is my understanding.

6 BY MR. JOHNSON:

7 Your Honor, just for clarity ---

8 BY THE COURT:

9 Well, we need some of that.

10 BY MR. JOHNSON:

11 Mr. Merlo's lot is to the right side of this parcel
12 that's shown and the utilities are coming into the
13 lot to the right of that.

14 BY THE COURT:

15 Okay, that's fine.

16 BY MR. JOHNSON:

17 This is the driveway side and this plat shows the
18 encroachment.

19 BY THE COURT:

20 Well, I mean that's fine. I mean generally, as I
21 said, you've got multiple lots in a subdivision,
22 they have uniform easements for utilities.

23 BY MR. TAROKH:

24 Correct, Your Honor, that's my understanding, too.

25 BY THE COURT:

1 Wait a minute. I mean that doesn't necessarily
2 happen, but it's the common practice among
3 developers and builders in this area, but I won't
4 pit against that point so anyway. All right,
5 anything else from Mr. Merlo?

6 BY MR. TAROKH:

7 One second, Your Honor.

8 BY MR. JOHNSON:

9 Your Honor, I'm just going to put this in for Mr.
10 Merlo. This the invoice here related to when we
11 were talking about White Harbour moving the water
12 line. I was going to put in for Mr. Merlo and the
13 check.

14 BY THE COURT:

15 Well, I mean have you got a series of things you're
16 going to ---

17 BY MR. JOHNSON:

18 A couple of items, Your Honor, but I ---

19 BY MR. TAROKH:

20 Your Honor, I thought we're just limited in scope
21 from those areas he discussed yesterday.

22 BY THE COURT:

23 He said he was going to bring Ms. Merlo to admit
24 some checks?

25 BY MR. JOHNSON:

1 Yes, she paid these invoices.

2 BY MR. TAROKH:

3 Okay, no objection.

4 BY MR. JOHNSON:

5 You want me to go ahead and put it in?

6 BY THE COURT:

7 Well, why don't we do this, I mean is she still
8 coming or are we doing something else?

9 BY MR. JOHNSON:

10 Yes, Your Honor.

11 BY MR. TAROKH:

12 Well, why don't we then ---

13 BY THE COURT:

14 Just put it all in with her. It will make it
15 easier for me to locate them. He's already agreed
16 to let it in, so if she doesn't show up you can get
17 it in anyway. All right, anything further?

18 BY MR. TAROKH:

19 No, Your Honor.

20 BY THE COURT:

21 All right, Mr. Merlo, you can step down. All
22 right. Now, I believe the next item to commence
23 was to go to your expert?

24 BY MR. TAROKH:

25 Yes, Your Honor.

1 BY THE COURT:

2 Is that still okay with you, Mr. Johnson?

3 BY MR. JOHNSON:

4 Yes, sir.

5 BY MR. TAROKH:

6 Thank you.

7 BY THE COURT:

8 All right. Because we're taking him out of order
9 obviously.

10 BY MR. TAROKH:

11 Yes, Your Honor, I appreciate the accommodation.

12 Your Honor, I call Mr. Mich LaPlante to the stand.

13 BY THE COURT:

14 All right, sir. Please come around here and be
15 sworn in.

16 BY COURT REPORTER:

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

20 BY MR. LAPLANTE:

21 I do. Thank you.

22 TESTIMONY OF MICHEL LAPLANTE

23 DIRECT EXAMINATION BY MR. TAROKH:

24 Q. Mr. LaPlante, please state your full name for the
25 record.

1 A. It's Michel M-I-C-H-E-L but I go by "Mich LaPlante
2 L-a-P-L-A-N-T-E.

3 Q. And can you please tell the Court the benefit of
4 your education and background?

5 A. I have a Professional Bachelor's or Baccalaureate
6 Degree from Oklahoma State University. I went
7 through an intern program with license. I
8 graduated in '73, with a license in '76, I'm
9 licensed in I guess nine different states but
10 active in three right now.

11 Q. And what are those ---

12 BY THE COURT:

13 And what kind of licenses is that?

14 A. Pardon?

15 BY THE COURT:

16 What kind of licenses?

17 A. To practice architecture.

18 BY THE COURT:

19 Architect, okay.

20 A. I'm sorry, sir.

21 Q. And what states are you licensed in currently?

22 A. North Carolina, South Carolina and Florida.

23 Q. And you said you have I guess inactive licenses in
24 other states?

25 A. We get reciprocity in all states if we want to

1 activate the license ---

2 Q. Okay, okay.

3 A. --- except for Texas and California, I mean New
4 York and California.

5 Q. How long have you been in the business of
6 architecture?

7 A. 49 years.

8 Q. And do you currently practice architecture?

9 A. Yes.

10 Q. And do you design residential homes currently?

11 A. My practice is focused on a lot with single-family
12 residential, yes.

13 Q. And has your work been featured in magazines or
14 publications?

15 A. Yes, and national magazines.

16 Q. And can you the Court an idea of the value of the
17 homes that you design?

18 A. For the last 40 years I've done homes that range
19 from maybe a half million to ten million dollars
20 with the average now being between two and five
21 million dollars.

22 Q. And you also have experience doing commercial
23 property; is that correct?

24 A. Yeah, early in my career I worked for a multi-
25 national firm in Houston, Texas and we did projects

1 and I became what they call a construction
2 architect, construction administration on projects
3 in Tulsa, Oklahoma and St. Louis, Missouri.

4 Q. And have you testified before about quality in
5 construction in other cases?

6 A. Yes.

7 Q. Your Honor, at this time I would move Mr. LaPlante
8 to be qualified as an expert witness in the quality
9 of construction.

10 BY THE COURT:

11 All right, Mr. Johnson?

12 BY MR. JOHNSON:

13 No objection, Your Honor.

14 BY THE COURT:

15 All right. Mr. LaPlante will be qualified as an
16 expert in that area.

17 Q. And, Mr. LaPlante, are you familiar with the Merlo
18 project?

19 A. Yes.

20 Q. And can you explain to the Court how you became
21 familiar?

22 A. I've known Mr. Tarokh for a while and he asked me
23 if I would help out on this case and I offered to,
24 I said I would, so he sent me information on, the
25 drawings, the reports, et cetera, and then I did a

1 site visit.

2 Q. And based upon your review of those documents and
3 your site visit, do you have an opinion as to the
4 quality of construction performed by IBI?

5 A. A well-built home.

6 BY MR. JOHNSON:

7 Your Honor, ---

8 A. There's no such thing as perfect. Any construction
9 has defects. There's no such thing as perfection
10 in architecture or construction, but it's a very
11 well-built home.

12 BY MR. JOHNSON:

13 Your Honor, I would object to any opinion that's
14 different than his deposition.

15 BY THE COURT:

16 Well, you're going to get to cross examine so if
17 it's a different viewpoint, do it at that time.

18 BY MR. JOHNSON:

19 Well, Your Honor, his opinion at the deposition was
20 based solely on site visit even though he had
21 access to the entire records.

22 BY MR. TAROKH:

23 That's not accurate and that's cross examination,
24 Your Honor.

25 BY THE COURT:

1 I agree. I mean it's totally in cross examination.
2 He's testifying and you didn't object to him being
3 qualified as an expert ---

4 BY MR. JOHNSON:

5 No, I didn't, Your Honor.

6 BY THE COURT:

7 --- so he's going to give his opinion ---

8 BY MR. JOHNSON:

9 Okay.

10 BY THE COURT:

11 --- and you'll cross examine him in a minute. All
12 right.

13 Q. Were you in Court yesterday?

14 A. Yes, sir.

15 Q. Would you say you were in Court for most of the
16 day?

17 A. Yes, unfortunately.

18 Q. And did you happen, so you were listening to Mr.
19 Merlo testify as to various issues that he alleged
20 with the house?

21 A. Yes, yes.

22 Q. And what is your opinion on what he was testifying
23 about?

24 A. It was a bad faith procedure. I mean the process
25 of building a home is based on good faith between

1 the client, the contractor and the architect and it
2 was bad faith.

3 Q. Can you explain why it was bad faith?

4 A. There was a crazy volume of photographs. I've done
5 hundreds of homes and I've never had a client
6 photograph the quality of construction during the
7 process, especially early on. They might document
8 where electrical lines are or whatever for future
9 maintenance, but never and I've never heard of such
10 thing or nor I have seen it or been involved with
11 it. It doesn't exist.

12 Q. If I can point you to Defendant's 75. And do you
13 remember looking at those pictures yesterday?

14 A. I glanced at them, yes, sir.

15 Q. And does anything in those pictures indicate any
16 issues with construction that would rise to the
17 level of breaching the standard of care?

18 A. No. I mean again, things like concrete is not an
19 exact science. Construction sites are messy, by
20 nature they're messy.

21 Q. And is it your opinion that IBI performed under the
22 contract in compliance with the standard of care?

23 A. Yes, and from the contract documents, yes.

24 Q. Did you see any issues in Plaintiff's, excuse me,
25 Defendant's 75 that would indicate a standard of

1 care issue?

2 A. No.

3 Q. What about the time element? I mean how often,
4 like if you're familiar with the house, the subject
5 house. Can you explain to the Court the typical
6 time how construction progress is based, what can
7 impede it and things of that nature?

8 A. I like a track home. A custom home takes much
9 longer because between the site conditions, the
10 weather, et cetera, and selections and action by
11 the architect, contractor, et cetera, it can take
12 it from 18 to 26 months I've seen.

13 Q. And so a house taking 23 months, is that a big
14 issue in your expert opinion?

15 A. No. We're all frustrated by the South Carolina
16 weather. Sometimes we get slapped by it and heavy
17 rains or hurricane shutdowns or whatever so, no,
18 it's not desirable but it happens sometimes.

19 Q. And you worked up here in the Upstate with
20 architecture and design?

21 A. I did a large home in Greenville for the Panel
22 family and the same thing, it took a long time,
23 also.

24 Q. You're familiar with the dispute between my client
25 and Mr. Merlo, correct?

1 A. Yes.

2 Q. What's your opinion of that dispute?

3 A. I, I had an old boss from Texas who told me that
4 it's a simple formula, no one is entitled to free
5 value. If you receive something, you should pay to
6 receive that value and it appears to me he's trying
7 to receive value for something and not pay for it.
8 It's a very simple formula.

9 Q. So it's your opinion that the construction of the
10 project was proper and was performed in a good
11 workmanlike manner in according with the plans and
12 specifications?

13 A. Certainly per industry standards, yes.

14 Q. And what about, what about IBI's management of the
15 construction of the project?

16 A. I have no indication it was not adequate.

17 Q. What about the supervision?

18 A. No indication it wasn't.

19 Q. No further questions.

20 BY THE COURT:

21 Cross examination.

22 CROSS EXAMINATION BY MR. JOHNSON:

23 Q. Mr. LaPlante, how, how tall are the basement
24 ceiling in this house supposed to be?

25 A. Pardon?

1 Q. How tall was the height of the basement ceiling
2 that was agreed to under the contract in this
3 matter?

4 A. I don't know, I'd have to look at the drawings. I
5 can't remember. I've done a lot of houses.

6 Q. Okay, well, let's take a look at the drawings and
7 the contract please.

8 A. Are these the complete drawings?

9 Q. Those are Defendant's final set of drawings.

10 A. It's by the floor, the floor is 11'3 but unless you
11 know the floor system I can't tell you the ceiling
12 height.

13 Q. Okay. Can you look at the contract and see if
14 there's a specification of the ceiling height? The
15 specification are in the contract. I believe
16 that's Plaintiff's 2.

17 A. I'm just glancing, I'm not reading every line
18 obviously.

19 Q. That's fine, take your time.

20 A. I can't find it unless you point it out to me.

21 Q. If you will look under the framing specification,
22 the last line does it say anything about the
23 ceiling height in the basement?

24 A. Main floor 10 foot, basement 10 foot.

25 Q. So if the house was not built with a 10 foot

1 ceiling in the basement, would that be a breach of
2 those terms of this contract with the Merlos?

3 A. Well, there's a conflict between this document and
4 the drawings. In drawings, you cannot get a 10
5 foot ceiling per the drawings that are there and it
6 identifies the floor to floor height. If you
7 remove the thickness the frame system you can't get
8 net 10 feet, so there's a conflict between the two
9 sets of documents.

10 Q. Would you agree that the Plaintiff agreed to build
11 them a 10 foot ceiling?

12 A. Again, as in my position, I believe there's a
13 conflict between the two and it should've been
14 resolved prior to proceeding because there's a
15 clear conflict between what's stated here and what
16 the drawing reflects. If I built per the drawings
17 precisely which is what the contract says to do,
18 you can't get 10 feet. And if I do the 10 feet,
19 then I can't do it per the drawings so that
20 should've been resolved.

21 Q. If you look further on there ---

22 A. Yes, sir.

23 Q. --- in the very end of the contract it again
24 references 10 foot ceilings?

25 A. "Outdoor shower to be installed, located", is that

1 what you're talking about?

2 Q. Say that again?

3 A. Well, I'm not sure. What were you ---

4 Q. Does it again reference a 10 foot basement ceiling?

5 A. "10 foot ceiling to be constructed in the basement.

6 (NOTE: this will/may cause the window and door
7 sizes to change from their current size. These
8 changes should be reflected on the revised plans)."

9 I don't know who prepared the plans or. Again, I'm
10 just telling you the contract documents are in
11 conflict with each other right now.

12 Q. But that's not what you testified to a little while
13 ago. You said that it would be depend on the floor
14 system?

15 A. Pardon?

16 Q. You said it would depend on the floor system.

17 A. Depend on -- I didn't understand. What did you
18 just say?

19 Q. Depend on the floor system?

20 A. I'm sure the floor system is very -- you cannot
21 build a house with beams, et cetera to achieve a 10
22 foot ceiling height per those plans, period.

23 Q. Would Mr. Merlo have any idea looking at the plans
24 that he did not agree to a 10 foot basement
25 ceiling?

1 A. I assume he looked at the drawings before they were
2 -- I would require a client to look at the drawings
3 and sign off prior.

4 Q. But him looking at those drawings as a layman?

5 BY MR. TAROKH:

6 Objection, relevance.

7 BY THE COURT:

8 Well, I agree. That just calls for pure
9 speculation. He doesn't have no way of knowing
10 what Mr. Merlo would believe.

11 Q. Do you agree that Mr. Merlo asked for and it was
12 agreed upon providing a 10 foot basement ceiling?

13 A. Well, first of all, he's not -- he's in the
14 business, I mean the real estate business so he
15 should as familiar, much more familiar with dealing
16 with drawing than the average homeowner. I mean
17 that's in the business of selling real estate so he
18 should know that I would assume.

19 Q. And that's just an assumption?

20 A. Any, any agent that I've ever dealt with knows how
21 to look at drawings and read drawings, correct,
22 that's correct.

23 Q. And to know what the ceiling height would be was
24 not specified in the plan?

25 A. If there's a conflict with this, I don't know what

1 was his knowledge base is, I don't. I truly don't
2 know that. But I'm telling you per the documents
3 you're giving me here, they are in conflict with
4 the other. There's a 10 foot minimum, but nominal.
5 That means not with the beams on, not with the
6 soffits or whatever. I don't know what the 10
7 foot, it doesn't clarify what 10 foot means. In
8 this room a 10 foot ceiling could be the top of the
9 coffer or the bottom of the coffer. What are you
10 calling the ceiling height? And that's not, the
11 term itself is not definitive in itself because it
12 could be from the floor to the lowest level of a
13 beam or it could be to the soffit above. I have no
14 idea what they're measuring to.

15 Q. Okay. But if it's 9'8 it's not 10?

16 A. If it's what?

17 Q. If the room was 9'8 feet tall that's not 10 feet,
18 is that correct?

19 A. If the average -- I'm saying with the roofing
20 system, if the 11 foot floor to floor is done
21 correctly and you use a floor system, you're going
22 to end up about a 9'8 ceiling, that's exactly what
23 you'd end up with. That's why I said they're in
24 conflict.

25 Q. Are you aware of any change orders regarding

1 changing the height of the basement ceiling?

2 A. I don't remember. I've read a lot of documents, I
3 don't recall.

4 Q. In the instance of a conflict between the plans and
5 the specs, what controls?

6 A. Generally the drawings. Being the architect, I
7 believe that. I believe that and I think most
8 contracts state that if there's a conflict the
9 drawings take precedence.

10 Q. What do the AIA 201, 2007 say?

11 A. Yeah, AIA does not relate -- AIA is a fraternal
12 organization of architects. It has nothing to do
13 with -- there's also a state licensing board on
14 drawings. The architect is not controlled by the
15 AIA. AIA, I don't know if the AIA, it's a
16 fraternal organization and it has nothing to do
17 with quality control of architecture, nothing at
18 all.

19 Q. What are the correct consensus docs, what's the
20 hierarchy there?

21 A. The what?

22 Q. The Consensus docs

23 A. What's a consensus doc?

24 Q. Consensus docs is another universally accepted
25 contracting document?

1 A. It's per a local building code or the state -- in
2 my case, the state licensing requirements.

3 Q. Do you know if this contract had a hierarchy
4 involved?

5 A. I have no idea. Of course, I practice architecture
6 and now law; it's much easier I think. It's faster
7 for sure.

8 Q. I'll come back to that in a second. Going back to
9 the plans, Defendant's Exhibit 6. And so we are
10 looking at the basement and the floor framing plan
11 of Defendant's Exhibit 6; is that right?

12 A. That's what it states, yeah.

13 Q. Okay. Where on these plans, what walls are
14 supposed to be poured concrete walls? How are
15 those delineated?

16 A. I'd have to -- again, these were not prepared by an
17 architect, so I don't know what he used as his
18 design systems.

19 Q. You don't think these were prepared by an
20 architect?

21 A. It doesn't say so; yeah, it says "designer". The
22 State of South -- in all states you cannot put the
23 word "architect" on an architectural design drawing
24 unless you're a licensed architect. These were not
25 prepared by a licensed; if they were, the fact he's

1 an architect which is really odd. These were
2 prepared by a drafting service or a drawing service
3 or whatever. It says design services, not
4 architect.

5 Q. Okay. Well, take a look at those and tell us what
6 were supposed to be poured concrete walls?

7 A. I'd have to read, I'd have to read the entire
8 legend.

9 Q. That's okay. Now, if you believe it's on a
10 different page please.

11 A. I cannot tell from here. No notes are jumping out
12 to me that make it clear to me. I'm sorry, I, I
13 can't, I can't tell from this.

14 Q. So you can't tell what's supposed to be a poured
15 concrete wall?

16 A. No, because, for example, the large one says eight
17 inches and then four inch. Eight is the eight inch
18 concrete block. Poured, concrete, frame, I have no
19 idea.

20 Q. And this is the basement floor plan of Exhibit 6.
21 What do you believe that these darker members are?

22 A. Interior partitions, what, you'd have to read what
23 it is, but it's narrow. The partition could be, if
24 it's in the floor it could be block, could be
25 framed, it could be poured concrete, it could be

1 block. It's just looks a narrow wall is all it's
2 showing.

3 Q. So these are walls that are darker, is that
4 correct?

5 A. So are perimeter, they're all walls.

6 Q. Well, I'm talking about the shaded areas, these are
7 interior walls; is that ---

8 A. No, those are not interior walls, those are
9 columns.

10 Q. Those are columns, okay.

11 A. From the framing.

12 Q. Do you agree that the specification for this back
13 wall is different than the specification for this
14 wall?

15 A. Look, are there specs on the drawings?

16 Q. Well, on the drawing is this ---

17 A. There's a graphic difference but that's not a
18 specification.

19 Q. So this right here ---

20 A. Unless there's a legend telling me what that is,
21 there's no legend here telling me what that is here
22 and what that is here, so without a legend you're
23 guessing at something, you know, nothing that I can
24 tell in these drawings.

25 Q. So when your client, IBI, poured concrete walls on

1 every other location that had that detail but
2 didn't do it right here, you're saying that they
3 just guessed at that?

4 A. How do you know it's supposed to be a concrete
5 wall?

6 Q. Well, ---

7 A. I'm asking you. I can't tell what it's supposed to
8 be. If you can tell me that?

9 Q. Well, you're the professional so ---

10 A. Sir, I'm telling you these drawing aren't
11 proficient in that they don't identify what that
12 wall is. They don't identify what that wall is so
13 you're asking me to guess what's supposed to be.
14 It could be block, it could be framed, it could be
15 poured concrete.

16 Q. Well, I'll represent to you that the testimony from
17 Mr. Grissinger was that that shows a concrete wall
18 and that he made a ---

19 A. That's his, that's his evaluation of the drawings.
20 I can't make that -- from the drawings I'm looking
21 at, I can't make that statement that that is
22 supposed to be a poured in place wall or a block
23 wall or it could be -- it very well could be but we
24 don't know for a fact, it's not definitive.

25 Q. Okay. Well, your client represented to this Court

1 that that was supposed to be a poured wall but it
2 was a field change.

3 A. I was not -- I did not make this. This is not mine
4 to say. I cannot make that statement.

5 Q. I understand. If -- can a general contractor take
6 a set of plans and change them unilaterally without
7 an owner's approval?

8 A. Of course, if he sees a better way to do it. I
9 encourage contractors if they -- I don't think I'm
10 all knowing. If they have a better way to do
11 something, I encourage them to do that or share
12 with me. Yes, we want to be as efficient as we can
13 be all the time. So we don't discourage it, we
14 encourage it. It's a team effort, it's not a side
15 thing on the side. It's supposed to be a team
16 effort to get the project done.

17 Q. Well, does a team effort contemplate the general
18 contractor having the discussion with the owner
19 about a change to this house?

20 A. It all depends on the scope of the change. If it's
21 a nail pattern that's changed, there's millions of
22 decisions that are done on a construction site,
23 hundreds a day that the homeowner nor the
24 architects knows, so you depend upon the contractor
25 to understand the needs are met for the

1 construction and to do the project that he thinks
2 is good quality, and if he believes it's deviating
3 beyond his realm of craftsmanship standards, then
4 he should consult with someone. May I have a glass
5 of water please?

6 Q. Yes.

7 A. I'm not used to talking this much, I work by
8 myself. Thank you.

9 Q. Yes, sir. So you don't believe that there's any
10 duty to communicate with an owner about ---

11 A. That's not what I've said.

12 Q. Okay. Well, explain to us what you're saying.

13 A. It depends upon the scope of the change. There are
14 things that are changed. I might draw some pattern
15 one way and if it's slightly different and it
16 achieves the same result, he's absolutely entitled
17 to do that. And so it depends, if he wants to use
18 to concrete block instead of poured concrete, which
19 normally in North Carolina is an acceptable
20 alternative always to me to use block instead of
21 poured concrete, because I mean any structures here
22 wouldn't have a problem with that, it makes no
23 difference unless the wall is doing something other
24 than just carrying a dead load.

25 Q. Is there ---

- 1 A. (Witness cellphone ringing) Oh, I'm sorry. I
2 thought I had turned it off, I apologize. I'm
3 sorry.
- 4 Q. No problem. Is there a difference between a block
5 wall and a wood frame wall?
- 6 A. In terms of what, material? Yes.
- 7 Q. Well, I mean ---
- 8 A. This -- you wouldn't do any of this frame, yeah,
9 yes, there's a difference.
- 10 Q. Okay. And so ---
- 11 A. Can you achieve the same thing with both walls? Of
12 course.
- 13 Q. Is one superior to the other?
- 14 A. It all depends on what you're trying to accomplish.
15 Does it carry a dead load; does it carry a lateral
16 load; what is it doing? So the answer, there is no
17 one solution.
- 18 Q. And I don't disagree there's not one solution. But
19 you're saying that the contractor can go out and
20 make these changes without the owner consenting?
- 21 A. Certain changes, I didn't say all changes, I never
22 said all changes.
- 23 Q. And who is that up to?
- 24 A. Who is that up to? It's up to his judgment whether
25 the change significantly affects the workmanship of

1 the project.

2 Q. And again on those items, you think there's no duty
3 to communicate at all?

4 BY MR. TAROKH:

5 Objection, asked and answered.

6 BY THE COURT:

7 I agree. He's asked him the same question over and
8 over. Just move on.

9 A. I don't have another answer.

10 Q. Do you believe that they built the house in
11 accordance with those plans and specs?

12 A. I didn't look, I didn't do a takeoff of dimensions
13 and verify that so I can't swear to it. I didn't
14 do a takeoff but conceptually, yes.

15 Q. At your deposition ---

16 A. There's never been a building built precisely, let
17 me just make that statement.

18 Q. At your deposition in the context of the ceiling
19 you're talking about, there would've needed to be
20 change order; do you recall that?

21 A. If, in fact, he's doing a change from these
22 drawings, that's correct.

23 Q. And you don't believe that there's a change
24 regarding the 10 foot?

25 A. And what I'm saying, these drawings, if you look at

1 these drawing and take them -- believe me, I take
2 drawings real serious.

3 Q. Well, they're not ---

4 A. But they will not allow for a 10 foot ceiling, I
5 mean it's not possible per the drawings. Let me
6 put it another way, the drawings were prepared by
7 someone who understands buildings. You know, the
8 outline is drafted by attorneys who probably might
9 not understanding buildings, don't take it wrong,
10 quite as well but.

11 Q. Forgive me, Your Honor, I'm looking for a provision
12 that we discussed two days ago with Grissinger in
13 the contract.

14 BY MR. TAROKH:

15 Your Honor, just for the sake of record I feel that
16 this is burning time. I understand this is cross
17 examination but it's just the preparation point. I
18 mean these documents I believe, Your Honor, was
19 very clear to us we should have things ready to go,
20 documents ready to roll, and I feel like we're
21 burning time.

22 BY THE COURT:

23 Well, I agree with you we're doing that and it's
24 unfortunate that Mr. Johnson doesn't seem to be as
25 prepared as -- I've been avoiding that, but he is

1 on cross examination and looking for some specific
2 reference. But I'm not sure what he's looking for
3 but I'm going to give him latitude.

4 A. I'm looking to go to my North Carolina cabin when
5 this is done.

6 BY THE COURT:

7 Well, it will still be there when you get there.

8 A. I don't know, it's been a long time.

9 Q. So in the notes of the contract, on the second to
10 last bullet point.

11 A. You said the last point?

12 Q. The second to last?

13 A. "Any discrepancy between code and plans, code will
14 always prevail."

15 Q. The second to last?

16 A. "General notes on plans are not considered specs
17 and are subject to change."

18 Q. So that provision, is that provision saying that
19 the specifications are in higher precedence than
20 the plans?

21 A. In my mind, no, because the plans -- again, you get
22 a permit for the plans, you meet the code per the
23 plans. This is a document between two folks. This
24 is not, this not what you build by. If you were
25 using a AA document or your using a AIA, it's a

1 pretty good construction document that would've
2 made it very clear if there was a conflict between
3 the plans and the contract because this would have
4 all been laid out correctly and it would've been,
5 the conflict, you would be able to address it. But
6 the drawings take precedence over.

7 Q. Is that what their contract says?

8 A. It says "General notes", general notes, the legend
9 talks about the general notes, we're not talking
10 about here. The general notes on the plans are not
11 considered specs. These are specific notes.
12 Seeing that does not -- flooring not a general
13 note, really it couldn't be any more specific note.
14 So just that clause negates what you're talking
15 about incompletely because that's not a general
16 note on the plan. It says per fraction of an inch
17 how close it's supposed to be. I would not call
18 that a general note in any way, in any way or
19 stretch of imagination. If you were at fault on
20 the other side and you built it wrong, I would say
21 you didn't build it per the plans and specs,
22 period. And that's not a general note, that's a
23 very specific detail.
24 Q. But does it not contemplate that the specifications
25 control?

1 A. It says "are not considered specs".

2 Q. Right.

3 A. Yeah, they're not -- you know what specs, the word
4 "specs" means, that's stands for specifications.
5 The specification tells you what color to use white
6 only or rip cut white only. It doesn't say how to
7 construct it, it tells you what the material is,
8 that's what it's telling you. It's not telling you
9 how it's built; it's telling you what the material
10 is and the standard for the material. It tells you
11 the strength of the concrete, tells you that type
12 of thing. But even, even then, the drawings,
13 although I know this gentleman would be the epitome
14 of a decent set of documents and they're very
15 specific on the floor to floor height. That's not
16 a general note by any stretch of the imagination.

17 Q. But doesn't that contemplate that the
18 specifications control?

19 BY MR. TAROKH:

20 Objection, asked and ---

21 BY THE COURT:

22 Sustained. You've asked him that same question and
23 he's answered it more than one time.

24 A. I'm getting old and it's hard to keep track of what
25 I've said.

1 Q. Does the contract have a specification sheet?

2 A. I don't ---

3 BY MR. TAROKH:

4 Objection, relevance.

5 A. There's note on ---

6 BY THE COURT:

7 Well, I don't know if it's got one or not.

8 A. There's a lot, an example right here, I'm looking
9 at it and it's telling you the type of concrete and
10 the size of the rebar. So there are specifications
11 on the drawings as well, and there might be some
12 there also. But if there's context that's telling
13 you that the free pour, yes, there's specs on here
14 as well as -- it could very well be on the summary
15 page. I'll call it a summary brief.

16 Q. What is a titled?

17 A. "Provide permission to revise pour."

18 Q. And the next line?

19 A. Chris Merlo.

20 Q. And the next line?

21 A. "Spec sheet for Chris Merlo proposed based off
22 plans" -- well, that's not right to me because it
23 says "based off plans" and it does not -- it's in
24 clear conflict and if he says that, he's wrong
25 because it's not based off these plans.

1 Q. Well, who, who prepared the contract?

2 BY MR. TAROKH:

3 Objection, relevance.

4 A. I have no idea.

5 BY THE COURT:

6 Sustained.

7 A. No idea at all.

8 Q. Within those specifications, is that where the
9 basement ceiling is discussed in the contract?

10 BY MR. TAROKH:

11 Objection, relevance.

12 BY THE COURT:

13 Well, I think it's repetitive.

14 BY MR. JOHNSON:

15 Well, I'm just going to get him to verify that
16 that's within ---

17 BY THE COURT:

18 Well, if you're going to ask him that, please do.

19 A. It's noted, it's noted on here and it's on the
20 forms, yes, it's in both places and they're in
21 conflict with each other as I've said.

22 Q. You testified earlier that it didn't make any
23 representation regarding the ceiling height on the,
24 on the plans?

25 A. Say that again.

1 Q. You testified earlier it didn't make any reference
2 to the ceiling height in the plans?

3 A. Well, let me explain the issue of the floor. For
4 example, with this building the floor, the floor
5 might be 18 feet, that's this floor to the floor
6 above, and you take away the depth of the
7 structural system, waffle cone system, that gives
8 you the net of the ceiling height, not the -- the
9 ceiling in this room, somebody could contend it's
10 to the top of the coffer and some could contend
11 it's to the bottom of the coffer. It's not a
12 universally accepted term what a ceiling height is.
13 There's variations in ceiling heights for beams,
14 soffits or whatever.

15 Q. Once a house is in the dry should you have
16 foundation leaks?

17 A. What are you -- you have to define "dry" because
18 I've did a lot of houses. We've got storms and did
19 somebody close a window or whatever, whatever,
20 whatever or did somebody backhoe correctly, or did
21 somebody fill a hole? There's a lot of things that
22 could happen during the construction process.

23 Q. When there's interior finish being done and there's
24 flooring installed, should mud be accessible into
25 the ---

1 A. Certainly not desirable, but I once did a project
2 to Tulsa, Oklahoma when my entire lower level
3 flooded in six feet of water because the water line
4 broke in the street next door. That was not
5 desirable, but we dealt with it.

6 Q. So what's the reference here on 1726?

7 BY THE COURT:

8 Is that part of an exhibit?

9 BY MR. JOHNSON:

10 Yes, Your Honor, excuse me. Defendant's Exhibit
11 75.

12 BY THE COURT:

13 And what's your question?

14 Q. Is that one of those undesirable situations?

15 A. This is really interesting. The water didn't come
16 from the wall; you can tell it's from on the floor.
17 It didn't come down from the wall into the room.
18 This water is here leaning against it, so somebody
19 spilled some water or some water got in there. I
20 don't know where the water came from or whatever
21 but this water did not come from, from my opinion,
22 I could be dead wrong, but that water did not come
23 down and out. Somehow it was on the floor,
24 somebody spilled something or water flowed in,
25 maybe something from that backfill, I don't know.

1 Q. That backfill drain?

2 A. I have no -- you nor I, unless you were there that
3 day, can tell where that water came from. The
4 oddity is in all these stacks of these is like, ha-
5 ha I caught you moments, and this is just not good
6 for construction. It's nothing -- I believe my job
7 is solving problems, one after another, that's all
8 it is, when you work with a company you solve
9 problems and you move forward.

10 Q. The same exhibit, Defendant's Exhibit 75, and this
11 is Merlo 1205?

12 A. I can't see what is it from this distance. I'm
13 sorry. Again, this is clearly not coming from the
14 wall. There's no moisture on this drywall.
15 Drywall is not very forgiving when it gets wet,
16 there's no moisture there. This is coming from
17 here and going there, so there's something in this
18 room spilt and going that way. The water is not
19 coming down here, sir, in my opinion anyway.

20 Q. And five minutes ago you testified that unless you
21 were there you would have no idea?

22 A. No one would have an idea.

23 Q. Okay. What about Merlo 1067?

24 A. I'm not sure what I'm looking at, sir. Is that
25 vertical? Is it horizontal or vertical; do you

1 know?

2 Q. Vertical.

3 A. This is, I have no idea what I'm looking at.

4 Q. Okay. You don't believe that that's water coming
5 in?

6 A. It could be, but I don't know. It'd be a sign, it
7 tells you that you need to address that situation
8 somewhere. But again, this is a severe site this
9 house is on. I've never built a house on such a
10 severe slope site. This is a very severe site
11 without a sewer system, et cetera, so it was not an
12 easy site to work on.

13 Q. Okay. I'm looking at Defendant's 77 and that's
14 Merlo 4001?

15 A. There appears to be some, you know, and again I
16 don't know where it came from. It could have been
17 a toilet that leaked above or, again the fact is,
18 you know, this didn't come from the outside.
19 Concrete is this thick. Water doesn't just flow
20 through concrete, it just can't do that. This
21 water was from inside of the house and it moved
22 down the wall, but this didn't come from the
23 outside.

24 Q. You don't think concrete is porous?

25 A. Oh, it is porous, but you're not going to get this

1 long streaking. The whole wall would be wet. The
2 whole wall is not wet, there's streaking. So this
3 water came, in my opinion, it came from the inside
4 and flowing down. The wall, if it's a concrete
5 wall this thick, you're not going to get moisture
6 to flow in and drizzle down or the whole wall would
7 get -- this not from that. This is from something
8 in the house, a toilet spill or a bucket of water
9 or whatever, I don't know what it's from. It's not
10 from the outside.

11 Q. If it's not from the outside, Mr. Merlo testified
12 that he has had no further leaks since these issues
13 were remediated, why is that?

14 A. It could be the plumber fixed all his plumbing in
15 all the lines, I have no early idea. It could be
16 done when someone spilled a bucket. I have no --
17 again, construction sites by nature are messy
18 places, they just are.

19 Q. Should there be mold behind baseboards, and we're
20 looking at Defendant's Exhibit 75, Merlo 1694?

21 A. I don't, I don't know if that's mold. There
22 appears to be a mark but I don't know what that is
23 precisely. Do you?

24 Q. I'm not testifying, sir.

25 A. All right, well, good enough. I'll testify, I

1 have no idea what that is.

2 Q. Okay. Again, on Merlo 1691?

3 A. Could you pull it a little closer? My eyes are not
4 going to be able to see.

5 Q. Yes, sir.

6 A. Again, this is evidence of something dropped --
7 it's here, the moisture is here on the floor. When
8 it's ponding in this corner because the plumber
9 cleaned the drain or let the water go below or
10 whatever, I have no idea where it came from, but it
11 didn't -- I don't believe it came from the wall and
12 came out. It's just -- again, if it came this way,
13 you wouldn't see unstained concrete here. It's
14 somewhere on the slab that got wet and then you get
15 it rid of it in time.

16 Q. You don't believe it came underneath the wall?

17 A. No, not at all. Virtually impossible.

18 Q. If a garage is properly poured for positive
19 drainage, do you know what the situation was like
20 in Merlo 2037?

21 A. Sir, I just told you I did a house that had six
22 foot of water that came in. You don't know what's
23 -- a heavy rain and flood can come in. But, it's
24 not ideal but it does happen and sites floods. I
25 mean when we frame a house and it rains hard, there

1 could be an inch of water on the floor before we
2 get rid of it. It just happens until you get the
3 building watertight.

4 Q. You testified that you haven't seen any evidence of
5 negligent supervision?

6 A. Pardon?

7 Q. You testified that you haven't seen any evidence of
8 negligent supervision in this case?

9 A. It is not apparent to me at all, no.

10 Q. How many of your projects where are representing
11 owners do you end up with the general contractor
12 encroaching on both sides of the lot?

13 A. First of all, I do what, we do what we call
14 observation. We don't do inspection, we do
15 observation. And the layout of the lot is always
16 the owner's responsibility to get it surveyed and
17 laid out, it's always done that way. It's not the
18 responsibility of the architect nor the contractor,
19 it's the homeowner's responsibility on every job
20 I've ever done to have the lot staked out and
21 identified clearly with where the lines go.

22 Q. Okay. And after the owner provides the survey to
23 the contractor and the contractor gets a site plan,
24 whose responsibility is it then?

25 A. For what?

1 Q. To make sure that the work put in place isn't
2 encroaching?

3 A. When you talked about utilities earlier, understand
4 utility companies are like God, they do what they
5 damn well please. They do not -- from the service
6 all the way to the house is the utility company's
7 role and they do it, I would venture to say there's
8 probably as many off the easement as often as
9 they're on easement, but they do what they damn
10 well please.

11 Q. Well, what about the retaining wall and driveway?

12 A. Really I don't know the details of that at all, I
13 can't comment on it.

14 Q. So when IBI -- and this is Defendant's Exhibit 75,
15 this is Merlo 2029. When IBI builds a retaining
16 wall that's encroaching on the neighbor's property,
17 is that ---

18 A. Again, I have no background on that and I can't
19 comment on that. It would be speculation which
20 doesn't make sense.

21 Q. Would that ---

22 A. I would have asked the surveyor when he laid the
23 site, how he stake there, et cetera, et cetera, et
24 cetera and I've not been asked to do that. I can't
25 comment on that at all.

1 Q. If IBI contracted to be solely responsible for the
2 work performed on the site, would they be
3 responsible for that encroachment?

4 BY MR. TAROKH:

5 Objection, calls for legal conclusion, relevance.

6 BY THE COURT:

7 Sustained.

8 A. I have no idea.

9 Q. And we're looking at Defendant's Exhibit 81. Was
10 it negligent for IBI to put the driveway on the
11 neighbor's lot?

12 BY MR. TAROKH:

13 Same objection.

14 BY THE COURT:

15 Sustained.

16 A. That's the same question you just asked me.

17 BY THE COURT:

18 Hold on. He's objected and I sustained the
19 objection.

20 Q. Is that proper supervision for IBI to place a
21 driveway on a neighbor's lot?

22 A. I just said I can't answer that. I don't, I don't
23 know what role he was given to do; I don't know
24 what the surveyor had. I mean did the surveyor lay
25 out the lot and lay out the guide for the road?

1 Who did the layout? I have no idea where the line
2 of responsibility was from one trade to the other.
3 I have no idea. Surveyors make a lot of errors, we
4 don't have the best surveyors in the South. As a
5 matter of fact, I did a house where the driveway
6 was heading for the neighbor's lot exactly that way
7 and the neighbors got together and said, okay,
8 that's it. But it was an error done by the
9 surveyor and the parties acted like normal people
10 and just worked it out. Not uncommon; not
11 desirable, but not uncommon.

12 BY MR. TAROKH:

13 Your Honor, the witness is wanting more water.

14 BY THE COURT:

15 I beg your pardon?

16 BY MR. TAROKH:

17 The witness is wanting more water.

18 Q. Is a general contractor typically in charge of the
19 site and his subcontractors?

20 A. Define "in charge". He's not a police officer but.

21 Q. Does a general contractor control the site and the
22 work performed underneath their scope?

23 A. Again that's a legal term "control the site". He
24 has his responsibilities per the plans and specs to
25 do things in a workmanlike manner, but there are

1 many forces outside of his jurisdiction that impact
2 the project.

3 Q. Okay. And is putting 12 lines into one junction
4 box ---

5 A. Well, some of those are low voltage lines. You can
6 put 100 in there and it wouldn't make a difference.
7 I have no idea what those wires are for, but if
8 it's low voltage it doesn't affect anything at all.
9 That's not line voltage, that's all low voltage
10 wiring there I believe.

11 Q. How, how do you know that?

12 A. The size of the wire.

13 Q. You don't there's a Codex ---

14 A. No. But that's just my opinion. I'm just glancing
15 at pictures. It looks to me that that's definitely
16 low voltage wire I believe. This could be, but
17 this is all low voltage here. All the gray wire I
18 believe is the phone company or whatever.

19 Q. You don't, you don't think that that's 4 Wire Codex
20 electrical wiring that's clearly shown in ---

21 BY MR. TAROKH:

22 Objection, Your Honor, asked and answered ---

23 BY THE COURT:

24 Sustained.

25 Q. Is it good workmanlike service for a contractor to

1 order the wrong width of windows and hack them down
2 and slap them in?

3 A. None of those implied workmanlike men hack them
4 down. You're using crass language to describe.

5 Q. How would you, how would you describe?

6 A. Can I have the folder please? It appears that the
7 jamb extension was too wide and it had to be
8 modified. I mean so something, you can tell that
9 something was changed somewhere in the field, but
10 was done to accommodate the trim.

11 Q. And a better avenue to order the right windows to
12 begin with?

13 A. No one said that, I don't think you can make that
14 statement. The jamb width might have been the
15 wrong jamb width, but not necessarily the right
16 width of windows. The windows seems to work, it's
17 the jamb extension which is just a piece of one
18 that might, that might have been wrong. That's not
19 an integral part of the window, that's an extension
20 trim to the window basically. Yes, things get
21 ordered wrong.

22 Q. And is it better practice to get the correct
23 material or to?

24 A. In the case of windows, it'd take 10, 12, 15 weeks
25 to order it. You do not re-order it, you go ahead

1 and revise it. Well, first of all, the jamb
2 extension is not integral to the window. It
3 doesn't make any difference at all. It could come
4 without out a jamb extension and you could still
5 make the window very well, so the jamb extension is
6 a trim portion to the window. It's not again --
7 that might even, might not have even, might have
8 been the manufacturer, I don't know.

9 Q. And even when that's painted, is that good
10 workmanlike service, quality workmanship?

11 A. It looks like the caulking could have been much
12 neater or the trim could have been dressed up
13 better. No, I would not have accepted this, I
14 would have wanted them to clean it up. But it's
15 workable; it's not rejectable, you don't say rip
16 this out. You work with them and you make it
17 optimum and you make it acceptable. It needs work,
18 but it should not be removed. It needs to be
19 repaired.

20 Q. And if Mr. Merlo's testimony that that was
21 representative of the trim work on the job?

22 A. That's not what I saw when I went there. The house
23 looked really good when I saw it.

24 Q. And there's a lot of testimony on that at your
25 deposition. At your deposition you were unaware

1 that basically work had been done?

2 A. That's not correct. I was not aware of the scope
3 of the work, but I was aware that work had been
4 done. I was given a long list of deficiencies of
5 the house and that's what I went by; and I found
6 half or more of them bogus, absolutely bogus
7 claims, totally without a basis at all. You know,
8 the shower height, the showerheads were 5'6 and I
9 stood and I'm 6'4 and it's over my head, that's
10 just a lie, I mean there's just, there was some
11 outright lies on that list of deficiencies and it
12 makes you question the whole darn list, the whole
13 process.

14 Q. But at the site, in your initial report in the site
15 visit, that was based on what you saw that day?

16 A. I saw it, yes. I mean I wouldn't -- I wasn't
17 taking pictures of the life of the project for
18 God's sake. No one has done that other than this
19 guy. I've never heard of such a thing.

20 Q. And so you know what the shower height was on
21 October 12th, 2019?

22 A. No, I do not. No, I do not. If you're telling
23 that he had the showerheads raised and retiled the
24 wall, then he's making that claim. It doesn't seem
25 believable, but he's making that claim.

1 Q. You don't think that my client did any tile work
2 and ---

3 A. I don't believe your client -- I haven't heard
4 anybody talk about that long list of deficiencies
5 that was sent to me, there was a whole pile, but
6 it's a bogus list of items. I mean to say the
7 driveway had to be replaced because of the crack;
8 there's crack in every concrete everywhere. And it
9 was full of bogus claims, not all, but there were a
10 couple that needed to be addressed but most were
11 bogus and absolute baloney.

12 Q. Bogus as of the date of the site visit?

13 A. Bogus, period. If you're going to tell me he
14 replaced the driveway and it's been poured in
15 between? I don't believe he did that, did he? Or
16 tell me that he did and then I'll accept it but.

17 Q. No. But I mean there were 97 items on that list,
18 were they not?

19 A. Yes, and I responded to every single one of them in
20 my report and I identified which ones were bogus
21 claims, which ones I couldn't judge because of when
22 it occurred or what had occurred, and then the ones
23 that I could address so I broke them into three
24 different categories, and they were much more that
25 were bogus than were valid, many, many more.

1 Q. But you're saying it was bogus based on what you
2 saw on the date of the site visit?

3 A. That's correct and there was what I would call
4 normal punch list items. Punch lists occur on
5 every, every single project; some more than others
6 but there are normal punch list items that are
7 handled between the contractor, the architect and
8 the homeowner.

9 Q. Okay. Well, when you ---

10 A. That's what's normally done, not in accordance with
11 this process.

12 Q. What you saw was after Mr. Merlo had engaged Joy
13 Construction to do \$137,000 worth of work?

14 A. You're telling me they tried to replace the
15 driveway?

16 Q. I'm not, I'm not saying the driveway was replaced,
17 no, sir.

18 A. But he claimed it had to be replaced, didn't he?

19 Q. He did not. He's saying ---

20 A. He absolutely did, he said it had to be ripped out
21 and redone. Now unless I'm losing my mind, he said
22 the driveway had to all be replaced. Concrete
23 cracks, period, it's the nature of concrete and for
24 him to make that claim, that was a big deal.

25 Q. He has not made that claim in this litigation.

1 There are cracks in the driveway, but that didn't
2 contemplate a new driveway. Anyway, we haven't
3 even brought that up.

4 A. Making up lies.

5 Q. Well, when your client builds a driveway on someone
6 else's lot, that's a different issue.

7 BY MR. TAROKH:

8 Objection.

9 BY THE COURT:

10 Sustained.

11 Q. Were you aware that Mr. Merlo had to do additional
12 waterproofing and additional flashing to stop the
13 water intrusion issues at his home?

14 A. Do I know it? I don't know it. I've heard claims
15 of it but I don't know it, I have no firsthand
16 knowledge of it.

17 Q. You didn't see the pictures of him removing the
18 rock and putting on the waterproofing and having
19 that redone?

20 A. I did not see the picture of the process, no, I did
21 not.

22 Q. And you didn't see the process of having to redo
23 the mold in the wall?

24 BY MR. TAROKH:

25 Objection, relevance.

1 BY THE COURT:

2 That's sustained. Mr. Johnson, I think he's
3 already testified that he did a site visit on a
4 certain day and that's when he observed what he
5 observed. What happened before that he hasn't
6 claimed he has knowledge of.

7 Q. Well, that's the whole problem, Your Honor.

8 BY THE COURT:

9 Well, I know, I'm just saying that that's not
10 disputed. I mean he's given you his opinion about
11 the quality of the construction and he's given the
12 basis of it.

13 Q. So to close the loop on that, on the day of the
14 site visit you think the quality of construction
15 was good?

16 BY THE COURT:

17 Will you repeat that please? I didn't hear it.

18 Q. I said on the date of the site visit your opinion
19 is the quality of the construction was good?

20 A. Generally very good workmanlike manner, certainly
21 by and per industry standards.

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

23 BY THE COURT:

24 Any redirect?

25 BY MR. TAROKH:

1 No, Your Honor.

2 BY THE COURT:

3 All right. You may step down and I assume there's
4 no objection to him being excused?

5 BY MR. TAROKH:

6 No, Your Honor.

7 BY MR. JOHNSON:

8 No objection, Your Honor.

9 BY THE COURT:

10 All right, you're excused. Mr. LaPlante, I
11 appreciate you coming.

12 A. Thank you.

13 BY THE COURT:

14 All right. We're now going to go back to Mr.
15 Johnson's case. You had another witness, you said?

16 BY MR. JOHNSON:

17 Yes, Your Honor, Ms. Nikki Merlo.

18 BY THE COURT:

19 Is she here?

20 BY MR. JOHNSON:

21 She is outside per the direction of the Court, Your
22 Honor.

23 BY THE COURT:

24 Do we need to take a five-minute break?

25 BY MR. TAROKH:

1 Yes, Your Honor, if that's okay.

2 BY THE COURT:

3 All right. It's almost 12:00, we've been here a
4 couple of hours so let's take a five-minute break.

5 (OFF THE RECORD)

6 BY THE COURT:

7 All right, let's swear in the witness.

8 BY COURT REPORTER:

9 Okay. Ms. Merlo, would you raise your right hand?

10 Do you solemnly swear or affirm to tell the truth,
11 the whole truth and nothing but the truth so help
12 you God?

13 BY MS. MERLO:

14 Yes.

15 BY THE COURT:

16 All right. Ms. Merlo, I'm going to ask you speak
17 real loud so everybody can hear what you've got to
18 say and so she can pick it up on the recorder,
19 okay? You need to pull that microphone a little
20 bit closer if you can and just speak real loud.

21 All right, Mr. Johnson?

22 TESTIMONY OF NIKKI MERLO

23 DIRECT EXAMINATION BY MR. JOHNSON:

24 Q. Yes, Your Honor. Ms. Merlo, I know you're not
25 excited about being up here so we'll make this

1 short. I'm going to hand you some checks and
2 invoices for you to identify. I'm going to put
3 this batch in, Your Honor, as ---

4 BY COURT REPORTER:

5 82.

6 Q. --- Defendant's 82.

7 (DEFENDANT'S EXHIBIT 82 MARKED FOR IDENTIFICATION)

8 BY THE COURT:

9 Now, has Mr. Tarokh looked at these?

10 BY MR. TAROKH:

11 Yes, Your Honor, no objection.

12 BY THE COURT:

13 All right. Defendant's 82 admitted without
14 objection.

15 (DEFENDANT'S EXHIBIT 82 ADMITTED INTO EVIDENCE)

16 Q. Ms. Merlo, ---

17 BY THE COURT:

18 Now, can you individually identify them in some
19 fashion or?

20 Q. They have check numbers and then I'll do the
21 registry as a second exhibit, Your Honor.

22 (DEFENDANT'S EXHIBIT 83 MARKED FOR IDENTIFICATION)

23 BY THE COURT:

24 All right.

25 Q. Ms. Merlo, if you could identify whether or not

1 that series of six checks are checks that you drew
2 on your checking account?

3 A. Yes, those are checks that I wrote.

4 Q. And who did you write those checks to, each one?

5 A. Joy Construction.

6 Q. Okay. On the first page, what is the date of that
7 check on the top?

8 A. November 13th, 2019.

9 Q. And for how much?

10 A. 15,000.

11 Q. And the check number?

12 A. 4834.

13 Q. And the second check on that document?

14 A. December 20th, 2019, 15,000, check number 4841.

15 Q. Okay. Moving over the second page if you can tell
16 us the date and the amount and the check number?

17 A. January 8th, 2020, 35,000, check number 4843; the
18 next check was January 22nd, 2020 in the amount of
19 20,000, check number 4846; February 1st, 2020 in the
20 amount of 15,000, check number 4847; February 6th,
21 2020 in the amount of 15,000, check number 4848;
22 March 4th, 2020 for the amount of 12,000, check
23 number 4857; the last check was March 18th, 2020 for
24 the amount of 10,000, check number 4867.

25 Q. Thank you. The next document I'm going to present

1 to you, tell us about that document. Is that a
2 registry from your account?

3 A. Yes, this is a bank ledger.

4 Q. And does it show these six checks being withdrawn
5 from your account?

6 A. Yes.

7 Q. And it shows one check that's not related to this;
8 is that correct?

9 A. Yes.

10 Q. All right. I ---

11 BY THE COURT:

12 Is that a separate exhibit or is that ---

13 BY MR. JOHNSON:

14 It is, Your Honor. I put that in separate. It's
15 Exhibit 83.

16 BY THE COURT:

17 Is there any objection?

18 BY MR. TAROKH:

19 Just to clarify, she testified that the 13,900 is
20 not related?

21 BY MR. JOHNSON:

22 That's correct.

23 BY MR. TAROKH:

24 No objection.

25 BY THE COURT:

1 All right.

2 (DEFENDANT'S EXHIBIT 83 ADMITTED INTO EVIDENCE)

3 BY MR. JOHNSON:

4 For speed, Your Honor, this check relates back to
5 Exhibit 43.

6 BY THE COURT:

7 Is this going to be another exhibit or part of 43?

8 BY MR. JOHNSON:

9 If we can make it part of 43, that's great.

10 BY THE COURT:

11 I mean is it already part of 43?

12 BY MR. JOHNSON:

13 No, Your Honor, this is the check that goes ---

14 BY THE COURT:

15 Well, then you need a new exhibit.

16 BY MR. JOHNSON:

17 Okay.

18 (DEFENDANT'S EXHIBIT 84 MARKED FOR IDENTIFICATION)

19 BY THE COURT:

20 Any objection?

21 BY MR. TAROKH:

22 None, no, Your Honor.

23 BY THE COURT:

24 That's going to be Defendant's Exhibit 84.

25 (DEFENDANT'S EXHIBIT 84 ADMITTED INTO EVIDENCE)

1 Q. Ms. Merlo, I'm representing to you that that
2 relates back to Defendant's Exhibit 43. Who is the
3 vendor for that?

4 A. Sea to Summit Pressure Washing.

5 Q. Okay. And what was that invoice for?

6 A. It appears to be for washing the exterior of the
7 house.

8 Q. And what's the amount?

9 A. \$784.86.

10 Q. Okay. And do you have a check to Sea to Summit for
11 that amount?

12 A. Yes, sir, the check ---

13 BY THE COURT:

14 Is this the same exhibit?

15 Q. No, Your Honor, the same exhibit.

16 BY THE COURT:

17 So you have more than one check in the same
18 exhibit?

19 BY MR. JOHNSON:

20 No, Your Honor, it's the invoice and check.

21 BY THE COURT:

22 Oh, invoice, okay.

23 A. It's check number 4877 written on March -- no, I'm
24 sorry, May 15th, 2020.

25 BY THE COURT:

1 And that check is 4877 and the amount of that check
2 is what?

3 A. \$784.86.

4 BY THE COURT:

5 Okay.

6 BY MR. JOHNSON:

7 And, Your Honor, we have a couple that reference
8 back to the exhibit. This is the check to get that
9 in.

10 BY THE COURT:

11 Are you going to put them?

12 BY MR. JOHNSON:

13 Say that again?

14 BY THE COURT:

15 I said are you going to put them in as separate
16 exhibits?

17 BY MR. JOHNSON:

18 Yes, sir. So this will be ---

19 BY THE COURT:

20 I think we were going to have all these things
21 numbered before we got started today but ---

22 BY MR. JOHNSON:

23 So this is Defendant's Exhibit 85.

24 (DEFENDANT'S EXHIBIT 85 MARKED FOR IDENTIFICATION)

25 BY THE COURT:

1 Any objection?

2 BY MR. TAROKH:

3 None, Your Honor.

4 (DEFENDANT'S EXHIBIT 85 ADMITTED INTO EVIDENCE)

5 Q. And this refers back to Plaintiff's or Defendant's
6 Exhibit 40, Your Honor. Is that a payment? Who is
7 that payment to?

8 A. This a check I wrote Tommy Hood Engineering for
9 \$400.

10 Q. What's the date of that check?

11 A. It is April 13th, 2020.

12 Q. Okay, thank you. I'm going to hand you another one
13 and it's going to be marked as Defendant's 86.

14 (DEFENDANT'S EXHIBIT 86 MARKED FOR IDENTIFICATION)

15 BY THE COURT:

16 Any objection?

17 BY MR. TAROKH:

18 No, Your Honor.

19 BY THE COURT:

20 Okay, that's Defendant's Exhibit 86 will be
21 admitted without objection.

22 (DEFENDANT'S EXHIBIT 86 ADMITTED INTO EVIDENCE)

23 Q. What's the amount of that check and who was it to?

24 A. This is a check written to Bob Hawkins for \$500 and
25 it's check number 4869.

1 Q. I'm handing you these two pages.

2 BY THE COURT:

3 The next exhibit you say is two pages?

4 BY MR. JOHNSON:

5 Yes, Your Honor. It's an invoice and a check.

6 (DEFENDANT'S EXHIBIT 87 MARKED FOR IDENTIFICATION)

7 BY THE COURT:

8 That's number 87?

9 BY MR. JOHNSON:

10 87, Your Honor.

11 BY THE COURT:

12 Any objection?

13 BY MR. TAROKH:

14 No, Your Honor.

15 BY THE COURT:

16 It will be admitted without objection.

17 (PLAINTIFF'S EXHIBIT 87 ADMITTED INTO EVIDENCE)

18 Q. Ms. Merlo, if you would tell us who the invoice is
19 from, what's it for and then whether or not you
20 wrote a check?

21 A. The invoice is from Phillip Broom. It's for
22 finishing the floors, hardwood floors. It was for
23 1,300. I wrote a check on April 24th of 2020 in the
24 amount of 1,300, check number 4875.

25 (DEFENDANT'S EXHIBIT 88 MARKED FOR IDENTIFICATION)

1 Q. I'm going to hand you another two-page exhibit with
2 an invoice and a check that's marked as Defendant's
3 88.

4 BY THE COURT:

5 Any objection?

6 BY MR. TAROKH:

7 No, Your Honor.

8 BY THE COURT:

9 Admitted without objection.

10 (DEFENDANT'S EXHIBIT 88 ADMITTED INTO EVIDENCE)

11 A. This is an invoice from White Harbour Plumbing and
12 it's for the water line and it was written on March
13 18th, 2020 for \$278.32, check number is 4866.

14 (DEFENDANT'S EXHIBIT 89 MARKED FOR IDENTIFICATION)

15 Q. I'm going to hand you another two-page exhibit
16 that's marked as Defendant's 89 and see if you
17 recognize that?

18 A. This is also to White Harbour Plumbing. It is for
19 relocating the line, the water line. The total of
20 the invoice was \$1,426.64. I wrote a check on
21 April 1st, 2020 for the amount of \$1,426.64 and that
22 check number was 4870.

23 (DEFENDANT'S EXHIBIT 90 MARKED FOR IDENTIFICATION)

24 Q. I'm going to hand you a document that's marked as
25 Defendant's 90 and see if you recognize that check?

1 BY THE COURT:

2 First of all, is there any objection to 89 or 90?

3 BY MR. TAROKH:

4 No, Your Honor, I've seen those.

5 BY THE COURT:

6 All right, they will be admitted.

7 (DEFENDANT'S EXHIBITS 89 & 90 ADMITTED INTO EVIDENCE)

8 A. This is a check written to Highland Cabinetry for
9 \$834 on June 3rd of 2020.

10 Q. What is the date of the check?

11 A. June, oh, the date of the check, I'm sorry, May
12 20th, 2020.

13 Q. Okay. And what was that for?

14 A. That was for cabinetry to I had to go pick up to
15 finish the cabinets.

16 (DEFENDANT'S EXHIBIT 91 MARKED FOR IDENTIFICATION)

17 Q. Okay. I hand you what's marked as Defendant's 91
18 and see if you recognize that?

19 A. This is a check to Total Home Exteriors for the
20 amount of \$385.

21 BY THE COURT:

22 385?

23 A. Yes, sir. It was written on May 6th, 2020.

24 Q. And what was that for?

25 A. I don't recall exactly, it had something with the

1 paint exterior or ---

2 BY MR. TAROKH:

3 I'd object, Your Honor, on authentication.

4 A. I just don't recall exactly who they were.

5 BY THE COURT:

6 If she can't tell what it was for I think you've
7 got a legitimate objection.

8 Q. Was it, was it for remediation?

9 BY MR. TAROKH:

10 Objection, leading.

11 A. It was for, it was for something for the house. I
12 don't know specifically what exactly without the
13 invoice. I wrote many checks. Total Home
14 Exteriors came in and corrected something, I don't
15 know exactly what.

16 Q. We'll withdraw.

17 BY THE COURT:

18 All right, that will not be admitted your objection
19 will be sustained.

20 (DEFENDANT'S EXHIBIT 92 MARKED FOR IDENTIFICATION)

21 Q. I'm going to hand you the last one which is marked
22 as Defendant's 92 and see if you recognize that
23 one?

24 BY THE COURT:

25 Any objection to 92?

1 BY MR. TAROKH:

2 None, Your Honor.

3 BY THE COURT:

4 Well, subject to authentication?

5 BY MR. TAROKH:

6 I understand. Thank you.

7 A. This David Thorp in the amount of \$175, check was
8 written on April 22nd, 2020, it's check number 4873
9 and this was to do with plumbing, I believe it was
10 like the septic line.

11 BY MR. TAROKH:

12 Objection, authentication.

13 BY MR. JOHNSON:

14 Your Honor, she knows it's with the septic line.

15 BY MR. TAROKH:

16 That's not, that's not what she said.

17 A. It has something to do with the septic line, it was
18 the plumbing.

19 Q. That's fine, that's fine. I know you're upset.

20 We'll move on.

21 BY THE COURT:

22 Okay. Well, move on.

23 Q. Your Honor, that's all the questions I have.

24 BY THE COURT:

25 All right. Any cross examination?

1 BY MR. TAROKH:

2 Just briefly, Your Honor.

3 BY THE COURT:

4 And I assume -- never mind, go ahead. All right,
5 cross examination.

6 CROSS EXAMINATION BY MR. TAROKH:

7 Q. Good morning, Ms. Merlo. My name is Jason Tarokh
8 and I represent the Plaintiff in this case. The
9 checks you just testified about, do you have some
10 personal knowledge of what each one was for?

11 A. I have some knowledge, I do not have the specifics.

12 Q. Okay. Let's take one of the checks that were -- if
13 I may approach? I'm looking for, it was a check
14 registry, the Bank of America check registry.

15 BY COURT REPORTER:

16 Defendant's Exhibit 83.

17 Q. Yes, ma'am, thank you. So from Defendant's Exhibit
18 83, I believe your testimony is on March 18th, 2020
19 you wrote a check to Joy Construction for \$10,000,
20 correct?

21 A. Yes.

22 Q. Why?

23 A. Service was done, service was done correctly so I
24 paid them.

25 Q. What kind of service?

1 A. (No response)

2 Q. If you don't know, you can tell me that, too. I
3 just want the truth.

4 A. (No response)

5 BY THE COURT:

6 Go ahead and answer if you know.

7 A. But if I say something it will be misconstrued I'm
8 afraid.

9 BY THE COURT:

10 Well, he's asking you a question and you have an
11 obligation to provide ---

12 A. Yes, I wrote the check. Yes, they did work for us.

13 BY THE COURT:

14 Okay.

15 Q. What, what work specifically?

16 A. I don't recall.

17 Q. Was it for new stuff?

18 A. No, sir.

19 Q. Are you sure?

20 A. Yes, sir, it was for -- yes.

21 Q. Was it to complete the project?

22 A. Yes.

23 Q. What about check number 4587 in the amount of
24 12,000 to Joy, was it also to complete the project?

25 A. Yes.

1 Q. What about check number 4848 to Joy Construction in
2 the amount of \$15,000; was it also to complete the
3 project?

4 A. Yes.

5 Q. What about check 4847 to Joy Construction in the
6 amount of \$15,000, was that also to complete the
7 project?

8 A. Yes.

9 Q. What about on January 27th, 2020, check number 4846
10 in the amount of \$20,000, was that also to complete
11 the project?

12 A. Yes.

13 Q. What about check number 4843 on January 9th, 2020 in
14 the amount of \$35,000, was that also to complete
15 the project?

16 A. Yes.

17 Q. What about check number 4841 from December 20th,
18 2019 in the amount of \$15,000, was that also to
19 complete the project?

20 A. Yes.

21 Q. What about check number 4834 in the amount of
22 \$15,000 on November 14th of 2019, was that also to
23 complete the project?

24 A. Yes.

25 Q. And it's true, Ms. Merlo, that you were

1 communicating with Christa Rampy at Joy
2 Construction, correct?

3 A. Yes.

4 Q. And it's true that those communications involved
5 you ordering certain items for the house that were
6 not part of the scope of the contract with IBI,
7 correct?

8 A. Repeat that question.

9 Q. It's true that you were communicating with Christa
10 Rampy at Joy Construction to order additional items
11 that were not part of the original contract with
12 IBI?

13 A. No.

14 Q. What about the recessed lighting in the kitchen, I
15 mean the oiled canned bronze lighting, didn't you
16 order those from Joy Construction?

17 A. I don't recall.

18 Q. But it's possible you did?

19 A. I don't recall.

20 Q. What about mirrors from Glass Doctor, did you also
21 order those through Joy Construction?

22 A. Yes.

23 Q. So it's true then that you paid Joy Construction
24 not only for completing the project but also for
25 new stuff; isn't that true?

1 A. No.

2 Q. Can you explain?

3 A. There were no mirrors in the house.

4 Q. And how, can you explain how that's my client's
5 responsibility when they were terminated by Mr.
6 Merlo?

7 A. One would assume that mirrors would've been put up
8 in the bathroom.

9 Q. Around the same time that Joy Construction was
10 working at your house, did you also have another
11 house you were renovating?

12 A. No, not that I recall.

13 Q. Do you remember when Joy Construction stopped
14 working at your house? Or would you agree that it
15 was around April of 2020?

16 A. Yes, he withdrew himself from the project.

17 Q. So a couple of months later were you ordering
18 cabinets directly from someone by the name of Larry
19 Morris?

20 A. I don't recall.

21 Q. Ms. Merlo, did your husband, Mr. Merlo, tell you to
22 write those checks?

23 A. I take care of all the accounting in the household.

24 Q. So can you explain that process? So when Mr. Merlo
25 communicated with you about paying Joy, would that

1 be your decision or would Mr. Merlo say, hey,
2 please write a check for this amount?

3 A. I get an invoice, I asked if the work was completed
4 and I paid them for their work they did.

5 Q. But you have no idea if that work was for -- well,
6 let me back up. And they completed the work,
7 that's the work they did, correct?

8 A. Yes.

9 Q. And no further questions.

10 BY THE COURT:

11 All right. Briefly, Mr. Johnson.

12 REDIRECT EXAMINATION BY MR. JOHNSON:

13 Q. Yes, Your Honor. Ms. Merlo, what is your
14 understanding of what Joy Construction did all
15 through the project?

16 A. What did Joy Construction do?

17 Q. Yes, ma'am.

18 A. They came in and tried to complete the house so
19 that we could pass the CO.

20 Q. Okay. Did that involve redoing any work?

21 BY MR. TAROKH:

22 Objection, leading.

23 BY THE COURT:

24 No, that's asking a question. I don't think it's
25 leading unless he's suggesting an answer. Go

1 ahead, it's overruled.

2 A. Ask that again.

3 Q. Did that involve redoing any work?

4 A. Yes, there was quite a list, a punch list from the
5 CO that had to be finished correctly or completed.

6 Q. Okay. And so when you were just implying that Joy
7 Construction completed the house, does that
8 contemplate ---

9 BY MR. TAROKH:

10 Objection, leading.

11 BY THE COURT:

12 You're leading there, Mr. Johnson.

13 Q. Were the payments made for re-working ---

14 BY MR. TAROKH:

15 Objection, leading.

16 BY THE COURT:

17 Sustained, that was a direct question.

18 Q. You just testified that there was re-work done.

19 BY MR. TAROKH:

20 Objection. I don't believe that's what she
21 testified during my cross.

22 BY THE COURT:

23 Well, I agree. I sustain the objection and it
24 would be helpful if you didn't try to rephrase the
25 testimony, that's in the record and everybody heard

1 what she said and it's going to be part of the
2 record. So ---

3 BY MR. JOHNSON:

4 I understand.

5 BY THE COURT:

6 Just ask her. If you have a question, just ask her
7 without leading.

8 Q. Ms. Merlo, those checks, tell us, tell us the work
9 that Joy Construction did?

10 A. Joy Construction ---

11 BY MR. TAROKH:

12 Objection, asked and answered.

13 BY THE COURT:

14 Well, I'm going to let him ask that question. She
15 has answered to some extent but go ahead. I'm
16 going to overrule the objection.

17 Q. Ms. Merlo, I'll ask a different question. What
18 work did Joy Construction redo on your home?

19 BY MR. TAROKH:

20 Objection, that's leading.

21 BY THE COURT:

22 I think that's exactly right.

23 BY MR. TAROKH:

24 I mean ---

25 BY THE COURT:

1 Sustained.

2 Q. Okay. Ms. Merlo, tell us, tell us the work that
3 Joy Construction did.

4 A. How much stuff do you want to know?

5 Q. Well, you can give me a broad description, we're
6 all ready to go.

7 A. One major thing was the mold downstairs in the
8 bedroom where there was water damage again. There
9 was some electrical work I know that he did. There
10 was correction to several, there was correction to
11 things that were not built straight. There was the
12 deck that had to be reinforced that didn't pass the
13 CO. Those are just a few things that come to mind.

14 Q. Do you believe that there are more things?

15 A. I'm sure there are.

16 Q. And did that, was that work necessary to ---

17 BY MR. TAROKH:

18 Objection, he's leading.

19 BY THE COURT:

20 Well, haven't heard the question yet.

21 Q. Was that work necessary to get the house complete?

22 A. Yes, to get a CO you have to have all of the punch
23 list done, all of the things they put on that list
24 have to be completed for you to move in to be safe.

25 Q. And did you pay for that work?

1 A. Yes.

2 Q. I think that's all the questions I have, Your
3 Honor.

4 BY THE COURT:

5 All right. I'll give you one last recross briefly,
6 Mr. Tarokh.

7 RECROSS EXAMINATION BY MR. TAROKH:

8 Q. Yes, Your Honor, I'll be very brief. You testified
9 about the electrical work. Well, isn't it true,
10 Ms. Merlo, that Joy Construction performed
11 electrical work on your property?

12 A. I do know that there was an electrical issue. As
13 to the details, I cannot tell you.

14 Q. So you can't sit here and testify under oath here
15 today whether or not the issue was an IBI issue or
16 was a Joy Construction issue, correct?

17 A. I can tell you it had to do with an electrical box
18 that was up in the attic previously before Joy
19 Construction even came.

20 Q. But, but then after that Joy Construction did
21 electrical work, correct?

22 A. Yes.

23 Q. So it's possible this electrical issue was caused
24 by Joy?

25 A. No.

1 Q. Why not?

2 A. Because Joy pointed it out to us and told us it was
3 an issue.

4 Q. Well, isn't it true that you had experienced
5 electrical issues after you employed Joy
6 Construction?

7 A. I'm sorry, say again?

8 Q. Isn't it true that you had experienced electrical
9 issues in the house after you hired Joy
10 Construction?

11 A. I don't recall.

12 Q. The deck, the deck you just testified about, when
13 you say it was reinforced what do you mean, like
14 adding some screws and wood?

15 A. No, they wanted us to take it all down. The County
16 code told us that it was not safe to be on.

17 Q. But isn't it true that you had modified the porch
18 to install an EZ-Breeze system?

19 A. No. I'm sorry, what are you getting at?

20 Q. What about the wine room? Isn't it true that you
21 hired Joy Construction to install a wine room?
22 I've been using the term "wine cellar" but a wine
23 room or wine cellar?

24 A. No, that was there.

25 Q. Who built that?

1 A. When IBI did the foundation it was there.

2 Q. So I mean when they did the foundation there was
3 like a freestanding wine room?

4 A. Yeah, there was a space that was left open.

5 Q. But built it up? Who constructed the actual space
6 for the wine cellar? It was Joy, wasn't it?

7 A. No, it was not.

8 Q. No further questions, Judge.

9 BY THE COURT:

10 All right. Ms. Merlo, you may step down.

11 A. Where can I stay? Should I leave or can I stay?

12 BY MR. TAROKH:

13 She can leave, Your Honor.

14 BY THE COURT:

15 She can leave but she can also stay.

16 BY MR. TAROKH:

17 That's fine.

18 BY THE COURT:

19 You can stay if you want to or you can leave,
20 either one. All right, Mr. Johnson, anything else
21 from you?

22 BY MR. JOHNSON:

23 The Defendant will rest.

24 BY THE COURT:

25 All right. The Defendant rests. Any reply from

1 the Plaintiff?

2 BY MR. TAROKH:

3 Yes, Your Honor, motion for directive verdict as to

4 ---

5 BY THE COURT:

6 Before we get that, are you going to have any

7 additional testimony?

8 BY MR. TAROKH:

9 No, Your Honor.

10 BY THE COURT:

11 All right. So we will go to motions.

12 BY MR. TAROKH:

13 Yes, Your Honor. This is Plaintiff's motion for
14 directive verdict as to Defendant's Counterclaim in
15 the 2019 case and also in the 2020 case is
16 Defendant's motion for directive verdict as well as
17 to the complaints made against Mr. Grissinger and
18 Mr. Montgomery. And to generalize, Your Honor,
19 they've accused my clients of committing fraud,
20 negligent misrepresentation, breach of contract,
21 negligence, a South Carolina Unfair Trade Business
22 Practice Act violation, and also, and also a breach
23 of fiduciary duty claim, I believe that was
24 directed to the Plaintiff in the 2019 case. And as
25 to the fraud, so as the fraud count and as to the

1 Unfair Business Trade Practice count, there is no
2 evidence that my client based upon a whole, there
3 is no reasonable inference the Court can make that
4 my client engaged in the Unfair Business Trade
5 Practice violation. I don't believe the evidence
6 supports that. In addition, Your Honor, fraud
7 requires clear, cogent and convincing evidence, and
8 based upon the testimony you've heard from Mr.
9 Merlo and Ms. Merlo, it's the complete opposite of
10 clear, cogent and convincing evidence of fraud. As
11 Your Honor knows fraud is the intentional
12 misrepresentation of a material intended to induce
13 reliance and the evidence showed the opposite of
14 that. The evidence showed that they're claiming
15 and based upon that, they're claiming that my
16 clients that -- well, that's what's unclear exactly
17 how the committed fraud. And even presuming that
18 fact, our position is it doesn't exist. But even
19 presuming that, then the issue becomes whether Mr.
20 Merlo had a right to rely upon it and whether it
21 was reasonable for him to rely upon it, and that's
22 not there. That's not there, Your Honor, because,
23 number one, he's a sophisticated real estate
24 professional; number two, he was understanding
25 exactly what was going on; number three, there was

1 evidence that he had plans of what he was going to
2 do to my client. There is a whole reason why we
3 saw, you know, almost a foot or two feet stack of
4 pictures or attempted pictures. And, you know, the
5 evidence doesn't, what we heard and what's in the
6 evidence does not support any element of fraud.
7 Intentional misrepresentation relies upon the
8 person hearing the misrepresentation to his
9 detriment. There's none of that. And so it's more
10 of a, it's more of a motion for directive verdict
11 as a matter of law because the law requires fraud
12 to be proven by clear, cogent and convincing
13 evidence. There was none of that. There's
14 evidence, but it wasn't clear, convincing and
15 cogent. So based upon that, Your Honor, we'd ask
16 the Court to grant a directive verdict to my
17 client's favor.

18 BY THE COURT:

19 All right. Mr. Johnson?

20 BY MR. JOHNSON:

21 Yes, Your Honor.

22 BY THE COURT:

23 What you've got to say?

24 BY MR. JOHNSON:

25 Your Honor, in the Plaintiff's case in chief they

1 presented balance sheets and numerous change
2 orders, but they have zero documentation for it and
3 they can't support. They don't have an invoice for
4 it, they have the time and material takeoff for it,
5 they don't have anything for it. It's just number
6 pulled out of their mind about what it should or
7 what they want to charge or whatever. Your Honor,
8 to pass that along to my client, and that was done
9 by both of those gentlemen, Your Honor, to pass
10 that along to my client is a violation of the
11 Unfair Trade Practices Act, that is fraudulent
12 behavior, it's a breach of fiduciary duty and it's
13 negligent misrepresentation, Your Honor, because
14 they can't support any of those numbers. There's
15 very limited testimony regarding emails that go
16 back and say that a change order was accepted.
17 It's very narrow, but it was put into evidence,
18 Your Honor. Under the contract, you had change
19 orders that either had to be written or they had to
20 approved via email and they were served in the
21 right order. There were two put into evidence that
22 were approved by email. All of them weren't proof
23 enough at all. And, Your Honor, that goes
24 completely to fraud, breach of fiduciary duty and
25 negligent misrepresentation causes action on the

1 Counterclaim and the Third-Party Complaint. Your
2 Honor, also with regard to the Defendants (sic)
3 unilaterally deciding to change the materials and
4 the plan of this project regarding the poured wall
5 and regarding the ceiling, that behavior also is
6 fraudulent and it's to their benefit. On both
7 accounts they saved money, Your Honor. The poured
8 wall is less expensive than a wood frame wall and
9 the lower ceiling height was less expensive than
10 the higher one. And so I would ask the Court to
11 deny their motion for directive verdict.

12 BY THE COURT:

13 All right. Well, first of all, let me ask this
14 question which I don't understand these claims
15 against Mr. Montgomery and Mr. Grissinger. I see
16 no evidence anywhere they were acting in any way
17 individually. All the things they did were as
18 employees of IBI, so how can they be personally
19 liable for anything?

20 BY MR. JOHNSON:

21 Your Honor, they're imputed with those decisions,
22 they're making those decisions.

23 BY THE COURT:

24 And they're acting for IBI, I mean they're
25 employees of IBI acting within the scope of their

1 employment. So based on that and the fact that the
2 evidence simply does not rise to the level of any
3 fraudulent activity or any misrepresentations by
4 the Plaintiff or Mr. Montgomery or Mr. Grissinger,
5 now so I'm going to grant the motion on those
6 matters. What we have basically is a dispute about
7 the payment of the contract and any, any
8 differences in what was owed and what was paid and
9 that sort of thing and that's the essence of this
10 case, and that's encapsulated in the mechanic's
11 lien action, as well as the breach of contract
12 action, as well as the quantum meruit action, and
13 there may be something else in there, too, I don't
14 know, but, you know, that's the issue. This
15 contract, all this stuff about the balance sheet, I
16 mean there was a lot of information going back and
17 forth to support what they claim and you've already
18 done it so that's what the case is about. How much
19 does Mr. Merlo owe them, if anything, or, you know,
20 has all that been offset by other issues that he
21 claims? You know, so I'm going to grant that
22 motion on those causes of action.

23 BY MR. JOHNSON:

24 And I don't understand your ruling, Your Honor, and
25 that's in spite of not having any backup

1 documentation?

2 BY THE COURT:

3 Well, I don't, I don't agree with that. I mean
4 where's the backup documentation for the \$625,000
5 price in the quote to start with? That's the price
6 they're going to charge.

7 BY MR. JOHNSON:

8 That's a lump-sum agreement, Your Honor.

9 BY THE COURT:

10 Well, all that stuff, a lot was lump-sum
11 agreements. A lot of was how much are you going to
12 charge me to enlarge this theater, and they came up
13 with the \$7,000 figure. That's their price, just
14 like 625 was their price and he agreed to it. So
15 I've made a ruling and we don't need to pursue it
16 any further.

17 BY MR. JOHNSON:

18 Well, just for the record, Your Honor, there was
19 not ever any agreement about the theater.

20 BY THE COURT:

21 Well, I think there's testimony that there was. I
22 mean he requested certain changes to be done and
23 they agreed to do it and then they charged him, put
24 on the balance sheet a number to pay for that.

25 BY MR. JOHNSON:

1 After termination, Your Honor.

2 BY THE COURT:

3 I've ruled on the motion.

4 BY MR. JOHNSON:

5 I understand, I understand.

6 BY THE COURT:

7 Okay? We're through with that motion.

8 BY MR. JOHNSON:

9 Yes, sir.

10 BY THE COURT:

11 Now, there's a place down in Columbia and you know
12 where it is and I hope if you want to go there, so
13 that's your resolution. All right. So what does
14 that leave with us with? That leaves us with ---

15 BY MR. TAROKH:

16 Your Honor, if like to hear closing arguments. I
17 know we're not in front of a jury, but I believe,
18 you know, every side has rested.

19 BY THE COURT:

20 You know, I was going to say does that take care of
21 the motions? Now, we've still, let's see, the
22 mechanic's lien, we've got the breach of contract,
23 we've got the quantum meruit. Is there anything in
24 the other causes of action?

25 BY MR. TAROKH:

1 Not, not on my side, Your Honor.

2 BY THE COURT:

3 Any other causes of action on the Defendant's side?

4 I mean everything you claim was against these two
5 individuals as I recall.

6 BY MR. JOHNSON:

7 No, Your Honor. We have a counterclaim on the
8 breach of contract, negligence, the negligent
9 misrepresentation, fraud and ---

10 BY THE COURT:

11 Well, I've already ruled on the fraud claim and
12 misrepresentation claims, that's included in the
13 motion.

14 BY MR. JOHNSON:

15 Yes, Your Honor.

16 BY THE COURT:

17 Now, as far as the ---

18 BY MR. JOHNSON:

19 The ones that were not included were breach of
20 contract, negligence and breach of fiduciary duty.

21 BY THE COURT:

22 Okay. I'm going to, I don't know that I see any
23 fiduciary duty claim here. Now, you tell me where
24 it is. I mean you had a contract between a
25 contractor and an owner, and that carries with it

1 whatever responsibilities and obligations between
2 two contracting parties. I don't see any evidence
3 that anybody was a fiduciary to anybody else.

4 BY MR. JOHNSON:

5 Your Honor, he has a duty to communicate truthfully
6 to my client by ---

7 BY THE COURT:

8 That doesn't make him a fiduciary, that's just part
9 of the contract. A fiduciary is a whole different
10 ballgame.

11 BY MR. JOHNSON:

12 I respectfully disagree with you, but I understand
13 your ruling.

14 BY THE COURT:

15 Okay. Well, I'm going to include that part in my
16 directive verdict on the motion. So that means
17 we've still claims on each side so we know what
18 they are. All right. Any other motions in regard
19 to those remaining claims?

20 BY MR. JOHNSON:

21 Your Honor, I would renew my directive verdict
22 motion regarding their breach of contract claim
23 based of the first breached rule, it's clear that
24 the contract called for 10 foot basement ceilings.
25 Mr. Merlo was notified on December 2018 that that

1 was not the case and that issue was economically
2 unsustainable to resolve but it's a breach of
3 contract and case law is very clear that a party
4 who breached can pursue breach of thereof and
5 that's abstract for a civil court, Your Honor, as I
6 stated two days ago.

7 BY THE COURT:

8 Is that it?

9 BY MR. JOHNSON:

10 That's it regarding renewing my motion, Your Honor.

11 BY THE COURT:

12 Okay. I'm going to deny that motion because,
13 number one, there's a lot of factual issues
14 involved in who breached what, when, so I mean to
15 say they breached it first, I don't necessary agree
16 with that. But the facts are in dispute about that
17 and we got it resolved after that, so that wouldn't
18 be appropriate to have any kind of directive
19 verdict on that. So I'm going to deny that motion.
20 All right, any other motions?

21 BY MR. TAROKH:

22 None from the Plaintiff, Your Honor.

23 BY THE COURT:

24 Let me ask you this question. There's some -- I'm
25 focusing on the claims of negligence and non-

1 contractual claims that are contained in the
2 Defendant's assertions and there was some reference
3 to certain a case in the pleadings and I want to
4 see where that stands?

5 BY MR. TAROKH:

6 Yes, Your Honor, I think I remember what you're --
7 and I probably do have one more motion. I'm sorry,
8 it's been a long week. But we would also add a
9 motion for directive verdict as to the negligence
10 claim. There's been no testimony on their part as
11 to the standard of care. Now, you, Your Honor,
12 heard this morning our expert opine as to the
13 standard of care and that they didn't breach the
14 standard of care, and based upon that testimony and
15 the lack of competing testimony but for Mr. Merlo's
16 opinion on it, I believe when he was on the stand,
17 among other things that he stated that he's no
18 builder or something like that or something of that
19 nature and I think he actually opined on his
20 ability to have an opinion on it. So because we
21 have submitted evidence from an expert that my
22 client did not breach the standard of care and
23 because there is not competing evidence other than
24 Mr. Merlo's opinion, as a matter of law I believe
25 the court should direct verdict in my client's

1 favor on the negligence ground as well.

2 BY THE COURT:

3 All right. Mr. Johnson?

4 BY MR. JOHNSON:

5 Your Honor, there were numerous examples of breach
6 of the standard of care regarding encroachments on
7 both sides, regarding the electrical that was put
8 in, regarding the leaks, regarding just the
9 general, even Mr. LaPlante when he was up here was
10 saying that the trim work failed below the standard
11 of care, Your Honor. There's plain evidence in the
12 record regarding that.

13 BY THE COURT:

14 Well, I didn't hear him say that. I heard him say
15 that there were punch list items like, you know,
16 you had on every project that needed to be
17 addressed.

18 BY MR. JOHNSON:

19 When we were looking at -- I can't put my finger on
20 that, Your Honor.

21 BY THE COURT:

22 Well, I have to go from memory and if we're talking
23 about motions right now and we've past the
24 evidentiary phase.

25 BY MR. JOHNSON:

1 Sure. I mean you're specifically referring to
2 that.

3 BY THE COURT:

4 Well, I saw all that but what's your point?

5 BY MR. JOHNSON:

6 Well, my point even their expert said that that was
7 against the standard of care.

8 BY THE COURT:

9 No, he didn't say that. You are mischaracterizing
10 his testimony. I heard it myself, he said they
11 fulfilled the standard of care, they admitted it.

12 BY MR. JOHNSON:

13 He said they needed to be redone, Your Honor.

14 BY THE COURT:

15 Well, he said there were punch list like you have
16 on every project, that's all said. He didn't say
17 that was a deviation from the standard of care. In
18 this case whatever punch list items were in
19 existence as of October 12th, they never even got a
20 chance to remedy those, he fired, your client fired
21 him and so they didn't have a chance to go in and
22 do these things that needed to be done if there
23 such things, so I mean it's punch list. And
24 there's testimony that right at the end of the
25 situation the appliances had been delivered, not

1 installed yet but delivered and they needed to do
2 the punch list items and then they were going to go
3 see about getting a CO the following week, and that
4 was shortly before October 12th, one day that week,
5 then on Saturday Mr. Merlo said you're fired. So
6 that's it, they didn't get a chance to address the
7 punch list items. And, you know, going back to
8 what you said earlier about the 10 foot ceiling,
9 that's a big issue in this case you relied on;
10 there's been no evidence that there was any damage
11 incurred by your client because the ceiling ended
12 up being 9'8 instead of 10 feet. Now, that's one
13 aspect of that. The other aspect is that it's a
14 big dispute as to whether that was in conformity
15 with the plans or not and that's got to be a part
16 of what gets resolved here, but ---

17 BY MR. JOHNSON:

18 Your Honor, there's testimony that the entire house
19 when it had ---

20 BY THE COURT:

21 That's testimony. If you deemed that that was an
22 error, then you can say, yeah, we had to do that.
23 But that's not, I mean there's ample testimony that
24 it wasn't an error at all, it was done exactly as
25 the plan showed it. And you relied on this one

1 little note in the specs that talks about framing
2 and it says 10 feet framing nominal, I think is the
3 terminology, and so, you know, it makes a lot of
4 sense to me that, you know, you frame it according
5 to plans and it provides a 11'3 floor to floor, and
6 then you come in and you put in your joists in your
7 ceiling and you put in your flooring, and that's
8 going to reduce it to some extent, in this case 9'8
9 inches. And so I don't know that that's even a
10 violation of any kind in this contract and so I
11 don't know that that's even a violation of any kind
12 under this contract. Now, you spent a lot of time
13 on that and you say it is but, you know, I don't,
14 at this point I'm not seeing that. But anyway, I'm
15 just throwing that out there because that's
16 something that goes back to another motion. But go
17 ahead and have you finished on the negligence
18 argument, standard of care, and all that sort of
19 thing because I mean I didn't hear anybody, anybody
20 from your side state what the standard of care was
21 that was violated.

22 BY MR. JOHNSON:

23 Your Honor, it's understood that the finished space
24 shouldn't have been leaking underneath the wall and
25 needed to be ---

1 BY THE COURT:

2 Well, wait a minute. Go ahead.

3 BY MR. JOHNSON:

4 That obviously had deviation from the standard of
5 care, Your Honor.

6 BY THE COURT:

7 Well, the problem with that whole argument is you
8 took these pictures and would talk about things
9 that existed in the middle of a construction
10 project, and I mean I've built things and I've
11 built houses and other things and I'm sure you
12 probably have, too, and, you know, the final
13 product wouldn't look anything like it would
14 halfway through. So I think that's an unfair
15 approach to take because I believe the expert
16 witness said that was unfair in his experience in
17 the building industry. But on my end you still
18 have to establish what standard of care was
19 violated.

20 BY MR. JOHNSON:

21 Your Honor, the industry standard for residential
22 construction you don't have mud coming in your ---

23 BY THE COURT:

24 Where is that written?

25 BY MR. JOHNSON:

1 I don't know the exact, but I know ---

2 BY THE COURT:

3 Where is that in the testimony? I mean where is
4 each standard that you talk about in the testimony?

5 BY MR. JOHNSON:

6 Your Honor, the standard is the residential
7 construction industry standards.

8 BY THE COURT:

9 Well, you didn't put in any evidence as to what
10 that is.

11 BY MR. JOHNSON:

12 There was evidence that that's what they we going
13 by Mr. LaPlante.

14 BY THE COURT:

15 I didn't hear that and Mr. LaPlante's testimony was
16 that IBI complied with the applicable standard of
17 care in his opinion.

18 BY MR. JOHNSON:

19 I understand that was his testimony, but at the
20 same time ---

21 BY THE COURT:

22 I know you don't agree with that, but you don't
23 have any expert witness that says otherwise.

24 BY MR. JOHNSON:

25 Your Honor, finished homes aren't supposed to leak.

1 BY THE COURT:

2 Well, this home was not finished when these people
3 were fired.

4 BY MR. JOHNSON:

5 On one hand you're saying it's close to a CO and on
6 the other hand you're saying it's not finished so,
7 you know.

8 BY THE COURT:

9 Well, the leaks you're talking about all occurred
10 way back in the process before that.

11 BY MR. JOHNSON:

12 That's not the testimony.

13 BY THE COURT:

14 Yeah, it is, that's what I heard, the pictures
15 you've and the dates they've given all was prior to
16 the end of this project. And I mean another thing
17 you've got to realize is that there's so much
18 that's presented about your client basically
19 approving the work, saying how wonderful it was,
20 how satisfied he was. Then all of sudden when the
21 end comes, it's the most terrible house that's ever
22 been built in the world. So that's a problem. So
23 I'm going -- I'll take that one under advisement on
24 the negligence and I'll take a look at it, but my
25 inclination is that I don't see any, any basis for

1 a negligence claim against IBI. I'll hold that
2 open for now, but I still say we get back to the
3 basic idea, breach of contract, mechanic's lien and
4 so forth. This matter of who, which, what, when
5 and what the damages were and who owes what, what.

6 BY MR. JOHNSON:

7 And, Your Honor, going back to negligence real
8 quick. I mean there's a duty to build in
9 conformance with the plans and specs; negligence
10 with this as well.

11 BY THE COURT:

12 Okay. But I mean you say a duty to do that and it
13 may be, but then it becomes the question of did
14 they do that or not?

15 BY MR. JOHNSON:

16 I agree.

17 BY THE COURT:

18 So that's a factual issue. Anything else?

19 BY MR. TAROKH:

20 No other motions, Your Honor. I believe in
21 furtherance of Your Honor saying that's obviously
22 material issues of fact for the court to determine,
23 relatively competing breach of contract claims and
24 the feedback foreclosure lien, I may have some
25 other counts. Other than that, Your Honor, and

1 then I understand that as a matter of law the court
2 finds the contract with equitable claims?

3 BY THE COURT:

4 Well, let me just address a little of that. The
5 mechanic's lien action and this gets a little bit
6 technical I think, but that's basically an in rem
7 action.

8 BY MR. TAROKH:

9 That's correct, Your Honor.

10 BY THE COURT:

11 And so there is no deficiency judgment in
12 connection with a mechanic's lien foreclosure
13 because that would be in persona. But you have the
14 breach of contract, the quantum meruit and the
15 other action, so basically what will happen is if
16 you prevail, and I said if, there's be a judgment
17 amount and then it would be offset by whatever the
18 sale of the property in the mechanic's lien netted,
19 so just to clarify that point. But so are ready to
20 proceed at this point to hear closing arguments?

21 And I will ask that, Mr. Tarokh, if you will draft
22 me an Order about what we ruled on on these motions
23 ---

24 BY MR. TAROKH:

25 Yes, Your Honor.

1 BY THE COURT:

2 --- and give it to Mr. Johnson for him to review,
3 and then submit it me and we'll take care of that
4 part of it, and then we'll leave open the remaining
5 items.

6 BY MR. TAROKH:

7 Yes, Your Honor. Your Honor, I guess I'll get that
8 to you within a certain amount -- obviously for the
9 amount of time, is there a preference?

10 BY THE COURT:

11 Whatever. Can you get it to me this afternoon by
12 4:00?

13 BY MR. TAROKH:

14 I may be on the interstate, but I will and I can
15 stay another night.

16 BY THE COURT:

17 No, I'm kidding. There's no big rush on it. I
18 mean get it to me in the next week or so is fine.

19 BY MR. TAROKH:

20 Okay.

21 BY THE COURT:

22 But you've got to let Mr. Johnson take a look at it
23 and get his input. You know, I'm not pushing you
24 on it. If it takes a couple of weeks that's fine,
25 whatever. Okay. So y'all want to have closing

1 arguments?

2 BY MR. TAROKH:

3 If, Your Honor, thinks it's beneficial?

4 BY THE COURT:

5 Well, I mean I don't know how beneficial it is but
6 that's up to you. I don't want to deprive you of
7 the opportunity to orate. I mean I'm going to
8 leave it up to you. I mean a lot of information
9 has been given and a lot of argument have taken
10 place on all levels but I want to give you last
11 shot at it if you want to; you don't have to. But
12 I mean that's the plan of the procedure if you want
13 to then I'll let you.

14 BY MR. TAROKH:

15 Well, Your Honor, to save time and it's noon now, I
16 mean the Plaintiff will waive if they waive closing
17 argument. But if not, we'll -- and my basis for
18 that, Your Honor, is it's a bench trial, you
19 understand.

20 BY THE COURT:

21 I understand and that's fine.

22 BY MR. JOHNSON:

23 Give me two minutes to talk to my client, Your
24 Honor.

25 BY THE COURT:

1 All right.

2 (OFF THE RECORD)

3 BY THE COURT:

4 All right. I mean I think that's fine. I mean
5 obviously closing arguments aren't evidence anyway.
6 But let me just say in closing that I know I rode
7 y'all hard yesterday and I felt like we had to to
8 get this thing done and if anybody's feelings got
9 hurt, I apologize. But I think we got everything
10 in that needs to be in the record and so I
11 appreciate everybody's cooperation in getting us to
12 this conclusion at this time. And so if there's
13 nothing further, then we will go ahead and adjourn?

14 BY MR. TAROKH:

15 Thank you, Judge.

16 BY THE COURT:

17 All right. Thank you.

18 BY MR. JOHNSON:

19 Thank you, Judge.

20 BY THE COURT:

21 Y'all have a good holiday weekend.

22

23 (END OF TRIAL @ 12:05 P.M. MAY 27TH, 2022)

24

25

1 STATE OF SOUTH CAROLINA)

2) **CERTIFICATE OF REPORTER**

3 COUNTY OF ANDERSON)

4

5 This will certify that the foregoing 827 pages
6 represent a true and accurate transcription of the
7 hearing held before the Honorable Steven C. Kirven,
8 Master-in-Equity for Tenth Judicial Circuit, which was
9 taken before me, Virginia H. Campbell, Court Reporter
10 and Notary Public in and for the State of South
11 Carolina, at the Anderson County Courthouse, Anderson,
12 South Carolina on May 24TH - 27TH, 2022.

13 I further certify that I am not interested in, nor
14 am I counsel or attorney to either of the parties
15 interested in the event of the cause.

16

17

18

Virginia H. Campbell

19

Court Reporter & Notary Public

20

for the State of South Carolina

21

My Commission Expires: 4/22/31

22

23

24 November 2, 2022

25 Anderson, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CASE #: 2019-CP-37-00687

MONTGOMERY HOLDINGS, LLC D/B/A
IBI BUILDERS,

Plaintiff,

v.

CHRISTOPHER J. MERLO;
and GRANDSOUTH BANK

Defendants,

_____ /

SATISFACTION OF JUDGMENT

The undersigned counsel for Plaintiff, MONTGOMERY HOLDINGS, LLC D/B/A IBI BUILDERS, does hereby acknowledge that the judgment entered against Defendant, CHRISTOPHER J. MERLO, on July 20, 2022, has been satisfied in full as to all damages, costs, and charges and that said judgment is satisfied and forever discharged.

I do hereby authorize the Oconee County Clerk of Court to mark said judgment paid, cancelled and fully satisfied and to take any further acts necessary therefore.

Respectfully submitted,
TAROKH LAW, PLLC
PO BOX 10827
TAMPA, FL 33679
813-922-5510
jason@tarokhlaw.com

s/ Jason M. Tarokh
JASON M. TAROKH
S. CAROLINA BAR # 72837

August 29, 2022



From: John Montgomery <john@ibibuilders.com>
Date: Fri, Aug 18, 2017 at 7:55 AM
Subject: Re: chris merlo house plan attached
To: Christopher J Merlo <chris@upstatecommercialgroup.com>, greg greg <greg@ibibuilders.com>

That is a good idea. Questions:

1. Do you want us to price per plan? I know you mentioned some changes, etc.
2. I would suggest having a surveyor provide you with a site plan for accurate budget and pricing. For example, the elevation on these plans are not going to necessarily be accurate to your lot. Also, a site plan can identify other important areas, such drive way and placement of the house. This can usually run around \$400-\$600... I can give you a couple of names if you wish. I strongly recommend this.
3. May want to think about a landscape plan, I have a guy that does this and runs around \$200. I know it may be insignificant now, but in the long run will save you a ton! This, as the site plan, will also give us a better and more accurate number for budget and allowances. Just my 2 cents.
4. How would you liked this priced? We offer 2 ways of doing this:

A) Cost Plus. We provide a budget/cost to construct based on plans, scope, etc. provided, + 15% builder fee. We do a (approximately) monthly reconciliation where we provide the invoices of work complete.

B) Turnkey. Simply, we give you a price of the home based strictly off the plans and all information provided. This price includes our profit. This contract amount will not change, unless you approve a change order. As the cost plus process, we will provide allowances for several areas, such as fixtures, flooring, tile, etc. If you go over or under any of these areas we will let you know.

Just know, that either way is fine with us. Every customer is different and prefers different methods, so we like to offer options. Let me know you thoughts on this questions. In the mean time we will begin to start pricing. Also, any specs you have at this time will help.

Thanks Chris.

Jm

On Thu, Aug 17, 2017 at 3:24 PM, <chris@upstatecommercialgroup.com> wrote:

John-

I went ahead & purchased the attached pdf file of the lake house plan from Don Gardner.
This way I can have builders effectively price the project.
Look it over & give me some feedback.

0976

With Kindest Regards,
Chris Merlo, BIC
Upstate Commercial Group
1814 E. Main St. Suite A
Easley, SC 29640
Phone (864)376-3384
Email: chris@upstatecommercialgroup.com
Website: www.upstatecommercialgroup.com



----- Original Message -----

Subject: Re: chris merlo
From: John Montgomery <john@ibibuilders.com>
Date: Tue, August 15, 2017 3:47 am
To: Christopher J Merlo <chris@upstatecommercialgroup.com>

Will call you later this a.m.

On Mon, Aug 14, 2017 at 12:29 PM, <chris@upstatecommercialgroup.com> wrote:

John-

I am considering building it now. Call me when you free up & we can talk.

With Kindest Regards,
Chris Merlo, BIC
Upstate Commercial Group
1814 E. Main St. Suite A
Easley, SC 29640
Phone (864)376-3384
Email: chris@upstatecommercialgroup.com
Website: www.upstatecommercialgroup.com



----- Original Message -----

Subject: Re: chris merlo

From: John Montgomery <john@jhibuilders.com>

Date: Mon, August 14, 2017 7:25 am

To: Christopher J Merlo <chris@upstatecommercialgroup.com>

Hey Chris,

Sorry I didn't call you back. Spoke to David about it and thought he might translate to you. I am still investigating the property. If my research generates the amount of lot I need, I may be looking for partners, money, etc. Keep you posted if anything transpires.

Really like this plan.. I would suggest have the garage bigger, allowing for larger opening(s). It appears that it is 9' wide opening, you may want 10'. We have discovered lately that the standard garage openings are not large enough for modern SUV/Trucks. The best practice to get the size you want is to

measure how your vehicles are parked in your current garage. Measure width and dept and determine the size you want. Just my thought.

I think the plan has a lot to offer and don't see many negatives to touch on. You still thinking a year or so before you build?

jm

On Sat, Aug 12, 2017 at 11:01 PM, <chris@upstatecommercialgroup.com> wrote:

John-

Never heard back from you but no worries,
I know how things get busy.
Did you move forward on your Lake Keowee tract?

On a separate note, my wife & I picked a Donald Gardner plan for our lake house.
It is named "Sandy Creek" & is W-1329-d if you want to view it on their website.
It will require a few modifications but nothing too extreme.

With Kindest Regards,
Chris Merlo, BIC
Upstate Commercial Group
1814 E. Main St. Suite A
Easley, SC 29640
Phone [\(864\)376-3384](tel:(864)376-3384)
Email: chris@upstatecommercialgroup.com
Website: www.upstatecommercialgroup.com



11-16-17

HOME CONTRACT

MONTGOMERY HOLDINGS, LLC d.b.a. (IBI Builders) (hereinafter "IBI") has contracted and agreed with Chris Merlo (hereinafter "Owners"), to finish construction of a new Home located Lot 12 Marina Bay Seneca, SC.

I. IBI agrees to construct the home per plans and scope (attached to this contract) for \$625,000. The cost does not include any cost associated with the Owner Bank Fees, HOA Fees, Utility Fees, Attorney Fees or any other cost not directly associated with construction material and labor of the project.

(A) IBI agrees to complete the work to the best of its ability in a period of 12 months from the date of reception of permits/authorization to commence work. This is an estimated completion time only and is understood that there are many variables that can potentially delay the timing of construction.

(B) The estimated completion date may be adjusted if minor deviations to the floor plan are requested or if Owners do not make product decisions in a timely manner. Change order requests should include a delay in the estimated completion date if appropriate, and all change orders shall be Approved by both parties, or via email. Estimated completion date DOES NOT take in to consideration of inclement weather, inspection periods, or any other areas outside of IBI authority that may suspend working activity.

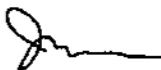
II. Payment to IBI will be made according to the following schedule:

IBI will follow the draw inspection schedule via the bank involved. However, when draws are requested it understood that payment shall take no longer than 1 week to deliver, at no cost to IBI. When change orders are requested and agreed upon, payment may be required for the added cost at time of work.

III. Requirements of Owners

(A) The Owners shall forward all instructions to IBI in writing. Owners also agree that any and all changes desired in the current floor plan will be contained in writing in a change order signed by all parties or approved via email. Owners understand that such change orders will affect the original budgeted cost of the construction. ANY REQUESTED WORK THAT IS NOT DETAILED ON THE PLANS OR IN SPEC SHEET MAY POTENTIALLY INCREASE AND A CHANGE ORDER WILL BE GENERATED FOR APPROVAL. NO COST SHALL INCREASE WITHOUT KNOWLEDGE OF OWNER.

IBI:



Owners: 

MERLO 00001

0980

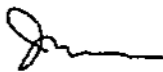
11-16-17

- (B) Owners agree to accept the Home which will have been constructed in a workmanlike manner.
- (C) The Owners shall sign all necessary applications to obtain permits and bonds. IF Applicable
- (D) The Owners shall select in a timely manner all materials and colors required during the construction process.
- (E) The Owners shall obtain all necessary approvals and/or all acknowledgments from any architectural board or committee whose jurisdiction is relevant to this project.
- (F) The Owners agree to cooperate and make every reasonable effort to assist IBI and further agrees to permit IBI to place signs on or about the premises during the course of construction and allow IBI to show the project to potential customers during the course of construction. Owners shall not be entitled to contract with, authorize, or permit, for any reason whatsoever, any individual, other contractor, or subcontractor to perform, in whole or in part, any portion of work for the project, without IBI APPROVAL. Owners shall not communicate directly with any of the IBIs workmen, employees, agents, or subcontractors, unless so directed by IBI.

IV. Requirements of IBI

- (A) IBI shall supervise and direct the work, using its best skill and attention, and it shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the work under the contract.
- (B) Unless otherwise specifically provided in the contract documents, IBI shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper executions and completion of the work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the work.
- (C) IBI shall at all times enforce strict discipline and good order among its employees and shall not employ on the project any unfit person or any person unskilled in the task assigned to him.
- (D) IBI warrants to the Owner that all materials and equipment incorporated in the work will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects, and in conformance with the

IBI:



Owners:



11-16-17

contract documents. IBI further agrees to provide an unlimited one-year warranty on all work related to the uncompleted construction from the date of the issuance of the Certificate of Occupancy.

- (E) Unless otherwise provided in the contract documents, IBI shall pay all sales, consumer, use, and similar taxes, which are legally enacted at the time bids are received, and shall secure and pay for the building permit and for all other permits and governmental fees, licenses, and inspections (NOT INCLUDING BANK INSPECTIONS) necessary for the proper execution and completion of the work.
- (F) IBI shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority with jurisdiction over the project, and shall promptly notice the Owners if the drawings and/or specifications are at variance therewith.
- (G) IBI shall be responsible to the Owners for the acts and omissions of his employees, subcontractors, and their agents and employees, and other persons performing any of the work under a contract with IBI.
- (H) IBI shall at all times keep the premises free from accumulations of excess waste materials or rubbish caused by his operations. At the completion of the work, IBI shall remove all their waste materials and rubbish from and about the project as well as his tools, construction equipment, machinery, and surplus materials.
- (I) IBI agrees to provide Worker's Compensation and general liability insurance for itself to the owner and or Bank Rep. IBI NOT RESPONSIBLE FOR ANY OTHER REQUIRED INSURANCE OR TAXES THAT MAY BE ASKED BY OWNER'S BANK.

V. Miscellaneous conditions and agreements.

- (A) Owners and IBI will jointly inspect the building before the C.O. is issued. At this inspection, Owners and IBI will prepare 1 written list of any and all items requiring repair, completion, correction, adjustment, or touch-up (the "Punch List"). Only those items contained in the Punch List will be addressed by IBI.
- (B) ~~Owners agree to transact all business related to the construction during normal business hours, Monday through Friday, from 8:00 a.m. until 6:00 p.m.~~
- (C) Pursuant to the terms and conditions contained in this Agreement and all Exhibits hereto, Owners hereby authorize IBI to contract and pay for the

IBI:



Owners: 

11-16-17

purchase of materials, supplies, and permits necessary for the construction, and to enter into contracts with subcontractors.

- (D) Owners and IBI agree that commitments have been made to suppliers and subcontractors. Any and all obligations relating to materials and labor for the construction will be paid in full at the time of monthly reconciliation. IBI agrees to execute a Builder's Affidavit after the Final Payment of balance, certifying that all charges and costs for labor performed, material furnished, and fixtures installed in the home have been fully paid. IBI CAN NOT BE RESPONSIBLE FOR ANY PRODUCT DELIVERY, WARRANTY (COST ASSOCIATE) MADE BY OWNER THROUGH ONLINE PURCHASES OR ANY OTHER SUPPLIERS NOT ASSOCIATED WITH IBI.

- (F) This contract shall be governed by the laws of the State of South Carolina.

Agreed and acknowledged this 16 day of October 2017

MONTGOMERY HOLDINGS, LLC:
(D.B.A. IBI Builders, llc)

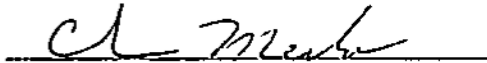
By:

John Montgomery

Date: 11-16-17



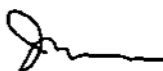
OWNERS:



Date: 11/17/17

Date: _____

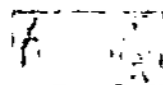
IBI:



Owners: 

Proposal (REVISED 4):
Chris Merlo

1



SPEC SHEET for Chris Merlo Proposal based off of plans provided by Don Gardner plan
Name Sandy Creek. Home to be built in the Marina Bay Subdivision in Seneca, SC

Permitting & Insurance

All permits will be acquired prior to construction. Any and all permitting cost, IBI will be Responsible. Prior to construction, IBI will provide full General Liability and Workman Compensation Certificates

Grading & Excavating

Lot will be graded per Specs of plan and or site plan. (NO RET WALLS PERS SITE PLAN)
Trees other than the building site area, will be marked by Home Owner for removal

Foundation

All footings will be poured to wall design requirements allowing for rock overlay
Pour Wall Foundation with Rebar reinforcement
Basement, garage slabs, and driveways will all include fiber mesh w/ 3000 psi concrete
Vapor Barriers and Radon venting to be installed if applicable
Water proofing system with 4" French drain system using Polypropylene membrane
Includes a 20 yr. warranty provided by the sub contractor only, not IBI.

Framing

Framing to comply with all state and county codes/frame per plan
Roof constructed using 2x8 rafters w/ OSB sheathing
ZIP Board or house wrap or similar product for moisture barrier
Floor system using I-Joist/ with Advantech (50 year) sub floor system (TO BE ENGINEERED)
All ceiling design (trey, coffer, cathedral, etc) per plan
Main floor 10' ceiling Basement 10' ceiling

Ext. Siding

Siding to consist of stone brick and hardy.
NO STUCCO (See stone/brick allowance on last page) *
Soffit and fascia using cement board (Hardy/Meritec) material
6 inch seamless gutter system/ with gutter guard protection
Columns recommend using 8X8 Post wrapped in Hardy

Signatures:

IBI Builders
Greenville, SC

Heated (approx) 4200
REVISED 11-11-17

MERLO 00005

0984

Window/Doors

All windows to consist of Premium Jeld WEN Vinyl windows or Sierra Pacific
Budget and recommendation based off using ALL VINYL Window
All exterior/interior doors per plan /or fiber glass SEE DOOR SCHEDULE PER PLAN
NO SKY Light per plan ** see note section
NOTE: Front door will be HO choice see allowance section *

Insulation

Tech Shield OSB roof sheathing
Ext. Walls, ceilings, attic, unfinished areas below finished BATT
Low compression foam applied to all seals, doors & windows
Sound proof R13 installed to all Bedrooms, bath, laundry rooms

Roof

NO Chimney as per plan
30 yr. architectural shingle installed color HO choice
Ice and water installed in all hips and valleys
Flashing installed in all side walls and necessary areas

CABINETS/Granite

Soft close drawers/doors Style and Color HO CHOICE. See allowance section*
Level 2 granite HO choice/Granite throughout home per location of cabinet tops
Mantles to be included in Budget see allowance section *

Stairs

Per Plan. Stairs to Bonus to be carpet
Stairs to basement oak treads, oak Railing, iron balusters
HO choice of baluster and rail by options provided

Int. Trim/Doors

5 1/4" crown molding installed all areas of main floor & Basement (2pc. Crown)
All window and doors to be cased (trimmed out)
7" base boards installed through all finished areas.
All Int and Ext. doors to be Solid CORE
NO trim in closets or Bonus. Base only, in Dining 1 area for chair rail/or wainscoting
included

Flooring/Tile

All bathrooms, Laundry Room, have tile flooring
Tile material included see allowance section*
Hardwood Flooring throughout main floor. Basement/bonus to be carpet.
See allowance section for Carpet *

Signatures:

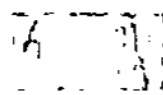


Gi Builders
Greenville, SC

Heated (approx) 4200
REVISED 11-11-17

MERLO 00006

0985



Decks/Porches

Flag stone floor for Front Porch
Flag Stone Steps for front Porch
Bottom deck Floor broom finish concrete
Select deck board for upper deck
Powder coated aluminum and balusters for exterior railing

HVAC

Trane or Lennox 15 seer Unit(s) tonnage to be accurately calculated
in field Gas Units if applicable for main floor only
Digital Thermostat
Returns in all bedrooms for more efficiency (if applicable)
All registers on main floor to be installed on floor (Not bonus or basement)
(Home Owner responsible for PROPANE SERVICE COMPANY IF REQUIRED)

Plumbing

All piping to PEX and plumbing to code
1 Gas (if applicable) Tank less water heater (location to be determined in field)
TUBS, FIXTURES, Toilets included see allowance section*
Ext. Hose Bibs HO choice of location (up to 3 included)
Utility sink in laundry room
White or Stainless rectangle sinks included
Sewer is available and we will connect/Not responsible for any
required UTILITY FEES

Electrical

Electrical will be installed to code & plan. Anything outside of code will be considered
added cost. 200 amp service. Under cabinet lighting in both kitchens only
Recessed cans to be installed location HO choice allotment of cans see allowance section*
(All other electrical fixtures and bulbs provided by homeowner/we include install)
Low voltage wiring:

We will install CAT 5/Cable/Data throughout home
Low Voltage will be ran to central panel (SMART PANEL)
for all future current TV, phone, etc. applications
One room (HO CHOICE) will be pre-wired for surround sound
All equipment (receivers, speakers, etc.) home owner will provide
Home owner responsible for security company and installation

Signatures:

IBI Builders
Greenville, SC

Heated (approx) 4200
REVISED 11-11-17

MERLO 00007

0986

Proposal (REVISED 4):
Chris Merlo

4

Specialty

Items Included: See allowance section*

Closet Shelving Throughout Home
Garage Doors
Bath hardware (toilet paper, towel bars, etc.)
Bathroom Mirrors
Shower Doors
Int. Ext. Door handles/knobs (All locks)

Fireplaces/Appliances

Appliances see allowance section
1- 36" Pre Fab fireplace insert See allowance section

Landscape

See allowance section *
General Sod around the home
Small Plant & Tree Pkg
Automatic Sprinkler System
Mulch Beds
Tying in of gutters to down spouts for water control
NO LANDSCAPE PLAN PROVIDED

Notes:

- There is was not a site plan included or provided for this proposal
- This proposal includes our 10 yr. structural & 1 yr finishing warranty. Other warranties vary among other products, i.e. appliances, HVAC, etc.
- This price is based off the plans by DG 1329-D MR
- Any variations can lead to potential increase in cost
- In the event we are excavating and rock is discovered, there will be added cost.
- ~~IBI will provide the septic tank installation, material and will conform to code. (NO DHEC PERMIT PROVIDED IN THIS PROPOSAL, IF PUMP IS REQUIRED THERE WILL BE ADDED COST).~~ Sewer available at road.
May have added cost for pump.
- Any door swings, sizes, etc. can be changed during framing at NO additional cost; however if changes request after work performed to plan, there may be additional cost.
- NO SPA Included in this proposal as seen on the plans
- Understood no site plan provided indicating home placement, drive and walk ways. Subject to price increase
- All cost subject to change per ARC requirements
- General notes on plans are not considered specs and are subject to change
- Any discrepancy between code and plans, code will always prevail.

Signatures:



IBI Builders
Greenville, SC

Heated (approx) 4200
REVISED 11-11-17

MERLO 00008

0987

*****BY SIGNING THIS PAGE ALL ALLOWANCES ARE UNDERSTOOD AND AGREED UPON. IT IS HIGHLY RECOMMENDED THAT OWNER RESEARCH THESE NUMBERS AND DETERMINE THAT WILL OR WILL NOT CONFORM TO THEIR SELECTIONS, PRIOR TO SIGNING*****

Allowance Section:

- Brick .42 cent / Rock material and labor at \$10.00 per sq ft.
- Front Door allowance of \$2,800.00
- Cabinets \$27,000.00
- Granite set at level 2 granite. Price range \$45.00-\$50.00 per sq ft.
- Mantel \$700.00
- Tile material \$5.00 per sq ft. Back Splash tile material \$15.00 per sq ft.
- Carpet \$24.00 per sq yard with pad
- Plumbing to include all toilets, fixtures, tub and shower Inserts \$6,500.00
- Electrical can allotment of 42 cans with trim included. ALL OTHER FIXTURES (chandeliers, fans, globe lighting, etc.) provided by home owner; IBI will install
- Specialty \$9,000.00
- There is no landscape plan provided with this proposal. Allowance of \$15,000.
- Appliance \$12,000 kitchen and screen porch only.

(Revised Cost based on meeting on 9-4-17)

****The plans are currently being modified. It is understood that this revised proposal is based up our meeting and the final plans. Once the revisions are made and site plan produced, we will confirm the overall estimated cost. ****

- NO ELEVATOR
- Ext. garage stairs to be removed
- No Spa/patio or Pool included as shown on original Plans
- 10' Ceilings to be constructed in the basement. (NOTE: this will/may cause the window and door sizes to change from their current size. These changes should be reflected on the revised plans).
- Out Door Covered Porch. Will include outdoor grill, vented hood, sink, mini fridge. Any appliance here considered part of appliance allowance.
- Movie theater to be added down stairs. This space will be FOAM INSULATED FOR BETTER SOUND PROOF. This will not completely eliminate sound, however there are other options available. (Equipment not included. Will Pre Wire) SPACE, LAYOUT UNDEFINED. These changes should be reflected on the revised plans.
- BONUS ROOM: PER PLAN ONLY
- Out door shower to be installed. Location TBD. H/C faucet only no drain or enclosure

Signatures:



IBI Builders
Greenville, SC

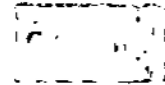
Heated (approx) 4200
REVISED 11-11-17

MERLO 00009

0988

Proposal (REVISED 4):
Chris Merlo

6



DELETIONS (REVISED 3)

- Remove Accordion Door (Allowance)
- Remove Chimney and Cap
- Remove Sky Lights
- Open UP Porch and remove 2 columns
(See Pic Emailed 11-9)

-
- Based on the attached site plan, there are no retaining walls, thus reducing the price (next page)
 - The attached REVISED floor plans will need to be completed with measurements and elevations

TOTAL CONTRACT COST

TOTAL TURNKEY REVISED (3)

\$625,000

Signatures:

IBI Builders
Greenville, SC

Heated (approx) 4200
REVISED 11-11-17

MERLO 00010

0989



John Montgomery <john@ibuilders.com>

RE: update

1 message

chris@upstatecommercialgroup.com <chris@upstatecommercialgroup.com>

Fri, Feb 2, 2018 at 1:05 PM

To: John Montgomery <john@ibuilders.com>

Thanks John. We are meeting Greg next Wednesday

With Kindest Regards,
Chris Merlo, BIC
Upstate Commercial Group
1814 E. Main St. Suite A
Easley, SC 29640
Phone (864)376-3384
Email: chris@upstatecommercialgroup.com
Website: www.upstatecommercialgroup.com



----- Original Message -----

Subject: update

From: John Montgomery <john@ibuilders.com>

Date: Fri, February 02, 2018 8:59 am

To: Christopher J Merlo <chris@upstatecommercialgroup.com>, greg greg <greg@ibuilders.com>

Chris,

Hope you are having a good week. Just want to touch base on a couple of things. Foundation work is starting Monday (barring any weather conditions). It will take a day or 2 of forming the walls, then there will be inspection by the county, then pour the walls. Another day to remove the forms. Then we start the underground plumbing. All in all the foundation walls should take about a week, again weather and inspection time permitting. Greg does need to talk to you about potential retaining walls/or options. So please call him at your convenience.

0990

Also, attached is your current balance sheet. We send this out periodically through the project. The only thing new is the removal of extra 3' of dirt you and Greg discussed. Feel free to call Greg with any questions on this as well.

Hope you have a great weekend.

Jm



John Montgomery <john@ibuilders.com>

RE: Requested Signature

1 message

chris@upstatecommercialgroup.com <chris@upstatecommercialgroup.com>
To: John Montgomery <john@ibuilders.com>

Mon, Jan 8, 2018 at 1:23 PM

Thanks for the update John.
I know you will be fair & I trust your accounting of the project.

My cabinet guy is pricing the job now.
Are you certain your cabinet man can bring the project in within the allowance?
We will have final numbers by Friday.

With Kindest Regards,
Chris Merlo, BIC
Upstate Commercial Group
1814 E. Main St. Suite A
Easley, SC 29640
Phone (864)376-3384
Email: chris@upstatecommercialgroup.com
Website: www.upstatecommercialgroup.com



----- Original Message -----

Subject: Re: Requested Signature
From: John Montgomery <john@ibuilders.com>
Date: Mon, January 08, 2018 8:35 am
To: Christopher J Merlo <chris@upstatecommercialgroup.com>, greg greg <greg@ibuilders.com>

One item I did forget but will apply as the others, is the driveway being larger.

On Mon, Jan 8, 2018 at 10:23 AM, John Montgomery <john@ibuilders.com> wrote:
See attached signed doc for Grand South. Also, couple of things:

0992

2/22/2022 10:22 AM

1. We have a grader scheduled to start Thursday.
2. As mentioned in previous conversation, regarding the changes in the plans for the following items:
 - A) Cabinets/Full kitchen in the basement.
 - B) Extra sq footage due to garage directional re design
 - C) Bath 2 size and additional size and sink

These areas are going to add cost, however considering that the Cabinets and full kitchen in the basement are under allowances and the other 2 items in fairness to you I do not think we should place a price tag on because I do not what it will impact if any. Therefore, we are just going to notate these items on our balance sheet. We will discuss openly if there is any impact at all. (BTW the 'balance sheet is something we send out monthly or after each draw just to keep everyone on same page with change orders, credits, applied payments, etc.)

Let me know if there is anything you or the bank needs from us at this time. Have a good week.

Jm

On Fri, Jan 5, 2018 at 3:48 PM, <chris@upstatecommercialgroup.com> wrote:
John-

The lender is requesting the attached document signed.
They will need the original prior to our Closing scheduled for next Thursday.
Thanks again.

With Kindest Regards,
Chris Merlo, BIC
Upstate Commercial Group
1814 E. Main St. Suite A
Easley, SC 29640
Phone (864)376-3384
Email: chris@upstatecommercialgroup.com
Website: www.upstatecommercialgroup.com



----- Original Message -----

Subject: Re: House staked
From: John Montgomery <john@ibibuilders.com>
Date: Mon, January 01, 2018 7:19 am

0993

2/22/2022 10:27 AM

To: Christopher J Merlo <chris@upstatecommercialgroup.com>, greg greg
<greg@ibibuilders.com>

Of course. We need to discuss or meet out there to have a clear understanding of what you are visioning here. Greg is best to talk to on this subject, nonetheless give him or me a call when you can.

On Sat, Dec 30, 2017 at 8:39 PM, <chris@upstatecommercialgroup.com> wrote:
John-

The stakes look accurate & fine on my side.
Once the trees are out, would it be possible to plateau the back yard a bit?

With Kindest Regards,
Chris Merlo, BIC
Upstate Commercial Group
1814 E. Main St. Suite A
Easley, SC 29640
Phone (864)376-3384
Email: chris@upstatecommercialgroup.com
Website: www.upstatecommercialgroup.com



----- Original Message -----

Subject: Re: House staked
From: John Montgomery <john@ibibuilders.com>
Date: Thu, December 28, 2017 11:38 am
To: Christopher J Merlo <chris@upstatecommercialgroup.com>, greg greg
<greg@ibibuilders.com>

They staked approximately just for the grader, this time... once the grader is complete, they will come back and do a exact stake out. I am telling you this in case you think it is in wrong place and know it is just for grading purpose and you will have time to review the final before we dig footings.

Jm

On Thu, Dec 28, 2017 at 1:22 PM, <chris@upstatecommercialgroup.com>
wrote:
John-

0994

I will be near there Friday morning about 10am.

With Kindest Regards,
Chris Merlo, BIC
Upstate Commercial Group
1814 E. Main St. Suite A
Easley, SC 29640
Phone (864)376-3384
Email: chris@upstatecommercialgroup.com
Website: www.upstatecommercialgroup.com



----- Original Message -----

Subject:

From: John M <john@ibuilders.com>

Date: Thu, December 21, 2017 10:35 am

To: Chris Merlo <Chris@upstatecommercialgroup.com>

Cc: Greg Grissinger <greg@ibuilders.com>

FYI... the house is going to be staked out on Wednesday. Let's just plan to take a look sometime after that so we can confirm the position of home together. Hope all is well and have a wonderful Christmas.

John M



John Montgomery <john@ibibuilders.com>

update

1 message

John Montgomery <john@ibibuilders.com>

Fri, Feb 2, 2018 at 10:59 AM

To: Christopher J Merlo <chris@upstatecommercialgroup.com>, greg greg <greg@ibibuilders.com>

Chris,

Hope you are having a good week. Just want to touch base on a couple of things. Foundation work is starting Monday (barring any weather conditions). It will take a day or 2 of forming the walls, then there will be inspection by the county, then pour the walls. Another day to remove the forms. Then we start the underground plumbing. All in all the foundation walls should take about a week, again weather and inspection time permitting. Greg does need to talk to you about potential retaining walls/or options. So please call him at your convenience.

Also, attached is your current balance sheet. We send this out periodically through the project. The only thing new is the removal of extra 3' of dirt you and Greg discussed. Feel free to call Greg with any questions on this as well.

Hope you have a great weekend.

Jm

 Merlo Balance Sheet.pdf
52K



Merlo Lot 12 Marina Bay

Contract Amount	\$ 625,000.00
Grading Addition. Removing 3 more ft of dirt	\$ 3,200.00

Payment \$ -

Balance \$ 628,200.00



John Montgomery <john@ibibuilders.com>

Balance Sheet

1 message

John Montgomery <john@ibibuilders.com>

Tue, Mar 6, 2018 at 4:56 PM

To: Christopher J Merlo <chris@upstatecommercialgroup.com>, greg greg <greg@ibibuilders.com>

Chris,

See attached balance sheet. Thanks for sending over the draw inspection report. We will need this each time going forward. Grandsouth is a little lite on the front end, but should balance out going forward.

Also, the change orders are typically paid at the time of draw. If you want to wait til the next draw that will be fine.

Let us know if you have any questions.

Jm

 Merlo Balance Sheet3-6-18.pdf
98K

**PLAINTIFF'S
EXHIBIT**

#8

Merlo Lot 12 Marina Bay

Contract Amount	\$ 625,000.00
Grading Addition. Removing 3 more ft of dirt	\$ 3,200.00

Payment 3/2/2018 \$ (43,750.00)

Balance \$ 584,450.00

Changes Made to plan after contract

	<u>SUBJECT</u>	<u>COST</u>	<u>NOTES</u>
1	Additonal Driveway	?	BASED OFF revised Site plan These were revised in the f cost based upon allowance Additonal Sq Footage was TBD if there is any addition Additional sink added in 2n Allowances will determin if
2	Added Cabinets/Appliances	?	
3	Added Sq Footage	?	
4	Added Sink 2nd Bath	?	

n TBD in the field
inal plans TBD if there is any
usage
added when final planse revised
al cost
d bath when planse revised
any additional cost



John Montgomery <john@ibbuilders.com>

Balance Sheet

1 message

John Montgomery <john@ibbuilders.com>

Tue, May 8, 2018 at 6:41 AM

To: Christopher J Merlo <chris@upstatecommercialgroup.com>, greg greg <greg@ibbuilders.com>

Chris,

Attached is the latest balance sheet showing recent draw payment (thank you for taking care of that) as well as the window additions, Nikki sent over yesterday. The windows are ordered as of yesterday. Remember we will need to get the first change order of dirt (do not worry about windows for now).

Thanks and let us know if you have any questions.

Jm

 Balance Sheet 5-8-18.pdf
97K



Merlo Lot 12 Marina Bay

Contract Amount	\$ 625,000.00
Grading Addition. Removing 3 more ft of dirt	\$ 3,200.00
Haul Dirt	???
Adtional Windows Email 5-3/Confirmed 5-7	\$ 5,880.00

Payment(s)	3/2/2018	\$ (43,750.00)
Payment(s)	5/7/2018	\$ (68,750.00)

Balance \$ 521,580.00

Changes made to plan after contract (SUBJECT TO ADDED COST)

	<u>Subject</u>	<u>Cost</u>	<u>Notes</u>
1	Addition Driveway		Based off revised site plan Cost TBD
2	Added Cabinets/Appliances		These were added in Final plans Cost T
3	Added Sq Footage		Additional Sq footage was added wher TBD if any additional cost
4	Added Sink in 2nd bath		Addition Sink added in 2nd bath when TBD if any additional cost

1 final plans revised

plans revised



John Montgomery <john@ibibuilders.com>

(no subject)

1 message

John Montgomery <john@ibibuilders.com>

Fri, May 11, 2018 at 9:38 AM

To: Christopher J Merlo <chris@upstatecommercialgroup.com>, greg greg <greg@ibibuilders.com>

Chris,

Thank you for the payment. Attached is the balance sheet showing this for your records.. Also, if you can send me the inspection report from bank.

Greg is on site now and we are working on Nikki's window questions. Will shoot back to you asap.

Jm

 Balance Sheet 5-11-18.pdf
98K



Merlo Lot 12 Marina Bay

Contract Amount	\$ 625,000.00	
Grading Addition. Removing 3 more ft of dirt	\$ 3,200.00	PAID 5-11-18
Haul Dirt	???	
Adtional Windows Email 5-3/Confirmed 5-7	\$ 5,880.00	

Payment(s)	3/2/2018	\$ (43,750.00)
Payment(s)	5/7/2018	\$ (68,750.00)

Balance	\$ 521,580.00

Changes made to plan after contract (SUBJECT TO ADDED COST)

	<u>Subject</u>	<u>Cost</u>	<u>Notes</u>
1	Addition Driveway		Based off revised site plan Cost TBD
2	Added Cabinets/Appliances		These were added in Final plans Cost T
3	Added Sq Footage		Additional Sq footage was added wher TBD if any additional cost
4	Added Sink in 2nd bath		Addition Sink added in 2nd bath when TBD if any additional cost



1 final plans revised

plans revised



John Montgomery <john@ibibuilders.com>

Window/Balance Sheet

1 message

John Montgomery <john@ibibuilders.com>

Tue, Jul 10, 2018 at 6:54 AM

To: Christopher J Merlo <chris@upstatecommercialgroup.com>, greg greg <greg@ibibuilders.com>

Chris,

Attached is the additional window you requested for the master. The cost of this is \$2,215. This includes the window, install, removal of old, all rework / or re-framing. Let me know if you would like to proceed.

Also, attached is the balance sheet reflecting the latest draw. Let me know if you have any questions.

Jm

2 attachments **Balance Sheet 7-9-18.pdf**
106K **Additional Window Merlo.pdf**
300K

QUOTE #	PO #	QUOTE NAME	PROJECT	JOB NAME	BID BY
983248		Merlo Reorder	IBI Builders		

LINE #	LINE TYPE	DESCRIPTION	QTY	U/M	NET PRICE	EXTENDED
100-1	WindowAndDoor	PK- 306	1	EA		

Standard Painted exterior color set-up charge automatically included on quote unless total number of units is 5 or more or any quantity in combination with clad of the same color.

Row 1: Vinyl 8000 CasementAwning Casement Left / Right 58.375 x 53.5

Row 2: Vinyl 8000 Shapes Direct Set Eyebrow Above Springline 58.375 x 22

Unit 1, 2: Custom: Frame Width = 29.1875, Frame Height = 53.5, Screen Width = 24.3745, Screen Height = 48.3745

Unit 3: Custom: Unit 3: Frame Width = 58.375, Frame Height = 22, Frame Short Side = 14, Frame Radius = 57.24438

Complete Unit, Drawing Numbers = , DP Rating = Standard, Product Offering Special Modification = No

Frame Color = Bronze 024, Interior Finish = Beige

Sash-Panel Color = Bronze 024

Estimated Sash Weight = 31.92243

Unit 1, 2: Dual Insulated, Low-E, Standard Bead, Tempered Glass = Yes, both lites, Argon Gas = Yes, Spacer Channel = Standard Intercept Spacer

Unit 3: Dual Insulated, Low-E, Standard Bead, Argon Gas = Yes, Spacer Channel = Standard Intercept Spacer

E-Guard Finish (Beige), Roto, Standard Handle, Beige, Window Opening Control Device = No

Screen Option = Full Screen Applied, Beige, Fiberglass Mesh

Integrated Mull, 1/2" Wood Horizontal Mull

Integrated Mull, 1/2" Wood Horizontal Mull

Integral Rigid Vinyl Nailing Fin, No Drip Cap

6-9/16", Wood, Pine Jamb Extension, Primed Interior, Applied, Entire Set

Interior Casing = None

Unit 1, 2: U-Factor = 0.28, SHGC = 0.25, CR = 59, VT = 0.45, AI = 0.03, CPD =

SIE-N-127-00197-00001, Energy Star Region = NC,SC,S, GapFill1 = ARG, Can ER = -I, Can ES Zone = , W m 2k = -I

Unit 3: U-Factor = 0.27, SHGC = 0.34, CR = 58, VT = 0.62, AI = 0.01, CPD =

SIE-N-133-00273-00001, Energy Star Region = N,NC, GapFill1 = ARG, Can ER = -I, Can ES Zone = , W m 2k = -I

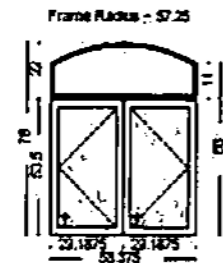
Non-Manufacturer Related =

Unit 1,2: Glass Width = 23.8125, Glass Height = 47.8125,Sash Width = 27.3125, Sash Height = 51.3125, Unit 3: Glass Width = 56.125, Glass Height = 19.75, Glass Short Side = 12.2298,Sash Width = 58.125, Sash Height = 19.75

Rough Opening: 58.87501" X 76.5"

Overall Unit Size: 58.375" X 76"

Room Location: Master Bath





Merlo Lot 12 Marina Bay

Contract Amount	\$	625,000.00	
Grading Addition. Removing 3 more ft of dirt	\$	3,200.00	PAID 5-11-
Haul Dirt			
Adtional Windows Email 5-22 email	\$	11,030.00	

Payment(s)	7/9/2018	\$	(93,750.00)
Payment(s)	3/2/2018	\$	(43,750.00)
Payment(s)	5/13/2018	\$	(3,200.00) CM
Payment(s)	5/7/2018	\$	(68,750.00)

Balance	\$	426,580.00

Changes made to plan after contract (SUBJECT TO ADDED COST)

	<u>Subject</u>	<u>Cost</u>	<u>Notes</u>
1	Addition Driveway		Based off revised site plan Cost
2	Added Cabinets/Appliances		These were added in Final plans
3	Added Sq Footage		Additional Sq footage was adde TBD if any additional cost
4	Added Sink in 2nd bath		Addition Sink added in 2nd bath TBD if any additional cost



d when final plans revised



John Montgomery <john@ibibuilders.com>

balance sheet

1 message

John Montgomery <john@ibibuilders.com>

Fri, Aug 3, 2018 at 1:19 PM

To: Christopher J Merlo <chris@upstatecommercialgroup.com>, greg greg <greg@ibibuilders.com>

Got the wire... Attached is the latest balance sheet.

Balance Sheet 8-3-18.pdf
131K



Merlo Lot 12 Marina Bay

Contract Amount	\$	625,000.00
Grading Addition. Removing 3 more ft of dirt	\$	3,200.00 PAID 5-11-18
Haul Dirt		
Additional Windows Email 5-22 email	\$	11,030.00
Insulation Foam	\$	1,470.00
Master Bath Window	\$	2,305.00
Volume Controls	\$	525.00
Overage Can allowance	\$	2,550.00
200 amp service	\$	1,750.00
Electrical to dock, etc	\$	1,850.00
Keeping Chimney (Rock/Cap/Venting)		
Payment(s)	8/3/2018	\$ (43,750.00)
Payment(s)	7/9/2018	\$ (93,750.00)
Payment(s)	3/2/2018	\$ (43,750.00)
Payment(s)	5/13/2018	\$ (3,200.00) CM
Payment(s)	5/7/2018	\$ (68,750.00)
Balance		\$ 396,480.00

Changes made to plan after contract (SUBJECT TO ADDED COST)

	<u>Subject</u>	<u>Cost</u>	<u>Notes</u>
1	Addition Driveway		Based off revised site plan Cost TBD
2	Added Cabinets/Appliances		These were added in Final plans Cost TBD
3	Added Sq Footage		Additional Sq footage was added when final plans revised TBD if any additional cost
4	Added Sink in 2nd bath		Addition Sink added in 2nd bath when plans revised TBD if any additional cost



John Montgomery <john@lbibuilders.com>

Balance sheet

1 message

John Montgomery <john@lbibuilders.com>

Thu, Sep 27, 2018 at 1:56 PM

To: Christopher J Merlo <chris@upstatecommercialgroup.com>

Attached is the balance sheet showing the latest draw payment for your records. Thank you

Jm

Balance Sheet.pdf
129K

Merlo Lot 12 Marina Bay

Contract Amount	\$	625,000.00
Grading Addition. Removing 3 more ft of dirt	\$	3,200.00
Haul Dirt		
Additional Windows Email 5-22 email	\$	11,030.00
Insulation Foam	\$	1,470.00
Master Bath Window	\$	2,305.00
Volume Controls	\$	525.00
Overage Can allowance	\$	2,550.00
200 amp service	\$	1,750.00
Electrical to dock, etc	\$	1,850.00
Keeping Chimney (Rock/Cap/Venting)	\$	1,400.00
Metal Roof	\$	1,440.00
Payment(s)	\$	(7,500.00) CM
Payment(s)	\$	(43,750.00)
Payment(s)	\$	(93,750.00)
Payment(s)	\$	(43,750.00)
Payment(s)	\$	(3,200.00) CM
Payment(s)	\$	(68,750.00)
Payment(s)	\$	(87,500.00)
Balance	\$	304,320.00

Changes made to plan after contract (SUBJECT TO ADDED COST)

<u>Subject</u>	<u>Cost</u>	<u>Notes</u>
1 Addition Driveway		Based off revised site plan Cost TBD

- 2 Added Cabinets/Appliances
- 3 Added Sq Footage
- 4 Added Sink in 2nd bath

These were added in Final plans Cost TBD
Additional Sq footage was added when final plans revised
TBD if any additional cost
Addition Sink added in 2nd bath when plans revised
TBD if any additional cost



John Montgomery <john@ibibuilders.com>

Balance sheet and Front Door

1 message

John Montgomery <john@ibibuilders.com>
To: chris.upstatecommercialgroup@gmail.com

Wed, Oct 24, 2018 at 10:01 AM

Chris,

Attached is the balance sheet showing both the latest payments. Thank you!!

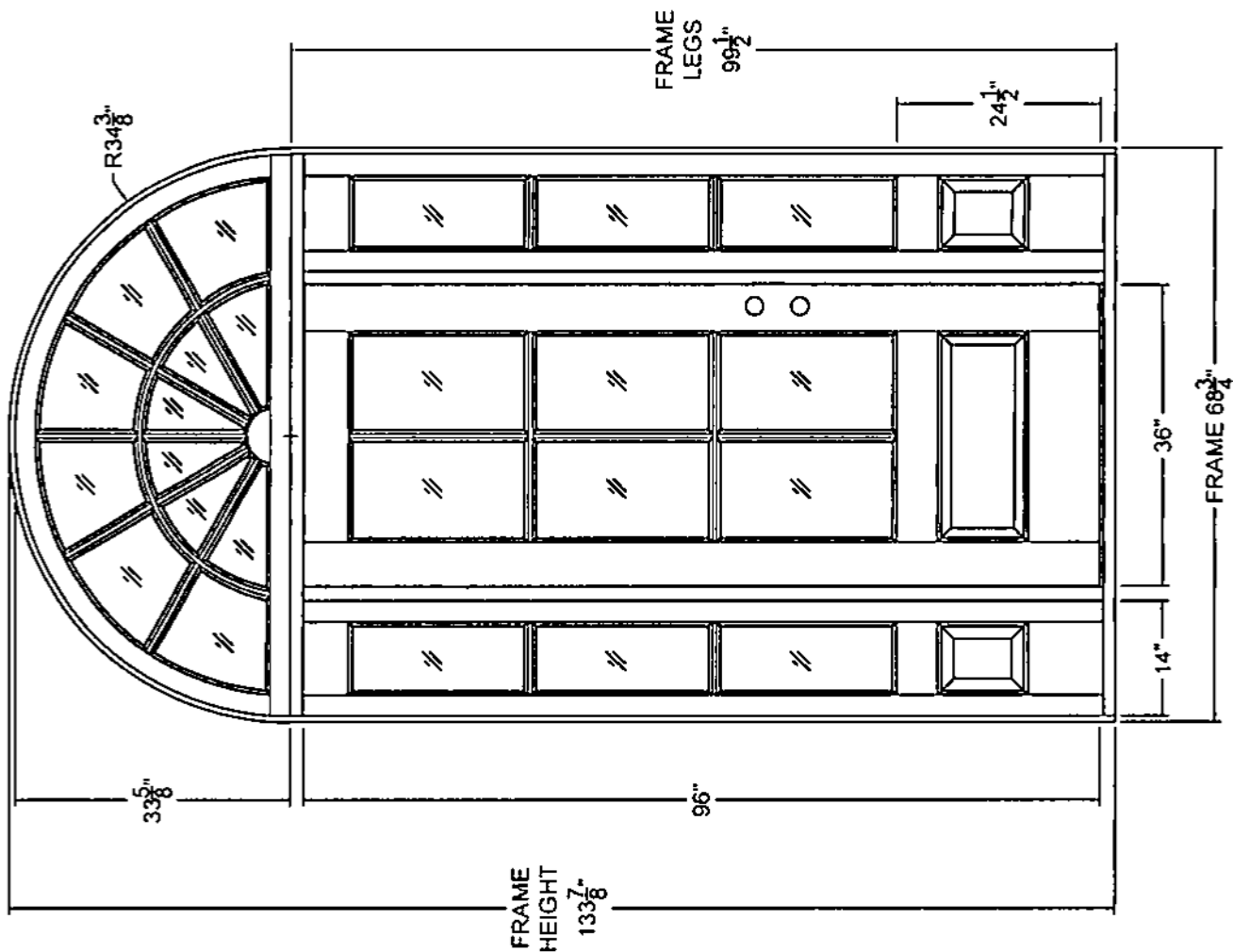
Also, attached is the front door (again). As you can see this is 8'. Going to 8' actually takes over \$475. Which is actual cost and we are taking care of the cost of the other door that is custom and can not be returned. In short yoders is helping and we are helping for the mix up prior and you are getting \$5k door for \$475 extra. This is almost identical to what is there now just larger.

let me know so we can order by this week.

2 attachments

Merlo Door Revised.pdf
58K

Balance Sheet.pdf
129K



GLASS TYPE
CLEAR BEVEL IG LOW-E

RO: 70" X 134-7/8"

www.southwooddoors.com

YODERS		PO # : N/A
		ORDER # : N/A
		SALES PERSON : ETHAN
		DRAWN BY : JUSTIN
30 X 80 ANDALUCIA 6LT TDL SQ TOP		DATE : 10/22/18
SIGNATURE FOR APPROVAL :		



SOUTHWOOD DOORS

Merlo Lot 12 Marina Bay

Contract Amount	\$	625,000.00
Grading Addition. Removing 3 more ft of dirt	\$	3,200.00
Haul Dirt		
Adtional Windows Email 5-22 email	\$	11,030.00
Insulation Foam	\$	1,470.00
Master Bath Window	\$	2,305.00
Volume Controls	\$	525.00
Overage Can allowance	\$	2,550.00
200 amp service	\$	1,750.00
Electrical to dock, etc	\$	1,850.00
Keeping Chimney (Rock/Cop/Venting)	\$	1,400.00
Metal Roof	\$	1,440.00
Payment(s)		
10/23/2018	\$	(5,000.00) CM
Payment(s)	\$	(75,000.00)
10/19/2018	\$	(87,500.00)
Payment(s)	\$	(7,500.00) CM
8/8/2018	\$	(43,750.00)
Payment(s)	\$	(93,750.00)
8/3/2018	\$	(43,750.00)
Payment(s)	\$	(3,200.00) CM
7/9/2018	\$	(68,750.00)
3/2/2018	\$	
Payment(s)	\$	
5/13/2018	\$	
Payment(s)	\$	
5/7/2018	\$	
Balance	\$	224,320.00

Changes made to plan after contract (SUBJECT TO ADDED COST)

Subject	Cost	Notes
1 Addition Driveway		Based off revised site plan Cost TBD
2 Added Cabinets/Appliances		These were added in Final plans Cost TBD
3 Added Sq Footage		Additional Sq footage was added when final plans revised
4 Added Sink in 2nd bath		TBD if any additional cost
		Addition Sink added in 2nd bath when plans revised
		TBD if any additional cost



John Montgomery <john@ibbuilders.com>

balance sheet

1 message

John Montgomery <john@ibbuilders.com>

Tue, Feb 12, 2019 at 7:14 AM

To: chris merlo <screntalspace@gmail.com>, greg greg <greg@ibbuilders.com>

Chris,

I will get that signed moved or replaced today or tomorrow. Attached, is the balance sheet. I know you sent some payments in the past, can you update us on the other items. Greg and i have been somewhat slack on this part, just don't want some clients getting too far out.

Thank you sir.

Jm

 Balance Sheet.pdf
105K

Merlo Lot 12 Maria Bay

Contract Amount:	\$	675,000.00
Grading Addition. Removing 3 more ft of dirt	\$	3,700.00
Haul Dirt	Pending	
Additional Windows Email 5-22 email	\$	11,000.00
Insulation	\$	1,470.00
Master Bath Window	\$	2,305.00
Volume Controls	\$	525.00
Overage Can allowance	\$	2,550.00
200 amp service	\$	1,750.00
Electrical to dock, etc	\$	1,850.00
Keeping Chimney (mer/kay/mw/mg)	\$	1,400.00
Metal Roof	\$	1,440.00
Front Door	\$	475.00
Stairs to Bonus room	\$	1,800.00
Vinyl flooring in Kitch/nec room vs carpet	\$	2,194.00
Stain doors & Fire Rated	\$	3,691.00
Pocket door Basement	\$	330.00
T & G Kitchen	\$	2,650.00
Fort Hill Gas Co.	\$	450.00
Running line	Pending	
Staining Each Door \$45 Each	\$	13,550.00
Cabinet	\$	320.00
Extra doors added in Basement	Pending	
Making Theater room larger	\$	855.00
Upgrade Trim (size)	\$	480.00
Newell Post	\$	1,200.00
Frame New Deck (deck flooring not included or rail)	\$	3,400.00
Additional Trim Install above windows	\$	3,785.00
The Overage allowance	\$	825.00
Accent details on the shower walls	\$	460.00
Special order freight on flooring selections	Pending	
Barn Doors	\$	1,533.00
The overage, misc master shower walls see notes	\$	5,890.00
Copper Hood Order		

This includes \$600 deduction and free desk

Subitem	Cost	Notes
1 Addition Driveway	\$ (5,000.00) CM	Based off revised site plan Cost TBD
2 Added Cabinets/Appliances	\$ (75,000.00)	These were added in final plans Cost TBD
3 Added Sq Footage	\$ (87,500.00) CM	Additional Sq footage was added when final plans revised
4 Added Slnk in 2nd bath	\$ (7,500.00) CM	TBD if any additional cost
	\$ (43,750.00)	Addition Slnk added in 2nd bath when plans revised
	\$ (93,750.00)	TBD if any additional cost
	\$ (43,750.00) CM	
	\$ (3,200.00) CM	
	\$ (58,750.00)	
	\$ 266,708.00	



John Montgomery <john@ibibuilders.com>

Re: Paint

1 message

John Montgomery <john@ibibuilders.com>
To: chris merlo <screntalspace@gmail.com>

Fri, Aug 9, 2019 at 2:58 PM

See attached balance sheet

On Thu, Aug 8, 2019 at 5:25 PM chris merlo <screntalspace@gmail.com> wrote:
John-

If we can paint the 2 creamy walls in the living-room Antique White, the only paint remaining will be touch up.

The electricians did ask me about the remaining lights. There are 2 hallway sconces missing & lights for garage, closets, workshop, etc. Otherwise, electrical is coming along.

Also attached the Aug Re-work schedule. We initially had 4 pages & now down to 1, heading in the right direction. Thanks again for the assistance.

If I could trouble you to send over the balance sheet of funds owed. My lender has begun the final paperwork & as soon as the c/o is available, the appraiser will come out within 7 days.

On Thu, Aug 8, 2019 at 2:56 PM John Montgomery <john@ibibuilders.com> wrote:

Yes.. I understand. Attached is the paint schedule (only schedule) we were given, which we in turn provide to the painters. Therefore that is what we go off of. Therefore when request are made to change without sending me the updated schedule prior to paint install, createa the communication issue we are having. If there are any other paint changes going forward (or stain) please send to me and not do so verbally. From experience, this is the only way we can ensure accuracy and save change request cost. I have passed along the new information now, so hopefully all is good.

On Thu, Aug 8, 2019 at 1:13 PM chris merlo <screntalspace@gmail.com> wrote:
John-

I hope you can assist on painting 2 living-room walls to Antique White.

The painters mis-painted the following rooms & we have agreed to accept them to save time & re-work.

Room above Garage-Should have been Snowfall but is Creamy
M. Bathroom-Should have been Pewter but painted Tin Lizzie
2nd Master-Was painted Pewter & should not have been touched but got painted Antique White
Several closets & hallways that we will simply accept
Coffered Ceiling from original paint schedule

Greg Sr is really making a valiant effort & we figured we better role with the tide a little here.

On Thu, Aug 8, 2019 at 11:57 AM John Montgomery <john@ibibuilders.com> wrote:

Chris,
Im told there are some paint color changes for Living Room.. please send that to me via email, to avoid confusion. THank you sir.

Jm

--

With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

--

With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

 Balance Sheet.xlsx
16K

PLAINTIFF'S
EXHIBIT

26

Merlo Lot 12 Marina Bay

Contract Amount	\$	625,000.00
Grading Addition. Removing 3 more ft of dirt	\$	3,200.00
Haul Dirt	Pending	
Adtional Windows Email 5-22 email	\$	11,030.00
Insulation Foam	\$	1,470.00
Master Bath Window	\$	2,305.00
Volume Controls	\$	525.00
Overage Can allowance	\$	2,550.00
200 amp service	\$	1,750.00
Electrical to dock, etc	\$	1,850.00
Keeping Chimney (Rock/Cap/Venting)	\$	1,400.00
Metal Roof	\$	1,440.00
Front Door	\$	475.00
Stairs to Bonus room Hardwoods now	\$	1,800.00
Vinyl flooring in Kitch/rec room vs vs carpet	\$	2,194.00
Stain doors & Fire Rated	\$	3,691.00
Pocket door Basement	\$	330.00
T & G kitchen	\$	2,650.00
Staining Each Door \$45 Each	Pending	
Cabinet See email 11-8-18	\$	13,550.00 This includes \$600 deduction
Extra doors added in Basement	\$	320.00 and free desk
Making Theater room larger	Pending	
Upgrade Trim (size)	\$	855.00
Newell Post	\$	480.00
Frame New Deck (deck flooring not included or rail)	\$	1,200.00
Additional Trim install above windows	\$	1,400.00
Tile Overage allowance	\$	3,785.00 See email DEC 17
Accent details on the shower walls	\$	825.00
Special order freight on flooring selections	\$	460.00
Barn Glass Door Slab	\$	482.00
Tile overage, misc master shower walls see notes	\$	1,533.00 See Email DEC 17
Copper Hood Order	\$	5,890.00

MERLO 00192

Deck Flooring for extra deck to connect	\$	640.00	
Pine door basement under front porch basement	\$	1,142.00	
Extra Outlets In kitche	\$	200.00	See CSC Inv 61 4.24.19
Extra under cabinet lighting Basement	\$	250.00	
Basement Flooring (carpet contract) NOT INCL. LARGER MEDIA	\$	4,764.00	
Boulder Walls	\$	39,000.00	
Adding LVT in Wine room	\$	450.00	
Granite for Basement kitchen	\$	2,958.00	
Driveway	\$	3,500.00	
Re Do Stair	\$	2,924.00	
Landscape Overage (Landscape Lights)	Pending		
Ship Lap	\$	700.00	
Dimmers Material and Labor	\$	175.00	
Deck extension Flooring and Rail	Pending		

Payment(s)	6/27/2019	\$	(62,410.00)
Payment(s)	3/18/2019	\$	(75,090.00)
Payment(s)	2/19/2019	\$	(10,000.00) CM
Payment(s)	10/23/2018	\$	(5,000.00) CM
Payment(s)	10/19/2018	\$	(75,000.00)
Payment(s)	9/12/2018	\$	(87,500.00)
Payment(s)	8/8/2018	\$	(7,500.00) CM
Payment(s)	8/3/2018	\$	(43,750.00)
Payment(s)	7/9/2018	\$	(93,750.00)
Payment(s)	3/2/2018	\$	(43,750.00)
Payment(s)	5/13/2018	\$	(3,200.00) CM
Payment(s)	5/7/2018	\$	(68,750.00)

	<u>Subject</u>	<u>Cost</u>	<u>Notes</u>
1	Addition Driveway		Based off revised site plan Cost TBD
2	Added Cabinets/Appliances		These were added in Final plans Cost TBD
3	Added Sq Footage		Additional Sq footage was added when final plans revised

4 Added Sink in 2nd bath

TBD if any additional cost
Addition Sink added in 2nd bath when plans revised
TBD if any additional cost

MERLO 00194

Specialty Balance

Garage door

Palmetto Inv. 24894

\$ 3,600.50

\$ 6,615.16

Plumbing Balance

Ferguson Sinks

Trim Inv 6139241

Trim Inv 6139241-1

\$ 1,464.27

\$ 11,214.94

\$ 251.49

3 Invoices 7-2-19

\$ 10,215.66

\$ 12,930.70

Electrical Trim Balance

Greer Lighting Inv 7901

\$ 377.15



John Montgomery <john@ibuilders.com>

Re: Merlo Boulder Wall

1 message

John Montgomery <john@ibuilders.com>

Tue, Apr 30, 2019 at 8:00 AM

To: chris merlo <screntalspace@gmail.com>

Cc: greg greg <greg@ibuilders.com>

See attached balance sheet.

Ok, we discussed this and pondered how we can do this. The only way we can do this is to have a personal guaranteed signed and some sort of letter from the bank showing approval for this (and/or balance overage). (None of us know what the bank appraisal will be) Believe me this is not a personal direction, simply we have to have some source of protection more so confirmation of payment forthcoming. I hope you understand, it is a lot of money to cover and it is very, very difficult for us to do so, but willing to absorb the pressure to move forward. Furthermore, I am certain there is more going to be added in regards to landscaping, plumbing overages, etc.

If you are in agreement with this, I will get a doc over to you to sign and you see if you can get something from the bank. If so, I went ahead and scheduled meeting (this Friday) with our worker to layout wall(s) per landscape plan and determine when he can start and schedule boulder delivery. Also, I should have your landscape quote back by then.

What is your thoughts?

Jm

On Mon, Apr 29, 2019 at 12:31 PM chris merlo <screntalspace@gmail.com> wrote:

John-

We initially put a large amount down with the lender prior to beginning construction. The HELOC should be \$130,000-\$150,000 depending on the final appraisal.

(Can I trouble you to send an updated Balance Sheet on the project)

On Mon, Apr 29, 2019 at 10:22 AM John Montgomery <john@ibuilders.com> wrote:

Chris,

I am glad you like the walls. We would love to do the same, I am just not sure how we can carry this considering there is overage balance currently around \$46k. Do you know what amount your HELOC is going to be from the bank. ?

On Sat, Apr 27, 2019 at 2:19 PM chris merlo <screntalspace@gmail.com> wrote:

John-

We were able to view the wall at Terry Steel's house & it is obviously a great looking wall (or should I say 5 walls). The boulders create a natural transition into the landscape.

I think you have convinced me that the way to handle it is to allow your crew to build it with Greg's oversight.

My lender is ready to pull the trigger on the Heloc loan to get our balance settled but that will require a final appraisal. I can request the appraisal now out 60 days but I anticipate the project may extend beyond June. We will require those funds to satisfy the price tag of the boulder wall which is much higher than initially anticipated. As a professional courtesy, consider placing the costs of the boulder wall on our balance sheet to expedite completion. If you would like to confirm the lender's commitment to the heloc funds, simply contact Laura Thompson at GrandSouth Bank, she can be reached at 864-622-0602.

Nikki & I appreciate the value you & Greg have brought to the project. It is refreshing to see

subcontractors working daily to reach the finish line.

—

With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

--

With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

 Balance Sheet.pdf
108K

PLAINTIFF'S
EXHIBIT

#28

Merlo Lot 12 Marina Bay

Contract Amount	\$	625,000.00	Specialty Balance
Grading Addition. Removing 3 more ft of dirt	\$	3,200.00	
Haul Dirt	Pending		
Adtional Windows Email 5-22 email	\$	11,030.00	
Insulation Foam	\$	1,470.00	
Master Bath Window	\$	2,305.00	
Volume Controls	\$	525.00	
Overage Can allowance	\$	2,550.00	
200 amp service	\$	1,750.00	
Electrical to dock, etc	\$	1,850.00	
Keeping Chimney (Rock/Cap/Venting)	\$	1,400.00	
Metal Roof	\$	1,440.00	
Front Door	\$	475.00	
Stairs to Bonus room Hardwoods now	\$	1,800.00	
Vinyl flooring in Kitch/rec room vs vs carpet	\$	2,194.00	
Stain doors & Fire Rated	\$	3,691.00	
Pocket door Basement	\$	330.00	
T & G Kitchen	\$	2,650.00	
Staining Each Door \$45 Each	Pending		
Cabinet See email 11-8-18	\$	13,550.00	This includes \$600 deduction
Extra doors added in Basement	\$	320.00	and free desk
Making Theater room larger	Pending		
Upgrade Trim (size)	\$	855.00	
Newell Post	\$	480.00	
Frame New Deck (deck flooring not included or rail)	\$	1,200.00	
Additional Trim Install above windows	\$	1,400.00	
Tile Overage allowance	\$	3,785.00	See email DEC 17
Accent details on the shower walls	\$	825.00	
Special order freight on flooring selections	\$	460.00	
Barn Glass Door Slab	\$	482.00	
Tile overage, misc master shower walls see notes	\$	1,533.00	See Email DEC 17
Copper Hood Order	\$	5,890.00	

Deck Flooring for extra deck to connect	\$	640.00
Pine door basement under front porch basement	\$	1,142.00
Extra Outlets in kitche	\$	200.00 See CSC Inv 61 4.24.19
Extra under cabinet lighting	\$	250.00

Payment(s)	3/18/2019	\$	(75,090.00)
Payment(s)	2/19/2019	\$	(10,000.00) CM
Payment(s)	10/23/2018	\$	(5,000.00) CM
Payment(s)	10/19/2018	\$	(75,000.00)
Payment(s)	9/12/2018	\$	(87,500.00)
Payment(s)	8/8/2018	\$	(7,500.00) CM
Payment(s)	8/3/2018	\$	(43,750.00)
Payment(s)	7/9/2018	\$	(93,750.00)
Payment(s)	3/2/2018	\$	(43,750.00)
Payment(s)	5/13/2018	\$	(3,200.00) CM
Payment(s)	5/7/2018	\$	(68,750.00)
		\$	183,382.00

Subject	Cost	Notes
1 Addition Driveway		Based off revised site plan Cost TBD
2 Added Cabinets/Appliances		These were added in Final plans Cost TBD
3 Added Sq Footage		Additional Sq footage was added when final plans revised TBD if any additional cost
4 Added Sink in 2nd bath		Addition Sink added in 2nd bath when plans revised TBD if any additional cost



John Montgomery <john@ibibuilders.com>

Merlo Boulder Wall

1 message

chris merlo <screntalspace@gmail.com>

Sat, Apr 27, 2019 at 2:18 PM

To: John Montgomery <john@ibibuilders.com>, Nikki <screntalspace2@gmail.com>, greg greg <greg@ibibuilders.com>

John-

We were able to view the wall at Terry Steel's house & it is obviously a great looking wall (or should I say 5 walls). The boulders create a natural transition into the landscape.

I think you have convinced me that the way to handle it is to allow your crew to build it with Greg's oversight.

My lender is ready to pull the trigger on the Heloc loan to get our balance settled but that will require a final appraisal. I can request the appraisal now out 60 days but I anticipate the project may extend beyond June. We will require those funds to satisfy the price tag of the boulder wall which is much higher than initially anticipated. As a professional courtesy, consider placing the costs of the boulder wall on our balance sheet to expedite completion. If you would like to confirm the lender's commitment to the heloc funds, simply contact Laura Thompson at GrandSouth Bank, she can be reached at 864-622-0602.

Nikki & I appreciate the value you & Greg have brought to the project. It is refreshing to see subcontractors working daily to reach the finish line.

--

With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384



John Montgomery <john@ibibuilders.com>

Re: Merlo Boulder Wall

1 message

John Montgomery <john@ibibuilders.com>

Wed, May 1, 2019 at 5:18 PM

To: chris merlo <screntalspace@gmail.com>

Cc: greg greg <greg@ibibuilders.com>

Attached is the personal guarantee form. Again, just in the event something would happen to you and nothing personal at all. Just a lot of money for us to put up. One pager. If there is anything currently in question (on the balance sheet) please email me this week to answer. As soon as you get the appraisal, you should be able to get something from the Bank approving HELOC and you can send that over then. Again, we are meeting Friday to discuss material availability and start date and will let you know.

Jm

On Tue, Apr 30, 2019 at 1:30 PM chris merlo <screntalspace@gmail.com> wrote:

John-

Thank you for working out the details. I take great comfort in knowing the boulder wall will be done correctly & IBI will control all the moving pieces involved. I trust this may save us some time as well.

On the personal guarantee, I will be glad to sign it confirming the details of our agreement. The lender has given me several options to access the equity & I would never over-commit our position. A final appraisal is required because the prior appraisal dates over 12 months ago.

On Tue, Apr 30, 2019 at 8:00 AM John Montgomery <john@ibibuilders.com> wrote:

See attached balance sheet.

Ok, we discussed this and pondered how we can do this. The only way we can do this is to have a personal guaranteed signed and some sort of letter from the bank showing approval for this (and/or balance overage). (None of us know what the bank appraisal will be) Believe me this is not a personal direction, simply we have to have some source of protection more so confirmation of payment forthcoming. I hope you understand, it is a lot of money to cover and it is very, very difficult for us to do so, but willing to absorb the pressure to move forward. Furthermore, I am certain there is more going to be added in regards to landscaping, plumbing overages, etc.

If you are in agreement with this, I will get a doc over to you to sign and you see if you can get something from the bank. If so, I went ahead and scheduled meeting (this Friday) with our worker to layout wall(s) per landscape plan and determine when he can start and schedule boulder delivery. Also, I should have your landscape quote back by then.

What is your thoughts?

Jm

On Mon, Apr 29, 2019 at 12:31 PM chris merlo <screntalspace@gmail.com> wrote:

John-

We initially put a large amount down with the lender prior to beginning construction. The HELOC should be \$130,000-\$150,000 depending on the final appraisal.

(Can I trouble you to send an updated Balance Sheet on the project)

On Mon, Apr 29, 2019 at 10:22 AM John Montgomery <john@ibibuilders.com> wrote:

Chris,

I am glad you like the walls. We would love to do the same, I am just not sure how we can carry this considering there is overage balance currently around \$46k. Do you know what amount your HELOC is

going to be from the bank. ?

On Sat, Apr 27, 2019 at 2:19 PM chris merlo <screntalspace@gmail.com> wrote:

John-

We were able to view the wall at Terry Steel's house & it is obviously a great looking wall (or should I say 5 walls). The boulders create a natural transition into the landscape.

I think you have convinced me that the way to handle it is to allow your crew to build it with Greg's oversight.

My lender is ready to pull the trigger on the Heloc loan to get our balance settled but that will require a final appraisal. I can request the appraisal now out 60 days but I anticipate the project may extend beyond June. We will require those funds to satisfy the price tag of the boulder wall which is much higher than initially anticipated. As a professional courtesy, consider placing the costs of the boulder wall on our balance sheet to expedite completion. If you would like to confirm the lender's commitment to the heloc funds, simply contact Laura Thompson at GrandSouth Bank, she can be reached at 864-622-0602.

Nikki & I appreciate the value you & Greg have brought to the project. It is refreshing to see subcontractors working daily to reach the finish line.

--
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

--
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

--
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

 Personal Guarantee.pdf
20K



It is understood that Mr. & Mrs. Merlo (guarantor) are seeking a separate resource for funding the additional items agreed to be added to the construction of the home located at 548 Mountain View Lane lot 12 in Marina Bay. The current conventional construction loan does not cover the current overages due to Montgomery Holdings, dba IBI Builders (MHIBI) and a HELOC is being sourced to fund the current balance of overages. The following is the obligations of the guarantor:

OBLIGATIONS GUARANTEED. Guarantor irrevocably, absolutely, and unconditionally guaranties to MHIBI the full and punctual performance of the following (the "Obligations"):

- Full payment of all additional items, (AKA change orders, allowances overages,) notated on the balance sheet as well as remaining contract balance of construction.
- Balance sheet as of 4-30-19 consist of a total balance of \$183,382.
- Understood that other items will be added to the sheet such as Boulder Retaining walls, plumbing overages etc. and these approved additional item(s) will also be obligated under this said guarantee
- Full payment of this obligation will be made prior to move in completion of home and or Certificate of Occupancy request. (SEE CONTRACT FOR ALLOWED MONIES TO HOLD FOR PUNCH LIST COMPLETION)
- Guarantor will inform MHIBI of payments forthcoming and will update any change of status.

Guarantor shall remain liable until all terms of the Obligations are fully performed via final and total payment. This Guaranty remains enforceable regardless of any defenses that the Guarantor may assert on the Obligations, including but not limited to, failure of consideration, breach of warranty, fraud, statute of frauds, bankruptcy, lack of legal capacity, statute of limitations, lender liability, accord and satisfaction. If this Guaranty is given to an attorney for enforcement, Guarantor will reimburse MHIBI for all expenses incurred in connection with enforcement including without limitation, reasonable attorneys' fees.

This is a NON-TRANSFERRABLE guarantee for either party. In such event as death, bankruptcy or unforeseen health condition, the guarantee remains enforceable to the guarantor and or trust.

NAME (PRINT): _____

DATE: 5-3-19

SS#: _____

Name (SIGNATURE) _____



John Montgomery <john@ibbuilders.com>

Re: Merlo Boulder Wall

1 message

chris merlo <screntalspace@gmail.com>

Fri, May 3, 2019 at 4:55 PM

To: John Montgomery <john@ibbuilders.com>

John-

Please find the signed guarantee attached.

The only item I don't recognize on the balance sheet is "Pine Basement Door under front porch basement"

The door was initially installed & then the painters mistakenly painted it whereas all the doors should be stained.

The door will actually be concealed by a cabinet Mark Ladd is installing in front of it so if its painted, no worries, we can live with it.

On Wed, May 1, 2019 at 5:19 PM John Montgomery <john@ibbuilders.com> wrote:

Attached is the personal guarantee form. Again, just in the event something would happen to you and nothing personal at all. Just a lot of money for us to put up. One pager. If there is anything currently in question (on the balance sheet) please email me this week to answer. As soon as you get the appraisal, you should be able to get something from the Bank approving HELOC and you can send that over then. Again, we are meeting Friday to discuss material availability and start date and will let you know.

Jm

On Tue, Apr 30, 2019 at 1:30 PM chris merlo <screntalspace@gmail.com> wrote:

John-

Thank you for working out the details. I take great comfort in knowing the boulder wall will be done correctly & IBI will control all the moving pieces involved. I trust this may save us some time as well.

On the personal guarantee, I will be glad to sign it confirming the details of our agreement.

The lender has given me several options to access the equity & I would never over-commit our position.

A final appraisal is required because the prior appraisal dates over 12 months ago.

On Tue, Apr 30, 2019 at 8:00 AM John Montgomery <john@ibbuilders.com> wrote:

See attached balance sheet.

Ok, we discussed this and pondered how we can do this. The only way we can do this is to have a personal guaranteed signed and some sort of letter from the bank showing approval for this (and/or balance overage). (None of us know what the bank appraisal will be) Believe me this is not a personal direction, simply we have to have some source of protection more so confirmation of payment forthcoming. I hope you understand, it is a lot of money to cover and it is very, very difficult for us to do so, but willing to absorb the pressure to move forward. Furthermore, I am certain there is more going to be added in regards to landscaping, plumbing overages, etc.

If you are in agreement with this, I will get a doc over to you to sign and you see if you can get something from the bank. If so, I went ahead and scheduled meeting (this Friday) with our worker to layout wall(s) per landscape plan and determine when he can start and schedule boulder delivery. Also, I should have your landscape quote back by then.

What is your thoughts?

Jm

On Mon, Apr 29, 2019 at 12:31 PM chris merlo <screntalspace@gmail.com> wrote:

John-

We initially put a large amount down with the lender prior to beginning construction. The HELOC should be

\$130,000-\$150,000 depending on the final appraisal.
(Can I trouble you to send an updated Balance Sheet on the project)

On Mon, Apr 29, 2019 at 10:22 AM John Montgomery <john@ibibuilders.com> wrote:
Chris,

I am glad you like the walls. We would love to do the same, I am just not sure how we can carry this considering there is overage balance currently around \$46k. Do you know what amount your HELOC is going to be from the bank. ?

On Sat, Apr 27, 2019 at 2:19 PM chris merlo <screntalspace@gmail.com> wrote:
John-

We were able to view the wall at Terry Steel's house & it is obviously a great looking wall (or should I say 5 walls). The boulders create a natural transition into the landscape.

I think you have convinced me that the way to handle it is to allow your crew to build it with Greg's oversight.

My lender is ready to pull the trigger on the Heloc loan to get our balance settled but that will require a final appraisal. I can request the appraisal now out 60 days but I anticipate the project may extend beyond June. We will require those funds to satisfy the price tag of the boulder wall which is much higher than initially anticipated. As a professional courtesy, consider placing the costs of the boulder wall on our balance sheet to expedite completion. If you would like to confirm the lender's commitment to the heloc funds, simply contact Laura Thompson at GrandSouth Bank, she can be reached at 864-622-0602.

Nikki & I appreciate the value you & Greg have brought to the project. It is refreshing to see subcontractors working daily to reach the finish line.

—
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

—
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

—
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

--
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

 IBI Guarantee.pdf
605K



It is understood that Mr. & Mrs. Merlo (guarantor) are seeking a separate resource for funding the additional items agreed to be added to the construction of the home located at 548 Mountain View Lane lot 12 in Marina Bay. The current conventional construction loan does not cover the current overages due to Montgomery Holdings, dba IBI Builders (MHIBI) and a HELOC is being sourced to fund the current balance of overages. The following is the obligations of the guarantor:

OBLIGATIONS GUARANTEED. Guarantor irrevocably, absolutely, and unconditionally guaranties to MHIBI the full and punctual performance of the following (the "Obligations"):

- Full payment of all additional items, (AKA change orders, allowances overages,) notated on the balance sheet as well as remaining contract balance of construction.
- Balance sheet as of 4-30-19 consist of a total balance of \$183,382.
- Understood that other items will be added to the sheet such as Boulder Retaining walls, plumbing overages etc. and these approved additional item(s) will also be obligated under this said guarantee
- Full payment of this obligation will be made prior to move in completion of home and or Certificate of Occupancy request. (SEE CONTRACT FOR ALLOWED MONIES TO HOLD FOR PUNCH LIST COMPLETION)
- Guarantor will inform MHIBI of payments forthcoming and will update any change of status.

Guarantor shall remain liable until all terms of the Obligations are fully performed via final and total payment. This Guaranty remains enforceable regardless of any defenses that the Guarantor may assert on the Obligations, including but not limited to, failure of consideration, breach of warranty, fraud, statute of frauds, bankruptcy, lack of legal capacity, statute of limitations, lender liability, accord and satisfaction. If this Guaranty is given to an attorney for enforcement. Guarantor will reimburse MHIBI for all expenses incurred in connection with enforcement including without limitation, reasonable attorneys' fees.

This is a NON-TRANSFERRABLE guarantee for either party. In such event as death, bankruptcy or unforeseen health condition, the guarantee remains enforceable to the guarantor and or trust.

NAME (PRINT): CHRIS MERLO

DATE: 5-3-19

SS#: 202 97 9889

Name (SIGNATURE)

Chris Merlo



John Montgomery <john@ibbuilders.com>

Re: Merlo Boulder Wall

1 message

chris merlo <screntalspace@gmail.com>

Mon, May 6, 2019 at 7:11 PM

To: John Montgomery <john@ibbuilders.com>

John-

Now that you remind me of the details, you are correct on the door.
Originally, the plan did not include access under the porch or a door.
I think we own that up-charge.

On Mon, May 6, 2019 at 11:32 AM John Montgomery <john@ibbuilders.com> wrote:

Thank you Chris... We have schedule the boulder walls, guys will start end of next week.. (We had to order the wall material they were short some in stock).

Regarding the door (call Greg to discuss, as he understand this one better) What I am understanding is that this was not on the plan and it had to be weather stripped door (such as the garage entry) and it is all solid pine. Again call Greg and he will let me know if something needs to be changed, sorry for any confusion

Jm

On Fri, May 3, 2019 at 4:55 PM chris merlo <screntalspace@gmail.com> wrote:

John-

Please find the signed guarantee attached.

The only item I don't recognize on the balance sheet is "Pine Basement Door under front porch basement"

The door was initially installed & then the painters mistakenly painted it whereas all the doors should be stained.

The door will actually be concealed by a cabinet Mark Ladd is installing in front of it so if its painted, no worries, we can live with it.

On Wed, May 1, 2019 at 5:19 PM John Montgomery <john@ibbuilders.com> wrote:

Attached is the personal guarantee form. Again, just in the event something would happen to you and nothing personal at all. Just a lot of money for us to put up. One pager. If there is anything currently in question (on the balance sheet) please email me this week to answer. As soon as you get the appraisal, you should be able to get something from the Bank approving HELOC and you can send that over then. Again, we are meeting Friday to discuss material availability and start date and will let you know.

Jm

On Tue, Apr 30, 2019 at 1:30 PM chris merlo <screntalspace@gmail.com> wrote:

John-

Thank you for working out the details. I take great comfort in knowing the boulder wall will be done correctly &

IBI will control all the moving pieces involved. I trust this may save us some time as well.

On the personal guarantee, I will be glad to sign it confirming the details of our agreement.

The lender has given me several options to access the equity & I would never over-commit our position.

A final appraisal is required because the prior appraisal dates over 12 months ago.

On Tue, Apr 30, 2019 at 8:00 AM John Montgomery <john@ibbuilders.com> wrote:

See attached balance sheet.

Ok, we discussed this and pondered how we can do this. The only way we can do this is to have a personal guaranteed signed and some sort of letter from the bank showing approval for this (and/or balance overage). (None of us know what the bank appraisal will be) Believe me this is not a personal

direction, simply we have to have some source of protection more so confirmation of payment forthcoming. I hope you understand, it is a lot of money to cover and it is very, very difficult for us to do so, but willing to absorb the pressure to move forward. Furthermore, I am certain there is more going to be added in regards to landscaping, plumbing overages, etc.

If you are in agreement with this, I will get a doc over to you to sign and you see if you can get something from the bank. If so, I went ahead and scheduled meeting (this Friday) with our worker to layout wall(s) per landscape plan and determine when he can start and schedule boulder delivery. Also, I should have your landscape quote back by then.

What is your thoughts?

Jm

On Mon, Apr 29, 2019 at 12:31 PM chris merlo <screntalspace@gmail.com> wrote:

John-

We initially put a large amount down with the lender prior to beginning construction. The HELOC should be \$130,000-\$150,000 depending on the final appraisal.

(Can I trouble you to send an updated Balance Sheet on the project)

On Mon, Apr 29, 2019 at 10:22 AM John Montgomery <john@ibibuilders.com> wrote:

Chris,

I am glad you like the walls. We would love to do the same, I am just not sure how we can carry this considering there is overage balance currently around \$46k. Do you know what amount your HELOC is going to be from the bank. ?

On Sat, Apr 27, 2019 at 2:19 PM chris merlo <screntalspace@gmail.com> wrote:

John-

We were able to view the wall at Terry Steel's house & it is obviously a great looking wall (or should I say 5 walls). The boulders create a natural transition into the landscape.

I think you have convinced me that the way to handle it is to allow your crew to build it with Greg's oversight.

My lender is ready to pull the trigger on the Heloc loan to get our balance settled but that will require a final appraisal. I can request the appraisal now out 60 days but I anticipate the project may extend beyond June. We will require those funds to satisfy the price tag of the boulder wall which is much higher than initially anticipated. As a professional courtesy, consider placing the costs of the boulder wall on our balance sheet to expedite completion. If you would like to confirm the lender's commitment to the heloc funds, simply contact Laura Thompson at GrandSouth Bank, she can be reached at 864-622-0602.

Nikki & I appreciate the value you & Greg have brought to the project. It is refreshing to see subcontractors working daily to reach the finish line.

—
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

—
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

—
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

—
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

—
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384



John Montgomery <john@ibibuilders.com>

Re: Finishing Up

1 message

chris merlo <screntalspace@gmail.com>
To: John Montgomery <john@ibibuilders.com>

Tue, Aug 20, 2019 at 4:21 PM

John-

I will request a draw with GrandSouth now.

On Tue, Aug 20, 2019 at 3:17 PM John Montgomery <john@ibibuilders.com> wrote:

CO should be obtainable by then. However, we have no control over the government sector, but we will push our best. Also, Can you please go ahead and request a draw inspection with bank and/or fund anything you can on your end as well. Thank you sir.

Jm

On Tue, Aug 20, 2019 at 11:58 AM chris merlo <screntalspace@gmail.com> wrote:

John-

Just a quick update on my final financing for the house.
My lender has opened paperwork & we are scheduled for appraisal
on September 16th. They will require c/o prior to appraisal.

I wanted to get started now so that I can fulfill my financial commitment promptly
upon completion.

Thank you for helping us finish it up.

--
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

--
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384



John Montgomery <john@ibibuilders.com>

Re: Back splash and Fireplace

1 message

chris merlo <screntalspace@gmail.com>

Mon, Aug 26, 2019 at 7:51 PM

To: John Montgomery <john@ibibuilders.com>

John-

That works on the backsplash.

Let's put it in.

On the mantel, we picked a simple one piece
that was priced at \$400. They are coming out this week to measure
& the quote should be available. The plan had floating shelves in the master bath
& I was going to to have Bree's include those in the quote.

On Mon, Aug 26, 2019 at 5:42 PM John Montgomery <john@ibibuilders.com> wrote:

Chris,

Hope all is well with you. The price for the down stairs kitchen back splash is \$1279. material an labor. Not bad...

Please let me know if you have any questions.

Jm

—
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384



John Montgomery <john@ibibuilders.com>

Re: CO

1 message

chris merlo <screntalspace@gmail.com>

Sat, Oct 12, 2019 at 7:24 AM

To: John M <john@ibibuilders.com>, Townes Johnson <tjohnson@sc.legal>

John-

I don't think a meeting will be necessary.

After careful consideration, I have decided to terminate my contract with IBI Builders effective immediately.

The contract began 11/16/17, and 695 days have passed, 2 years to build a house of 4000 SF.

It remains unfinished & the re-work required is extensive. I cannot in good conscience devote another year of my life to this partnership.

While I believe your team is very qualified, the contractors hired & decisions made on my project have been less than stellar. Mismanagement would be an understatement. The one shining light, Greg Sr. He has done more to benefit the project than anyone & I commend his ability.

Moving forward, please instruct all subcontractors to remain off the property. Security monitoring is enabled & video recording is active.

I truly hope we can come to some type of consensus regarding the financial component.

My advisors are telling me I may have overpaid already with the costs incurred on my side.

On Fri, Oct 11, 2019 at 6:17 PM John M <john@ibibuilders.com> wrote:

Friday will not work. Will be best to do sooner. Let me know what you have available.

John M

On Oct 11, 2019, at 3:56 PM, chris merlo <screntalspace@gmail.com> wrote:

John-

Sounds like a plan, let me know if next Friday will work & we can pencil it in.

On Fri, Oct 11, 2019 at 11:47 AM John Montgomery <john@ibibuilders.com> wrote:

Chris,

Lets plan a time to meet at our office next week. This is not part of what we agreed on and we are a little concerned working with quicken loans rep. I think if we can meet, we can an understanding in order. Let us know what works best for you next week.

Jm

On Thu, Oct 10, 2019 at 5:14 PM chris merlo <screntalspace@gmail.com> wrote:

John-

While I encouraged the lender to move forward, they are requesting a c/o as evidenced in their last email below.

In the meantime, if I could trouble you for a final balance sheet showing funds owed, that would be ideal.

Do you have a projected completion date on the project that I can offer the lender?

Hey Chris,

I got word back from the underwriter. He said once you have the certificate of occupancy, send it my way and we'll take things from there. They don't want to move forward with getting an appraiser out there until we have that.

Do you have an ETA on when everything will be completed and you have it? I know the whole project has been fairly drawn out since the start.

Talk soon. Thanks!

Tyler DeWitt

Mortgage Banker

(313) 545-1234 Direct

(800) 226-6308 x 51234

(864) 923-5210 Cell

(855) 902-1369 Fax

NMLS# 1719740

On Wed, Oct 9, 2019 at 6:11 PM John M <john@ibuilders.com> wrote:

Unfortunately we can not call for a CO until funds for balance owed is paid per contract. Rifi's do not require CO, so please get this worked out with the bank and let us know. If the bank can give us a letter of confirmation of Payment, we can possibly work with that.

John M

On Oct 9, 2019, at 5:27 PM, chris merlo <screntalspace@gmail.com> wrote:

John-

Sounds like good news on appliances.

C/O is required for refi efforts.

Please find Oct. Re-Work attached.

On Tue, Oct 8, 2019 at 7:38 PM John Montgomery <john@ibuilders.com> wrote:

Chris,

Hope all is well. Appliances are finally in route this week for install, after weeks of coordinating. We are schedule to begin CO inspections this week, as soon as appliances are in. This can be unpredictable, due to inspectors schedule, request per inspector, documentation requirements, etc. Nonetheless, we have ordered and prepared to respond accordingly to any request needed via City. We would like to know where you are with your bank in regards to your refi, payment, etc. This information would help tremendously as we move forward.

Please let me know and look forward to hearing from you.

Thanks

J/m

—
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

| <Merlo House Re-work Oct.pdf>

--
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

—
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

--
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384



FILED OCONEE COUNTY, SC
JANUARY 17, 2013
REGISTER OF DEEDS

Recorded this 17 day of
Oct 20 12
Vol. 8 Pg. 168
and Certified
Register of Deeds, Oconee County

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

OCT 17 P 2 32

IN THE OFFICE OF THE
REGISTER OF DEEDS

MONTGOMERY HOLDINGS, LLC D/B/A
HBI BUILDERS

Petitioner,

NOTICE AND CERTIFICATE
OF MECHANIC'S LIEN

CHRISTOPHER J. MERLO; BANK OF TRAVELERS
REST; and GRANDSOUTH BANK

Home Builders License # 22088
(HBI Builders)

Respondents.

TO: THE RESPONDENTS ABOVE NAMED

YOU WILL PLEASE TAKE NOTICE, that the Petitioner, Montgomery Holdings, LLC D/B/A HBI Builders, by virtue of the attached Affidavit of Mechanic's Lien and Statement of Account, hereby claims and holds a mechanic's lien upon the real estate hereinafter described for labor and materials Petitioner furnished in the amount of Two Hundred Fifty-Five Thousand Five Hundred Thirty-Four and 86/100 Dollars (\$255,534.86), as evidenced by the attached certified Statement of Account, together with a reasonable attorney's fee, interest and all costs and disbursements related to this lien. Such labor and materials were actually used in the construction and improvement of the real estate more particularly described in Exhibit A, which is attached hereto and incorporated herein by reference and the property upon which this lien is attached. Petitioner provided such professional services and/or materials by virtue of an agreement with Christopher J. Merlo (herein "Owner"), and by consent of the Owner, or a person or persons authorized by, or rightfully acting for said Owner, or by virtue of, upon information and belief, the authorization of said Owner for the procuring or furnishing of such labor and/or materials.

FURTHER NOTICE IS HEREBY GIVEN that the labor and/or materials were last furnished within ninety (90) days of the date hereof; that Petitioner has and claims a lien on the stated premises, structures, buildings, the tract of land and the leaseholds, pursuant to the Code

05260
25 Janokh Jaw
PO Box 10827
Chaparral 733677

CERTIFIED TRUE COPY
Register of Deeds

Oconee County

By: [Signature]
Date: 11/15/2012

1048 68

of Laws of South Carolina, 1976, as amended, to secure the payment of the debt, the amount which is set forth on an itemized and verified Statement of Account which is attached as Exhibit 1 to the Affidavit of Mechanic's Lien, which is attached hereto as Exhibit B and incorporated herein by reference; that the said Petitioner has a claim on said premises, structures, buildings, and said tract of land to secure payments of an additional sum to cover the costs and disbursements of any action to foreclose the aforementioned lien, including interest and reasonable attorney's fees, all pursuant to the provisions of the statutes applicable to such cases.

TAROKH LAW, PLLC
PO BOX 10827
TAMPA, FL 33679
813-922-5510
jason@tarokhlaw.com


JASON M. TAROKH
SOUTH CAROLINA BAR # 72837
Attorney for the Petitioner

October 17, 2019

EXHIBIT A

Property Address: 548 Marina Bay Dr., Seneca, South Carolina 29762

Owner of Property: Christopher J. Merlo

TMS#: 520-82-01-012

Description of Property
subject to lien:

All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Oconee, being shown and designated as Lot No. 12 on a Plat entitled Marina Bay, dated August 26, 2016 and recorded in Plat Book B560 at Page 5, Oconee County ROD. Reference is hereby made to said plat for a more complete description of metes and bounds.

This being a portion of the same property conveyed to MT Investments, LLC by deed of Crescent Communities, LLC, recorded October 30, 2015 in Deed Book 2140 at Page 198-205, Oconee County ROD.

See Deed 2222 pg 145

REC'D
OCONEE COUNTY SC
REGISTERED
2015 OCT 17 P 2:32

68

EXHIBIT B

FILED OCEAN COUNTY, SC
ANNA K. DAVISON
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA
COUNTY OF OCEAN

IN THE OFFICE OF THE REGISTER OF DEEDS
OCT 17 P 2 32

MONTGOMERY HOLDINGS, LLC D/B/A
IBI BUILDERS.

Petitioner,

AFFIDAVIT OF MECHANIC'S
LIEN

v.

CHRISTOPHER J. MERLO; BANK OF TRAVELERS
REST; and GRANDSOUTH BANK

Home Builders License # 22088
(IBI Builders)

Respondents.

TO: THE RESPONDENTS ABOVE NAMED AND ALL OTHERS CONCERNED

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PERSONALLY appeared before me, Gregory K. Grissinger, Jr., holder of home builders license # 22088, and doing business as IBI Builders, who being first duly sworn, deposes and states that certain labor and/or materials were furnished for the improvement of property described below:

Property Address: 548 Marina Bay Dr., Seneca, South Carolina 29762
Owner of Property: Christopher J. Merlo
TMS#: 520-82-01-012

All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Oconee, being shown and designated as Lot No. 12 on a Plat entitled Marina Bay, dated August 26, 2016 and recorded in Plat Book B560 at Page 5, Oconee County ROD. Reference is hereby made to said plat for a more complete description of metes and bounds.

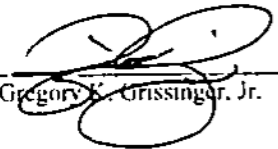
This being a portion of the same property conveyed to MT Investments, LLC by deed of Crescent Communities, LLC, recorded October 30, 2015 in Deed Book 2140 at Page 198-205, Oconee County ROD.

Such labor and/or materials having been furnished by the Petitioner at the special insistence and request of the Owner of said property or by consent of the Owner or some person or agent having authority from or rightfully acting for such Owner or authorized by the Owner and such labor and/or materials having been furnished within ninety (90) days from the date of this Affidavit.

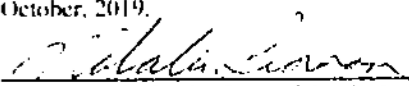
Affiant further states that there is due and owing to the Petitioner from the Owner of said property, the sum of Two Hundred Fifty-Five Thousand Five Hundred Thirty-Four and 86/100 Dollars (\$255,534.86), as evidenced by the Verified Statement of Account, attached as Exhibit 1, together with a reasonable attorney's fee, interest, and the costs and disbursements of any action to foreclose said lien.

FURTHER AFFIANT SAYETH NOT.

By: _____


Gregory K. Grissinger, Jr.

SWORN to before me this 16th day of
October, 2019.



Notary Public for the State of South Carolina

My Commission Expires
February 25, 2026



89

EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE OFFICE OF THE
REGISTER OF DEEDS

MONTGOMERY HOLDINGS, LLC D/B/A
IBI BUILDERS, -

Petitioner,

VERIFIED STATEMENT OF
ACCOUNT OF MATERIALS
AND LABOR FURNISHED

v.

CHRISTOPHER J. MERLO; BANK OF TRAVELERS
REST; and GRANDSOUTH BANK

Home Builders License # 22088
(IBI Builders)

Respondents.

Due to Petitioner for all materials and labor supplied by Petitioner for improvement of the property described in the Affidavit of Mechanic's Lien and owned by Christopher J. Merlo in the amount of Two Hundred Fifty-Five Thousand Five Hundred Thirty-Four and 86/100 Dollars (\$255,534.86) in base contract work and any applicable change orders and/or allowance overages.

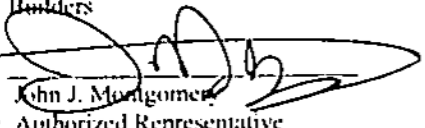
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

VERIFICATION

PERSONALLY appeared before me John J. Montgomery, who, being duly sworn, says that he is the Authorized Agent for Montgomery Holdings, LLC D/B/A IBI Builders, and that the above Statement of Account is true and correct; and, that no part thereof has been paid.

FURTHER AFFIANT SAYETH NOT.

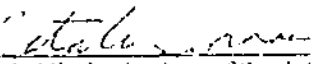
Montgomery Holdings, LLC D/B/A IBI
Builders

By: 

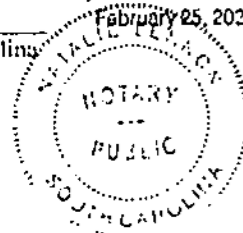
John J. Montgomery

Its: Authorized Representative

SWORN to before me this 16th day of
October, 2019.


Notary Public for the State of South Carolina

My Commission Expires:
February 25, 2026



FILED OCT 17 P 2:32
AMANDA DAVENPORT
REGISTER OF DEEDS
CLERK OF DISTRICT 80

4-39

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
1	Monthly Let 1.2 in extra fee																						
2	Contract Amount																						
3	Monthly Let 1.2 in extra fee																						
4	Monthly Let 1.2 in extra fee																						
5	Monthly Let 1.2 in extra fee																						
6	Monthly Let 1.2 in extra fee																						
7	Monthly Let 1.2 in extra fee																						
8	Monthly Let 1.2 in extra fee																						
9	Monthly Let 1.2 in extra fee																						
10	Monthly Let 1.2 in extra fee																						
11	Monthly Let 1.2 in extra fee																						
12	Monthly Let 1.2 in extra fee																						
13	Monthly Let 1.2 in extra fee																						
14	Monthly Let 1.2 in extra fee																						
15	Monthly Let 1.2 in extra fee																						
16	Monthly Let 1.2 in extra fee																						
17	Monthly Let 1.2 in extra fee																						
18	Monthly Let 1.2 in extra fee																						
19	Monthly Let 1.2 in extra fee																						
20	Monthly Let 1.2 in extra fee																						
21	Monthly Let 1.2 in extra fee																						
22	Monthly Let 1.2 in extra fee																						
23	Monthly Let 1.2 in extra fee																						
24	Monthly Let 1.2 in extra fee																						
25	Monthly Let 1.2 in extra fee																						
26	Monthly Let 1.2 in extra fee																						
27	Monthly Let 1.2 in extra fee																						
28	Monthly Let 1.2 in extra fee																						
29	Monthly Let 1.2 in extra fee																						
30	Monthly Let 1.2 in extra fee																						
31	Monthly Let 1.2 in extra fee																						
32	Monthly Let 1.2 in extra fee																						
33	Monthly Let 1.2 in extra fee																						
34	Monthly Let 1.2 in extra fee																						
35	Monthly Let 1.2 in extra fee																						
36	Monthly Let 1.2 in extra fee																						
37	Monthly Let 1.2 in extra fee																						
38	Monthly Let 1.2 in extra fee																						
39	Monthly Let 1.2 in extra fee																						
40	Monthly Let 1.2 in extra fee																						
41	Monthly Let 1.2 in extra fee																						
42	Monthly Let 1.2 in extra fee																						
43	Monthly Let 1.2 in extra fee																						
44	Monthly Let 1.2 in extra fee																						
45	Monthly Let 1.2 in extra fee																						
46	Monthly Let 1.2 in extra fee																						
47	Monthly Let 1.2 in extra fee																						
48	Monthly Let 1.2 in extra fee																						
49	Monthly Let 1.2 in extra fee																						
50	Monthly Let 1.2 in extra fee																						
51	Monthly Let 1.2 in extra fee																						
52	Monthly Let 1.2 in extra fee																						
53	Monthly Let 1.2 in extra fee																						
54	Monthly Let 1.2 in extra fee																						
55	Monthly Let 1.2 in extra fee																						
56	Monthly Let 1.2 in extra fee																						
57	Monthly Let 1.2 in extra fee																						
58	Monthly Let 1.2 in extra fee																						
59	Monthly Let 1.2 in extra fee																						
60	Monthly Let 1.2 in extra fee																						
61	Monthly Let 1.2 in extra fee																						
62	Monthly Let 1.2 in extra fee																						
63	Monthly Let 1.2 in extra fee																						
64	Monthly Let 1.2 in extra fee																						
65	Monthly Let 1.2 in extra fee																						
66	Monthly Let 1.2 in extra fee																						
67	Monthly Let 1.2 in extra fee																						
68	Monthly Let 1.2 in extra fee																						
69	Monthly Let 1.2 in extra fee																						
70	Monthly Let 1.2 in extra fee																						
71	Monthly Let 1.2 in extra fee																						
72	Monthly Let 1.2 in extra fee																						
73	Monthly Let 1.2 in extra fee																						
74	Monthly Let 1.2 in extra fee																						
75	Monthly Let 1.2 in extra fee																						
76	Monthly Let 1.2 in extra fee																						
77	Monthly Let 1.2 in extra fee																						
78	Monthly Let 1.2 in extra fee																						
79	Monthly Let 1.2 in extra fee																						
80	Monthly Let 1.2 in extra fee																						



John Montgomery <john@ibbuilders.com>

Re: New Flex Building
1 message

chris mero <scentspace@gmail.com>
To: John Montgomery <john@ibbuilders.com>

Thu, Jul 11, 2019 at 5:54 PM

We would be looking to begin 1st quarter 2020.
I have the building plans & next time we meet up at
house, I'll be certain to bring them along.

It's essentially a metal building with brick front & sides.
The interiors are a combo of office/warehouse.

On Thu, Jul 11, 2019 at 2:32 PM John Montgomery <john@ibbuilders.com> wrote:
Yes, we would be interested. What time frame are you thinking? Would need to see property and building plans to give accurate price. To sell park, need a little more information, size, what is inside
to be finished like, bath rooms etc.

jm

On Thu, Jul 11, 2019 at 1:24 PM chris mero <scentspace@gmail.com> wrote:

John-

I have a lot in Powderville & I'm thinking of building a small 15,000 SF flex building
kind of like the one pictured.

Is this something you guys may want to consider building?
Interested to see what a SF price might be.

Thanks for taking a look.

With Kindest Regards,

Chris Mero

INFINITE RENTALS

Thomas, Apartments, & Office Spaces*

Po Box 223

Clemson, SC 29633

864-376-3384

With Kindest Regards,
Chris Mero

INFINITE RENTALS

Thomas, Apartments, & Office Spaces*

Po Box 223

Clemson, SC 29633

864-376-3384



Hope all is well. Appliances are finally in route this week for install, after weeks of coordinating. We are schedule to begin CO inspections this week, as soon as appliances are in. This can be unpredictable, due to inspectors schedule, request per inspector, documentation requirements, etc. Nonetheless, we have ordered and prepared to respond accordingly to any request needed via City. We would like to know where you are with your bank in regards to your refi, payment, etc.

This information would help tremendously as we move forward.

Please let me know and look forward to hearing from you.

Thanks

Jim

Randy Lively Wed, Oct 9, 4:35 PM (10 days ago)

to me

I talked with Mr. Merlo and he said he is going to put all of the theater equipment onto his loan.

So, I wasn't sure what to do so I called Greg today and I told him the situation about Mr. Merlo and his theater. Greg said he would talk to you about this. I am including the estimate on this email.

I wasn't sure how this should be handled with a \$5,761.19 balance for all the equipment and labor.

We also talked about some homes that are ready to be trimmed out. Is there a way you could send me a list of addresses that are ready and which color I am using for plates. Thanks in advance

Thanks for your time.

Randy Lively
Soundscapes

ohn Montgomery <john@ibibuilders.com> Wed, Oct 9, 4:41 PM (10 days ago)

to chris, greg, bcc: Soundscapes

Chris.

See below from Randy. Unfortunately, we do not pay for entertainment equipment and trim out, this is something you will have to work out directly with Randy.

Also, please let us know regarding my previous email.

Thank you sir,

Jm

chris merlo Wed, Oct 9, 5:27 PM (10 days ago)

to me, Nikki, greg, ggrissl

John-

Sounds like good news on appliances.

C/O is required for refi efforts.

Please find Oct. Re-Work attached.

John M <john@ibibuilders.com> Wed, Oct 9, 6:11 PM (10 days ago)

to chris, Nikki, greg, ggrissl

Unfortunately we can not call for a CO until funds for balance owed is paid per contract. Rifi's do not require CO, so please get this worked out with the bank and let us know. If the bank can give us a letter of confirmation of Payment, we can possibly work with that.

John M

chris merlo Thu, Oct 10, 5:14 PM (9 days ago)

to me, Nikki, greg, ggrissl

John-

While I encouraged the lender to move forward, they are requesting a c/o as evidenced in their last email below.

In the meantime, if I could trouble you for a final balance sheet showing funds owed, that would be ideal.

Do you have a projected completion date on the project that I can offer the lender?

Hey Chris.

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CASE #: _____

MONTGOMERY HOLDINGS, LLC D/B/A
IBI BUILDERS,

LIS PENDENS

Plaintiff,

v.

CHRISTOPHER J. MERLO; BANK OF TRAVELERS
REST; and GRANDSOUTH BANK

Defendants,

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this Court upon the Complaint of the above-named Plaintiff against the above-named Defendants for foreclosure of a mechanic's lien recorded on October 17, 2019, in the office of the Register of Deeds for Oconee County, South Carolina, in Volume 8, Page 68. The premises affected by said mechanic's lien are described as follows:

All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Oconee, being shown and designated as Lot No. 12 on a Plat entitled Marina Bay, dated August 26, 2016 and recorded in Plat Book B560 at Page 5, Oconee County ROD. Reference is hereby made to said plat for a more complete description of metes and bounds.

This being a portion of the same property conveyed to MT Investments, LLC by deed of Crescent Communities, LLC, recorded October 30, 2015 in Deed Book 2140 at Page 198-205, Oconee County ROD.

This being the same property conveyed to Christopher J. Merlo by deed of MT Investments, LLC, recorded November 4, 2016 in Deed Book 2222 at Page 145, Oconee County ROD.

Owner of Property: Christopher J. Merlo
Property Address: 548 Marina Bay Dr., Seneca, South Carolina 29762
TMS#: 520-82-01-012

Respectfully submitted,

TAROKH LAW, PLLC
PO BOX 10827
TAMPA, FL 33679
813-922-5510
jason@tarokhlaw.com

/s/ Jason M. Tarokh
JASON M. TAROKH
SOUTH CAROLIN BAR # 72837

November 8, 2019

**PLAINTIFF'S
EXHIBIT**

#43

CONSTRUCTION LOAN ADVANCES AND INSPECTION REPORT

[illegible][illegible]

From 1200-2 Chas. 77000

2123
کسا

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

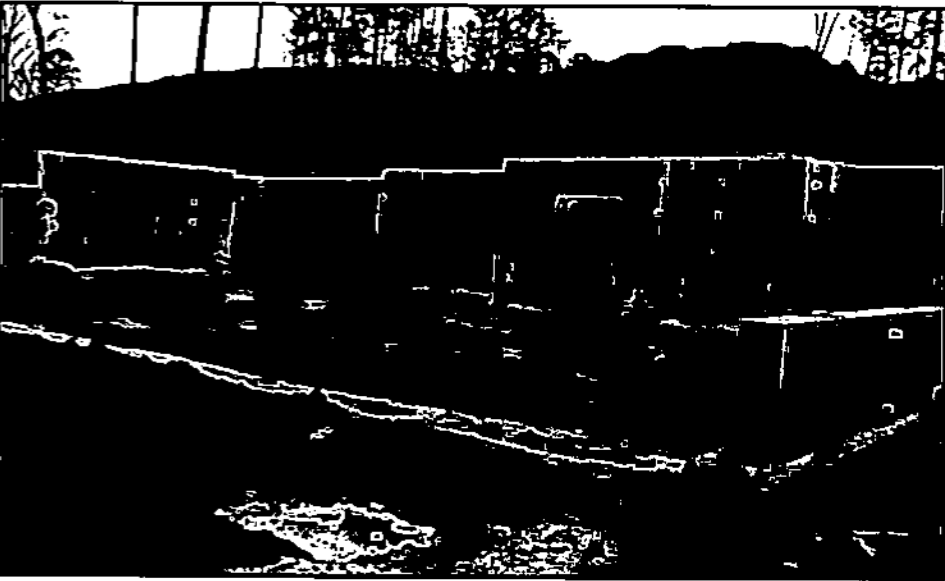
City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Front 02/28/2018548 Marina Bay Drive
Rear 02/28/2018548 Marina Bay Drive
GENERAL VIEW 9

Draw Inspection #2

Borrower or Owner	Christopher Merlo
Property Address	548 Marina Bay Drive
City	Seneca
County	Columbia
Client	GrandSouth Bank

City	Seneca	County	Oconee	State	SC	Zip Code	29672
Chase	GrandSouth Bank						

Client	GrandSouth Bank

**PLAINTIFF'S
EXHIBIT**

EXHIBIT

44

CONSTRUCTION LOAN ADVANCES AND INSPECTION REPORT

Christopher Moore

COMPLETION DATE

ZAHNKRANKHEITEN

ANALYSIS

NAME FBI Builders

REF ID: A66122

BLOCK

LOT PROS/CONS:

STREET ADDRESS 548 Merion Bay Dr.

ADMINISTRATIVE USE ONLY Seawater, SC

[illegible][illegible]

Form 1000-7 (Jan, 1994)

2/2	5/3
لما	لما

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

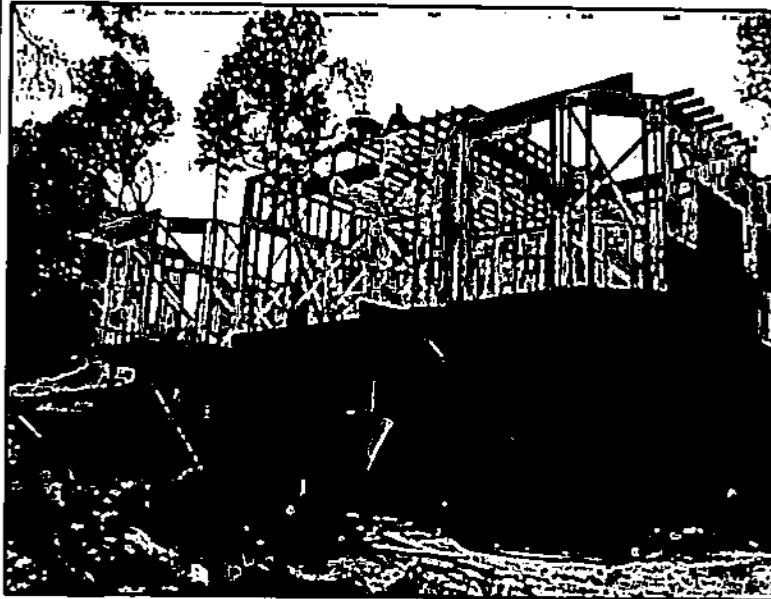
City Seneca

County Oconee

State SC

Zip Code 29672

Class GrandSouth Bank

548 Marina Bay Drive
Front 05/03/2018548 Marina Bay Drive
Rear 05/03/2018548 Marina Bay Drive
General 05/03/2018

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

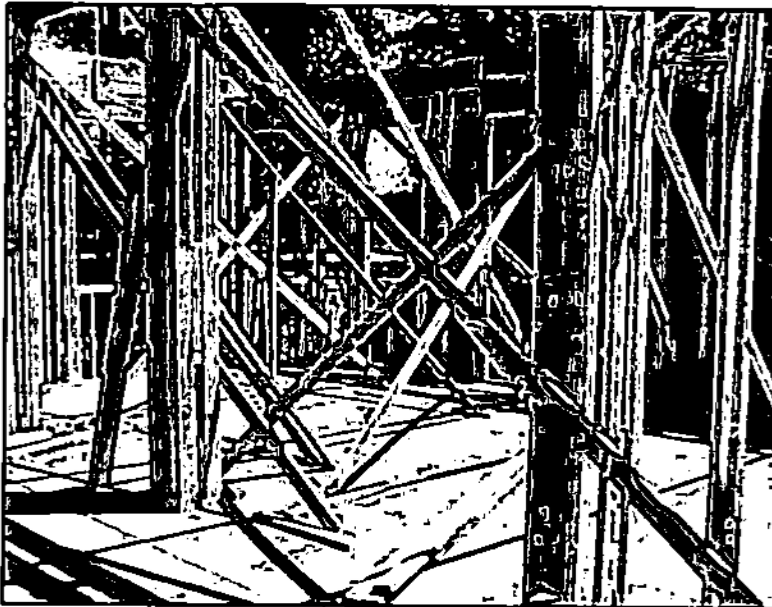
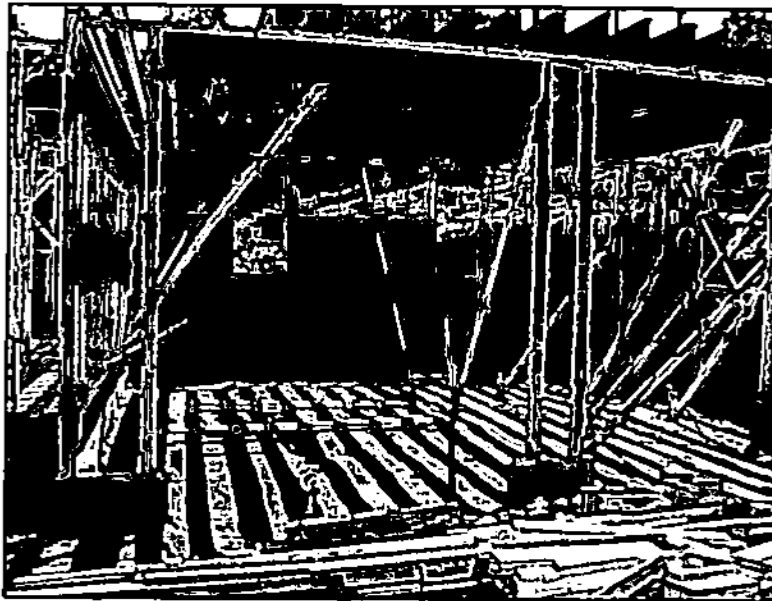
City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Interior 05/03/2018548 Marina Bay Drive
Garage Area 05/03/2018548 Marina Bay Drive
Basement Framing 05/03/2018

Draw Inspection #3

Borrower or Owner Christopher Merlo
Property Address 548 Marina Bay Drive
City Seneca County Oconee State SC Zip Code 29672
Client GrandSouth Bank

**PLAINTIFF'S
EXHIBIT**

CONSTRUCTION LOAN ADVANCES AND INSPECTION REPORT

EXPONER	Christopher Merlo	COMMITMENT DATE	
ON NUMBER		AMOUNT	
CLASS	FBI Builders		
AT NO	12	SLACK	
STREET ADDRESS	548 Marion Bay Dr.	LOT NUMBER PER	
OF PROPORTIONATE LOTS	Sevier, SC		

[illegible][illegible]

From 1990-1994, 1994

2/23	5/3	7/3
2/23	5/3	7/3

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Front 07/03/18548 Marina Bay Drive
Rear 07/03/18548 Marina Bay Drive
Garage Side 07/03/18

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Kitchen 07/03/18548 Marina Bay Drive
Interior 07/03/18548 Marina Bay Drive
Bath 07/03/18

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

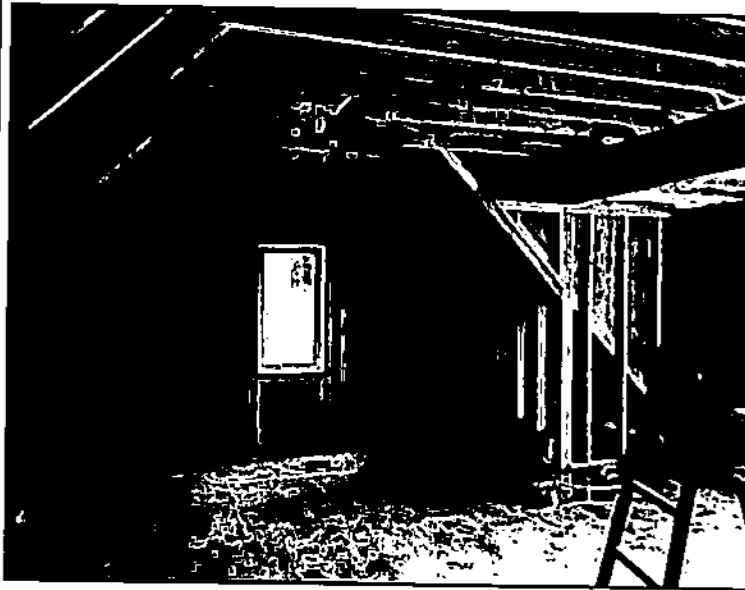
City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Bonus Rm 07/03/18548 Marina Bay Drive
Interior2 07/03/18548 Marina Bay Drive
Bsmt 07/03/18

Draw Inspection #4

Borrower or Owner Christopher Merlo
Property Address 548 Marina Bay Drive
City Seneca County Oconee State SC Zip Code 29672
Client GrandSouth Bank



CONSTRUCTION LOAN ADVANCES AND INSPECTION REPORT

REPORTED Christopher Morla
 ON MARCH
 PLACE FBI Building
 AT NO. 12 BLOCK
 STREET ADDRESS 548 Marion Bay Dr.
 AT INSPECTOR LET BLANK Savannah, SC

[illegible]

ITEMS COMPLETED	%	1st	2nd	3rd	4th	5th	6th
Sheet rock - rough grade	2	2	1				
Footings	2	2					
Framing	3	3					
Basement	4	4					
Floor: 1st () Framing () Bas. Floor ()	4	4					
Walls: 1st Floor () 2nd Floor () Wall Sheathing ()	4	4					
Roof framing () Roof Sheathing ()	4	4					
Outside doors/windows	4	4					
Plumbing rough in	4	4					
Heating rough in	4	4					
Electrical rough in	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4	4					
Electrical	4	4					
Plumbing	4	4					
Heating	4						

From 220-1 (May, 1964)

2125	513	713	B12
2125	513	713	B12

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

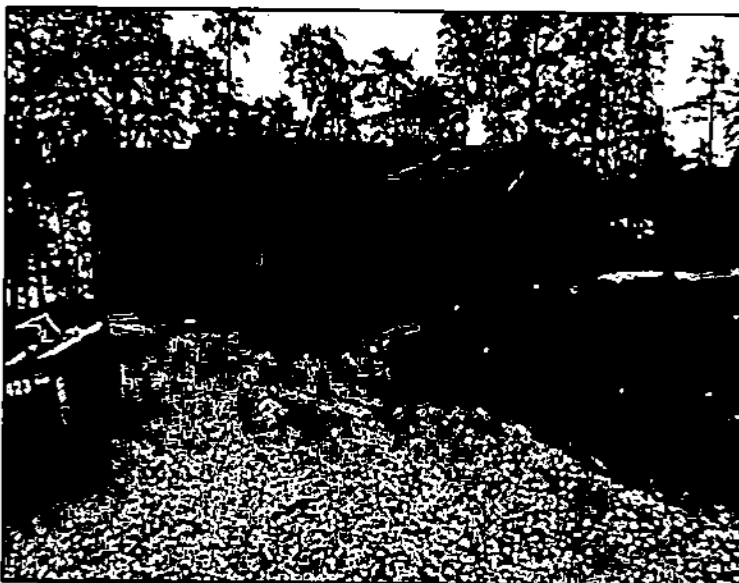
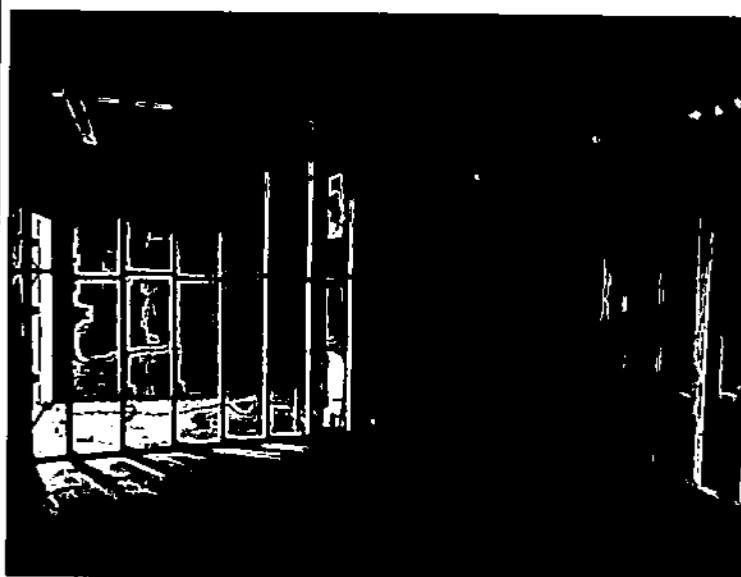
City Seneca

County Oconee

State SC

Zip Code 29672

Chert GrandSouth Bank

548 Marina Bay Drive
Front 08/02/2018548 Marina Bay Drive
Rear 08/02/2018548 Marina Bay Drive
Basement 08/02/2018

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo
 Property Address 548 Marina Bay Drive
 City Seneca County Oconee State SC Zip Code 29672
 Clerk GrandSouth Bank



548 Marina Bay Drive
 Kitchen 08/02/2018



548 Marina Bay Drive
 Den 08/02/2018



548 Marina Bay Drive
 Bedroom 08/02/2018

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

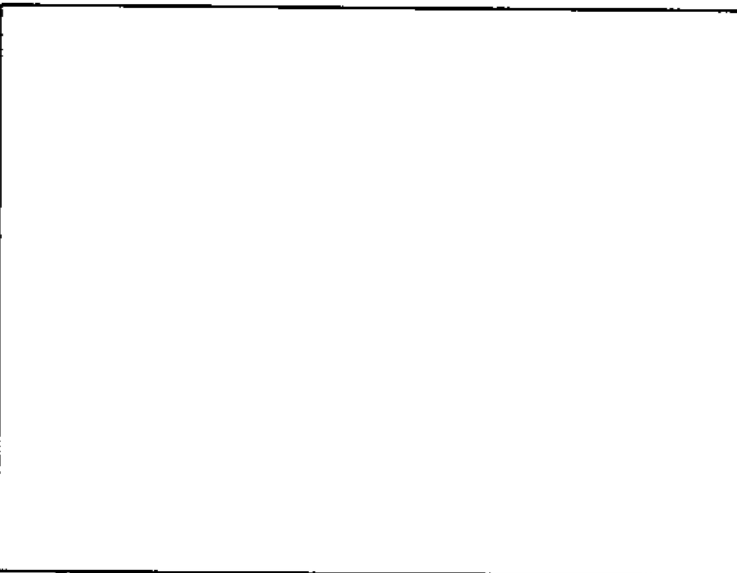
City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Furnace 08/02/2018548 Marina Bay Drive
Bonus Rm 08/02/2018

Draw inspection #5

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

City Seneca

County Oconee

State SC

200 C-500 29672

Client **GrandSouth Bank**



CONSTRUCTION LOAN ADVANCES AND INSPECTION REPORT

Christopher Merle

02-21-2004 2:41

2015-2016

AMOUNT

NAME IBI Builders

DE NO 12

PLAN

REFERENCES

STREET ADDRESS 548 Marion Gray Or

STANDARD 101-6-100 Series 5C

[illegible][illegible]

Form 2220-7 (Rev. 7-89)

2124	513	713	912	712
rw	rw	rw	rw	rw

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Front 09/12/2018548 Marina Bay Drive
Rear 09/12/2018548 Marina Bay Drive
Side 09/12/2018

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

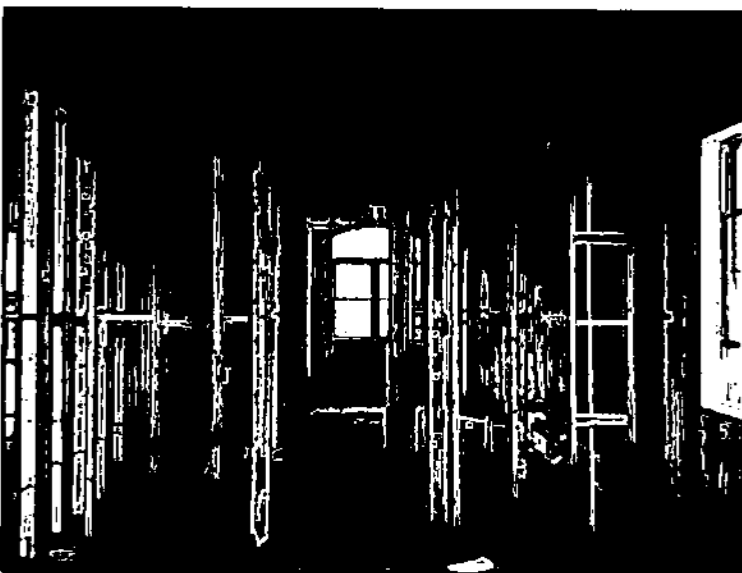
City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Den 09/12/2018548 Marina Bay Drive
Kitchen 09/12/2018548 Marina Bay Drive
Interior 09/12/2018

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

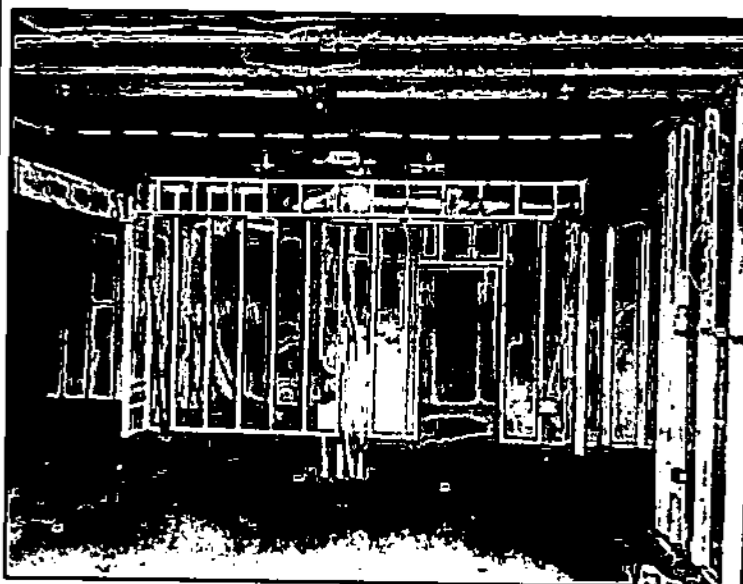
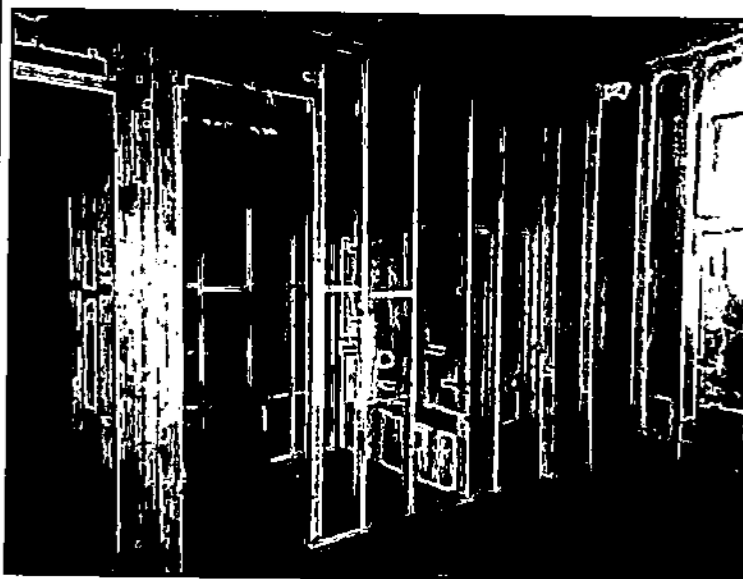
City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Bonus 09/12/2018548 Marina Bay Drive
Basement 09/12/2018548 Marina Bay Drive
Addl. Basement 09/12/2018

Draw Inspection #6

Borrower or Owner Christopher Merlo
Property Address 548 Marina Bay Drive
City Seneca County Oconee State SC Zip Code 29672
Client GrandSouth Bank



CONSTRUCTION LOAN ADVANCES AND INSPECTION REPORT

SUBJECT Christopher Merlo
DATE 06-17-89
FILE NUMBER
CLASS FBI Builders
AT NO. 12
CITY ADDRESS 548 Marion Bay Dr.
AT INTERSECTION LOT OR BLK Seaside, SC
COMMITMENT DATE
PAYMENT
LAT RELEASED FOR

[illegible]

ITEMS COMPLETED	1st	2nd	3rd	4th	5th	6th
Clear lot - rough grade	2	1				
Footings	2	1				
Foundations	2	1				
Floor: Blk () Framing () Sub Floor ()	1					
Walls: Cill Studs () sill Studs () Wall Sheathing ()	1	4				
Roof Trussing () Roof Sheathing ()	1	6				
Outside doors/windows	1		5			
Plumbing rough in	1		2			
Heating rough in	1		2			
Electrical rough in	1			3		
Exterior	2		3			
Subsides (in leveling)	2					
Windows	2				1	
Roofing shingles	2				6	
Insulation: Walls () Ceiling () Floor ()	2		1	1		
Inside walls & ceiling sheathing	2				2	
Inside floor: Windows () Doors () Inside Doors ()	2					6
Exterior cabinets/shops	1				1	
Ceramic tile: Floors () Walls ()	2					
Interior painting complete	2					
Water: () Sewer: ()	2					
Plumbing: Hot Tub () Lav () WC () Blk ()	2					
Windows () In Conditioning	2		1			
W without interior subflooring complete	1			2		
Concrete: Drive () Walks ()	2					
Deck: () porch () stairs ()	2					
Exterior painting complete	2					
Final: painting () Landscaping ()	2					
Main floor: Hardwood () Carpet ()	2					
Appliances	2					
Start interior in remodeling others	2					
Walls: Wallpaper () Hardware () Mirrors () Clean up ()	1					
	100%	7	11	15	7	14
		10	33	40	44	66

Form 1000-2 Rev. 7/66

Form EDD-2 (Rev. 7/80)

2114	513	713	812	911	1011
2114	513	713	812	911	1011

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Front 10/18/2018548 Marina Bay Drive
Rear 10/18/2018548 Marina Bay Drive
Side 10/18/2018

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

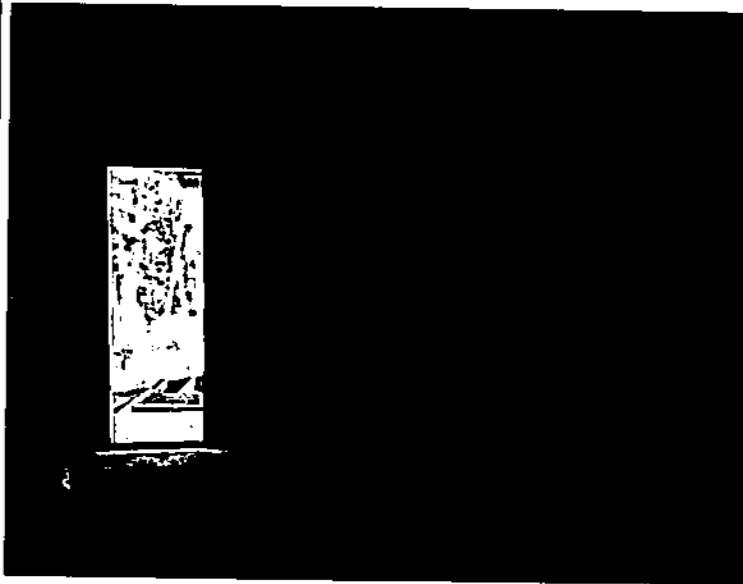
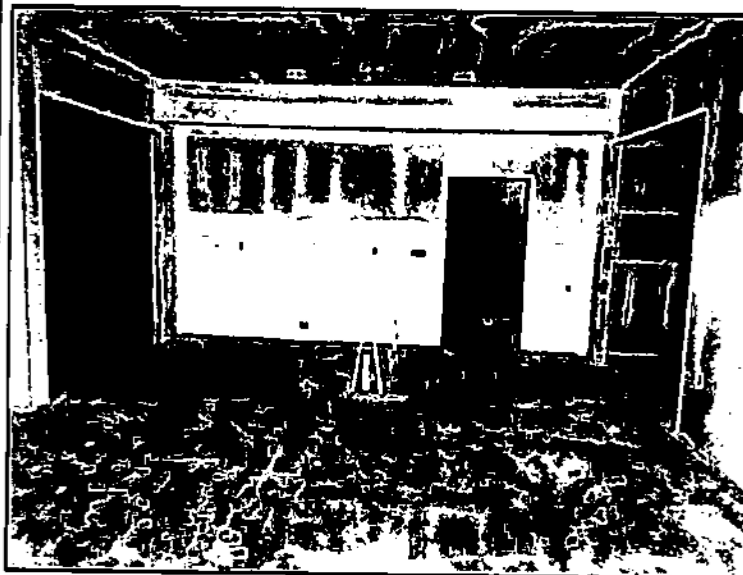
City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Den 10/18/2018548 Marina Bay Drive
Kitchen 10/18/2018548 Marina Bay Drive
Basement 10/18/2018

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Bath 10/18/2018548 Marina Bay Drive
Bath 2 10/18/2018548 Marina Bay Drive
BEDROOM 10/18/2018

Appraisal Associates of Anderson
4103 Weatherstone Way
Anderson, SC 29621
864-376-1965
33-1124657

INVOICE	03/13/2019	A1712142H	
	DATE	FILE NUMBER	CASE NUMBER

Client: GrandSouth Bank
381 Halton Road
Greenville, SC
29606
Attention: Client



Item	Total
APPRAISAL FEE FOR SERVICES RENDERED	125.00

Borrower: Christopher Merlo
548 Marina Bay Drive
Seneca, SC 29672
Lt 12 Marina Bay/DB-2222 PG-145

Total: 125.00

Thank you

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo
 Property Address 548 Marina Bay Drive
 City Seneca County Oconee State SC Zip Code 29672
 Client GrandSouth Bank



548 Marina Bay Drive
 Front 03/13/19



548 Marina Bay Drive
 Rear 03/13/19



548 Marina Bay Drive
 Kitchen 03/13/19

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

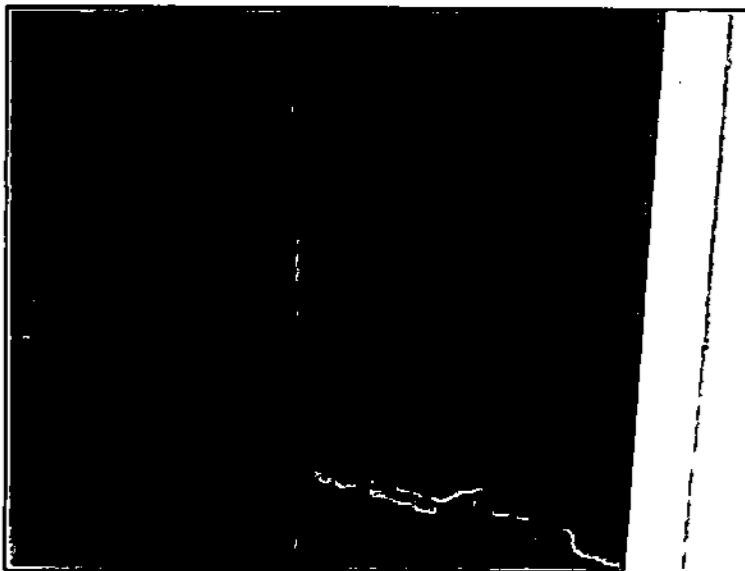
City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Den 03/13/19548 Marina Bay Drive
Bonus Rm 03/13/19548 Marina Bay Drive
Bath 03/13/19

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

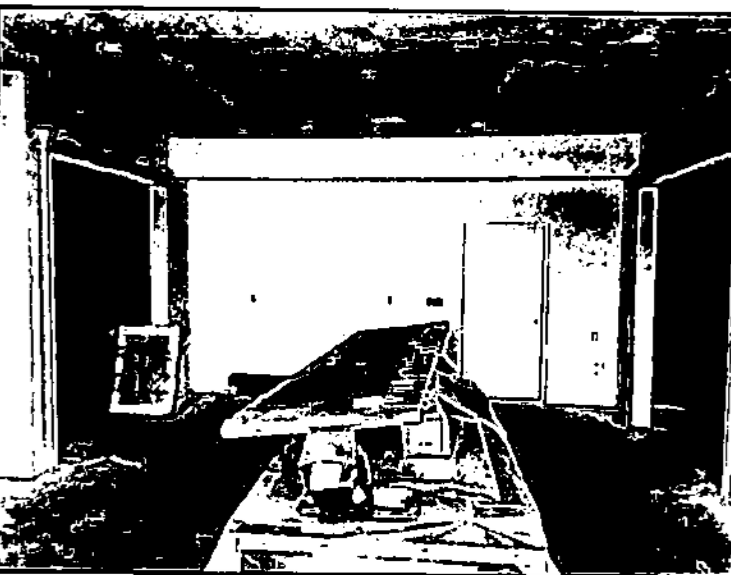
City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Owners Bdrm 03/13/19548 Marina Bay Drive
Owners Bath 03/13/19548 Marina Bay Drive
Basement 03/13/19

Appraisal Associates of Anderson
4103 Weatherstone Way
Anderson, SC 29621
864-376-1965
33-1124657

INVOICE	06/26/2019 DATE	A17121421 FILE NUMBER	CASE NUMBER

Client: GrandSouth Bank
381 Halton Road
Greenville, SC
29606
Attention: Client



Item	Total

APPRAISAL FEE FOR SERVICES RENDERED	\$ 125.00

Borrower: Christopher Merlo
548 Marina Bay Drive
Seneca, SC 29672
L1 12 Marina Bay/DB-2222 PG-145

Total: \$ 125.00

Thank you

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

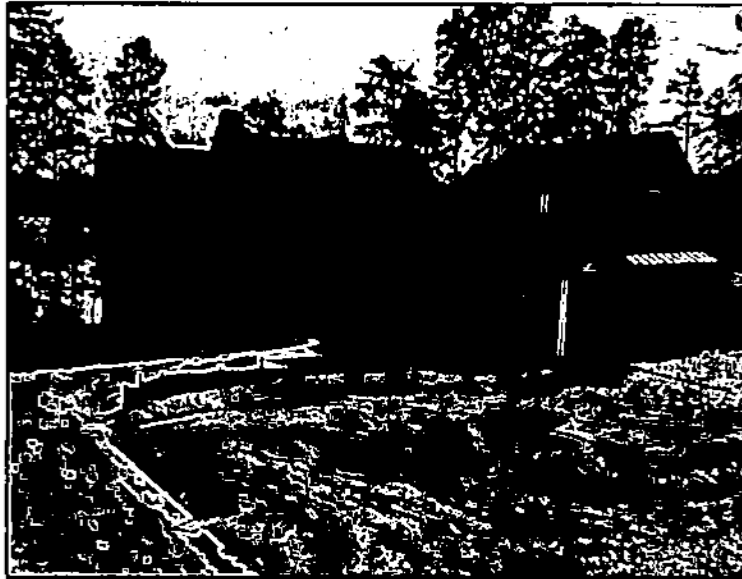
City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Front 06/26/19548 Marina Bay Drive
Rear 06/26/19548 Marina Bay Drive
Side 06/26/19

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Kitchen 06/26/19548 Marina Bay Drive
Den 06/26/19548 Marina Bay Drive
Bonus 06/26/19

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merto

Property Address 548 Marina Bay Drive

City Seneca

County Oconee

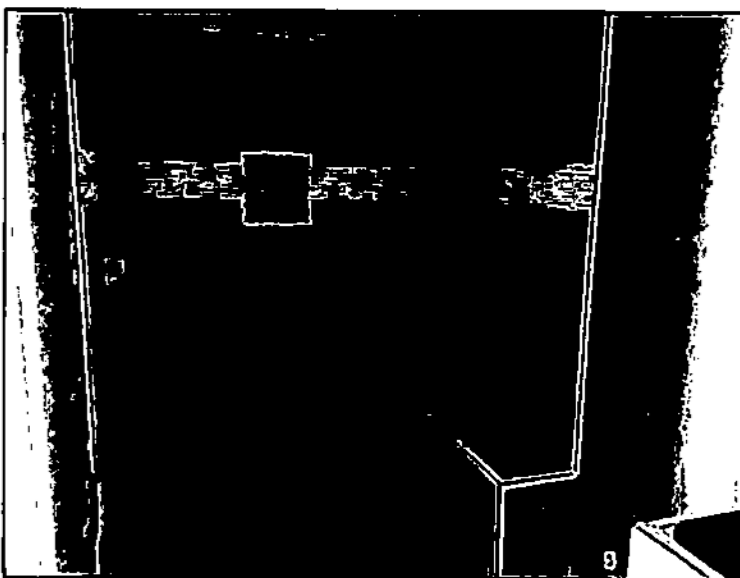
State SC

Zip Code 29672

Client GrandSouth Bank



548 Marina Bay Drive
Basement 06/26/19



548 Marina Bay Drive
BATH 06/26/19



548 Marina Bay Drive
Bath2 06/26/19

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

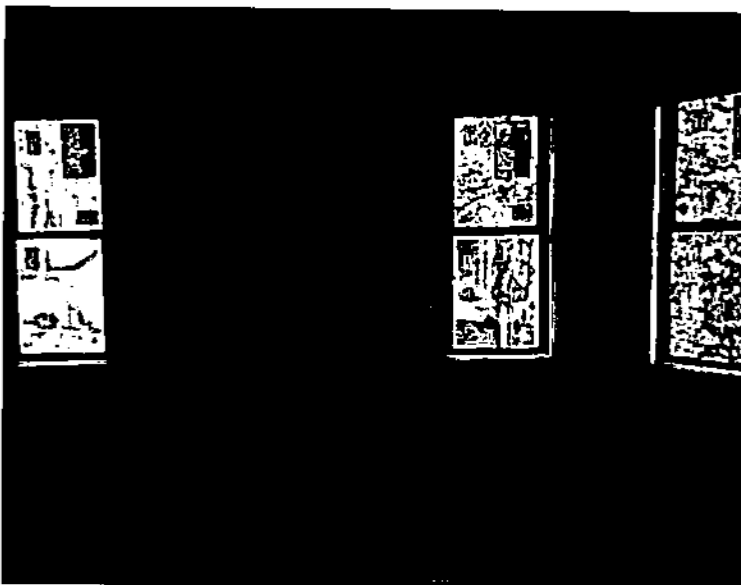
City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
BEDROOM 06/26/19548 Marina Bay Drive
Bath 3 06/26/19548 Marina Bay Drive
Garage 06/26/19

Appraisal Associates of Anderson
4103 Weatherstone Way
Anderson, SC 29621
864-376-1965
33-1124657

INVOICE	08/26/2019 DATE	A1712142J FILE NUMBER	CASE NUMBER

Client: GrandSouth Bank
381 Halton Road
Greenville, SC
29606
Attention: Client



Item	Total

APPRAISAL FEE FOR SERVICES RENDERED

\$ 125.00

Borrower: Christopher Merlo
548 Marina Bay Drive
Seneca, SC 29672
Lt 12 Marina Bay/DB-2222 PG-145

Total: \$ 125.00

Thank you

Property Address 548 Marina Bay Drive

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

Christopher Merlo

COMMITMENT DATE

SUMMARY

Abstract

IRI Builders

PLATE 1

ALERT

LET YOUR CASE BE

548 Marion Bay Or.

~~BY AIRMAIL: 107 CLEAR~~ 300-41, 5C

[illegible][illegible]

Page 2205-1 05/04/2004

ZLW	S13	713	B12	H12	10117	3113	G6C
LW	LW	LW	LW	LW	LW	LW	LW

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

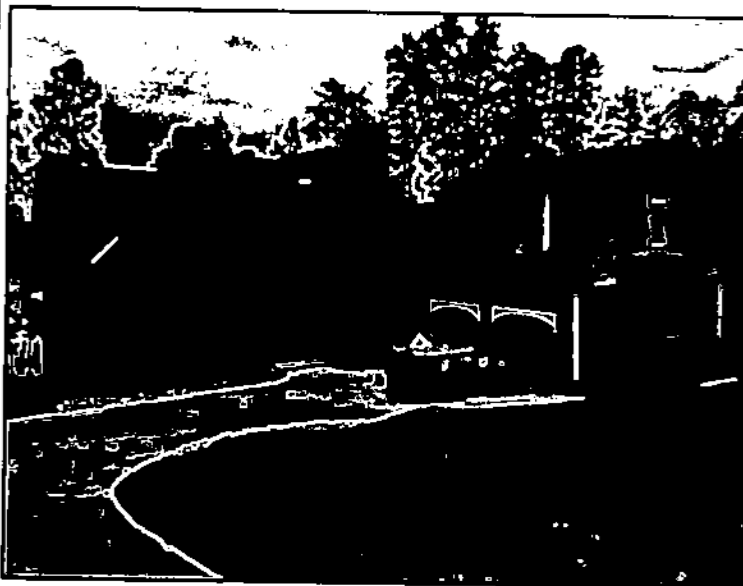
City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Front 08/26/19548 Marina Bay Drive
Rear 08/26/19548 Marina Bay Drive
Side 08/26/19

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

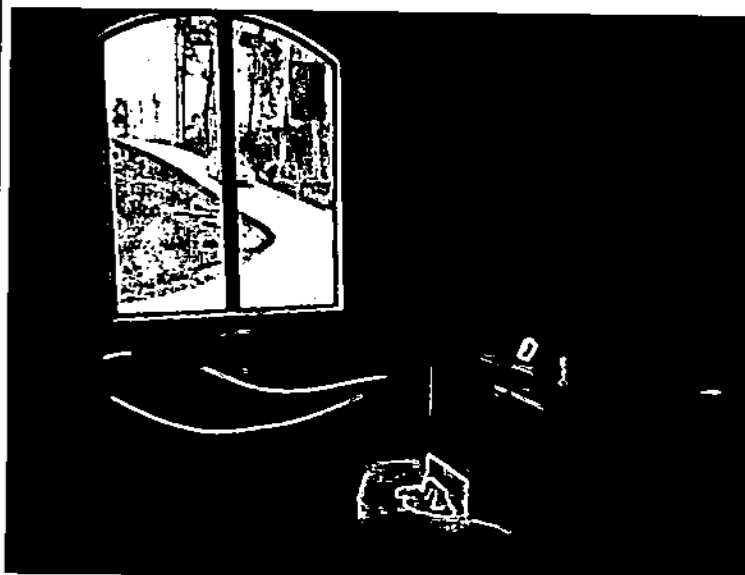
City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Kitchen 08/26/19548 Marina Bay Drive
Bath 08/26/19548 Marina Bay Drive
Bed 08/26/19

PHOTOGRAPH ADDENDUM

Borrower or Owner Christopher Merlo

Property Address 548 Marina Bay Drive

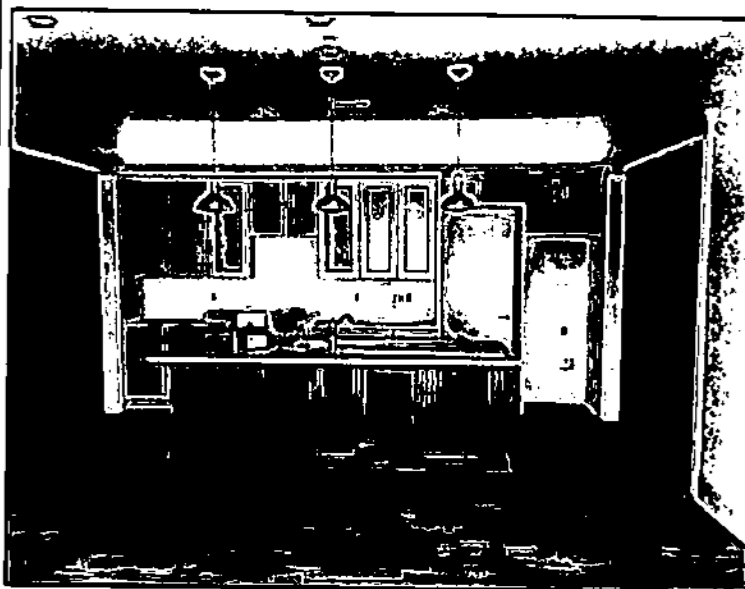
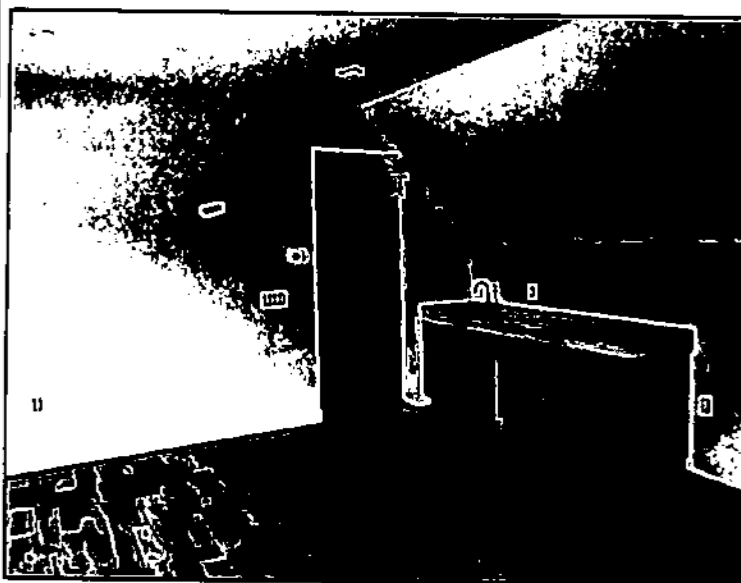
City Seneca

County Oconee

State SC

Zip Code 29672

Client GrandSouth Bank

548 Marina Bay Drive
Bsmt Kitchen 08/26/19548 Marina Bay Drive
Bonus Rm 08/26/19548 Marina Bay Drive
Bath 08/26/19

John Montgomery <john@ibbuilders.com>

Re:

1 message

chris merlo <screntalspace@gmail.com>
To: John Montgomery <john@ibbuilders.com>

Wed, Feb 13, 2019 at 1:26 PM



John-

I appreciate you checking on the tub.
It's the one we prefer but we need to stay within the allowance.

On Wed, Feb 13, 2019 at 12:51 PM John Montgomery <john@ibbuilders.com> wrote:
Chris,

On the balance sheet regarding the doors. Greg and I confirmed "stained doors and fire rated" line item is correct. This is for the actual stain grade doors and the fire rated door for the garage, you confirmed. The "staining for each door \$45" is separate because this is what we are charged for staining these doors vs. painting. I do not have total price for this until they actually do the work and confirm the total amount of doors.

Regarding the bath tub you sent over, this is what Ashley w/ Ferguson sent me:

"Good morning! We do have access to Signature Hardware. I called them and this tub is actually discontinued. Take a look at this one below which is the same tub but copper instead of mottled burgundy. Unfortunately, Signature Hardware has "set" prices so the price on the website is the price but we can definitely order it for you. I'd suggest going through us instead of online because Ferguson has purchased Signature Hardware so if you have ever any issues with damage or warranty, we will be able to help out."

<https://www.signaturehardware.com/72-bateau-double-slipper-copper-tub-w-rings-smooth-rim-copper-ext-nickel-int-overflow.html>

Thanks!

jm

—
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384



John Montgomery <john@ibibuilders.com>

Re: Lights

1 message

John Montgomery <john@ibibuilders.com>

To: chris merlo <screntalspace@gmail.com>

Cc: greg greg <greg@ibibuilders.com>, Nikki <screntalspace2@gmail.com>

Wed, Jul 24, 2019 at 11:18 AM

I have told Leo about the lights... and good on the Ship lap.

jm

On Tue, Jul 23, 2019 at 7:43 PM chris merlo <screntalspace@gmail.com> wrote:
John-

I would like to add the 4 low voltage ground lights to shine up on the rear stone columns.

In addition, Greg & I spoke about adding some ship-lap to the fireplace & adding a niche to fit the television. He said it would be \$700 & I wanted to confirm my acceptance of the up-charge.

--

With Kindest Regards,
Chris Merlo

INFINITE RENTALS

"Homes, Apartments, & Office Spaces"

Po Box 223

Clemson, SC 29633

864-378-3384



John Montgomery <john@ibibuilders.com>

Re: Back splash and Fireplace

1 message

chris merlo <screntalspace@gmail.com>

Mon, Aug 26, 2019 at 7:51 PM

To: John Montgomery <john@ibibuilders.com>

John-

That works on the backsplash.
Let's put it in.

On the mantel, we picked a simple one piece
that was priced at \$400. They are coming out this week to measure
& the quote should be available. The plan had floating shelves in the master bath
& I was going to to have Bree's include those in the quote.

On Mon, Aug 26, 2019 at 5:42 PM John Montgomery <john@ibibuilders.com> wrote:

Chris,

Hope all is well with you. The price for the down stairs kitchen back splash is \$1279. material an labor. Not bad...

Please let me know if you have any questions.

Jm

--

With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384



John Montgomery <john@ibbuilders.com>

Re: MARINA BAY REDO

1 message

chris merlo <screntalspace@gmail.com>
To: John Montgomery <john@ibbuilders.com>

Fri, Jun 14, 2019 at 8:26 PM

John-

I think we are the culprit of this change order & we will absorb it.

On a separate note, I know the house took on some serious water from the rain last weekend & there is some lingering concern over the water that came inside. I mentioned the concern to Greg & he said to monitor the baseboards to see if they swell. I realize some additional silt fence was placed on the side of the house and I wonder if there is a way to turn the grade away from the house near the screen-porch. I appreciate your thoughts on the issue.

PS- Driveway looks great!

On Fri, Jun 14, 2019 at 9:45 AM John Montgomery <john@ibbuilders.com> wrote:

Chris, See attached. This is the quote for re doing the stair due to your first choice being LVT. This is strictly our cost, not marking anything up. Please let me know if you wish proceed. You can also call Greg to discuss.

----- Forwarded message -----

From: Micheal Millard <micheal@majesticstaircases.com>
Date: Fri, Jun 14, 2019 at 9:05 AM
Subject: MARINA BAY REDO
To: John IBI <john@ibbuilders.com>, Greg Grissenger <greg@ibbuilders.com>

This is the maximum cost to adjust the rises and change out the landing tread. This is assuming everything that we have to pull out to adjust is going to need to be replaced. Anything that we can reuse will be reused and I will take it off the invoice.

—
Thanks,
Micheal Millard
Majestic Staircases, Inc.
864-304-1781 Cell
864-224-2821 Office

—
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384



John Montgomery <john@ibibuilders.com>

Re: Landscape Est

1 message

John Montgomery <john@ibibuilders.com>
To: chris merlo <screntalspace@gmail.com>

Mon, May 13, 2019 at 9:05 AM

Yes. He did this per the plan.. The biggest expense is the plants, fire pit and walk way and nearly 30k in cost. There are 272 plants on the plan. That is quite a lot, nothing wrong with that but explains the expense. If you are looking to save, cut the the plants down, maybe some mulch (100 cubic yards), of course not do the firepit and walk, you could save now \$20k +/- . If you are considering doing it all at some point, now is going to be cheaper as I am sure it will be more later.

jm

On Fri, May 10, 2019 at 3:55 PM chris merlo <screntalspace@gmail.com> wrote:

I appreciate the courtesy you extended to Wayne. He should be thankful for the nice upgrade to his lot.

On the landscape quote provided by Leo, can you confirm he quoted the exact plan Michael Dorn provided. The price appears good as I have two other quotes & they are both a few dollars higher.

I was considering doing it in stages but everyone is telling me that if I lay sod in the backyard & then come back to complete the fire-pit & flagstone pathway later, the grass will need to be redone & possibly the irrigation if they hit it.

Leo's quote is at 45k & I believe my allowance is 15k.

If you have a minute to look over the quote, can you make a suggestion. Perhaps there is some efficiency you might recommend.

On Thu, May 9, 2019 at 8:38 AM John Montgomery <john@ibibuilders.com> wrote:

I will send the granite prices over a soon as they get back to me

I have not received the lighting choices, you may want to reach out to them to make sure they send to us.

The plumbing yes, you approved the overage. The tub you mention feel free to purchase and drop off or coordinate delivery at your convenience.

For the record, we did not have to do anything for Wayne, we did to be neighborly. I met him out there a few times and showed him the issues he faces on his property.. Again, just fyi.

On Wed, May 8, 2019 at 6:22 PM chris merlo <screntalspace@gmail.com> wrote:

John-

The landscape quote has been received & I will review it.
Please find the granite selections attached along with the May Re-work schedule.

I was in the area today & went by the house.
There were 5 contractors working & it is moving along nicely.
The wood flooring was the right choice.
Wayne's lot looks great as Greg Sr. said you guys fixed it up.

The plumbing fixtures have all been selected from Ferguson minus
2 vessel sinks for the 2nd master. In addition, the price for a copper tub
was a bit high so we selected a Lowe's model Sinkology 71.5 inch Antique Copper Oval Center Drain

Freestanding Item #674678 Model# TBT-7132HA
The lighting has all been selected at Gallery of Lighting.

Thanks again for all the assistance & the commitment to finishing it up.

On Wed, May 8, 2019 at 2:32 PM John Montgomery <john@ibibuilders.com> wrote:

Chris,

Attached is the landscape estimate via Leo. He has itemized different areas in the case you want to eliminate anything. We always offer you to price elsewhere as this is allowance option.

Review and let me know

--
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

--
With Kindest Regards,
Chris Merlo

INFINITE RENTALS
"Homes, Apartments, & Office Spaces"
Po Box 223
Clemson, SC 29633
864-376-3384

PLAINTIFF'S
EXHIBIT

tabbier

#57

Apr 17, 2019 12:39 PM

18643763384

Custom Docks
Contact: Michael
864-225-2393

Apr 17, 2019 12:39:53 PM

Greg Grissinger(18644146658)

He can't get anyone to come out this week it will
be the beginning of the next.

Apr 17, 2019 1:07:45 PM

18643763384

No worries-
Thanks for handling the repair

Apr 17, 2019 1:09:31 PM

18643763384

Greg-
I negotiated a TN boulder border wall down to
\$23,700 versus John's quote of \$41,000.
It seems too good to be true so I would like you
to meet the contractor I onsite to review the
project. My preference is to have IBI enter into
agreement with contractor with the
understanding that The costs is added to my
balance sheet.
You have the experience to protect us both here.
In return for the contractor doing the job near
his costs, I told him you would allow him to
quote other jobs if his installation on my site is
superior. He could turn out to be a great
resource moving forward.
Let me know if you are available to meet
Tuesday morning anytime.

Apr 17, 2019 2:07:21 PM

Apr 18, 2019 7:20 AM

Greg Grissinger(18644146658)

10 o'clock Tuesday. On the exterior paint do you
want flat on the walls and semi gloss on the
trim?

Apr 18, 2019 7:20:09 AM

18643763384

I'll confirm 10am on Tuesday-
On the exterior paint, I prefer acrylic latex flat on
walls, satin on the trim

Apr 18, 2019 8:47:51 AM



South Carolina
Department of Labor, Licensing and Regulation



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement

Henry D. McMaster
Governor

Emily H. Farr
Director

NOTICE OF COMPLAINT



November 26, 2019

GREGORY K GRISSINGER JR
PO BOX 3625
GREENVILLE, SC 29608

File #: 2019-812

Site Location:
548 Marina Bay Dr
Seneca, SC 29678

Listed are the particulars of a complaint filed against you for work performed at the above address. Please submit a written response addressing each of the items in the complaint within ten (10) days from receipt of this letter. You may mail your response to the address on this letter or fax it to 803-896-4656. Please include the case number on any correspondence and address it to my attention.

1. Substandard work

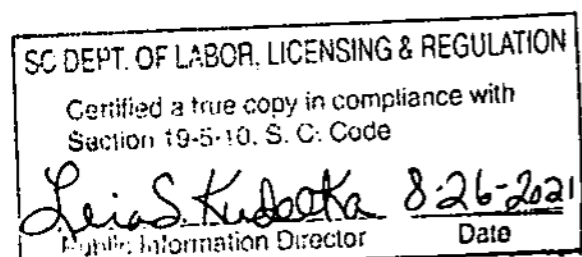
Please be advised that I will be conducting an inspection at the above address in the next 30 to 60 days at which time I will examine each item in the complaint to determine if it represents a violation of the applicable building codes or construction standards. If you desire to be present during the inspection, please contact me at 803-896-4470.

The results of my investigation will be submitted to an Investigative Review Committee (IRC) for review to determine if you have violated any of the provisions of the license law with regard to building code or standards violations. If you have satisfactorily addressed and/or repaired the items that represent violations, prior to my inspection or filing of the IRC report, that fact will be taken into consideration by the IRC as long as proper documentation is received by this office.

Your cooperation in this matter is appreciated.

Respectfully,

Thomas Brown
Investigator





110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4696
FAX: (803) 896-4814

South Carolina
Department of Labor, Licensing and Regulation

Residential Builders Commission



Henry D. McMaster
Governor

Emily H. Farr
Director

January 27, 2021

CONFIDENTIAL

GREGORY K. GRISSINGER JR
PO BOX 3625
GREENVILLE SC 29608

Re: 2019-812

Dear Mr. Grissinger, Jr.:

Pursuant to South Carolina law, the Department of Labor, Licensing and Regulation investigated the initial complaint against you. On 10/14/2020, the Residential Builders Commission ordered the initial complaint be dismissed.

Thank you for your cooperation in this matter. We wish you well in your future endeavors.

Sincerely,

Janet Baumberger
Administrator



SC DEPT. OF LABOR, LICENSING & REGULATION

Certified a true copy in compliance with
Section 19-5-10, S. C. Code

Public Information Director Date 8-26-2021

 **COTTINGHAM & Associates, Inc.**
Engineering, Surveying & Construction

February 15, 2018

Mr. B.J. Klaren
City of Seneca Building & Codes
Seneca, SC 29679 (sent by email)

Re: Foundation and retaining walls
548 Marina Bay Way
Seneca, SC
Permit # 2018-82-1-12



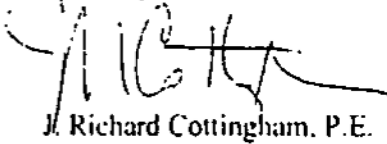
Dear Mr. Klaren:

Today at the request of Southern Basements, Cottingham and Associates, Inc. inspected the reinforcing steel in the forms for foundation and retaining walls at the subject house. The dimensions and steel placement was in accordance with my designs for the 10 ft foundation walls and the 6 ft retaining wall. We had inspected the footings on 2-6-18.

I recommend that you approve the walls.

Please contact me with any questions.

Sincerely,


J. Richard Cottingham, P.E.

Cc: Southern Basements



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	
	)	
Montgomery Holdings, LLC d/b/a IBI Builders,	)	GRANDSOUTH BANK'S RESPONSES
	)	TO PLAINTIFF'S REQUESTS FOR
	)	ADMISSIONS
Plaintiff,	)	
	)	C.A. No.: 2019-CP-37-00687
vs.	)	
	)	
Christopher J. Merlo; Bank of Travelers Rest, and GrandSouth Bank,	)	
	)	
Defendants.	)	
	)	

REQUESTS FOR ADMISSIONS

1. Admit that GRANDSOUTH BANK made only nine (9) draw payments to Plaintiff in the total amount of \$581,250.00 in connection with the construction of a home located at 548 Marina Bay Drive, Seneca, SC.

RESPONSE: Admit

2. Admit that upon the request of Christopher J. Merlo, GRANDSOUTH BANK made a draw payment in the amount of \$43,750.00 to Plaintiff in or about March 2018.

RESPONSE: Admit

3. Admit that upon the request of Christopher J. Merlo, GRANDSOUTH BANK made a draw payment in the amount of \$68,750.00 to Plaintiff in or about May 2018.

RESPONSE: Admit

4. Admit that upon the request of Christopher J. Merlo, GRANDSOUTH BANK made a draw payment in the amount of \$93,750.00 to Plaintiff in or about July 2018.

RESPONSE: Admit

5. Admit that upon the request of Christopher J. Merlo, GRANDSOUTH BANK made a draw payment in the amount of \$43,750.00 to Plaintiff in or about August 2018.

RESPONSE: Admit

6. Admit that upon the request of Christopher J. Merlo, GRANDSOUTH BANK made a draw payment in the amount of \$87,500.00 to Plaintiff in or about September 2018.

RESPONSE: Admit

7. Admit that upon the request of Christopher J. Merlo, GRANDSOUTH BANK made a draw payment in the amount of \$75,000.00 to Plaintiff in or about October 2018.

RESPONSE: Admit

8. Admit that upon the request of Christopher J. Merlo, GRANDSOUTH BANK made a draw payment in the amount of \$75,090.00 to Plaintiff in or about March 2019.

RESPONSE: Admit

9. Admit that upon the request of Christopher J. Merlo, GRANDSOUTH BANK made a draw payment in the amount of \$62,410.00 to Plaintiff in or about June 2019.

RESPONSE: Admit

10. Admit that upon the request of Christopher J. Merlo, GRANDSOUTH BANK made a draw payment in the amount of \$31,250.00 to Plaintiff in or about August 2019.

RESPONSE: Admit

11. Admit that GRANDSOUTH BANK did not pay the Plaintiff the specific amount of \$127,000.00 in the form of a single draw payment, a single check, a single wire transaction or any other single transaction in connection with the construction of a home located at 548 Marina Bay Drive, Seneca, SC.

RESPONSE: Admit

12. Admit GRANDSOUTH BANK did not receive any request from Christopher J. Merlo to pay Plaintiff the specific amount of \$127,000.00 in the form of a single draw payment, a single check, a single wire transaction or any other form of payment.

RESPONSE: Admit

13. Admit that GRANDSOUTH BANK wired the specific amount of \$127,000.00 in January 2018 to pay off a mortgage held on the real property located 548 Marina Bay Drive, Seneca, SC, then owned by Christopher J. Merlo.

RESPONSE: Admit

ROE CASSIDY COATES & PRICE, P.A.


James H. Cassidy, SC ID # 1160
jcassidy@roecassidy.com

ROE CASSIDY COATES & PRICE, P.A.

1052 North Church Street (29601)

P. O. Box 10529

Greenville, S.C. 29603

Telephone: 864-349-2620

ATTORNEYS FOR GRANDSOUTH BANK

Greenville, South Carolina
March 14, 2022

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

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

Plaintiff,

vs.

Christopher J. Merlo; Bank of Travelers
Rest, and GrandSouth Bank,

Defendants.

IN THE COURT OF COMMON PLEAS

VERIFICATION

C.A. No.: 2019-CP-37-00687

PERSONALLY appeared before me the undersigned who, being duly sworn, deposes and on oath states that Laura Thompson, of GrandSouth Bank, Defendant in the foregoing action; has read the responses to Plaintiff's Requests for Admission, and he believes them to be true and correct to the best of his/her knowledge and belief.

SWORN TO AND SUBSCRIBED
before me this the 14 day
of March, 2022.

Karen Thompson
Notary Public for S.C.
My Commission Expires: 4/27/2031

Karen Thompson
NOTARY PUBLIC
State of South Carolina
My Commission Expires 4/27/2031

GRANDSOUTH BANK

BY: [Signature]

ITS: SVP / Commercial banker

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	
	)	
Montgomery Holdings, LLC d/b/a IBI Builders,	)	CERTIFICATE OF MAILING
	)	
	)	C.A. No.: 2019-CP-37-00687
Plaintiff,	)	
	)	
vs.	)	
	)	
Christopher J. Merlo; Bank of Travelers Rest, and GrandSouth Bank,	)	
	)	
Defendants.	)	
_____	)	

I, Stacie Bryant, an employee of the law offices of Roe Cassidy Coates & Price, P.A., attorneys for Defendants, do hereby certify that on March 14, 2022, I have served a copy of Defendant GrandSouth Bank's Responses to Plaintiff's Request for Admission, along with this Certificate of Service in connection with the above-referenced case by mailing a copy of the same by email and United States mail, postage prepaid, to the following:

Jason M. Tarokh
TAROKH LAW, PLLC
P.O. Box 10827
Tampa, FL 33679
jason@tarokhlaw.com
Attorney for Plaintiff

Townes B. Johnson, III
TOWNES B. JOHNSON, III, LLC
P.O. Box 9246
Greenville, SC 29604
tjohnson@sc.legal
Attorney for Defendant Christopher J. Merlo



Stacie Bryant, Legal Assistant:

James H. Cassidy, ID No.1160

jcassidy@roecassidy.com

Roe Cassidy Coates & Price, P.A.

Attorneys for Defendant GrandSouth Bank

Post Office Box 10529

Greenville, S.C. 29603

(864) 349-2600

Greenville, South Carolina

March 14, 2022

From: chris.merlo
To: Laura.Thompson
Subject: Re: Draw Request
Date: Sunday, January 6, 2019 1:11:32 PM



Laura-

I hope you had a good holiday & New Year.

I noticed on my new bill that the Prime Rate jumped to 5.25 & my rate is now 5.75.
Yikes, I'm interest rate sensitive.

Can you tell me your current fixed 30 yr jumbo rate & your heloc rate.
We may need to massage this for comfort.

Construction is slow with all the rain but continues. The end-product should
be exceptional.



From: chris merlo
To: Laura Thomason
Subject: Draw Request
Date: Friday, March 8, 2019 8:32:38 AM

Laura-

My builder has requested another Draw.

I had a good conversation with John after we spoke on the phone & we are meeting this Tuesday to walk thru the house together. I am satisfied with the project but my impatience is catching up. I really never thought it would take 18 months to build but that looks like the case.

I feel certain the final appraisal will reflect a number that soothes my anxiety.
Thank you for the assistance along the way.

--
With Kindest Regards,
Chris Merlo, BIC
2508 N. Main St. STE M
Anderson, SC 29621
864-376-3384





From: chris merlo
To: Laura Thomason
Subject: Merlo Update
Date: Thursday, April 25, 2019 9:36:07 AM

Hi Laura-

I hope you had a great Easter holiday.

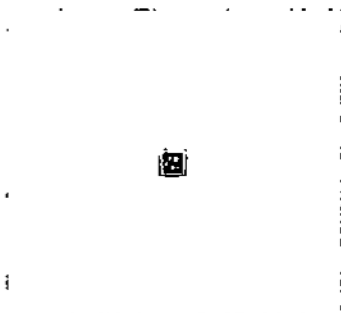
After speaking with my builder & encouraging him to get moving on the house, work is finally moving along briskly. If they keep up at this pace, I anticipate occupancy in June.

Should we consider a rate lock?

I am still interested in a 30 yr fixed with a Heloc. The engineered boulder wall quote just came back at \$51,000 & while it adds costs, I think it will also add equity. The appraisal should be favorable.

--

With Kindest Regards,
Chris Merlo, BIC
2508 N. Main St. STE M
Anderson, SC 29621
864-376-3384





From: chris.merito
To: Laura Thompson
Subject: Re: Merito Update
Date: Tuesday, April 30, 2019 2:55:13 PM

Laura-

I had time to thoughtfully consider the options & here are my thoughts.
The present loan is at 752k & I owe the builder another 150k & have paid him cash of 30k already.
It feel like a 1st mortgage at 4.5% for 30 years fixed is the right product.

Exhibit D

From: chris.merlo
To: Laura Thompson
Subject: Re: Merlo Update
Date: Friday, May 3, 2019 12:33:26 PM



Hi Laura-

After consideration, it makes sense on my side to maximize the 1st mortgage.
The Contract is 752k, I owe the builder 150k, I paid the builder 30k already & spent another 60k on the project (plans, survey, trees, etc.)
I have receipts for everything.
Can we do a 1st loan for 992 that gets my builder paid & reimburses my costs, assuming it appraises at 1,250,000 or higher.

The boulder wall is going to slow the project down because there are not enough boulders in stock. That will push a move-in date into July.

Exhibit E



From: chris.made
To: Laura Thompson
Subject: Re: Update
Date: Wednesday, May 29, 2019 5:14:46 PM

Laura-

I'm not certain why I would be going back to Ryan.
I thought we cleared the following path...

After consideration, it makes sense on my side to maximize the 1st mortgage.
The Contract is 752k, I owe the builder 150k, I paid the builder 30k already & spent another 60k on the project (plans, survey, trees, etc.)
I have receipts for everything.
Can we do a 1st loan for 992 that gets my builder paid & reimburses my costs, assuming it appraises at 1,250,000 or higher.

Please advise.

From: chris.meda
To: Laura Thompson
Subject: Re: Draw Request
Date: Tuesday, August 20, 2019 4:32:04 PM



Hi Laura-

It's hard to believe, but we are almost finished with the house.
It's been a long road. The house now exceeds are initial expectations though.

The builder is requesting a draw.



From: Ron Marchant
To: John Wood
Cc: Laura Thompson
Subject: FW: Merlo New Home Update
Date: Wednesday, November 13, 2019 8:22:02 AM
Attachments: Scanned from a Xerox Multifunction Printer.pdf

John, here was the email LT was going to send to Cassidy. We are not sending this letter, but it gives a little overview of where we are. LT spoke with our borrower yesterday and he could not explain why the builder felt they were owed \$255m+. Borrower did not feel there were any change orders to discuss. LT has the file documented very well. She has her completed, original due diligence on the builder; along with the contract. The borrower put his equity in at closing and on the first draw. We have records from his checking account where he has wired roughly \$581m to the builder. We have \$43m left to draw. Together these totals add up to the original \$625m contract. All of her draws were made with 3rd party inspections from our usual appraiser, Matt West. I visited the home yesterday and it looks good. Needs to be punched out and appliances installed, etc. Other than that, it is ready to go. Heat was on, all utilities in place.

To recap, pending you reading this and commenting; LT and I are going to at least call Cassidy and make sure we aren't missing anything. Lien attached.

Please advise - RM

From: Laura Thompson <laura.thompson@grandsouth.com>
Sent: Friday, November 8, 2019 10:04 AM
To: Ron Marchant <ron.marchant@grandsouth.com>
Subject: FW: Merlo New Home Update

Ron, Please see below is it okay if I send this to Mr. Cassidy today, do you want me to copy you and John Wood? If not, how do you want me to proceed. Please advise. Thanks.

Mr. Cassidy,

Good morning. I have a construction loan at GrandSouth for Chris Merlo for his future primary residence being built at 548 Marina Bay Drive, Seneca, SC. The current principal balance is \$705,420.05 with \$43,750.00 still to be drawn on the construction. The last construction inspection report I requested and received on 08/26/2019 indicates the home is 93% complete. Our LTV once the loan is fully drawn is at 79.69%. This is a construction/perm loan that is now amortizing. The Builder is IBI Builders, John Montgomery. Mr. Merlo originally closed on the construction loan January 11, 2018 and is still not finished. Mr. Merlo let his builder go due to the timing, etc.. He has engaged an attorney Townes Johnson 864 757-4899 to represent him and this matter. Chris Merlo is also in discussions with another builder to finish the home, but has not made any decisions just yet. Chris made me aware that he was getting frustrated and was going to let the builder go, etc. I then received a phone call this week from White Appliance, Alan White 864 859-8028, informing me that he had delivered appliances to the property but had not been paid. I called my borrower and he said that the appliance store had a contract with his builder and not with him. I asked my customer, Mr. Merlo, the name of the attorney representing him and told him



that I needed to talk with our bank attorney and let him consult with him and his attorney so that we could figure out the best way to proceed (this was yesterday). Today, I received the email below that Mr. Merlo was served with papers that IBI had filed a mechanics lien and had also named GrandSouth Bank. I have not received anything as of yet. Please advise as to how I should proceed and let me know what you need from me. Thanks so much.

Laura H. Thompson

Relationship Manager/VP

Mortgage Originator & Commercial Lender

GrandSouth Bank

1601 N. Fant St.

Anderson, SC 29621

864 622-0602 Direct

864 527-7110 Fax

864 934-4721 Cell

Laura.thompson@grandsouth.com

NMLS#472415

GrandSouth
BANK

From: chris merlo <chris.upstatecommercialgroup@gmail.com>

Sent: Friday, November 8, 2019 9:41 AM

To: Laura Thompson <laura.thompson@grandsouth.com>; Townes Johnson <tjohnson@sc.legal>

Subject: Merlo New Home Update

Laura-

IBI has filed a mechanic's lien and named GrandSouth in addition to myself on the paperwork.

I received service late last night & GrandSouth will undoubtedly receive service soon.

A meeting is scheduled with Townes Johnson next week & we would welcome GrandSouth's attorney to be present.

--

With Kindest Regards,

Chris Merlo, BIC

2508 N. Main St. STE M

Anderson, SC 29621

864-376-3384

Low Pressure/Soft Wash
Safe Soaps (Pet & Plant Friendly)
Hot Water
Referral Program
See Website



Sea to Summit Pressure Washing LLC
& Window Cleaning
864-653-0123
www.SeaToSummitPressureWashing.com
SeaToSummitPressureWashing@gmail.com



Service Estimate

4/6 Emailed Estimate
4/8 Emailed Driveway cost
4/9 Emailed Add 6626
Roof Next week
Driveway

4/14 Emailed Schedule Conf.

Date of Estimate: 4 - 4 - 20
Date Scheduled: 4 - 15 - 20
Arrive Between: 4:30/20 - 6:00/20
11:30/20 - 1:00/20
Due to storm + house next door

Name: Chris Merlo
Address: 548 Marina Bay Dr
City: Seveca State: SC Zip Code: 29692
Phone: (864) 376-3384
Email: screentalspace@gmail.com

Found us By: ☐ Website ☐ Referral ☐ Other
☐ Flyer ☐ Truck/Trailer
☒ Residential ☐ Commercial
☒ New Customer ☐ Repeat Customer
Amount ☐ Cash ☐ Check # ☐ Credit Card ☐ Invoiced ☐ Donation

* Marina Bay Subdivision - gated

(Single Service Request for Different Days)

✓ "Soft Wash" House/Building Exterior 462.50
✓ Exterior Gutter Whitening with House 0.00
() Clean Exterior or Interior Windows Only
() Clean Exterior & Interior Windows
() Clean Detached Garage
() Clean Storage Building or Shed
✓ Clean Driveway Mud Stained 1204.20
✓ Clean Sidewalks
() Clean Roof...One Side (Mud Stained) 138.40
✓ Clean Concrete or Brick Patio Stained
() Clean Deck of Dirt & Mold (not stain prep)
✓ Remove Red Mud Stains, Rust Stains, or Battery Acid Burns on Concrete or Siding 113.00
✓ Driveway right in front of garage 218.40
✓ Red Mud fire mark on roof
* Pick & choose

Cost for Services Scheduled for Different Days 41918.10
() Water Hall Fee 100.00 Minimum Extra Charge
() Remove and Replace More than 5 Items of Plants, Furniture, etc Adds 45.00 Minimum Charge
Coupons, Gift Certificates, Annual Service Discount
Total Cost

* New Construction * Construction

(Multiple Services Scheduled for Same Day)

✓ "Soft Wash" House/Building Exterior 462.50
✓ Exterior Gutter Whitening with House 0.00
() Clean Exterior or Interior Windows Only
() Clean Exterior & Interior Windows
() Clean Detached Garage
() Clean Storage Building or Shed
✓ Clean Driveway Mud Stained 823.94
✓ Clean Sidewalks
() Clean Roof...One Side (Mud Stained) 103.80
✓ Clean Concrete or Brick Patio Stained
() Clean Deck of Dirt & Mold (not stain prep)
✓ Remove Red Mud Stains, Rust Stains, or Battery Acid Burns on Concrete or Siding 105.96
() Driveway right in front of garage 218.40
() of & beside the garage
* Pick & choose w/ House

Cost for Services Scheduled for the Same Day 1494.20
() Water Hall Fee 100.00 Minimum Extra Charge 184.86
() Remove and Replace More than Five Items of Plants, Furniture, etc Adds 45.00 Minimum Charge
Coupons, Gift Certificates, Annual Service Discount
Total Cost

NOTE: Payment due upon services rendered. If payment is not received within 30 days past date of service, we will add 15% per month until paid in full.

***NOTE: If paying with a credit card, please add 3% processing fee to balance owed.



Please make checks payable to:
Sea to Summit Pressure Washing, LLC
105 Fleetwood Ct
Liberty, SC 29657

We Appreciate Your Business

PLAINTIFF'S
EXHIBIT
#1121

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA
3 GREENVILLE DIVISION
4 C.A. NO. 6:20-CV-01176-TMC
5
6
7 DONALD A. GARDNER, INC.,
8
9 PLAINTIFF, DEPOSITION
10
11 VS. OF
12
13 MONTGOMERY HOLDINGS, LLC; IBI
14 BUILDERS, LLC; JOHN MONTGOMERY;
15 AND GREGORY CRISINGER, JR.,
16
17 DEFENDANTS.
18
19
20 THE DEPOSITION OF CHRIS MERLO, TAKEN BEFORE JILL BISHOP
21 EDWARDS, CVR-CM, CERTIFIED VERBATIM REPORTER AND NOTARY
22 PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT
23 THE HOUR OF 10:05 A.M., THURSDAY, THE 10TH DAY OF DECEMBER,
24 2020, VIA VIDEOCONFERENCE AT VARIOUS LOCATIONS IN SOUTH
25 CAROLINA.

Page 2

1
2 APPEARANCES
3
4 FOR THE PLAINTIFF
5 MELIAH BOWERS JEFFERSON, ESQUIRE
6 WYCHE, P.A.
7 200 EAST CAMPERDOWN WAY
8 GREENVILLE, SOUTH CAROLINA 29601
9 mjefferson@wyche.com
10
11 FOR THE DEFENDANTS
12 ELIZABETH M. MCMILLAN, ESQUIRE
13 MCANGUS GOUDELOCK & COURIE, LLC
14 55 EAST CAMPERDOWN WAY, SUITE 300 (29601)
15 POST OFFICE BOX 2980
16 GREENVILLE, SOUTH CAROLINA 29602
17 beth.mcmillan@mgclaw.com
18
19 FOR THE DEFENDANTS
20 TOWNES B. JOHNSON, III, ESQUIRE
21 TOWNES B. JOHNSON, III, LLC
22 POST OFFICE BOX 9246
23 GREENVILLE, SOUTH CAROLINA 29604
24 info@sc.legal
25

Page 3

1
2
3
4 INDEX
5
6 STIPULATIONS.....5
7
8 EXAMINATION BY MS. MCMILLAN.....5
9
10 CERTIFICATE.....33
11
12
13 EXHIBITS
14
15 DEFENDANT'S EXHIBIT NUMBER 1, MARKED,
16 EMAIL 8-12-17, ATTACHED.....11
17
18 DEFENDANT'S EXHIBIT NUMBER 2, MARKED,
19 EMAIL 8-17-17, ATTACHED.....12
20
21 DEFENDANT'S EXHIBIT NUMBER 3, MARKED,
22 EMAIL 8-31-17, ATTACHED.....14
23
24 DEFENDANT'S EXHIBIT NUMBER 4, MARKED,
25 EMAIL 10-23-17, ATTACHED.....15

Page 4

1 EXHIBITS (CONTINUED)
2
3 DEFENDANT'S EXHIBIT NUMBER 5, MARKED,
4 EMAIL 11-21-17, ATTACHED.....17
5
6 DEFENDANT'S EXHIBIT NUMBER 6, MARKED,
7 FINAL PLANS WITH MODIFICATIONS, ATTACHED.....19
8
9 DEFENDANT'S EXHIBIT NUMBER 7, MARKED,
10 RIVERSTONE PLANS, ATTACHED.....20
11
12
13
14
15
16
17
18
19
20
21
22
23
24 *DIGITALLY RECORDED AUDIO RETAINED FOR TWELVE (12) MONTHS
25 FROM DATE OF CERTIFICATION.



Page 5

1 STIPULATIONS
2 IT IS STIPULATED BY AND BETWEEN COUNSEL
3 FOR THE RESPECTIVE PARTIES THAT ALL OBJECTIONS
4 ARE RESERVED UNTIL THE TIME OF TRIAL, EXCEPT
5 AS TO THE FORM OF THE QUESTION.
6 THIS DEPOSITION IS BEING TAKEN PURSUANT
7 TO THE FEDERAL RULES OF CIVIL PROCEDURE.
8
9 THE READING AND SIGNING OF THIS DEPOSITION IS
10 WAIVED BY THE DEPONENT AND COUNSEL FOR THE RESPECTIVE
11 PARTIES.
12 WHEREUPON, CHRIS MERLO, BEING DULY SWORN AND
13 CAUTIONED TO SPEAK THE TRUTH, THE WHOLE TRUTH, AND
14 NOTHING BUT THE TRUTH, TESTIFIED AND DEPOSED AS
15 FOLLOWS:
16 EXAMINATION
17 BY MS. MCMILLAN:
18 Q Mr. Merlo, good morning. My name is Beth McMillan. I
19 represent Montgomery Holdings and John Montgomery and
20 Gregory Grissinger in a lawsuit that's been filed by
21 Donald A. Gardner, Inc. And we're taking your
22 deposition today. I know you've been involved in some
23 other litigation, so have you had your deposition taken
24 before?
25 A No, I have not.

Page 6

1 Q So, basically, this is an opportunity for me and the
2 other lawyers in the case to ask questions of you as a
3 fact witness about what you may know, information that
4 might be relevant to the case. I'm going to kind of
5 ask you questions that hopefully are clear, but if I
6 ask a question that you don't understand, please ask me
7 to rephrase it, and I'll be glad to restate the
8 question.
9 If you need to take a break, let me know that,
10 too. I'm not trying to do a marathon here, and I don't
11 anticipate this will take too terribly long. But if
12 you need to take a break, let me know, and I'll be glad
13 to stop at any time.
14 A Okay.
15 Q Also, if you will wait to respond until I finish asking
16 my question, so that we're not talking over one
17 another, and I'll try to do the same, that would be
18 helpful for the court reporter.
19 And I think I see that my paralegal just sent an
20 email to you with some exhibits. I apologize. I sent
21 the hard copy documents to your lawyer's office, and
22 not realizing that y'all were not going to be together.
23 So I may get you to pull up that email shortly.
24 But, first of all, let's go ahead, and I'm going
25 to go ahead and get some background information on you.

Page 7

1 If you would, Mr. Merlo, tell me what your educational
2 background is.
3 A College educated.
4 Q And where did you go college?
5 A Clemson.
6 Q What did you get a degree in?
7 A My degree is in management.
8 Q In what year did you graduate from Clemson?
9 A 1996.
10 Q After graduating from Clemson, what type of work have
11 you done?
12 A Primarily real estate, as a real estate developer.
13 Q And do you have a real estate broker's license?
14 A Yes, I do.
15 Q When did you obtain that?
16 A That's a good question. I worked with another firm for
17 quite a few years, so maybe ten years ago.
18 approximately.
19 Q Do you currently own your own business?
20 A Yes, I do.
21 Q What's the name of your business?
22 A Upstate Commercial Group.
23 Q And what do you primarily specialize in in Upstate
24 Commercial Group?
25 A As far as services?

Page 8

1 Q Yes. You said you're in real estate. Is it -- I
2 assume it's a commercial group. I mean, is there a
3 particular niche that you are involved in in the
4 commercial real estate world?
5 A We help clients buy and sell assets.
6 Q Do you solely own Upstate Commercial Group, or do you
7 have partners?
8 A No, I'm the sole owner.
9 Q And you live in Seneca; is that your -- is that
10 correct?
11 A Yes, it is.
12 Q As part of your experience in the real estate business,
13 did you ever sell residential properties?
14 A I haven't sold many personally.
15 Q Well, do you have people in your group that sell
16 residential properties?
17 A Yes, I do.
18 Q How many agents do you have that work with you?
19 A We have three, total.
20 Q What area do you primarily focus on or target for your
21 properties? And by that, I mean, what areas in South
22 Carolina or Georgia? What -- is there some particular
23 area in the Upstate that you focus on?
24 A Mostly just the Upstate of South Carolina.
25 Q When did you first meet John Montgomery?

Page 9

1 A I think it was back in early 2017.
2 Q And how did you meet John?
3 A Initially, I don't recall.
4 Q Were you interested in talking with him about building
5 a residence for you?
6 A Yes, I was. Yes.
7 Q Do you recall how you had ever heard of his name or his
8 business? I mean, by -- was it by word of mouth?
9 A It's been a while back. I just don't recall.
10 Q Okay. Well, when you first met with John, what did you
11 ask him to do?
12 A I would imagine it would have been to quote some
13 pricing on the house.
14 Q Did you know Greg Grissinger, as well, or did you deal
15 -- well, let me ask you. Did you know Greg Grissinger
16 back in 2017?
17 A I believe I met Greg months after meeting John.
18 Q So I think you just said that you were asking him to
19 give you quotes. Was this for your personal residence
20 in Seneca?
21 A Yes, ma'am.
22 Q When did you buy the lot on the lake in Seneca?
23 A It was years before that, so maybe around 2015.
24 Q And did you meet with other contractors to get bids
25 from them to build your house?

Page 10

1 A Yes.
2 Q Do you know about how many other contractors you talked
3 to?
4 A I don't recall the exact number.
5 Q But did you end up selecting John and Greg to be the
6 builders for your home on the lake in Seneca?
7 A Yes.
8 Q Now, tell me about how you got the architectural plans
9 for your home in Seneca.
10 A They were purchased from Donald Gardner.
11 Q How many different sets of plans did you look at from
12 Don Gardner?
13 A I think we examined a handful of plans online, but we
14 only purchased one plan.
15 Q Did you get a set of plans and ask John Montgomery to
16 give thoughts on whether any revisions needed to be
17 made to those plans?
18 A I don't recall specifically. It's just been a while
19 back.
20 Q Do you recall when you purchased the Don Gardner plans?
21 A Yes, in 2017.
22 Q After you purchased the initial set of plans, did you
23 get revisions made to those plans by Don Gardner?
24 A Yes.
25 Q Do you recall what the revisions were?

Page 11

1 A Yes.
2 Q What were they?
3 A We took some storage space downstairs and made it
4 functional.
5 Q Meaning you put a den or some other type of room in the
6 storage space area?
7 A An exercise room.
8 Q Did you end up using those plans that were revised to
9 John and Greg for them to use to build the home?
10 A I believe so.
11 Q Let's take -- I'm -- did you see if you got that email
12 that was sent by Yvonne Kakkar?
13 A Yes, I did.
14 Q Okay.
15 MS. McMILLAN: Let's go off the record for just a
16 minute.
17 (OFF THE RECORD)
18 MS. McMILLAN: All right. So we can go back on
19 the record then.
20 (MARKED FOR IDENTIFICATION, DEFENDANTS' EXHIBIT
21 NUMBER 1, EMAIL, 8/12/17, ATTACHED.)
22 BY MS. McMILLAN:
23 Q So, Mr. Merlo, this is an email dated August 12, 2017,
24 from you to John Montgomery. And it says on there,
25 "Never heard back from you, but no worries. I know how

Page 12

1 things get busy. Did you move forward on your Lake
2 Keowee tract?"
3 And then, "On a separate note, my wife and I
4 picked the Donald Gardner plan for our lake house. It
5 is named Sandy Creek, and is W-1329-D, if you want to
6 view it on their website. It will require a few
7 modifications, but nothing too extreme."
8 Does this refresh your memory of you discussing
9 with John Montgomery in August about a Donald Gardner
10 plan that you had selected?
11 (Document shared with witness.)
12 A Yes, it does; yes.
13 Q Do you recall any follow-up conversations you all had
14 about this particular email?
15 A Not specifically, because it's been over three years
16 ago.
17 MS. McMILLAN: Jill, if you will, go to the next
18 email dated 8/17/2017. Make that Exhibit 2, please.
19 (MARKED FOR IDENTIFICATION, DEFENDANTS' EXHIBIT
20 NUMBER 2, EMAIL, 8/17/17, ATTACHED.)
21 (Document shared with witness.)
22 BY MS. McMILLAN:
23 Q And I think this one has three pages, if you want to
24 review it, Mr. Merlo.
25 A (Reviewing.)

Page 13

1 Q So, in this -- in the first page of this email, it
2 appears that you are advising John that you went ahead
3 and bought the attached .pdf file of the lake house
4 plans from Don Gardner. And it said, "This way I can
5 have builders effectively price the project."
6 So did -- do you think you sent plans to Mr.
7 Montgomery around August 17, 2017?
8 A Yes.
9 Q On the second page of this email --
10 MS. McMILLAN: Can you scroll back down? Well,
11 maybe it's the one before that.
12 COURT REPORTER: Here?
13 MS. McMILLAN: Well, go to the last page, please.
14 COURT REPORTER: Okay.
15 MS. McMILLAN: Well, is it just two page -- well,
16 there's three pages. I don't know why I'm showing a
17 third, a different page.
18 COURT REPORTER: Let's see. That's Page 2.
19 MS. McMILLAN: Yeah. That's the one I want right
20 there.
21 COURT REPORTER: Okay.
22 MS. McMILLAN: Page 2.
23 BY MS. McMILLAN:
24 Q On this one, it's an email from John Montgomery to you,
25 I think in response to the August 12th email we used as

Page 14

1 Exhibit 1, and he's giving you some thoughts on some
2 changes to the plan that you told him to look at. Do
3 you see that on there?
4 A Yes.
5 Q So does that refresh your memory that John made some
6 suggested changes for the plans?
7 A Yes.
8 MS. McMILLAN: If you would, Jill, now use the
9 email dated August 31, 2017, as Exhibit 3.
10 (MARKED FOR IDENTIFICATION, DEFENDANTS' EXHIBIT
11 NUMBER 3, EMAIL, 8/31/17, ATTACHED.)
12 (Document shared with witness.)
13 BY MS. McMILLAN:
14 Q If you'll take a look at that, Mr. Merlo, on this
15 email, it appears that you're going -- that you sent
16 the plans to several other builders to get estimates
17 from them. Do you recall doing that?
18 A Yes.
19 Q And let me ask you this. Back to Exhibit 1, which was
20 the one where you -- or Exhibit 2, where you said you
21 were attaching a .pdf of the plans that you bought from
22 Donnie Gardner, you believe you sent that original set
23 of plans from Don Gardner that had not been modified at
24 all to Mr. Montgomery. Is that right?
25 A I don't recall which ones I sent, specifically.

Page 15

1 Q Well, in Exhibit 2, it said, "I went ahead and
2 purchased the attached .pdf file of the lake house
3 plans from Don Gardner. This way I can have builders
4 effectively price the project. Look it over and give
5 me some feedback."
6 So would that indicate to you that you sent the
7 original plans that had not been modified yet from Don
8 Gardner to John Montgomery?
9 A I can't see the attachments on here, so I just -- I'm
10 not sure if they had been modified, or if that was the
11 original.
12 Q Okay.
13 MS. McMILLAN: Let's go to -- Jill, if you would
14 put up the email -- there should be one -- or the email
15 from Merlo dated October 23, 2017.
16 COURT REPORTER: Is that right?
17 MS. McMILLAN: Yes. That's right. It's a five-
18 page email.
19 (MARKED FOR IDENTIFICATION, DEFENDANTS' EXHIBIT
20 NUMBER 4, EMAIL, 10/23/17, ATTACHED.)
21 (Document shared with witness.)
22 BY MS. McMILLAN:
23 Q I guess what we should do is probably start at the back
24 page, and let Mr. Merlo have a chance to read all the
25 pages.

Page 16

1 COURT REPORTER: This is Page 5.
2 MS. McMILLAN: Oh, 5? Excuse me.
3 COURT REPORTER: This is Exhibit 4, but I shared
4 Page 5.
5 BY MS. McMILLAN:
6 Q Mr. Merlo, if you could read each page, I just want you
7 to have a chance to read them before I ask you
8 questions about it. So you can ask her to scroll it.
9 A Okay. (Reviewing.) Okay.
10 Q So were you reading it from your computer, basically,
11 the whole entire document?
12 A Yes. It's a little bigger, yes.
13 Q Okay. So, if you look at Page 3 of the email, it's an
14 email from John to you, dated October 4, 2017. And
15 John says, "Yeah, that would be scary if that was the
16 case. If we still have a shot at, I would suggest once
17 you have the final plans and site plan, let us give you
18 a number based on cost-plus."
19 Does that indicate to you that the plans had not
20 been finalized at that time in October?
21 A That sounds accurate.
22 Q And then on the very first page of the email, which is
23 the last string in the email, Monday, October 23rd,
24 John writes to you again, and said, "Yes, making a full
25 courtyard entry would be the simplest fix. I would

Page 17

1 recommend that the architect do this for you (if they
2 are making other changes for you)."
3 So does this indicate that, in October, by October
4 23, 2017, you were still getting revisions made to the
5 Donald Gardner plans?
6 A That also sounds accurate.
7 MS. McMILLAN: Okay. Jill, if you would now put
8 up the email for Exhibit 5, the email from Merlo,
9 11/21/2017, final modifications.
10 (MARKED FOR IDENTIFICATION, DEFENDANTS' EXHIBIT
11 NUMBER 5, EMAIL, 11/21/17, ATTACHED.)
12 (Document shared with witness.)
13 MS. McMILLAN: My computer screen's frozen. Have
14 you put it up?
15 COURT REPORTER: Yes. Can anyone else see it?
16 MS. JEFFERSON: Yes.
17 MS. McMILLAN: For some reason, mine's still on
18 the previous one. Mine's on the September -- I'm not
19 seeing the 11/21/2017 email for some reason. Well, my
20 computer screen's frozen up. I'm sorry. If you all
21 can see that one, if it is the November 21st email.
22 BY MS. McMILLAN:
23 Q Mr. Merlo, this says, "John, please find final plans
24 attached. Site plan should be back soon." And you're
25 forwarding an email from Tina Bowling at Don Gardner,

Page 18

1 which says, "Your house plans are attached to this
2 email in .pdf format. You may save the file to your
3 computer and reproduce the file as many times as you
4 would like in order to build your home."
5 Does this indicate to you that you had sent to
6 John the final revised plans from Don Gardner on
7 November 21, 2017?
8 A That sounds accurate.
9 Q Now, when you had the original plans that you got from
10 Don Gardner when you first purchased them, what did you
11 do with those plans, the original plans? Did you have
12 to turn those back in to Don Gardner? What did you do
13 with those?
14 A I just don't recall. It's been over three years ago.
15 Q Do you recall them requiring you to return those plans,
16 or were there any restrictions on your use of the
17 original plans that you purchased?
18 MS. JEFFERSON: Object to form.
19 THE WITNESS: I just don't recall.
20 BY MS. McMILLAN:
21 Q Do you recall how much you had to pay in addition to
22 get the revisions made to the plans?
23 A I do not. It's been over three years ago.
24 MS. McMILLAN: Jill, if you would, could you --
25 the next exhibit is the one that says "Merlo Final

Page 19

1 Plans with Modifications." And when you put it up,
2 since my screen's frozen, can you tell me what is
3 depicted on the first page of that exhibit?
4 MS. JEFFERSON: I'm sorry. What exhibit are we
5 on? What number?
6 COURT REPORTER: No. 6.
7 MS. JEFFERSON: Okay.
8 MS. McMILLAN: And it should be one that says,
9 "Merlo Final Plans with Modifications" from the email.
10 COURT REPORTER: Okay. I have it up. Do you need
11 me to tell you what's on the front page, or --
12 MS. McMILLAN: Yes, because I can't see it. I
13 can't see it.
14 COURT REPORTER: I just see the picture of the
15 front of the house. It's a drawing.
16 MS. McMILLAN: Okay.
17 (MARKED FOR IDENTIFICATION, DEFENDANTS' EXHIBIT
18 NUMBER 6, FINAL PLANS WITH MODIFICATIONS, ATTACHED.)
19 (Document shared with witness.)
20 BY MS. McMILLAN:
21 Q So is the drawing --
22 MS. JEFFERSON: It's the front elevation.
23 MS. McMILLAN: What now? Sorry?
24 MS. JEFFERSON: The front elevation.
25 MS. McMILLAN: Okay. The front elevation. That's

Page 20

1 what I wanted to clarify. Okay.
2 BY MS. McMILLAN:
3 Q So, Mr. Merlo, if you could look through this exhibit,
4 can you verify to me that these are the final plans
5 that you received from Don Gardner.
6 A (Reviewing) That looks to be accurate.
7 Q Can you tell if some of the modifications that you
8 requested have been made to this set of drawings?
9 A (Reviewing) Can you repeat that question?
10 Q Yes. I was asking you, can you tell if some of the
11 revisions that you requested to be made are in this set
12 of drawings?
13 A I don't see the exercise room.
14 Q Do you see any other changes, like how the garage was
15 laid out or any additional square footage?
16 A Yes. I believe the garage is modified.
17 MS. McMILLAN: Let's mark -- there's another set
18 of drawings in the email referenced as "Riverstone
19 Plans."
20 Jill, if you could put that up and mark it as
21 Exhibit 7, please.
22 (MARKED FOR IDENTIFICATION, DEFENDANTS' EXHIBIT
23 NUMBER 7, RIVERSTONE PLANS, ATTACHED.)
24 (Document shared with witness.)
25 BY MS. McMILLAN:

Page 21

1 Q And, Mr. Merlo, this is the set of plans, I think in
2 your email, that says "Riverstone Plans." Can you look
3 through that and tell me if that is the original set of
4 plans that you purchased from Don Gardner?
5 A Ah, now I can see.
6 MS. JEFFERSON: Excuse me, Beth. I don't have
7 those exhibits listed with the titles that you are
8 referencing during this deposition. So I'm going to
9 need you to describe a little more fully for me whether
10 or not I have the accurate exhibits.
11 MS. McMILLAN: Well, the two exhibits that I sent
12 in hard copy, the drawings, one had the front page of
13 it was an elevation, which is the one we marked as
14 Exhibit 6; and the other set of drawings started out
15 with "Floor Plan Design." That's Exhibit 7, and that's
16 what I'm referring to as the Riverstone Plans, or the
17 original set of plans that Mr. Merlo gave to -- I'm
18 asking him if this is the original set of plans that he
19 gave to John Montgomery.
20 MS. JEFFERSON: Okay. Just for -- Jill, could you
21 scroll up on that. I can't see the whole page, so I
22 just -- I'm trying to just make sure I have the right
23 document.
24 COURT REPORTER: Now, of course, my screen is
25 freezing.

Page 22

1 MR. JOHNSON: On Exhibit 7, the design number is
2 -- on the bottom right is 1329-D MR. On Exhibit 6, it
3 was Design No. 17176-1329-D MR.
4 MS. JEFFERSON: Okay. Then the first page that
5 you're looking at, does it say Sheet 2 of 12 JMR?
6 MR. JOHNSON: Yeah, on Exhibit 7; that's right.
7 MS. JEFFERSON: Okay. All right. Thank you. I'm
8 okay with that.
9 MS. McMILLAN: Okay. And, Townes, what was the
10 number you referenced? What was the number you
11 referenced on the front page of Exhibit 7?
12 MR. JOHNSON: It's on the bottom right-hand
13 corner, Beth. It's got a design number.
14 MS. McMILLAN: Right.
15 MR. JOHNSON: It says Sandy Creek.
16 MS. McMILLAN: Right.
17 MR. JOHNSON: And on Exhibit 7, it says 1329-D MR.
18 On Exhibit 6, it said Design No. M17176-1329-D MR.
19 MS. McMILLAN: Okay. Right. Got it now.
20 BY MS. McMILLAN:
21 Q So, Mr. Merlo, do you know if Exhibit 7 are the plans
22 that would have been for the original version of the
23 home that you got from Don Gardner?
24 A They look to be.
25 Q All right. After you got the final revised set of

Page 23

1 drawings, and John Montgomery had begun building your
2 home, did you ask Mr. Montgomery about retaining walls,
3 wanting to see some retaining walls, so that you could
4 get an idea of what you wanted at your house in Seneca?
5 A I'm sure we might have spoken about the retaining
6 walls. I just don't remember specifically what we
7 talked about.
8 Q Did you go look at any retaining walls at any other
9 homes that John and Greg had built to see if you wanted
10 a similar type retaining wall?
11 A Yes, I did.
12 Q And where all did you look?
13 A They gave me one address for a home, and we went there.
14 Q Where was that?
15 A I don't recall. It's been a while back.
16 Q What was the -- at the time you went and looked at that
17 retaining wall, how far along were you on your house in
18 Seneca?
19 A I just don't recall.
20 Q Do you know if you were close to completing
21 construction, or were you just getting started? Do you
22 have any idea what phase you were in?
23 A I don't recall the specific timing of it.
24 Q After you went and looked at the retaining wall, did
25 you decide that you wanted to use that type of

Page 24

1 retaining wall at your house on the lake at Seneca?
2 A Yes, we did.
3 Q Do you recall any discussions you had with John or Greg
4 about the retaining wall you wanted installed at your
5 lot?
6 A I remember pricing it with several other vendors, and
7 then John and Greg talked me into using their vendor.
8 Q And was the retaining wall built?
9 A Yes, it was.
10 Q Do you recall when you started, or you believe that you
11 had any issues with the work that John and Greg were
12 doing on your house in Seneca?
13 MR. JOHNSON: Object to form.
14 BY MS. McMILLAN:
15 Q You can answer.
16 A Can you repeat the question, please?
17 Q Yes. Do you recall when you believe that you first
18 started having any issues with the work that was being
19 done by John and Greg?
20 A And are we speaking to the quality of construction?
21 Q Anything that you thought was an issue.
22 A Fairly early on in the process.
23 Q What were the first issues that you had?
24 A I believe those were grading issues, the positioning of
25 the house.

Page 25

1 Q What were your problems? What were your concerns about
2 that?
3 A They sunk the house down into a hole.
4 Q What did you do to talk -- address that with them?
5 A Well, the grading had already been done.
6 Q Did you do any -- get any corrective grading done on
7 that issue?
8 A I don't recall. It dates back a little.
9 Q So that was before -- so when you say the grading was
10 done, did you address the issue with the grading at the
11 time that it was done?
12 A I'm sure we did.
13 Q Do you know what the resolution was?
14 A I don't think there was one. I think we just lived
15 with it.
16 Q When was the last time that John and Greg, or anyone
17 from their company, worked on your home in Seneca?
18 A We fired IBI Builders in 2019; I think around October
19 or November.
20 Q Who did you hire to complete the work?
21 A Joy Construction.
22 Q And did they complete your home?
23 A For the most part, they did.
24 MR. JOHNSON: Object to form. Beth, you know, I'm
25 going to -- this is basically getting into two

Page 26

1 depositions of Chris. I mean, this is completely
2 unrelated to the Don Gardner case.
3 MS. McMILLAN: Well, I'm trying to establish a
4 timeline, is what I'm trying to do here.
5 BY MS. McMILLAN:
6 Q Let me ask you this, Mr. Gardner -- I mean, Mr. Merlo.
7 Did you contact anyone at Don Gardner about a home that
8 was built by John and Greg with regard to plans from
9 Don Gardner?
10 A I don't recall.
11 Q You don't know whether or not you contacted Don Gardner
12 about a house that you believe they had built using Don
13 Gardner's plans?
14 A I simply don't recall.
15 Q Do you contend, or do you have any knowledge of whether
16 or not John Montgomery and Greg, and anyone in their
17 company, built a house that was similar to yours in
18 Seneca?
19 A I did come across the house that looked identical to
20 mine, and I think I might have sent an email to Townes.
21 I just don't recall.
22 Q When did you come across the house that you felt was
23 identical to yours?
24 A Last year, in 2019.
25 Q Where was that house?

Page 27

1 A I was -- I believe it was Seneca.
2 Q Where in Seneca?
3 A I'm not sure specifically. I found it on the internet.
4 Q What were you looking for on the internet that led you
5 to find that house?
6 A I was simply conducting my daily business in real
7 estate.
8 Q How far away is this house from your house in Seneca?
9 A I don't recall the exact location.
10 Q When you saw the house, did you contact anyone with
11 John or Greg's business about it?
12 A I don't recall.
13 Q Did you take any action to try to determine if they had
14 permission to use the plans for the house that you saw
15 that you think was identical to yours?
16 A As I stated, I may have sent an email to Townes.
17 Q For what purpose?
18 A To make him aware I found a house that looked just like
19 mine.
20 Q And so you say this house is in Seneca; that's where it
21 is?
22 A It's in the general vicinity of Seneca. It may not be
23 inside the city like my house.
24 Q That house that you saw, do you recall if it had a name
25 on it, or anything like that, to reference where the

Page 28

1 house was?
2 A I don't recall. I saw it online.
3 Q This house that you saw, was the garage placed at the
4 same type angle as your garage?
5 A I don't remember.
6 Q Do you know if this house that you saw has a full
7 kitchen in the basement?
8 A I'm not certain. I didn't -- I didn't go by the house
9 or walk through the house.
10 Q Did you have any concerns about seeing a house that
11 looked similar to yours?
12 A Yes.
13 Q What were your concerns?
14 A When I purchased the plans from Donald Gardner, they
15 told me no one in the area had purchased that specific
16 plan, and I liked the idea of having a unique plan.
17 MS. JEFFERSON: I'm sorry. My connection went
18 out. Ms. Edwards, could you read back his response?
19 (Whereupon, the court reporter read back from the
20 record as requested.)
21 MS. JEFFERSON: Thank you.
22 BY MS. McMILLAN:
23 Q Mr. Merlo, do you know, was there anything that would
24 prohibit Don Gardner from selling that plan to someone
25 else?

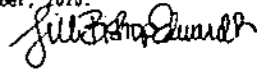
Page 29		Page 31	
1	MR. JOHNSON: Object to form.	1	looked at the retaining wall?
2	THE WITNESS: I'm not sure.	2 A	Not specifically. I know it was close to Seneca,
3	BY MS. McMILLAN:	3	though.
4 Q	Did you receive any promises or any warranties from	4	MS. McMILLAN: Let me check something real quick.
5	Donald Gardner that they would not sell that plan to	5	BY MS. McMILLAN:
6	anyone else in the Seneca area?	6 Q	Do you have any knowledge or information about where
7	MS. JEFFERSON: Object to form.	7	John Montgomery and Greg and their businesses would
8	THE WITNESS: I don't recall.	8	have obtained plans for the home that you say you saw
9	BY MS. McMILLAN:	9	on the internet that was similar to yours?
10 Q	Do you know anything that would prohibit anybody from	10	MS. JEFFERSON: Object to form.
11	buying a plan that was identical to the Sandy Creek	11	THE WITNESS: I'm not sure where they secured the
12	plan that you originally purchased?	12	plans from.
13	MS. JEFFERSON: Object to form.	13	BY MS. McMILLAN:
14	THE WITNESS: I'm not certain.	14 Q	Do you have any opinions or theories about where they
15	BY MS. McMILLAN:	15	obtained the plans for that home?
16 Q	The home that you think is similar or identical to your	16 A	Well, I relayed the plan to them via email, so it could
17	plan that you saw online, do you know if it has a --	17	have come from me, I suppose.
18	the exercise room and theater rooms like you have in	18 Q	Which plan are you referring to?
19	your basement area?	19 A	One of the versions that I sent them via email.
20 A	I haven't been inside that property.	20 Q	Did you ever talk to John or Greg about this other home
21 Q	So do you know if the house has the exercise and	21	that you thought was similar to yours?
22	theater rooms like you have at your home?	22 A	I don't recall speaking to them about it.
23 A	I'm not sure.	23	MS. McMILLAN: Mr. Merlo, I think that's all the
24 Q	Do you have any knowledge that the house that you're	24	questions I have.
25	saying is similar to yours has the revisions and	25	THE WITNESS: Okay.
Page 30		Page 32	
1	modifications that you had done to your set of plans?	1	MS. JEFFERSON: I don't have any questions.
2 A	I'm not sure. I didn't have any involvement with that	2	MS. McMILLAN: Well, I guess that's it then.
3	property.	3	THE WITNESS: Okay. Thank you.
4 Q	Well, do you have anything, any knowledge, that would	4	(WHEREUPON, THE DEPOSITION CONCLUDED AT 11:03 A.M.)
5	indicate to you that the house that you say you saw	5	
6	online was built with the same plans that you had that	6	
7	had been modified by Don Gardner?	7	
8	MS. JEFFERSON: Object to form.	8	
9	THE WITNESS: I'm not certain.	9	
10	BY MS. McMILLAN:	10	
11 Q	Have you ever talked with anyone from Don Gardner about	11	
12	this other home that you saw online?	12	
13 A	I don't recall.	13	
14 Q	You cannot remember whether or not you talked to anyone	14	
15	at Don Gardner about that home that you saw in 2019?	15	
16 A	It dates back to last year. I simply don't recall.	16	
17 Q	Do you recall talking to anyone about this house that	17	
18	you believe is identical to yours, and the fact that	18	
19	John and Greg had built this house?	19	
20 A	I may have sent an email to Townes.	20	
21 Q	Was the house that you're talking about, that you think	21	
22	is similar to yours, was that the house where you went	22	
23	and looked at the retaining wall?	23	
24 A	No, it was not.	24	
25 Q	Do you recall where the house was where you went and	25	

CERTIFICATE

This is to certify that the foregoing deposition of CHRIS MERLO, consisting of 32 pages, is a true and correct transcript of the testimony given by said deponent after first being duly sworn; said deposition was reported by method of Stenomask with digital backup. This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 14th day of December, 2020.



Jill Bishop Edwards, CVR-CN
Certified Verbatim Reporter

Notary in and for the State of South Carolina
My Commission Expires: July 10, 2030

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE) C.A. NO. 2019-CP-37-00687

Montgomery Holdings, LLC d/b/a)
IBI Builders,)
 Plaintiff(s),)
 versus)
Christopher J. Merlo, et al,)
 Defendant(s).)

 ORIGINAL

D E P O S I T I O N



WITNESS: CHRISTOPHER J. MERLO
DATE: February 25th, 2021
TIME: 11:47 a.m.
LOCATION: Townes Johnson, LLC
 101 North Main Street, Suite 302
 Greenville, South Carolina 29601
REPORTED BY: Lisa M. Nowell, Certified Verbatim Reporter

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 APPEARANCES:

2

3 Jason M. Tarokh, Esquire

4 Tarokh Law, PLLC

5 P.O. Box 10827

6 Tampa, Florida 33629

7 jason@tarokhlaw.com

8 Attorney for the Plaintiff(s),

9

10 Townes B. Johnson, III, Esquire

11 Townes B. Johnson, III, LLC

12 P.O. Box 9246

13 Greenville, South Carolina 29604

14 tjohnson@sc.legal

15 Attorney for the Defendant(s).

16

17 ALSO ATTENDING: John Montgomery

18 Greg Grissinger

19

20

21

22

23

24

25

INDEX

Stipulations, Waiver and Oath.....	6
Examination by Mr. Tarokh.....	6
Examination by Mr. Johnson.....	188
Certificate of Reporter.....	189

EXHIBITS

Plaintiff's Exhibit Number 1, Proposal, Attached hereto.....	14
Plaintiff's Exhibit Number 2, Proposal, Attached hereto.....	14
Plaintiff's Exhibit Number 3, Joy Construction Homes, LLC Residential Construction Agreement, Attached hereto.....	15
Plaintiff's Exhibit Number 4, Affidavit of Christopher J. Merlo, Attached hereto.....	16
Plaintiff's Exhibit Number 5, Texts, Attached hereto...	18
Plaintiff's Exhibit Number 6, Letter from Joy Construction Company, Attached hereto.....	24
Plaintiff's Exhibit Number 7, Bank Account Activity, Attached hereto.....	32
Plaintiff's Exhibit Number 8, Settlement Agreement and Mutual Release of Claims, Attached hereto.....	41
Plaintiff's Exhibit Number 9, Copy of Envelope and	

1	Check, Attached hereto.....	41
2	Plaintiff's Exhibit Number 10, Emails, Attached hereto.	52
3	Plaintiff's Exhibit Number 11, Contract,	
4	Attached hereto.....	57
5	Plaintiff's Exhibit Number 12, Emails, Attached hereto.	57
6	Plaintiff's Exhibit Number 13, Verification,	
7	Attached hereto.....	58
8	Plaintiff's Exhibit Number 14, Defendant's Amended	
9	Answers to Plaintiff's First Set of Interrogatories	
10	and Responses to Plaintiff's First Set of Requests	
11	for Production, Attached hereto.....	58
12	Plaintiff's Exhibit Number 15, Letter to Surety Claims,	
13	Attached hereto.....	62
14	Plaintiff's Exhibit Number 16, Guarantee,	
15	Attached hereto.....	65
16	Plaintiff's Exhibit Number 17, Plaintiff's First Set of	
17	Requests for Admissions to Defendant, Attached hereto..	78
18	Plaintiff's Exhibit Number 18, Emails, Attached hereto.	88
19	Plaintiff's Exhibit Number 19, Texts, Attached hereto..	90
20	Plaintiff's Exhibit Number 20, Emails, Attached hereto.	92
21	Plaintiff's Exhibit Number 21, Balance Sheet,	
22	Attached hereto.....	94
23	Plaintiff's Exhibit Number 22, Costs, Attached hereto..	99
24	Plaintiff's Exhibit Number 23, Payments to IBI	
25	Builders, Attached hereto.....	108

1	Plaintiff's Exhibit Number 24, Appraisal,	
2	Attached hereto.....	110
3	Plaintiff's Exhibit Number 25, Letter from Chris Merlo,	
4	Attached hereto.....	111
5	Plaintiff's Exhibit Number 26, List of Work Needed on	
6	Marina Bay 10/12/19, Attached hereto.....	112
7	Plaintiff's Exhibit Number 27, October Exterior Re-work,	
8	Attached hereto.....	114
9	Plaintiff's Exhibit Number 28, Emails, Attached hereto.	139
10	Plaintiff's Exhibit Number 29, Emails, Attached hereto.	141
11	Plaintiff's Exhibit Number 30, Emails, Attached hereto.	146
12	Plaintiff's Exhibit Number 31, Invoice from White's	
13	Appliances, LLC, Attached hereto.....	150
14	Plaintiff's Exhibit Number 32, House Plans,	
15	Attached hereto.....	162
16	Plaintiff's Exhibit Number 33, House Plans,	
17	Attached hereto.....	163
18	Plaintiff's Exhibit Number 34, Emails, Attached hereto.	169
19	Plaintiff's Exhibit Number 35, Emails, Attached hereto.	171
20	Plaintiff's Exhibit Number 36, Emails, Attached hereto.	178
21	Plaintiff's Exhibit Number 37, Emails, Attached hereto.	181
22		
23		
24	(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL	
25	IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)	

1 STIPULATIONS:

2 It is agreed by and between the Counsel for the parties as
3 follows:

- 4 1. That this deposition is being taken pursuant to Rule 30
5 of the South Carolina Rules of Civil Procedure;
6 2. That the deponent reserves the right to read and sign
7 the deposition transcript.

8 *****

9 CHRISTOPHER J. MERLO, first being duly sworn, was examined
10 and testified as follows:

11 *****

12 EXAMINATION BY MR. TAROKH:

13 Q. Good morning, Mr. Merlo. My name is Jason Tarokh. I
14 represent the plaintiff in this case. This case is
15 Montgomery Holdings, LLC d/b/a IBI Builders versus
16 Christopher J. Merlo, et al. It's case number 2019-CP-
17 37-00687. Mr. Merlo, have you been deposed before?

18 A. No, never.

19 Q. I'm going to ask you questions and I want you to
20 respond to my questions with verbal answers, and that's
21 for the benefit of the court reporter. Everything you
22 state will be put on record. And so if you shake your
23 head or nod your head, there's no way for the court
24 reporter to capture that. So if the answer is yes,
25 state what the answer is. For example, if it's yes,

1 don't nod your head in agreement. Verbalize it. And
2 if you need any breaks or anything of that nature, just
3 let me know. I'll be happy to accommodate. Mr. Merlo,
4 are you familiar with this case?

5 A. Yes.

6 Q. Who is Dustin Rampy?

7 A. He's a builder.

8 Q. And just for the record, Rampy is spelled R-A-M-P-E-Y.
9 And when did you first meet Mr. Rampy?

10 A. I first met Dustin when the police were called to my
11 house and one of the subcontractors of IBI was stealing
12 power from the neighbor next door, and he was building
13 that house.

14 Q. And when you say your house, is that the house that's
15 at issue in this case?

16 A. Correct.

17 Q. Can you state the address, please?

18 A. 548 Marina Bay Drive.

19 Q. And that's in Seneca?

20 A. Correct.

21 Q. Now, throughout the deposition I'll refer to your house
22 as the "project" or the "job" or the "house". Do you
23 understand?

24 A. Yes.

25 Q. Now, tell me about the circumstances upon you first met

1 Mr. Rampy. Describe the circumstances a little bit
2 more. So you just stated that subcontractors had
3 stolen electricity from a neighbor's house; is that
4 correct?

5 A. Correct, yes.

6 Q. And how were you notified of that?

7 A. I guess they called me. I don't recall. It's been
8 quite a few years ago.

9 Q. Who called you?

10 A. I don't recall. I remember going out to the house and
11 the police were there.

12 Q. You don't recall how you became notified of that
13 incident?

14 A. No, sir.

15 Q. But you agree you were notified?

16 A. Yes.

17 Q. And when you were notified, what did you do?

18 A. I drove out.

19 Q. You drove to where?

20 A. To the house.

21 Q. To your house?

22 A. Yes.

23 Q. And did you come into contact with Mr. Rampy?

24 A. Yes, I did. I met him and his wife.

25 Q. At your house?

1 A. Yes.

2 Q. Was that meeting prearranged?

3 A. Not at all.

4 Q. So help me understand. How is it that Mr. Rampy and
5 his wife randomly shows up at your house that day?

6 A. The police were there because the subcontractor was
7 stealing power from his house. I imagine maybe he
8 called them.

9 Q. And what did Mr. Rampy tell you that day?

10 A. That the subcontractors were stealing power from his
11 house.

12 Q. And what did you tell him?

13 A. I apologized. It was kind of an embarrassing
14 situation.

15 Q. Did you invite him inside of your house?

16 A. I was on the top of the hill, and I think when I got
17 there he may have been in the house already with the
18 police. I don't know that I invited him in, but I do
19 think he ended up going in.

20 Q. So at that point in time, what was the condition of the
21 house? It was -- was it being built?

22 A. Correct.

23 Q. You weren't living in there at that time?

24 A. No, sir.

25 Q. So you saw him from a hill and you went to the site

1 location. And when I reference site location, that's
2 the site of your job where your house is located?

3 A. Yes, it is.

4 Q. Did you show him around your house that day?

5 A. I don't recall. I remember meeting him. I was on the
6 top of the hill, he came up the hill after being inside
7 the house, but I don't know that I escorted him through
8 the house.

9 Q. Did you ask him to look at certain things about the
10 house, about the construction of the house, when he was
11 there?

12 A. Not specifically.

13 Q. But generally?

14 A. No, the call was a police complaint because the
15 contractor -- the subcontractor was stealing power, so
16 that's kind of why we were there. They were trying to
17 address why they had strung an extension cord five
18 blocks away to take power from the house that he was
19 building.

20 Q. How long was he at your house that day?

21 MR. JOHNSON:

22 Object to form. You can answer.

23 WITNESS:

24 A. I don't recall. Maybe 20 minutes, 30 minutes. Like I
25 said, when I arrived he was already on the site.

1 EXAMINATION RESUMED BY MR. TAROKH:

2 Q. Did you exchange contact information with him that day?

3 A. I don't recall, but perhaps, yeah. Perhaps we did.

4 Q. And when was it exactly? Was it -- you said -- and I
5 don't want to misstate what you said, but you said it
6 was months prior? It was -- I guess, when was it
7 exactly?

8 A. Could you clarify the question, please?

9 Q. Certainly. When was it that the police were called at
10 your house because of an allegation that a
11 subcontractor was stealing power and when you first met
12 Mr. Rampy? When was that date?

13 A. I don't remember.

14 Q. When generally? I'm not looking -- my next question --
15 I'm not looking for a specific date, but when
16 generally? Do you remember the month?

17 A. It would have been sometime in the term of the 24
18 months that IBI was hired to build the house. Sometime
19 in that term.

20 Q. When was the second time you spoke with Mr. Rampy?

21 A. The second time I spoke with Mr. Rampy was after
22 terminating the contract with IBI.

23 Q. And what day was that? Excuse me, what day was your
24 second communication with Mr. Rampy?

25 A. I don't recall the specific date.

1 Q. Would you agree that you terminated the contract with
2 IBI on October 12th, 2019?

3 A. That sounds accurate.

4 Q. So how many days after that date did you have a
5 conversation with Mr. Rampy?

6 A. I would expect soon after.

7 Q. One day after? A week after?

8 A. I don't recall the specifics.

9 Q. Did you communicate with -- how did you communicate
10 with him?

11 A. By phone.

12 Q. Who's your cell phone carrier?

13 A. AT&T.

14 Q. And what is your cell phone number?

15 A. 864-376-3384.

16 Q. And this is the same number from which you called Mr.
17 Rampy?

18 A. Yes, sir, it is.

19 Q. During that second conversation with Mr. Rampy, what
20 did you discuss with him?

21 A. My scenario with the house.

22 Q. And what was that?

23 A. It was in a state of disarray. I didn't have the
24 resources to complete all the rework that was necessary
25 and I asked if he'd be interested in taking the project

1 on.

2 Q. And what did he say?

3 A. I don't think he gave a definitive answer. We agreed
4 to meet and he agreed to look over the project.

5 Q. How long was that conversation?

6 A. I don't recall specifically.

7 Q. Did you have another conversation with Mr. Rampy after
8 the second conversation?

9 A. Surrounding the project?

10 Q. For any reason.

11 A. I would expect so. There was a lot of questions and a
12 lot of issues we were trying to resolve.

13 Q. Do you remember when you spoke to him after the second
14 time?

15 A. Not specifically.

16 Q. How long before -- excuse me, how long after you
17 terminated the contract with IBI to when you hired
18 Dustin Rampy and his construction company?

19 A. I was feverishly searching for any builder that would
20 come in and tackle the project. It was left in a state
21 of disarray. Everyone was telling me no, they wouldn't
22 even take it over. And I think he was the only one
23 that agreed to put a proposal together to correct all
24 the work that needed to be done. And I don't recall
25 how long it took him to put a proposal together. I'm

1 not positive. But after he put the proposal together,
2 I was very motivated to hire him because none of the
3 other builders I talked to would even consider it.

4 Q. I'm going to show you a document that will be marked as
5 Plaintiff's Exhibit 1.

6 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 1, PROPOSAL,
7 ATTACHED HERETO)

8 EXAMINATION RESUMED BY MR. TAROKH:

9 Q. Do you recognize Plaintiff's Exhibit Number 1?

10 A. It looks like part of Dustin Rampy's quote.

11 Q. Is that the proposal you were just referencing?

12 A. This may have been an initial proposal. I remember a
13 number a little bit larger than this here.

14 Q. I'm going to show you another document which will be
15 marked as Plaintiff's Exhibit 2.

16 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 2, PROPOSAL,
17 ATTACHED HERETO)

18 EXAMINATION RESUMED BY MR. TAROKH:

19 Q. Do you recognize that document?

20 A. It looks like a revised proposal.

21 Q. Is that the proposal you -- is that the last proposal
22 you received from Mr. Rampy?

23 A. It looks to be.

24 Q. I'm going to show you another document which will be
25 marked as Plaintiff's Exhibit 3.

1 (COURT REPORTER MARKS PLAINTIFF'S NUMBER 3, JOY CONSTRUCTION
2 HOMES, LLC RESIDENTIAL CONSTRUCTION AGREEMENT, ATTACHED
3 HERETO)

4 EXAMINATION RESUMED BY MR. TAROKH:

5 Q. Please let me know if you recognize that document.

6 A. Yes, I do.

7 Q. What is that document?

8 A. The contract with Joy Construction.

9 Q. Did Exhibit 2 accompany what I just handed you, Exhibit
10 3?

11 A. Can you repeat that question?

12 Q. Sure. Did Exhibit 2 accompany Exhibit 3?

13 A. I'm not certain. I suppose maybe it did. It looks
14 like the breakdown of the pricing.

15 Q. So between Exhibit 1 and 2, what was the proposal you
16 agreed to?

17 A. I believe it was Exhibit 2.

18 Q. Did Mr. Rampy's proposal -- what did it include? And
19 I'm not asking for specific items. I guess what I'm
20 asking for is, did Mr. Rampy's proposal to you include
21 remediation for alleged defects, or completion of the
22 house, or both?

23 A. I would say both.

24 Q. Did it include any items that were beyond the scope of
25 the contract that you had with IBI?

1 A. I'm not certain.

2 Q. So it's possible, then, that the proposal of Mr. Rampy
3 included items that were beyond the scope of the
4 contract with IBI, correct?

5 A. Could be possible.

6 Q. I'm going to show you another document which will be
7 marked as Plaintiff's Exhibit 4.

8 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 4, AFFIDAVIT
9 OF CHRISTOPHER J. MERLO, ATTACHED HERETO)

10 EXAMINATION RESUMED BY MR. TAROKH:

11 Q. Do you recognize that document?

12 A. Yes, I do.

13 Q. And what is that document?

14 A. It looks like an affidavit.

15 Q. And that's your affidavit?

16 A. Yes, sir, it is.

17 Q. I want you to look at paragraph 11 and read it and let
18 me know when you finish reading it.

19 A. (Witness reviews document). Okay.

20 Q. Now, it states - and this is my summary - that you've
21 expended \$215,523.20 correcting the following work
22 plaintiff performed, and then you go on and list the
23 work that the plaintiff allegedly performed; is that
24 correct?

25 A. Yes, but that number is not accurate. We've since

1 added to that.

2 Q. Explain that.

3 A. The list of work here is not inclusive of all the
4 defects that needed remedied.

5 Q. What defects needed remedy?

6 A. Where do you want me to start?

7 Q. Anywhere you want.

8 A. Okay. There was water damage inside the house that
9 developed into black mold in the walls.

10 Q. Let's start with the water damage.

11 A. Okay.

12 Q. When did that happen?

13 A. Under IBI's watch.

14 Q. What date was that? If you don't know the specific
15 date, generally what date was that?

16 A. On April 27th, 2018 --

17 Q. I'm going to stop you. What are you looking at?

18 A. A text log between me and Greg Grissinger.

19 Q. Can I see that document?

20 A. Sure. I've got all the instances where I documented
21 the water damage and texted it to him, the dates and
22 the times.

23 Q. Do you know if these documents were produced to me in
24 discovery?

25 A. I'm not certain.

1 Q. Would there be any reason why they were not produced to
2 me in discovery?

3 A. I'm not certain.

4 Q. Did you bring any other documents with you?

5 A. Sure, text logs from John Montgomery, Greg Senior. I
6 didn't bring all the pictures. I just have three or
7 four, but I have a picture gallery of 2,000 pictures of
8 the defects documented.

9 Q. I would like to mark what you just handed me as
10 Plaintiff's Exhibit 5. And just for the record, it
11 looks like it's 76 pages. The first page is 1 and the
12 last page is 76.

13 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 5, TEXTS,
14 ATTACHED HERETO)

15 EXAMINATION RESUMED BY MR. TAROKH:

16 Q. Okay, back to the water damage question. I think I
17 asked you when you first became aware of the alleged
18 water damage.

19 A. April 2018.

20 Q. And how were you made aware of the water damage?

21 A. I was onsite and witnessed it myself.

22 Q. Did IBI remedy the water damage?

23 A. They promised to repeatedly but did not.

24 Q. Did you eventually remediate the water damage?

25 A. Joy Construction did.

1 Q. Did you send my client a notice about the water damage?

2 A. Yes, I sent them one via text. And once the work --
3 the rework became so numerous and overwhelming, I
4 basically sent them a monthly rework list of all the
5 items that were defective in the house. It looked
6 something like this here (indicating) and this was e-
7 mailed to them on a monthly basis, usually five, six,
8 seven pages every month. So they were aware of the
9 issues as far as the water damage and the mold went.

10 Q. So explain to me the water damage specifically. Where
11 was it in the house?

12 A. Multiple locations.

13 Q. What were they?

14 A. A downstairs wall, upstairs roof, and basically both
15 sides of the house any time it rained.

16 Q. And it's your testimony that the \$215,000 figure
17 reflected in your affidavit did not include water
18 damage?

19 A. The figure is inaccurate because it's higher now, but
20 that did include the water damage.

21 Q. You signed the affidavit under oath, correct?

22 A. Yes.

23 Q. Why did you state an inaccurate figure in a sworn
24 statement?

25 MR. JOHNSON:

1 Object to the form.

2 WITNESS:

3 A. At the time I signed the affidavit, that was the
4 figure. And since then, more money has been put into
5 the project to remedy defects that still remain.

6 EXAMINATION RESUMED BY MR. TAROKH:

7 Q. So your testimony is, at the time you signed the
8 affidavit -- and it looks like you signed it on August
9 20th, 2020; is that correct?

10 A. Yes, it is.

11 Q. You expended \$215,000 -- excuse me, \$215,523.20. I
12 said that wrong, I'm sorry. \$215,523.20 correcting the
13 list of alleged defects; is that correct?

14 A. Yes, that is correct.

15 Q. And then subsequent or after August 20th, 2020, how
16 much did you expend?

17 A. I'm not sure on the exact amount.

18 Q. Did you keep records?

19 A. Yes.

20 Q. Can you ballpark it?

21 A. About 250.

22 Q. An additional \$250?

23 A. A total of \$250,000.

24 Q. How much specifically did you expend for the water
25 damage?

1 A. I'm not certain.

2 Q. Did you keep records?

3 A. I did.

4 Q. Who remediated the water damage?

5 A. Joy Construction.

6 Q. Were you aware of water damage at the time of your
7 affidavit?

8 A. Active water damage?

9 Q. Well, let's explore that. What do you mean by active
10 water damage?

11 A. I think it had been remediated by that time. This was
12 last year that I signed the affidavit.

13 Q. So on August 20th, 2020, your testimony is the water
14 damage - whatever it was, wherever it was - was
15 remediated, correct?

16 A. The interior water damage was remediated, yes.

17 Q. So now we have interior water damage. So we have
18 interior -- you said active water damage, interior
19 water damage. What other types of water damage are you
20 claiming?

21 A. Well, the house still takes on water when it rains.

22 Q. But you terminated my client, correct?

23 A. After 872 days, yes. We gave them a one year contract
24 initially.

25 Q. Did Joy Construction do anything relative to the water

1 damage?

2 A. Yeah, they remediated the water damage.

3 Q. But you just testified - and correct me if I'm wrong -
4 your house still has water damage?

5 A. We weren't able to fix everything. We weren't able to
6 correct all the work that needed rework from IBI's
7 building process.

8 Q. Why not?

9 A. We didn't have enough capital to complete everything.

10 Q. Did Mr. Rampy complete what you wanted him to complete?

11 A. For the most part.

12 Q. How much did you pay Mr. Rampy for his services, labor,
13 and materials? How much total money did you pay Mr.
14 Rampy? And what I mean by Mr. Rampy, I'm also
15 referencing Joy Construction.

16 A. Approximately \$140,000.

17 Q. Did any of that \$140,000 go to any type of water
18 damage?

19 A. Yes. I think it did, yes.

20 Q. Yes, or you think it did?

21 A. I'm fairly certain it did for the work that he did.

22 Q. So how do you know the water damage was not caused by
23 Dustin Rampy and Joy Construction?

24 A. Well, the house was taking on water prior to Dustin
25 doing the work, and now it doesn't take on water where

1 he did the work.

2 Q. So you don't have the water damage. So after Mr. Rampy
3 performed services, the house is free of water damage?

4 A. I didn't say that, because there was multiple spots.
5 He corrected the downstairs. There's other spots that
6 actually still take on water.

7 Q. And how did he correct the water damage?

8 A. Well, he had to cut a lot of stuff out that was put up
9 incorrectly, and he added a wall, he added a drain.

10 Q. Is Mr. Rampy your expert witness in this case?

11 MR. JOHNSON:

12 Object to the form.

13 WITNESS:

14 A. He corrected some of the work.

15 EXAMINATION RESUMED BY MR. TAROKH:

16 Q. That's not my question. Is Mr. Rampy your expert -- do
17 you intend to use -- strike that. What's the last
18 communication you had with Mr. Rampy?

19 A. I guess last year sometime.

20 Q. What did you talk about the last time you spoke with
21 him?

22 A. I don't recall.

23 Q. Did you talk to him about this case?

24 A. Against IBI?

25 Q. Uh-huh (affirmative), yes.

1 A. He understood the defects of the property and I was in
2 communication with him to correct them.

3 Q. Did you notify Mr. Rampy that you have a lawsuit with
4 IBI about your house?

5 A. I don't remember specifically, but perhaps. Perhaps I
6 did.

7 Q. Did you pay Mr. Rampy?

8 A. Yes.

9 Q. Did you fully pay him?

10 A. I believe so.

11 Q. Why do you believe so?

12 A. I pay everybody.

13 Q. If Mr. Rampy said that you breached your contract with
14 Joy Construction, would that be a true statement?

15 A. I'm not certain.

16 Q. I'm going to show you a document that will be marked as
17 Plaintiff's Exhibit 6.

18 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 6, LETTER
19 FROM JOY CONSTRUCTION COMPANY, ATTACHED HERETO)

20 EXAMINATION RESUMED BY MR. TAROKH:

21 Q. Do you recognize that document?

22 A. Yes, I do.

23 Q. What is it?

24 A. It's his letter to, I think, Building and Codes.

25 Q. Do you see the part where he says that he hereby -- and

1 this is my summary, hereby resigns as a licensed
2 residential contractor for your house effective April
3 6th, 2020 due to breach of contract in the form of non-
4 payment?

5 A. I do.

6 Q. Do you agree with that statement?

7 A. I don't. It's a little misleading. He actually sent
8 me money back after this letter went out.

9 Q. How much did he send you?

10 A. \$13,000. So I think that was from an overpayment,
11 actually.

12 Q. So that was a credit?

13 A. It was an overpayment.

14 Q. When did he send you that \$13,000?

15 A. After April the 6th. So after he would have written
16 this letter, he actually sent me \$13,000 back. So this
17 letter's a little misleading out of context.

18 Q. When did he send you the \$13,000?

19 A. After April the 6th.

20 Q. You don't remember a specific date?

21 A. I don't.

22 Q. But it was sometime last year?

23 A. After April the 6th, yes.

24 Q. Was it before you signed the affidavit?

25 A. I don't recall. I just know it was after this letter

1 he actually sent me \$13,000 back --

2 Q. Did you --

3 A. -- for an overpayment.

4 Q. Is the credit for the refund of \$13,000 reflected in
5 the \$215,000 figure in paragraph 11 of your affidavit?

6 A. I'm not certain to the details of that.

7 Q. How did you come up with that figure, the \$215,000
8 figure?

9 A. I have paid receipts for that amount.

10 Q. So it's possible you received \$13,000 before you signed
11 the affidavit and you did not credit that amount with
12 the amount you claim you have expended "correcting the
13 following work plaintiff performed", correct?

14 A. Could be a possibility.

15 Q. Would you agree that this \$215,000 figure in your
16 affidavit is unreliable?

17 A. No, not at all.

18 Q. Explain why it is reliable.

19 A. I have paid receipts exceeding that amount.

20 Q. But you don't know whether or not the \$13,000 refund
21 was included in that final amount?

22 A. I can't speak to that specifically.

23 Q. Why not?

24 A. I don't recall.

25 Q. Well, explain to me how you have -- that you can say --

1 that you can back up this amount with invoices, but you
2 can't account for the \$13,000.

3 A. I want -- I'm under oath and I want to speak
4 accurately.

5 Q. So explain it.

6 A. I'd have to do a full itemization to make certain it
7 was backed out of there.

8 Q. Did you do a full itemization at the time you signed
9 this affidavit?

10 A. Yes, sir, I did. Yeah, it took about two days.

11 Q. Do you know if you've produced those documents in
12 discovery?

13 A. What documents?

14 Q. The backup documentation from which you arrived at this
15 \$215,000 figure.

16 A. I believe we did produce all the receipts, the paid
17 receipts.

18 Q. But you don't know if the \$13,000 was accounted for in
19 that final amount?

20 A. I'm not positive.

21 Q. I'm just trying to understand. You're not positive
22 that the credit was accounted for or the refund was
23 credited for, but you just testified you went through
24 and you spent two days looking at invoices and things
25 of that nature, correct?

1 A. Yes.

2 Q. So how is it that you're not sure -- excuse me, how is
3 it that this figure, this \$215,000 figure, is accurate?

4 A. To the best of my knowledge when I signed the
5 affidavit, it was.

6 Q. Would you agree with me, then, that the \$215,000 figure
7 is not accurate because you don't know whether or not
8 you credited the \$13,000 refund?

9 A. I would disagree. I think it's a great basis for all
10 the work that needed to be done on the house.

11 Q. What specifically did Mr. Rampy give you the \$13,000
12 for?

13 A. For overpayment.

14 Q. Of what specifically?

15 A. The contract.

16 Q. What in the contract?

17 A. It was the entire contract, I guess.

18 Q. So he just sent you a check for \$13,000?

19 A. Well, once he did his financial accounting, I think he
20 realized there was an overpayment there.

21 Q. Did he explain to you what part of his services were --
22 that you overpaid?

23 A. I don't recall.

24 Q. Do you still have a copy of the check?

25 A. I'm not certain.

1 Q. What bank account did you deposit the check in?

2 A. I don't remember.

3 Q. What bank accounts did you have at that time?

4 A. I don't recall.

5 Q. You don't recall what bank accounts you have?

6 A. I have multiple accounts.

7 Q. What are the --

8 MR. JOHNSON:

9 If we can go off the record for just a second, I think
10 I can clear this up for you.

11 (OFF THE RECORD)

12 EXAMINATION RESUMED BY MR. TAROKH:

13 Q. Did Mr. Rampy return one of your checks, or did Mr.
14 Rampy write you a check for \$13,000?

15 A. I think he returned one of mine.

16 Q. And why has your testimony changed?

17 A. I don't believe it has.

18 Q. Why did you write Mr. Rampy a \$13,000 check that he
19 returned?

20 A. I wanted to make sure he was paid in full.

21 Q. So let's explore that, because you agree with me that
22 on April 6th, 2020 -- I'm looking at Exhibit 6 here. I
23 guess a letter was sent dated April 6th, 2020 to the
24 City of Seneca Building Codes saying that he hereby
25 resigns as a licensed contractor at your home for

1 breach of contract in the form of non-payment. And
2 then afterwards, your testimony is he sends you a
3 refund -- or excuse me, he sends you an unnegotiated,
4 uncashed check that you had previously written him?

5 A. Yes.

6 Q. Did he send you a letter with the check?

7 A. I don't recall.

8 Q. How did you get the check?

9 A. I don't recall.

10 Q. How do you normally get checks?

11 A. I don't usually get checks from builders.

12 Q. That's not my question. How do you normally receive
13 checks? If someone gives you a check, how do they
14 usually give it to you?

15 A. By mail perhaps.

16 Q. So how do you know the \$13,000 check you received back
17 from Mr. Rampy was for a refund for overpayment?

18 A. I don't know what else it could be for. The only
19 business we were involved surrounded the project.

20 Q. So help me understand. Mr. Rampy writes this letter,
21 then after he writes the letter he sends you back a
22 \$13,000 check and you don't know why?

23 A. I suspect it was overpayment.

24 Q. Do you suspect or do you know?

25 A. I suspect.

1 Q. So you don't know?

2 A. Not positive.

3 Q. So you disagree with Mr. Rampy, then, that you breached
4 the contract with him and Joy Construction in the form
5 of non-payment, correct?

6 A. Yes.

7 Q. Did you have a conversation with Dustin Rampy about
8 this letter, about the letter that's marked as Exhibit
9 6?

10 A. I don't recall. It dates back a year. I'm not
11 positive.

12 Q. Is there anything that could refresh your memory?

13 A. Not specifically that I know of.

14 Q. What bank account did you write the \$13,000 check from
15 that Mr. Rampy returned?

16 A. I don't know.

17 Q. After Mr. Rampy returned the \$13,000 check, did you
18 open up new bank accounts?

19 A. I don't recall.

20 Q. You run a business, correct?

21 A. Yes.

22 Q. What's your business?

23 A. Real estate.

24 Q. What's the name of your company?

25 A. Upstate Commercial Group.

1 Q. Are you a licensed realtor?

2 A. Yes.

3 Q. How long have you been licensed?

4 A. For awhile.

5 Q. To maintain your license as a realtor, do you have to
6 maintain accounting records relative to your bank
7 accounts?

8 A. We don't have an escrow account. So, no.

9 Q. I'm going to show you another document. This will be
10 Plaintiff's Exhibit 7.

11 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 7, BANK
12 ACCOUNT ACTIVITY, ATTACHED HERETO)

13 EXAMINATION RESUMED BY MR. TAROKH:

14 Q. Do you recognize that document?

15 A. Yes, I do.

16 Q. What is it?

17 A. It looks like a summary from one of our accounts
18 showing the payments to Joy Construction.

19 Q. So how many -- you said one of your accounts. How many
20 accounts do you have?

21 A. Numerous accounts.

22 Q. Two?

23 A. I'm not sure. I didn't -- I haven't counted them.

24 Q. So you have so many bank accounts, you can't keep track
25 of them?

1 A. No, not specifically, but we kind of divide
2 responsibilities. So I don't deal with that side a
3 whole lot.

4 Q. When you say -- who do you divide -- with whom? Who do
5 you divide responsibilities with?

6 A. Well, my wife would handle some and my sons and other
7 people in the company.

8 Q. Did your wife or sons ever pay Joy Construction from
9 their bank accounts?

10 A. I don't think it would have been from their bank
11 account. It would have been from one of our accounts,
12 or my accounts.

13 Q. Now, is this your personal account or is this a joint
14 account?

15 A. I'm not certain.

16 Q. So what does this document show?

17 A. Looks like maybe wires or actually check numbers to Joy
18 Construction.

19 Q. So you probably wrote a \$13,000 check out of this
20 account, correct?

21 A. I see one on there for \$13,900 there.

22 Q. So that's correct?

23 A. I think so.

24 Q. Would there be any other account from which you would
25 pay Joy Construction?

1 A. There could be.

2 Q. What are those accounts?

3 A. I don't know off the top of my head.

4 Q. Who do you think with besides Bank of America?

5 A. We have a lot of banking ties.

6 Q. That's not my -- you didn't answer my question. I know
7 you have a lot of banking ties, but who do you bank
8 with specifically?

9 A. Looks like on this, Bank of America.

10 Q. Who else?

11 A. I think we have an account with SunTrust Bank.

12 Q. Who else?

13 A. That's all that I can think of.

14 Q. But it's possible there's more bank accounts?

15 A. There may be.

16 Q. Did you pay Joy Construction from your SunTrust
17 account?

18 A. Looks like it came out of Bank of America.

19 Q. That's not my question. Did you pay Joy Construction
20 ever through your SunTrust account?

21 A. I don't believe so.

22 Q. Did you ever pay Joy Construction in cash?

23 A. I don't recall.

24 Q. Is it possible you paid Joy Construction in cash?

25 A. It is possible.

1 Q. Is it possible that the \$215,000 figure that is stated
2 in paragraph 11 of your affidavit was paid in cash?

3 A. Can you repeat that question?

4 MR. TAROKH:

5 Madam Court Reporter, if you can read it back.

6 (OFF THE RECORD)

7 WITNESS:

8 A. I believe some of it could have been paid in cash, but
9 I don't think the majority of it was.

10 EXAMINATION RESUMED BY MR. TAROKH:

11 Q. So some of that figure was paid in cash, correct?

12 A. Could have been.

13 Q. Do you have records?

14 A. Yes.

15 Q. How did you keep those records?

16 A. I would have secured a paid receipt.

17 Q. You would have -- I want to make sure I understand.
18 You said you would have secured a paid receipt?

19 A. Yes. Because of the litigation, Townes instructed me
20 to save all the paid receipts.

21 Q. Do you know if you've produced those receipts in
22 discovery?

23 A. I believe we did.

24 Q. After you received the \$13,000 check from Mr. Rampy,
25 did you communicate with him at all?

1 A. After the project completed?

2 Q. After the project completed, correct.

3 A. I haven't had really much communication with him since
4 it completed.

5 Q. When did Mr. Rampy complete the project?

6 A. Well, he resigned on April the 6th, 2020.

7 Q. So is it your testimony that Mr. Rampy completed the
8 project on April 6th, 2020?

9 A. Well, it wasn't complete.

10 Q. You just said it was complete, correct?

11 A. His involvement with the project was completed.

12 Q. What do you mean by that?

13 A. He didn't secure a C.O.

14 Q. Why not?

15 A. He moved out of state.

16 Q. Did you ask him to secure a C.O.?

17 A. That was our goal initially, but he moved fairly
18 quickly and wasn't able to secure the C.O. So I had to
19 take over the project myself.

20 Q. Now I'm confused because you said he completed the
21 project previously, and now you're saying that you
22 completed the project.

23 A. Correct, yes.

24 Q. And to summarize what you told me, you don't feel like
25 he completed the project because he doesn't secure a

1 C.O. So did you ask him to secure a C.O.?

2 A. We were working towards that, but the rework was so
3 extensive, he couldn't secure a C.O. working six months
4 after IBI was fired. His contractors worked morning,
5 noon, and night twelve hours a day very diligently.

6 Q. For how long? What time span? How many months or
7 weeks?

8 A. I guess from October 2019 all the way until April 6th,
9 2020.

10 Q. When was Joy Construction first on the jobsite working?

11 A. It was very soon after the contract was signed. I
12 don't remember the specific date.

13 Q. So my question again is, did you ask Mr. Rampy to
14 request a certificate of occupancy, a C.O.?

15 A. We were moving in that direction, but the defects were
16 just too numerous.

17 Q. Did you request a C.O. from Mr. Rampy? Did you ever
18 say, "Mr. Rampy, I need you to secure a C.O.," or
19 something to that effect?

20 A. I probably did.

21 Q. But you don't know for sure?

22 A. I probably did because a C.O. would have meant I could
23 have moved in after three years.

24 Q. But you don't know for sure?

25 A. (Negative response).

1 Q. So it's possible you didn't ask Mr. Rampy for a C.O.,
2 correct?

3 A. I guess it's possible.

4 Q. Before Mr. Rampy returned the \$13,000, did you make a
5 demand or a request for Mr. Rampy to do so?

6 A. I think we agreed there was an overpayment.

7 Q. Who brought up that topic first?

8 A. I don't remember if it was me or him.

9 Q. So was there a dispute about overpayment that you had
10 with Mr. Rampy?

11 A. I would say yes.

12 Q. And when was that dispute?

13 A. Leading up to April 6th of 2020.

14 Q. Did you tell him something to the effect of, "You
15 overpaid me. I need a refund"? Or did he say - and
16 this is my summary - "You overpaid me. Here's your
17 refund"? In other words, did you demand or request a
18 refund for overpayment, or did he voluntarily give it
19 to you?

20 A. I think we came to a mutual agreement.

21 Q. But why did you come to a mutual agreement? Why was it
22 necessary to even agree on that? Was there an
23 underlying dispute that came before the underlying
24 agreement?

25 A. There was some disagreement between us because I was

1 trying to get a lot of work redone on the project at a
2 reasonable rate, and he was doing that initially for
3 months and months. But when he told me he was moving
4 out of state abruptly, I thought the project was kind
5 of in jeopardy there. And so we came to an agreement
6 that I think everybody was satisfied with. Part of
7 that agreement was he would move away, I would step in
8 and finish the project, he would refund the \$13,000 in
9 overpayment. That being said, I credit him with
10 salvaging this entire project.

11 Q. Was it a surprise to you when he told you he was moving
12 out of state?

13 A. Yes.

14 Q. How did he tell you that?

15 A. I don't recall specifically.

16 Q. Was it an email?

17 A. Maybe a text.

18 Q. How many cell phones do you have?

19 A. I have one.

20 Q. Did he tell you why he was moving out of state?

21 A. Yes.

22 Q. Why?

23 A. To be closer to his children.

24 Q. Did you guys enter into a written settlement agreement
25 or anything of that nature? When I say "you guys", did

1 you and Dustin Rampy and/or Joy Construction enter into
2 a written settlement agreement?

3 MR. JOHNSON:

4 And if you want to go off the record -- if I haven't
5 produced it, I'm printing it out right now so you can
6 see it. And I've got the -- the check was sent to me
7 and I destroyed it. I'll clear all this up. I'm
8 getting it.

9 WITNESS:

10 A. Yes.

11 EXAMINATION RESUMED BY MR. TAROKH:

12 Q. So you did enter into a written settlement agreement?

13 A. Yes.

14 Q. Let's take two minutes.

15 (OFF THE RECORD)

16 EXAMINATION RESUMED BY MR. TAROKH:

17 Q. Mr. Merlo, we just took a break and we've just come
18 back from that break, and during that break I was given
19 two documents by your attorney which I've never seen
20 before until today. I'm going to hand you a document
21 that will be marked as Plaintiff's Exhibit 8, and I'm
22 also going to hand you another exhibit that will be
23 marked as Plaintiff's Exhibit 9.

24 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 8,
25 SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS, ATTACHED

1 HERETO)

2 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 9, COPY OF
3 ENVELOPE AND CHECK, ATTACHED HERETO)

4 EXAMINATION RESUMED BY MR. TAROKH:

5 Q. Do you recognize the document that's been marked as
6 Plaintiff's Exhibit 8?

7 A. Yes, I do.

8 Q. What is that document?

9 A. It looks like the settlement agreement with Joy
10 Construction.

11 Q. And when was it entered into?

12 A. Looks like 5/1/20.

13 Q. And you signed this document, correct?

14 A. Yes, I did.

15 Q. And Mr. Rampy signed this document as well?

16 A. Yes, he did.

17 Q. And it looks like Christa P. Rampy signed it, too?

18 A. Yes.

19 Q. Now, is Rampy spelled R-A-M-P-E-Y or R-A-M-P-Y? Do you
20 know?

21 A. According to his envelope, it looks like R-A-M-P-Y.

22 Q. In other words, there's not another Dustin Rampy out
23 there, correct? The Mr. Rampy I've been referring to
24 is the same Mr. Rampy? You understand, correct?

25 A. I believe so, yes.

1 Q. Why did you sign this document?

2 A. This is the agreement that Mr. Rampy and I made.

3 Q. Why?

4 A. To end our business relationship.

5 Q. I'm going to point you to the third "whereas" paragraph
6 on the first page. Do you see where it says "whereas
7 disputes have arisen"?

8 A. Yes.

9 Q. What disputes -- I'm sorry. It says disputes have
10 arisen - and this is my summary - related to the work
11 performed. Tell me about disputes related to the work
12 Joy Construction and/or Mr. Rampy performed.

13 A. I don't recall any specifically. I'm sure there were
14 some at the time. I just don't recall specifically.

15 Q. Is it possible that the work that you allege plaintiff
16 performed for which you've expended the round number of
17 \$215,000 as reflected in paragraph 11 of your
18 affidavit, that Joy Construction performed that work?

19 A. They did perform the majority of that work, yes.

20 Q. Well, is it possible that the issues that you describe
21 in paragraph 11 were issues caused by Joy Construction?

22 A. Absolutely not.

23 Q. How are you so sure?

24 A. Joy Construction remediated the work that needed to be
25 done at the house. They didn't cause any issues.

1 Q. So what work did Joy Construction perform for which a
2 dispute arose?

3 A. I don't recall any.

4 Q. So there were no disputes regarding the work performed
5 with Joy Construction, correct?

6 A. I don't recall any. As far as I'm concerned, Joy
7 Construction saved the entire project.

8 Q. Did it surprise you -- let me ask it another way. So
9 everything you state in your affidavit that my client
10 did which was defective -- and specifically I'm looking
11 at paragraph 9 and 11 and 12. All that damage --
12 alleged damage and defect, that was caused solely by
13 IBI; is that your testimony?

14 A. Yes.

15 Q. So help me understand why you signed a settlement
16 agreement which is marked as Plaintiff's Exhibit 8
17 which references that -- I'll read it verbatim.
18 "Whereas disputes have arisen between Merlo, Joy
19 Construction, and Rampy related to the work performed,"
20 et cetera, et cetera. What dispute did you have with
21 Joy Construction?

22 MR. JOHNSON:

23 Asked and answered.

24 WITNESS:

25 A. Yeah, I don't recall any.

1 EXAMINATION RESUMED BY MR. TAROKH:

2 Q. So is it possible disputes existed?

3 A. It is possible. I just don't recall specifically of
4 any disputes.

5 Q. So there's nothing about Joy Construction's work which
6 caused a memorable event in your mind?

7 A. No.

8 Q. So why did you sign this document which states that
9 disputes have arisen related to the work performed?

10 MR. JOHNSON:

11 Object to the form.

12 WITNESS:

13 A. Well, I think the biggest dispute was he was moving out
14 of state, I guess.

15 EXAMINATION RESUMED BY MR. TAROKH:

16 Q. Does this document reference Mr. Rampy moving out of
17 state?

18 A. I'm not certain.

19 Q. It doesn't, correct?

20 A. It doesn't look to.

21 Q. And it looks like that same "whereas" paragraph states
22 that - and this is my summary - disputes have arisen
23 related to the project management associated with the
24 work performed. Did you have any disputes with Joy
25 Construction or Mr. Rampy regarding project management?

1 A. Not that I remember. They were there every day.

2 Q. Is it your testimony that there were no disputes with
3 work performed or project management on behalf of Joy
4 Construction?

5 A. If there were, I just don't recall. It's been a year
6 ago.

7 Q. They would have been so minor?

8 A. Most likely.

9 Q. When did you give -- let me show you -- excuse me, let
10 me point you to Exhibit 9, and it looks like it's
11 several documents -- excuse me, one document, four
12 pages. What is this document?

13 A. It looks like the check that Mr. Rampy returned to me.

14 Q. The second page, what does it say on the second page?

15 A. "Apologies for the misunderstanding."

16 Q. And was that on a post-it note or a piece of paper, or
17 what?

18 A. I would guess so.

19 Q. What is that -- what was the misunderstanding and who
20 was that note addressed to?

21 A. That was addressed to Mr. Rampy.

22 Q. Why were you apologizing?

23 A. Well, we had reached the settlement agreement and he
24 moved out of state and evidently we had miscommunicated
25 over something.

1 Q. But you don't remember what it was?

2 A. Not specifically.

3 Q. Is there anything that could refresh your memory as to
4 what the dispute was?

5 A. My preference would have been for him to, you know,
6 stay in the state and continue to do the work, but --

7 Q. That's not my question. My question is, is there
8 anything out there that could refresh your memory as to
9 what the dispute was, what the misunderstanding was
10 that you reference on this second page?

11 A. I don't think so.

12 Q. The last page of Exhibit 9 is a copy of the check that
13 Mr. Rampy returned; is that correct?

14 A. It looks to be, yes.

15 Q. And what did you do with that check?

16 A. I guess I ripped it up, maybe.

17 Q. Did you deposit it into a bank account?

18 A. Well, this was a check I wrote and he returned.

19 Q. Correct.

20 A. So I don't think it would have been deposited. I think
21 it would have been ripped up, maybe.

22 Q. Let's go to Exhibit 7, and I'm going to point you to
23 the February 28th, 2020 entry. It says check 4856 in
24 the amount of \$13,900. Do you see that?

25 A. Yes, sir.

1 Q. What was it for?

2 A. I guess the services of the contract.

3 Q. Do you know if you've produced that check number in
4 this -- did you produce to me any checks in discovery,
5 any copies of checks in discovery?

6 A. I'm not sure.

7 Q. Who did you write check 4856 to?

8 A. It looks to be Joy Construction according to this
9 ledger that I have here.

10 Q. Show me, please. Show me where it says Joy
11 Construction next to that check number.

12 A. It does not say Joy Construction. But I'm just
13 assuming since it's in this list, this would have been
14 all of our payments to Joy Construction. We're glad to
15 produce the checks, including the 4856.

16 MR. TAROKH:

17 Townes, you'll produce those to me?

18 MR. JOHNSON:

19 Yeah, and we can leave it open if you have questions on
20 those.

21 MR. TAROKH:

22 Can I get those today for the deposition? Do you have
23 -- do you have them available?

24 MR. JOHNSON: (speaking to witness)

25 Can you log in?

1 WITNESS:

2 I don't do that, but I can have somebody log in. I
3 think the reason they did this here is because maybe
4 they -- we can get them some kind of copies, though.

5 MR. JOHNSON:

6 If we can do it today, that's great.

7 WITNESS:

8 Yeah, we'll be glad to produce them.

9 MR. JOHNSON:

10 Do you want us to make a call right now, Jason?

11 MR. TAROKH:

12 Yeah, let's take a -- let's take five, please.

13 (OFF THE RECORD)

14 EXAMINATION RESUMED BY MR. TAROKH:

15 Q. Now, back to your affidavit, Exhibit 4, we covered
16 water damage, but I don't see -- I'm sorry, we covered
17 water damage, but looking at Exhibit 4, I don't see any
18 reference to water damage. Do you see any specific
19 reference to water damage?

20 A. I'm not sure where you're at there.

21 Q. Let me point you to paragraph 9.

22 A. Okay.

23 Q. "In October 2019 and thereafter, I learned that
24 Plaintiff: 1) allowed black mold to fester inside the
25 project."

1 A. Okay.

2 Q. What is that? Is that the water damage you were
3 referencing earlier?

4 A. Yes.

5 Q. How did you learn that?

6 A. How did I learn about water damage?

7 Q. How did you learn about black mold inside the project
8 as you state in number 1 of paragraph 9 of your
9 affidavit?

10 A. Right. Well, we went out to the property and there was
11 mold growing on the walls, and Mr. Rampy indicated that
12 the best thing to do would be to cut them out and see
13 what was on the other side because the water was coming
14 from the other side.

15 Q. And this was after you terminated IBI?

16 A. Yes.

17 Q. When specifically did you learn about the black mold?

18 A. Would have been soon after terminating IBI because he
19 did an analysis of the house.

20 Q. Did IBI ever tell you that they would remediate black
21 mold?

22 A. They made several promises to, but the water was still
23 coming in.

24 Q. Did you send my client any notice after you terminated
25 them?

1 A. Yes, we sent them a termination.

2 Q. Did you send them a notice specifically referencing
3 black mold? Did you send them a letter via certified
4 mail?

5 A. After the termination?

6 Q. Yes.

7 A. No, sir. We haven't had any contact since the
8 termination.

9 Q. Why didn't you contact my client and say, "Hey, there's
10 black mold. You guys need to fix this"?

11 A. Your client filed a lawsuit, so we were dealing through
12 our attorneys.

13 Q. So because my client filed a lawsuit, you didn't
14 contact them to come fix the black mold?

15 A. Correct, plus I had already engaged the services of Joy
16 Construction.

17 Q. You engaged Joy Construction after --

18 A. Soon after firing IBI.

19 Q. Before or after the lawsuit was filed? Excuse me,
20 before or after you served -- you were served with the
21 lawsuit?

22 A. I don't remember the specific timing there as when the
23 lawsuit came in.

24 Q. Did you -- have you had -- did you already hire Joy
25 Construction before you were served with the lawsuit?

1 A. Most likely so. It was fairly quickly after firing IBI
2 that we hired Joy Construction.

3 Q. And did you vet Joy Construction?

4 A. Absolutely.

5 Q. And tell me the vetting process or what you did to vet.

6 A. Yeah, absolutely. First of all, he was the president
7 of the Home Builders Association for Oconee County. He
8 gave us a list of the folks that he had built houses
9 for and, you know, we walked through those houses and
10 talked to those owners.

11 Q. How long did it take you to meet those owners? Like
12 how long did the vetting process take? It sounds like
13 you called him --

14 A. Yeah, not very long because a lot of them were in the
15 subdivision.

16 Q. So like a couple of days or a day, or what?

17 A. Maybe a week, I guess.

18 Q. So the vetting process took a week; is that an accurate
19 statement?

20 A. I believe so.

21 Q. Let me show you a document that will be marked as
22 Plaintiff's Exhibit 10.

23 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 10, EMAILS,
24 ATTACHED HERETO)

25 EXAMINATION RESUMED BY MR. TAROKH:

1 Q. Do you recognize that document?

2 A. Yes.

3 Q. What is that document?

4 A. It looks like an email between me and my lender on the
5 project.

6 Q. Now, I'm looking at the email dated Monday, October
7 14th, 2019, the very top email. Do you see that?

8 A. Yes.

9 Q. And that would have been roughly two days after you
10 terminated my client, correct?

11 A. Sounds accurate.

12 Q. And it says in one of the sentences -- the second to
13 last sentence, it says, "A new GC has been interviewed,
14 vetted, and hired." Do you see that?

15 A. Yes, I do.

16 Q. So you just testified that the vetting process of Joy
17 Construction took a week, but yet a little more than
18 two days after you terminated my client you sent an
19 email to the bank saying you've already vetted them;
20 isn't that correct?

21 A. It appears so. We were motivated to move quickly.

22 Q. Were you telling the truth to Ms. Laura Thompson when
23 you sent this email?

24 A. Perhaps we were in the process of doing all these
25 things.

1 Q. That's not my question. My question was, were you
2 telling the truth to Ms. Laura Thompson when you sent
3 her that email?

4 A. I believe so.

5 Q. So explain to me how you can testify that it took about
6 a week to vet Joy Construction, but then two days after
7 you terminated my client you represent to the bank --

8 A. Perhaps it wasn't a full week. Maybe it was just a day
9 or so. Like I said, all of the houses that Dustin
10 Rampy built were directly surrounding my house.

11 Q. So when you testified earlier that it took about a week
12 to vet Joy Construction, that wasn't true, correct?

13 MR. JOHNSON:

14 Object to the form.

15 WITNESS:

16 A. Maybe it was a shorter length of time. Maybe it was
17 just a couple of days.

18 EXAMINATION RESUMED BY MR. TAROKH:

19 Q. So it was not correct that it took a week?

20 MR. JOHNSON:

21 Object to the form.

22 WITNESS:

23 A. It may have been quicker.

24 EXAMINATION RESUMED BY MR. TAROKH:

25 Q. So it's correct it was not a week?

1 A. May have been quicker. Like I said, we were very
2 motivated to move forward after dealing with IBI for
3 nearly two years.

4 Q. So let's explore that. So you testified that you met
5 or communicated with Dustin Rampy, he gave you the
6 names of owners with whom he built houses in your
7 neighborhood and you walked those houses, and you did
8 that within two days after terminating my client?

9 A. That sounds accurate. We were very motivated to move
10 on and remedy the defects of IBI.

11 Q. So why did you testify that it took a week?

12 A. This dates back to 2019. I wasn't sure of the
13 specifics. I said a week or so. So it ended up being
14 less than a week.

15 Q. You also state that you hired a new GC. And by new GC,
16 you mean Dustin Rampy and his company, correct?

17 A. Yes, sir.

18 Q. So is it true that on October 14th, 2019 when you sent
19 this email, that Dustin Rampy and Joy Construction had
20 already been hired?

21 A. I think maybe we were negotiating the terms of the
22 contract and I was fairly certain that we were going to
23 hire them because none of the other GCs we spoke with
24 would commit to taking on or remediation of the
25 project. It was just too much to do.

1 Q. So it's not true that on October 14th, 2019 that you
2 had hired Dustin Rampy?

3 MR. JOHNSON:

4 Object to the form.

5 WITNESS:

6 A. I think that was our intent to hire him.

7 EXAMINATION RESUMED BY MR. TAROKH:

8 Q. I'm not asking about your intent. Did you actually
9 hire Dustin Rampy and Joy Construction as of October
10 14th, 2019?

11 A. I'm not certain if we had signed the contract.

12 Q. So did you intend to hire them on that date --

13 A. Yes, yes.

14 Q. -- or did you actually hire them or had hired them on
15 that date?

16 A. We had intended to hire them. I'm not positive if we
17 had signed a contract by then.

18 Q. You'd agree with me that it's important that you keep
19 your bank informed of what's going on with the project
20 because they hold a mortgage on it, correct?

21 A. Yes.

22 Q. And it was your intent with this email to put the bank
23 at ease?

24 A. Yes. I was embarrassed by the actions of IBI.

25 Q. So you would say things they'd probably want to hear,

1 correct?

2 A. Not necessarily.

3 Q. How many days was it from the time you enter into a
4 contract with IBI -- Mr. Merlo, what are you texting?
5 It looks like you're texting. You're on your phone.

6 A. I'm trying to send the checks you requested to Townes
7 so he can print them out for your records.

8 Q. Okay, but let's -- if you can kindly not do that until
9 a break.

10 A. Okay.

11 Q. Now, how many days was it from the time you hired IBI
12 until the day you terminated them?

13 A. I think it was about 872 days. The contract was for
14 twelve months. Everyone that we interviewed said they
15 could build the house in six to nine months. We
16 allowed IBI twelve and fired them after two years.

17 Q. How are you so sure that it was 872 days?

18 A. I just counted the days between the date the contract
19 was signed and the date of termination and counted it
20 out.

21 Q. So if we take the date the contract was signed, which
22 was -- I think it was November 17th, 2017.

23 A. Sounds accurate.

24 Q. I'm going to show you what will be marked as
25 Plaintiff's Exhibit 11.

1 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 11, HOME
2 CONTRACT, ATTACHED HERETO)

3 EXAMINATION RESUMED BY MR. TAROKH:

4 Q. Take a look at that document, please, and let me know
5 if you recognize it.

6 A. Yes, that looks like the contract. November 11th of
7 2017.

8 Q. And you terminated them on October 12th, 2019?

9 A. That sounds accurate. Nearly two years.

10 Q. I want to show you a document that will be marked as
11 Plaintiff's Exhibit 12.

12 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 12, EMAILS,
13 ATTACHED HERETO)

14 EXAMINATION RESUMED BY MR. TAROKH:

15 Q. Do you recognize what's been identified as Number 12?

16 A. Yes, sir, I do.

17 Q. And what is that?

18 A. IBI's termination email.

19 Q. And there are other emails too in this document,
20 correct?

21 A. Yes, sir.

22 MR. JOHNSON:

23 We'll stipulate that's 695 days.

24 EXAMINATION RESUMED BY MR. TAROKH:

25 Q. I'm going to show you another document that will be

1 marked as Plaintiff's Exhibit 13.

2 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 13,
3 VERIFICATION, ATTACHED HERETO)

4 EXAMINATION RESUMED BY MR. TAROKH:

5 Q. Do you recognize that document?

6 A. Yes.

7 Q. And what is that document?

8 A. Look's like a verification form that I signed
9 personally.

10 Q. And this verification form was sworn to, correct?

11 A. Yes, I believe so.

12 Q. And everything you stated in this verification form is
13 true; is that correct?

14 A. Yes.

15 Q. I want to show you another document which will be
16 marked as Plaintiff's Exhibit 14.

17 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 14,
18 DEFENDANT'S AMENDED ANSWERS TO PLAINTIFF'S FIRST SET OF
19 INTERROGATORIES AND RESPONSES TO PLAINTIFF'S FIRST SET OF
20 REQUESTS FOR PRODUCTION, ATTACHED HERETO)

21 EXAMINATION RESUMED BY MR. TAROKH:

22 Q. Do you recognize that document?

23 A. Yes, I do.

24 Q. What's the title of that document?

25 A. It looks like the answers to the plaintiff's complaint.

1 Q. Are those your amended answers?

2 A. Yes, they are.

3 Q. To plaintiff's first set of interrogatories?

4 A. Yes.

5 Q. If you can look to page 6, top of page 7. Do you see
6 your response?

7 A. Yes.

8 Q. Can you state for the record the first sentence of your
9 response?

10 A. "Plaintiff was terminated after 872 days." Yeah, I
11 think that's an error. I think it was 695 days.

12 Q. But you signed this under oath, correct? I'm sorry,
13 you signed -- excuse me. Exhibit 13 states that you
14 were -- this is my summary, and tell me if you
15 disagree. You were duly sworn that you've read
16 defendant's admitted answer which is paragraph -- I'm
17 sorry, which is Exhibit 14, et cetera, and the same are
18 true and correct -- it says to "her" knowledge, but of
19 your own knowledge. "And as to those statements made
20 upon information and belief, she believes them to be
21 true." That's quite a discrepancy, don't you agree,
22 695 days that's set forth in Exhibit 12 and 872 days?

23 A. Looks to be a typo.

24 Q. That would be one significant typo; wouldn't you agree?

25 A. It looks to be a typo.

1 Q. But my question is, that would be one -- that's one
2 significant typo if it was truly a typo, correct?

3 A. Yeah, they missed the date count a little bit, but
4 correct.

5 Q. I mean, the difference is roughly 157 days.

6 A. Sounds like it.

7 Q. So which one's correct? 695 days set forth in Exhibit
8 12 or 872 days set forth in Number 7?

9 A. Definitely 695 days.

10 Q. Did your calculations for damages incorporate the 872
11 day figure?

12 A. I believe the 872 days may be from the time we first
13 signed the contract until the day we got the C.O.

14 Q. Maybe so, but that's not what the first sentence in
15 paragraph 7 states, correct?

16 A. Correct.

17 Q. It states that plaintiff was terminated after 872 days
18 working on the house?

19 A. It's inaccurate.

20 Q. What else is inaccurate?

21 A. Nothing to my knowledge.

22 Q. Are you sure?

23 A. Fairly certain.

24 Q. Let's go back to Exhibit 12. If I can point you to the
25 second page, the email dated October 8th, 2019 at 7:38

1 p.m. Let me know when you're there.

2 A. Yes, I'm there.

3 Q. Do you see the second to last -- I guess third to last
4 sentence. It says, "We would like to know where you
5 are with your bank in regards to your refi, payment,
6 etc." Do you see that?

7 A. Yes.

8 Q. And then it looks like you responded the next day on
9 October 9th and your second sentence says, "C.O. is
10 required for refi efforts"; is that correct?

11 A. Yes.

12 Q. And then it looks like on that same day Mr. Montgomery
13 emails you back and says, "Unfortunately we cannot call
14 for a C.O. until funds for balance owed is paid per
15 contract." Do you see that?

16 A. Yes, I do.

17 Q. Do you agree with that statement?

18 A. I'm not sure what the question is.

19 Q. The sentence I just read to you. Do you agree that IBI
20 cannot call or could not call for a C.O. until funds
21 for balance owed is paid per contract?

22 A. It sounds like maybe their company policy, I guess.

23 Q. So do you agree with it? Was that a true statement?

24 MR. JOHNSON:

25 Object to the form.

1 WITNESS:

2 A. I guess with their company that maybe was their policy
3 they followed.

4 EXAMINATION RESUMED BY MR. TAROKH:

5 Q. But did you agree with it?

6 A. I guess so.

7 Q. I'm going to show you another document that will be
8 marked as Plaintiff's Exhibit 15.

9 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 15, LETTER
10 TO SURETY CLAIMS, ATTACHED HERETO)

11 EXAMINATION RESUMED BY MR. TAROKH:

12 Q. Do you recognize that document?

13 A. Yes, I do.

14 Q. What is that document?

15 A. It looks like a bond claim for IBI.

16 Q. Is that your signature on the last -- the next page?

17 A. Yes, it is.

18 Q. And did you send it to Ginger L. Barnes, claims
19 consultant of Western Surety Company?

20 A. Yes, I did.

21 Q. Let's look at the first paragraph where you state --
22 let me know when you're there. It should be the third
23 or fourth sentence from the last sentence of the first
24 paragraph. It says, "Mr. Grissinger was not able to
25 secure an occupancy permit because the house was a

1 disaster and riddled with building code violations."

2 Do you see that sentence?

3 A. Yes, I do.

4 Q. Now, the occupancy permit, is that the same thing as a
5 C.O. or a certificate of occupancy?

6 A. Yes, it is.

7 Q. Did everything you state to the Western Surety Company
8 and specifically to Ginger Barnes, the claims
9 consultant, the truth?

10 A. As far as I'm aware.

11 Q. So everything you stated in this document, Plaintiff's
12 Exhibit 15, is true?

13 A. As far as I'm aware.

14 Q. You've made no false statements in Exhibit 15; is that
15 correct?

16 A. Not that I'm aware of.

17 Q. So explain to me, then, how in Exhibit 12 where you
18 just said you agreed that IBI could not call for a C.O.
19 until funds for balance owed is paid per contract, but
20 then you send the surety company a letter saying Mr.
21 Grissinger was not able to secure an occupancy permit
22 because the house was a disaster and riddled with
23 building code violations?

24 A. That's correct, there was too many defects. Once we
25 fired IBI, we spent X amount of dollars with Dustin.

1 Six months later, still failed the C.O. The house was
2 just riddled with defects.

3 Q. But you state in your letter to Ms. Barnes, you state
4 Mr. Grissinger was not able to secure an occupancy
5 permit?

6 A. That's correct, he was not. He couldn't have. Even if
7 he would have applied for it, it would have been denied
8 because we spent over \$200,000 in six months and still
9 couldn't get an occupancy permit.

10 Q. But the truth of the matter is - and you'll agree with
11 me but tell me if you don't - is that the reason why a
12 certificate of occupancy was not applied for by IBI was
13 because you didn't make payment?

14 A. Not the case. They never could have applied for one.
15 They never would have approved it. They didn't want to
16 be embarrassed by what they had created. The work was
17 too subpar, the craftsmanship was unbelievable.

18 Q. So would you agree that that statement in your letter
19 to Ms. Barnes that I just read is misleading?

20 A. I don't believe it is.

21 Q. Explain that.

22 A. It's simply factual. They never could have secured the
23 occupancy permit.

24 Q. But it implies that Mr. Grissinger attempted to secure
25 an occupancy permit; would you agree?

1 A. I don't think it does. I don't believe it does.
2 That's not the way I read it.

3 Q. How do you read it?

4 A. He was not able to secure it because the house was in
5 such abominable shape, he could not have secured it, so
6 he didn't even try.

7 Q. But that implies that he actually applied for a
8 certificate of occupancy, correct?

9 A. That's not the way I read it, but I guess it could be
10 interpreted different ways.

11 Q. I'm going to show you another document. This will be
12 Plaintiff's Exhibit 16.

13 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 16,
14 GUARANTEE, ATTACHED HERETO)

15 EXAMINATION RESUMED BY MR. TAROKH:

16 Q. Do you recognize that document?

17 A. Yes, I do.

18 Q. What is that document?

19 A. Looks like a guarantee to IBI.

20 Q. And that's your signature on it?

21 A. Yes, sir, it is.

22 Q. And your Social Security number?

23 A. (Affirmative nod).

24 Q. Do you see where it's the fourth bullet point under
25 Obligations Guaranteed? Do you see that?

1 A. Yes, I do.

2 Q. Read that sentence for me.

3 A. "Full payment of the obligation will be made prior to
4 move in completion of home and/or certificate of
5 occupancy request."

6 Q. Thank you. Did you make full payment to IBI?

7 A. I did not.

8 Q. But you make it sound like Mr. Grissinger applied for a
9 C.O. in your letter to the bond company; isn't that
10 true?

11 A. Wasn't my intention.

12 Q. But that's what it sounds like, correct?

13 MR. JOHNSON:

14 Object to the form.

15 WITNESS:

16 A. Perhaps. It wasn't my intention, though. He never
17 applied for the C.O. It would have been ludicrous for
18 him to apply.

19 EXAMINATION RESUMED BY MR. TAROKH:

20 Q. What was your intention with that sentence in the bond
21 company letter?

22 A. Basically to stress the fact that he never completed
23 the project.

24 Q. Did you explain -- let me back up. You wanted to
25 stress the fact that Mr. Grissinger never completed the

1 project?

2 A. Correct. After 692 days, the project was in a state of
3 disarray.

4 Q. How was it possible for IBI to complete the project
5 after you terminated them?

6 A. It was not. IBI was given twelve months to build a
7 house that should have taken six months to build.
8 After two years, they were terminated because of the
9 faulty craftsmanship, the headache, the anxiety, just
10 the disregard for the client.

11 Q. When did you first start having issues with IBI?
12 Construction issues, the ones you just described?

13 A. I would say early on.

14 Q. A week after the contract?

15 A. Early on. Probably in the framing stage. Maybe in the
16 grading stage.

17 Q. Why didn't you terminate them then?

18 A. Well, I felt an obligation. I signed a contract.

19 Q. After the first year went by?

20 A. Hindsight being 20/20, I should have terminated them on
21 day 366.

22 Q. Why didn't you do that?

23 A. Hindsight being 20/20, I would have, but I didn't. I
24 wanted to extend the courtesy for them to fix all the
25 defects that were happening at the time, and I trusted

1 that they could do that. They promised me they would
2 do that and they simply didn't fulfill those promises.

3 Q. Well, let's go back to Exhibit 12. You make no
4 references in these emails about defects and about the
5 time it has taken for construction to occur, correct?

6 A. Well, I did say it took 695 days, two years to build a
7 house with 4,000 square feet. And then I also
8 referenced the fact that the rework is extensive and I
9 sent them a full picture gallery of the rework for 12
10 to 14 months.

11 Q. The emails leading up to that email -- you're
12 referencing the October 12th email; is that correct?

13 A. Yes.

14 Q. The emails leading up to that email, the emails dated
15 October 9th, 2019 and October 11th, you make no
16 reference to the time it has taken or the time that had
17 passed and you make no reference to alleged defects or
18 anything of that nature, correct?

19 A. Correct. I felt sure the builders were aware of all
20 those issues.

21 Q. Why were you sure of that?

22 A. I emailed them monthly to refresh their memory of items
23 that needed to be corrected, defects that were in
24 place.

25 Q. Was it your intent on October 9th, 2019 in your email

1 dated 5:27 p.m. when you said, "C.O. is required for
2 refi efforts," was it your intent for IBI to apply for
3 a C.O.?

4 A. They never could have got it even if they had tried.

5 Q. That's not my -- that's not an answer to my question.
6 My question was, was it your intent by stating in that
7 email, "C.O. is required for refi efforts" for IBI to
8 apply for a C.O.?

9 A. No, I simply wanted to let them know if they intended
10 to get paid, a C.O. was required.

11 Q. But that's not what you agreed to, correct?

12 A. I believe our contract with IBI was breached early on.

13 Q. That's not -- you're not answering my question. That's
14 not what you agreed to. You didn't make a C.O. --
15 excuse me, you didn't make payment contingent on a
16 C.O., correct?

17 A. I don't know that we did.

18 Q. So then you got Mr. Montgomery's October 9th, 2019
19 email at 6:11 p.m. Do you see that at the top of the
20 second page of Exhibit 12?

21 A. Yes.

22 Q. Did this email make you mad?

23 A. I don't think so. The prior two years had me a little
24 upset, though.

25 Q. Now, it looks like you respond to that email on October

1 10th, 2019, correct, at 5:14 p.m.? It's the back of
2 the --

3 A. Yes, I see it. Yes, that's correct.

4 Q. And then in one of your sentences you say in that same
5 email, "While I encouraged the lender to move forward,
6 they are requesting a C.O. as evidenced in their last
7 email below," correct?

8 A. Yes.

9 Q. Why did you encourage the lender to move forward?

10 A. Well, my intention was never to hold back funding the
11 project if they completed the rework and made the
12 project right.

13 Q. But you didn't say anything about making the project
14 right or remediating defects?

15 A. I think after me sending them the monthly rework
16 schedule for twelve months straight, they had a fairly
17 good understanding that they were going to correct the
18 items that needed to be corrected.

19 Q. What does -- what do you mean by rework? Like what is
20 that?

21 A. Yeah, great question. Let's take a look at some of the
22 items. For example, when they put the windows in, they
23 didn't center them.

24 Q. I'm not asking for specifics right now, but I'm just
25 asking generally. You reference rework.

1 A. Correct, work that was done improperly by unskilled
2 subcontractors.

3 Q. How do you know that, though? Like you're not a
4 general -- you're not licensed as a general contractor,
5 are you?

6 A. No, I'm not. But when I go out to the house and
7 there's 15-year-olds building the deck, I have an issue
8 with that.

9 Q. How do you know they were 15 years old?

10 A. We called the police and the police asked them.

11 Q. Besides --

12 A. And I have a picture of them if you want to see them.

13 Q. Besides that, like how do you know -- like isn't it
14 true you're just sending them -- you testified you sent
15 them monthly emails with a rework list, but those
16 weren't true defects, correct?

17 A. They were true defects.

18 Q. They were just cosmetic preferences on your part; isn't
19 that true?

20 A. No, sir.

21 Q. Well, how are you qualified to determine what a
22 construction defect is and what it's not?

23 A. I consider it a defect if it's going diminish the value
24 of the property.

25 Q. But how are you qualified to say that? I mean, isn't

1 that just your opinion?

2 A. Perhaps.

3 Q. So those rework list items, that's just all your
4 opinion on certain things that could have a little bit
5 -- that didn't meet your cosmetic preferences, correct?

6 A. It was more than cosmetic.

7 Q. After you terminated IBI, did you use any of their
8 subs?

9 A. Not that I'm aware of. Joy Construction selected all
10 their subs that came into the project.

11 Q. Yeah, but after -- well, let's explore that. Joy
12 Construction used IBI's subs or Joy Construction used
13 Joy's subs?

14 A. Joy used Joy's subs, yeah.

15 Q. After your relationship with Joy terminated, did you
16 use any of IBI's subs?

17 A. Yes, there was one gentleman that did audio/visual and
18 we did continue to use him. Still use him to this day.

19 Q. Anybody else?

20 A. There may have been somebody else.

21 Q. Let's go back to Exhibit 12, which is that email that
22 I'll call the termination email chain.

23 A. Okay.

24 Q. Do you see on October 11th -- it's the back of the
25 first page on the top. October 11th, 2019 at 11:47,

1 Mr. Montgomery writes, "Chris, let's plan a time to
2 meet at our office next week. This is not part of what
3 we agreed on and we are a little concerned working with
4 Quicken loans rep." Do you agree that requesting a
5 C.O. by IBI before full payment is made was not part of
6 the contract between you and IBI?

7 A. IBI breached the contract long before then.

8 Q. That's not my -- you're not answering my question.

9 A. The contract was to build the house in one year.
10 You're talking about 24 months later.

11 Q. My question again is --

12 A. We were willing to honor the contract had IBI fulfilled
13 their obligation and made the house right. If they
14 would have corrected the work, we would have paid them
15 in full.

16 Q. But you didn't give them an opportunity to do the
17 rework.

18 A. Yeah, we gave them a full year.

19 Q. Well, that's --

20 A. On top of the contract.

21 Q. That's odd because -- that's odd to me because, in
22 response to that email on October 11th, 2019 at 3:56
23 p.m., you say, "John, sounds like a plan. Let me know
24 if next Friday will work and we can pencil it in."

25 A. That is correct.

1 Q. Why did you do that? Why did you say that?

2 A. At that point in time I was going to slog into year
3 three, maybe year four.

4 Q. In your mind, what did John want to -- excuse me, what
5 did Mr. Montgomery want to meet about?

6 A. I think the payment, right?

7 Q. Correct? Is that true, the payment?

8 A. I think so.

9 Q. And you state again, "John, sounds like a plan. Let me
10 know if next Friday would work and we can pencil it
11 in." Why did you send my client an email informing him
12 of your intention of having a meeting with him to
13 discuss payment?

14 A. That was my intention at that point, then I came to my
15 senses.

16 Q. So that was -- your email was sent on October 11th,
17 2019 at 3:56.

18 A. Correct.

19 Q. And then Mr. Montgomery states that same day two and a
20 half hours later, if my math is correct, "Friday will
21 not work. Will be best to do it sooner. Let me know
22 if you are available." You received that email,
23 correct?

24 A. Yes, I did. Yes.

25 Q. Did that email make you upset?

1 A. No, but the prior two years made me upset. Dealing
2 with IBI for two years made me fairly angry.

3 Q. And then after Mr. Montgomery sent you that email, you
4 sent him the termination email October 12th, 2019 at
5 7:24 a.m., correct?

6 A. Sounds accurate.

7 Q. So what happened?

8 A. I came to my senses.

9 Q. So let's discuss that. I want to explore that. So
10 Friday afternoon, say, around 4:00 - 3:56 to be
11 specific - you sent him an email expressing your
12 intention of meeting together to discuss the payment
13 situation?

14 A. Yeah.

15 Q. And then not even 24 hours later - roughly 13, 14, 15
16 hours later - you sent him an email early Saturday
17 morning terminating IBI?

18 A. Yes, I came to my senses after two years.

19 Q. Well, explain what you mean by coming to your senses.
20 Like what did you do that night to come to your senses
21 to completely reverse course. You admit you reversed
22 course, correct?

23 A. Yes, I do. Great question. I think I realized the
24 stress and the pressure and the anxiety that IBI put me
25 under for two years. The house should have been built

1 six months, nine months at the most. I was watching
2 houses around me larger than mine be built in six
3 months. When I pulled up to my house, no one was
4 working, no contractors were onsite. As I looked at my
5 neighbors' houses, there was 10, 15, 20 vehicles in the
6 yard actually performing the work, completing it,
7 getting it done properly. I was suffering from high
8 blood pressure, I was in marital counseling, and I had
9 a lot of issues going on as a result of this build.
10 And so I decided rather than moving forward and
11 extending the gratitude of giving them a year three and
12 maybe a year four, because I figured it'd take them a
13 couple more years to finish, I would go ahead and
14 terminate them, bite the bullet, try to figure out how
15 to finish it on my own.

16 Q. So it sounds like what you're saying is, your dealing
17 with IBI was very stressful.

18 A. Absolutely.

19 Q. Well, isn't it true that hiring and vetting a new
20 general contractor, scrambling in a sense, is more
21 stressful?

22 A. Absolutely. Why do you think I tried to make due with
23 IBI for an extra year, right?

24 Q. So it seems to me you knew that you were close to the
25 finish line with completion because you're asking --

1 because you're giving my client information about how
2 your lender is requiring a C.O.

3 A. I don't think we were anywhere near completion. As a
4 matter of fact, once I fired IBI and hired Joy
5 Construction, I spent another \$250,000 out of pocket
6 and another six months and it's still not all right.

7 Q. So your testimony is, at the time you sent this
8 termination email, you didn't think you were anywhere
9 near completion?

10 A. Correct.

11 MR. TAROKH:

12 Let's take ten minutes.

13 (OFF THE RECORD)

14 EXAMINATION RESUMED BY MR. TAROKH:

15 Q. Now, Mr. Merlo, before we had taken a break we were
16 discussing your issue with how long the project was
17 taking, correct?

18 A. Yes.

19 Q. I'm going to show you what will be marked as
20 Plaintiff's Exhibit 17.

21 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 17,
22 PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS TO
23 DEFENDANT, ATTACHED HERETO)

24 EXAMINATION RESUMED BY MR. TAROKH:

25 Q. Do you recognize that document?

1 A. Yes.

2 Q. And I'm going to show you Exhibit A to that document.
3 Do you see that?

4 A. Yes.

5 Q. And that's an email to you and Ms. Thompson with Grand
6 South Bank; is that correct?

7 A. Yes, it is.

8 Q. What's your intention with that email?

9 A. I think I was just touching base. I did mention the
10 construction is slow in there.

11 Q. But you also state -- let me back up. You say,
12 "Construction is slow with all the rain, but
13 continues"; isn't that correct?

14 A. Yes.

15 Q. Well, isn't it true the rain contributed to the delay?

16 A. I don't think so.

17 Q. So why did you tell Ms. Thompson that?

18 A. Why did I tell her --

19 Q. Why did you say, "Construction is slow with all the
20 rain, but continues"?

21 A. Well, I just meant things were moving forward.

22 Q. But did you tell her the truth in this email, Exhibit
23 A?

24 A. I think so.

25 Q. So it was true, then, that, "Construction is slow with

1 all the rain, but continues"?

2 A. At the time, we were still under contract and, you
3 know, whenever a contractor came out there to do work,
4 they came out there to do work.

5 Q. So the rain contributed to the delay in construction?

6 A. Absolutely not.

7 Q. So help me understand. You say, "Construction is slow
8 with all the rain, but continues." Why did you say
9 "with all the rain"?

10 A. At the time, I thought rain slowed a project down, and
11 then they built a house beside mine that's twice the
12 size of mine in six months and I realized the rain
13 doesn't slow it down unless you're a poor contractor,
14 right?

15 Q. Did you realize that, about the rain -- what I'm asking
16 about is that day. So when you emailed -- and it was a
17 Sunday, correct?

18 A. Yes.

19 Q. It was Sunday afternoon?

20 A. Yes, it was. Yes.

21 Q. You tell her, "Construction is slow with all the rain,
22 but continues." So at that time --

23 A. I think maybe the bank was getting anxious because the
24 realized we were in it 13, 14, maybe 15 months.

25 Q. But your intention was to inform the bank construction

1 is slow because of the rain?

2 A. Maybe I used that as an excuse at that time.

3 Q. Were you telling the truth?

4 A. Well, I was embarrassed and I was ashamed of the
5 project that they were building, right? And I was
6 embarrassed it was taking so long. So 15 months in,
7 the bank's wondering, "What's wrong? What's happening?
8 What's going on. Why is it taking so long?" Because
9 all the other house get built in six months and this
10 one's 15 months down the road.

11 Q. So you sent her an email because you were embarrassed
12 and to assure her?

13 A. Yes, because they were funding the project.

14 Q. So you basically told her what she probably wanted to
15 hear even though it may not have been true?

16 A. It was true. The construction was slow.

17 Q. But again, why did you have to say "with all the rain"?

18 A. I made an excuse for a builder that I had a contract
19 with. At the end of the day, it was me. I selected
20 the builder. I felt ashamed I picked the wrong one.

21 Q. So was construction slow because of the rain when you
22 sent her that email?

23 A. I don't think so.

24 Q. So why didn't you tell her the truth?

25 A. I would have had to admit I picked a subpar builder. I

1 was embarrassed.

2 Q. But then you also state, "The end product should be
3 exceptional"?

4 A. Grandiose expectations. I was thinking if IBI came in,
5 did everything we talked about, fixed all the rework,
6 by some miracle it would look good in the end.

7 Q. So on that day, you had confidence that the end product
8 would be exceptional, correct?

9 A. Probably overconfident.

10 Q. Let's go to Exhibit B. We're now on March 8th, 2019.

11 A. Uh-huh (affirmative).

12 Q. Read the second sentence -- I'm sorry, read the second
13 -- read that middle portion, "I had a good
14 conversation," et cetera.

15 A. Yeah. "I had a good conversation with John after we
16 spoke on the phone and we are meeting this Tuesday to
17 walk through the house together. I'm satisfied with
18 the project but my impatience is catching up. I really
19 never thought it would take 18 months to build. I feel
20 certain the final appraisal will reflect a number that
21 soothes my anxiety."

22 Q. But you state, "I really never thought it would take 18
23 months to build but that looks like the case."

24 A. That's where I was. Yeah, it had taken them that long,
25 yeah.

1 Q. So you were not concerned -- excuse me, the issue of
2 delayed construction was not really a concern of yours,
3 correct?

4 A. That was a top concern.

5 Q. But you're telling the bank, are you not, that, "Hey, I
6 guess it will take 18 months. I am satisfied with the
7 project." Why did you tell the bank you were satisfied
8 with the project?

9 A. They were lending on it. I didn't want them to stop
10 lending on the project. I was kind of informing them
11 that I was satisfied, but I really wasn't.

12 Q. So you were not telling them the truth?

13 A. I was not.

14 Q. Let's go to Exhibit C, Thursday, April 25th, 2019. You
15 mentioned an engineered boulder wall quote of \$51,000,
16 correct?

17 A. Yes.

18 Q. Was that true?

19 A. I believe so.

20 Q. Where did you get that information about the boulder
21 wall being \$51,000?

22 A. I imagine from IBI.

23 Q. But you don't remember for certain?

24 A. No, because in addition to their quote, I also talked
25 to a half dozen other gentlemen that were brought

1 onsite to quote the boulder wall. They quoted a price
2 that was half IBI's, but they wouldn't let us use
3 anybody except their own handpicked subcontractors. I
4 think they might be getting kickbacks from them.

5 Q. If you can go to Exhibit D. That's an email dated
6 April 30th, 2019, correct?

7 A. Yes.

8 Q. And that would have been just roughly a little more
9 than five months before you terminated them?

10 A. Sounds accurate.

11 Q. You state in here that, "I owe the builder another
12 \$150,000"?

13 A. Correct.

14 Q. At that time, were you satisfied with the project?

15 A. No, I was not.

16 Q. So why did you tell the bank that you owed the builder
17 \$150,000?

18 A. The bank was going to refi the property at the end so
19 the builder could be paid in full.

20 Q. So it was your goal with these emails to not raise any
21 issue with the bank regarding the project?

22 A. Yes.

23 Q. So you would say anything you think they would want to
24 hear so that they could keep the financing in place,
25 correct?

1 A. Not anything, no. But they were getting nervous
2 because the timeframe had elapsed.

3 Q. So regardless of whether or not you conveyed the truth
4 about the situation or your feelings, you were going to
5 tell them things to soothe their anxiety, so to speak?

6 MR. JOHNSON:

7 Object to the form.

8 WITNESS:

9 A. No, uh-uh (negative). Absolutely not.

10 EXAMINATION RESUMED BY MR. TAROKH:

11 Q. Let's go to Exhibit E. It's an email dated May 3rd,
12 2019, roughly five months or so -- a little more than
13 five months before you terminated the contract. You
14 state a contract is \$752,000, "I owe the builder
15 \$150,000," and you're asking, it looks like, for a new
16 loan or a refinance, correct?

17 A. Correct.

18 Q. And you're doing -- and it looks like you're asking for
19 a first loan of \$992,000 because you believe it would
20 appraise at \$1.25 million; is that correct?

21 A. Yes.

22 Q. So if the project was such a disaster and in disarray,
23 as you describe it, what makes you think it would
24 appraise for \$1.25 million or higher?

25 A. Grandiose thinking. And I figured if the contractor by

1 some miracle were to correct all the deficiencies,
2 maybe it would appraise.

3 Q. Let's go to Exhibit F, May 29th, 2019. It looks like
4 you say the same thing. The contract is \$752,000 -
5 this is my summary - "I owe the builder \$150,000," and
6 you ask again for a loan of \$992,000 correct?

7 A. Correct.

8 Q. And that was like almost a month after you sent the
9 other email. That was like 26 days after that, after
10 your email to Laura about basically the same thing,
11 correct?

12 A. Yes.

13 Q. So help me explain -- almost a month went by and you're
14 still asking -- you're making -- you're telling the
15 bank that you believe it will appraise at \$1.25 million
16 or higher, correct?

17 A. Correct.

18 Q. And that's because you were confident that the items
19 for which you sought rework would be remedied?

20 A. Correct.

21 Q. But you didn't give my client a chance to do any of the
22 rework items, correct?

23 A. I gave them 695 days.

24 Q. Right, but in May -- the end of May, you're telling the
25 bank you think the house -- the project would appraise

1 for over a million dollars. And how can the rework
2 items that you claim are so defective -- how can that
3 be? Like how can you tell the bank, "Presuming this
4 appraises at over a million dollars, we can do a first
5 loan," if you were not, in fact, confident that my
6 clients could remediate the rework list items?

7 A. I had faith that they would at that point. I wanted
8 them to complete it, to correct all the deficiencies so
9 I could pay them in full and we could part friends.

10 Q. So the next email, Exhibit G, is dated August 20th,
11 2019, and that would have been six weeks or so -- five
12 or six weeks before you terminated the contract,
13 roughly.

14 A. Uh-huh (affirmative).

15 Q. You send her an email that says, "Hi, Laura. It's hard
16 to believe, but we are almost finished with the house."
17 Was that a true statement?

18 A. It was not.

19 Q. So you didn't tell her the truth in this email?

20 A. I did not.

21 Q. And then your next -- the next line says, "It's been a
22 long road. The house now exceeds our initial
23 expectations though."

24 A. By this point we were 20 months into a project that
25 should have took 12 months. Actually probably six or

1 nine months. The bank's getting very nervous. I didn't
2 want them to cut off funding for the project.

3 Q. So was it true the house exceeded your initial
4 expectations?

5 A. In certain aspects, it did.

6 Q. Like what?

7 A. Not with the construction, though.

8 Q. What aspects did the house exceed your expectations?

9 A. I liked all the windows, the natural light.

10 Q. That's it?

11 A. That's all that comes to mind.

12 Q. So you sent the bank an email and stated, "The house
13 now exceeds our initial expectations though," because
14 you liked all the natural light from the windows?

15 A. Correct.

16 Q. But then you also state, "The builder is requesting a
17 draw"?

18 A. Correct.

19 Q. If you weren't satisfied with the project at that time
20 and if you didn't feel like the house exceeded your
21 initial expectations, why did you tell the bank that
22 the builder was requesting a draw?

23 A. They were funding it.

24 Q. So you wanted to get my clients paid?

25 A. Correct.

1 Q. If they were doing such a disastrous job, as you
2 describe, why were you trying to get them paid?

3 A. I wanted to fulfill my obligation.

4 Q. Did you fulfill your obligation, ultimately?

5 A. About as much as they fulfilled theirs.

6 Q. I'm going to show you another email or another document
7 that will be marked as Plaintiff's Exhibit 18.

8 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 18, EMAILS,
9 ATTACHED HERETO)

10 EXAMINATION RESUMED BY MR. TAROKH:

11 Q. Let me know when you finish reading it.

12 A. (Witness reviews document). Yes, finished.

13 Q. Do you see the email dated July 11th, 2019 at 1:24
14 p.m.?

15 A. Yes.

16 Q. You say, "John, I have a lot in Powderville and I'm
17 thinking of building a small 15,000 SF flex building
18 kind of like the one pictured. Is this something you
19 guys may want to consider building? Interested to see
20 what a SF price might be."

21 A. Correct.

22 Q. "Thanks for taking a look." If they were doing such a
23 disastrous job on your residential house, why would you
24 entrust them with a commercial building, especially
25 when your business is commercial real estate?

1 A. I never would. I was just hunting for a dollar per
2 square foot cost and I knew they were building flex
3 space. All I wanted was a dollar per square foot. I
4 never would have hired them.

5 Q. So why did you say, "Is this something you guys may
6 want to consider building?"

7 A. Well, maybe they'd share the last building they did so
8 I could understand that cost.

9 Q. Can you repeat that? I'm sorry.

10 A. Maybe they would share the cost per square foot of the
11 last building they did so I would understand that cost.

12 Q. I don't understand that. Why did you ask them -- if
13 you didn't trust them with building a commercial
14 property for you when you are in the commercial
15 building business, why did you ask them again to
16 consider building it?

17 A. I was just fishing to get the average cost per square
18 foot for the buildings they were building, that's all.

19 Q. Why didn't you just ask them -- I mean, why did you
20 have to say that sentence? Like you could have gotten
21 that information, correct, if you didn't say, "Is this
22 something you guys may consider building"? You could
23 have just said, "John, I have a lot in Powderville," et
24 cetera, delete the, "Is this something you guys may
25 want to consider building?", leave that part out and

1 say, "Interested to see what a SF price might be.
2 Thanks for taking a look." Like why did you have to
3 put the, "Is this something you guys may want to
4 consider building?" sentence in there?

5 A. I wanted to keep the tone cordial.

6 Q. So you had no intention of having IBI build --

7 A. Absolutely not.

8 Q. I'm going to show you another document that will be
9 marked as Plaintiff's Exhibit 19.

10 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 19, TEXTS,
11 ATTACHED HERETO)

12 EXAMINATION RESUMED BY MR. TAROKH:

13 Q. Let me go back to 18 really quickly. Why were you
14 interested in having the relationship be cordial or
15 remain cordial?

16 A. Because I was in such a deficit with the property,
17 there was so much rework that needed to be finished, I
18 needed to maintain a cordial relationship.

19 Q. Let's go to Exhibit 19. Let me know when you have a
20 chance to read it. It's front and back.

21 A. Uh-huh (affirmative).

22 Q. Do you recognize this document?

23 A. Yes, it's a text.

24 Q. And it looks like on February 14th of 2019, John
25 Montgomery sends you a text that says, "Thank you for

1 the gift!! Nice surprise!" Did you send him a gift?

2 A. I obviously did.

3 Q. Why?

4 A. Trying to remain cordial.

5 Q. You also state after he sent that text, "You're very
6 welcome. Nikki and I appreciate you and Greg on the
7 house. Enjoy." Now, this is over a year - 13, 14, 15
8 months - after construction began, correct?

9 A. Correct.

10 Q. And you're sending him a gift and telling him you're
11 appreciative of him and Greg on the house?

12 A. Trying to induce him to do the rework to get the house
13 done and completed.

14 Q. Was it true that you appreciated John and Greg on the
15 house when you sent this text?

16 A. Well, I appreciate the efforts they were making at the
17 time.

18 Q. So much so you gave him a gift?

19 A. Correct.

20 Q. What was the value of the gift? Do you remember what
21 it was?

22 A. I don't recall.

23 Q. Was it delivered, or did you give it him personally, or
24 did you drop it off, or was it a basket or something,
25 mail order basket?

1 A. I don't recall. I apologize.

2 Q. Let me show you another email. This will be
3 Plaintiff's Exhibit 20.

4 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 20, EMAILS,
5 ATTACHED HERETO)

6 EXAMINATION RESUMED BY MR. TAROKH:

7 Q. Take a moment to look at the exhibit and let me know
8 when you finish, please.

9 A. (Witness reviews document). Okay.

10 Q. Let's start from the top, your email to Mr. Montgomery
11 dated -- this would have been August 8th, 2019. You
12 state in the third paragraph, "Also attached the August
13 --" I'm going to summarize. "Also attached the August
14 rework schedule. We initially had four pages and now
15 down to one. Headed in the right direction. Thanks
16 again for the assistance. If I could trouble you to
17 send over the balance sheet of funds owed. My lender
18 has begun the final paperwork, and as soon as the C.O.
19 is available, the appraiser will come out in seven
20 days." That was your email, correct?

21 A. Yes, it was.

22 Q. So it's true in August 2019 -- this would have been
23 approximately a little over two months before you
24 terminated IBI, but you sent them an August rework
25 schedule that had four pages and they completed items

1 on it and they whittled it down to one; isn't that
2 correct?

3 A. I think we condensed some of the items and we decided
4 just to passively accept some of the items that were
5 defective at the time.

6 Q. What items did you passively accept?

7 A. I don't recall specifically.

8 Q. What were their value? Like what did it cost to
9 rework?

10 A. I don't recall specifically.

11 Q. So it's true, then, in August, whatever your rework
12 list of multiple items was reduced?

13 A. It looks to be true, yeah.

14 Q. To your satisfaction?

15 A. Well, there was still a lot of rework that was left.

16 Q. But was it to your satisfaction? The reduction in the
17 rework items, did it satisfy you at that time?

18 A. It sounds like it did.

19 Q. Did it?

20 A. Sounds like it did according to the email I sent.

21 Q. But did it?

22 A. I think so, yeah.

23 Q. And then you also state, "Heading in the right
24 direction. Thanks again for the assistance." What was
25 your intent with that? What did you mean? Those are

1 two different questions. What did you mean by that?

2 A. Well, I wanted to encourage them to complete the rest
3 of it.

4 Q. And you were truly appreciative of their work, correct?

5 A. Of what they had done, correct.

6 Q. And then it looks like Mr. Montgomery sends you a
7 balance sheet. It says, "See attached balance sheet."
8 I only have one copy of this, so we can mark it and
9 counsel can look at it. This will be Exhibit 21.

10 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 21, BALANCE
11 SHEET, ATTACHED HERETO)

12 EXAMINATION RESUMED BY MR. TAROKH:

13 Q. Are you finished?

14 A. Yes, uh-huh (affirmative).

15 Q. Was that the balance sheet attached to the August 9th
16 email referenced in Exhibit 20?

17 A. I believe it was.

18 Q. So he sent you that. By "that", I mean Exhibit 21.
19 And then it looks like roughly 11 days later you update
20 him about your final financing for the house, correct?
21 If you look on the back, flip the page of Exhibit 20.

22 A. Yes, I see it.

23 Q. So is that correct?

24 A. That looks accurate.

25 Q. So on August 20th, 2019, you apply -- or you update him

1 on final financing, correct?

2 A. Yes.

3 Q. And -- is that correct?

4 A. Yes.

5 Q. And you're actually scheduling an appraisal on
6 September 16th. That would have placed it within less
7 than a month before you terminated them, correct?

8 A. Sounds accurate. My intention was to pay them.

9 Q. And why did you tell Mr. Montgomery, "They will require
10 a C.O. prior to appraisal"?

11 A. It was a requirement of the lender.

12 Q. And it's a requirement under the contract you had with
13 IBI, correct?

14 A. I believe it was.

15 Q. And you also state, "I wanted to get started now so
16 that I can fulfill my financial commitment promptly
17 upon completion."

18 A. Correct.

19 Q. So help me understand. You had already scheduled a
20 final appraisal with the bank for September 16th, 2019,
21 correct? When you sent this email August 20th, you had
22 already planned with the bank to schedule a future
23 final appraisal, right?

24 A. Yeah, I don't -- I don't think they scheduled it
25 because we didn't have a C.O. So the C.O. was a

1 requirement, a prerequisite for that appraisal.

2 Q. But you state in your email, "My lender has opened
3 paperwork." What did you mean by "paperwork"?

4 A. They were in process.

5 Q. "And we are scheduled for appraisal on September 16th."
6 Was that true?

7 A. Sure, yes, it was.

8 Q. Why did you schedule the appraisal if the house was
9 such a disaster and everything was in such disarray as
10 you've previously testified?

11 A. Well, to fulfill my financial obligation. I was
12 entrusting IBI to remedy all the defects. Whether I
13 paid them \$250,000 or paid Dustin Rampy \$250,000 was
14 indifferent to me. I just wanted the house completed
15 and done properly.

16 Q. And you were confident at that time that it would be
17 done properly, correct?

18 A. I entrusted these guys with my whole life, yes.

19 Q. So you trusted them that they would have the house as
20 you liked it by September 16th, 2019?

21 A. They were promising, promising, promising I was going
22 to get in, I was going to get in. This was two years
23 down the road, right? Matter of fact, I took one of
24 their employees, put him in my truck and drove him into
25 the house in the subdivision at the end that they built

1 in six months. I asked him why they built that house
2 in six months larger than my house, right?

3 Q. Who was that employee?

4 A. Mr. Grissinger's father.

5 Q. What I'm trying to understand, though, is -- you keep
6 going back to the time element, the two years. It's
7 taken two years.

8 A. Entirely too long. Should have took six months, maybe
9 seven.

10 Q. But you were at the finish line, correct?

11 A. No, we weren't even close.

12 Q. But you scheduled a final appraisal with the bank?

13 A. Weren't even close.

14 Q. Didn't you? So why did you -- explain to me or help me
15 understand. Why did you schedule a final appraisal
16 with the bank on September 16th if you were not, in
17 fact, close to completion?

18 A. Yeah, that's a great question. I was overly optimistic
19 that IBI was going to pull off a miracle here, complete
20 everything they needed to do. I was overly optimistic.

21 Q. And it's true that, before you gave them the
22 opportunity to do everything they were supposed to do,
23 as you said - that was my summary - that you terminated
24 them, correct?

25 A. I gave them 695 days.

1 Q. But you terminated them right before the finish line?

2 A. No, we actually didn't get the C.O. until April or May,
3 six months later. \$250,000 later.

4 Q. Right, but you didn't allow them an opportunity to
5 finish so they could apply for the C.O.?

6 A. I gave them 695 days. That was enough. That was
7 actually too much. Looking back, we should have
8 terminated them after one year.

9 Q. Why didn't you terminate them before you sent them the
10 email that -- like I don't understand how when you sent
11 this email to inform IBI that you're scheduled for
12 final appraisal, that all of a sudden the fact that it
13 took two plus years to get to that point was an issue.

14 A. I can explain and expand upon that. I was extremely
15 patient, quiet, working in my business doing my own
16 thing for two years, and then I started talking to
17 other people and I realized that IBI had got the best
18 of me. I realized that a house of this nature
19 shouldn't take two years to build. I started looking
20 around at my neighbors. They were building houses
21 larger than me in six months, five months, seven
22 months. And I realized with all the rework that was
23 involved, I was in over my head. I was going to have
24 to fire them. I didn't have any choice. They wouldn't
25 make the project right. I gave them ample opportunity

1 to make it right and they never did. They made a lot
2 of promises, but they never fulfilled those promises.

3 Q. Well, don't you think it's unfair to tell my client
4 that you scheduled the final appraisal, tell them in
5 this email that you wanted to "get started now so I can
6 fulfill my financial commitment promptly upon
7 completion", and then terminate them the very next day
8 after you were trying to arrange a meeting to discuss
9 the financial component?

10 A. We were in the middle of everything and I just came to
11 my senses.

12 Q. But wasn't that unfair?

13 A. Looking back, it probably was, yeah. I think I
14 probably could have handled it better.

15 Q. Do you have any intention of paying my client?

16 A. I had intention of your client paying me.

17 Q. Let's get into that. This will be Plaintiff's Exhibit
18 22.

19 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 22, COSTS,
20 ATTACHED HERETO)

21 EXAMINATION RESUMED BY MR. TAROKH:

22 Q. What is that document? Take your time to review it.
23 What is this document?

24 A. It looks like some of the hard costs that we incurred
25 while building the project.

1 Q. What are hard costs?

2 A. Capital that we expensed for the project.

3 Q. I'm sorry, I didn't hear you.

4 A. Capital that we expensed for the project.

5 Q. And if you flip the page you see on the right -- the
6 bottom on the right -- not too far right but on the
7 right, it says \$215,523.20?

8 A. Yes.

9 Q. What does that figure represent?

10 A. That figure represents the money that we had to commit
11 to finish the property.

12 Q. When you say commit, you mean actually pay?

13 A. Yes, actually paid.

14 Q. Would another word for that be expended?

15 A. Yes.

16 Q. Now, if you'll go back to the first page of that
17 document, do you see the figure \$49,712?

18 A. Yes.

19 Q. What does that represent?

20 A. I think the line there denotes before and after IBI.
21 So maybe that was the money that we spent during IBI's
22 building of the house, and then afterwards would have
23 been Dustin Rampy's. I think that's why you see a line
24 there.

25 Q. So this \$215,000 figure, were those -- was that the sum

1 of remediation for alleged defects, or for new things,
2 additions that you wanted that were not accounted for
3 in the scope of work with my client?

4 A. Yeah, I think the majority of that is obviously
5 remediation of defects.

6 Q. So not all of that figure, that \$215,000 figure, was
7 for the remediation of alleged defects, correct?

8 A. I believe the majority of it was.

9 Q. But was all of it?

10 A. I'm not certain if all of it was.

11 Q. If you can go back to Exhibit 4.

12 A. Okay.

13 Q. Paragraph 11, you swore that -- and I'll paraphrase,
14 and correct me if my paraphrase is not accurate. But
15 you swore that you expended \$215,523.20 correcting "the
16 following work plaintiff performed"?

17 A. Yes.

18 Q. Now you just -- and that figure in paragraph 11 of the
19 affidavit is the same figure in --

20 A. Yeah, and the reason --

21 Q. -- what I just showed you?

22 A. Yeah, I think the reason that is, this (indicating
23 Plaintiff's Exhibit 4) is an incomplete list of the
24 defects, right? This is just basically a summary.
25 There's a lot more than this, and I think that might

1 account for a little bit of the difference.

2 Q. What difference?

3 A. Well, the difference in the number.

4 Q. But there is no difference in the number, is there?
5 When you compare the number in paragraph 11 with the
6 number at the end of --

7 A. Oh, same number, right.

8 Q. And you just testified that Exhibit 22 is not inclusive
9 of all -- it doesn't represent -- it only represents,
10 excuse me, a majority of what you paid, which means
11 that there are probably some items on there -- or
12 excuse me, there are items on there that were not to
13 remediate alleged defects, correct?

14 A. No, all these items are to remediate defects.

15 Q. All of them?

16 A. I believe so.

17 Q. You believe so but you're not sure, correct?

18 A. Can you rephrase the question, please?

19 Q. Sure. If you'll look at the front page of Exhibit 22,
20 and do you see the line?

21 A. Yes.

22 Q. I'll call it demarcation line, the one underneath the
23 \$49,000 figure.

24 A. Uh-huh (affirmative).

25 Q. If you go down, go back on the other page, and it looks

1 like it totals on the right-hand side \$215,523.20,
2 correct?

3 A. Yes.

4 Q. So my question is, again, is that figure the sum of
5 everything you expended to correct --

6 A. That figure is --

7 Q. -- alleged defects?

8 A. Yeah, that figure is actually low. We actually
9 expended more than that figure.

10 Q. If you look below the demarcation line, as I called it,
11 are there any line items which did not go for the
12 correction of alleged defects?

13 A. To my knowledge everything was for the correction of
14 the defects.

15 Q. What is Security Complete? Do you see it says October
16 23rd, 2019 -- I'm looking right below the demarcation
17 line, October 23rd, 2019.

18 A. Yes.

19 Q. Check number 4830. What is that?

20 A. I think that was the security system.

21 Q. And how was that a defect that my client was
22 responsible for?

23 A. Yeah, great question. When your client wired the
24 house, the security system was already in place, or the
25 wiring was. And so they cut all the wires that

1 Security Complete had put in, so they had to come back
2 out and rewire everything.

3 Q. What about the next one, Theo Galloway?

4 A. Yeah, I don't recall specifically what he did, but we
5 paid him \$400. I don't recall specifically.

6 Q. Is it possible he could have done something that was
7 not -- was an addition, not a remediation?

8 A. I don't think so. Most -- all these expenses that you
9 see here are remediation issues.

10 Q. What about Sound Scapes? If you look at February 6th,
11 2020, check number 4849 for \$1,300, what is that?

12 A. Yes, that had something to do with the audio/visual and
13 I don't know what that specific check was for.

14 Q. But that's an item you say that needed remediation
15 because of an alleged defect caused by my client,
16 right?

17 A. I would imagine that had to do with wiring as well.

18 Q. But you don't know for sure?

19 A. I believe it was a wiring issue.

20 Q. Are you confident?

21 A. I believe so. That's what they do, wiring.

22 Q. What about White Harbour, check number 4866 for
23 \$278.32?

24 A. Yeah, that check there was for plumbing that needed to
25 be done because your client placed my water line on my

1 neighbor's driveway. He wasn't too happy with that, so
2 we were required to move it.

3 Q. Would it be fair to say that everything after -- excuse
4 me, is it true that everything after the April 1st,
5 2020 check number 4868 to Joy Construction in the
6 amount of \$13,000 -- do you see that?

7 A. Yes.

8 Q. That everything after that on the next page was after
9 Joy Construction had performed work at the project?

10 A. It looks to be accurate.

11 Q. So everything on this back page -- I'm looking at the
12 Bates stamp number Merlo 3904 that begins with April
13 1st, 2020, check number 4869 to Bob Hawkins in the
14 amount of \$500. Everything including that and below was
15 after Joy Construction had worked on the project?

16 A. I believe so.

17 Q. That being the case, why do you include everything
18 after the April 1st, 2020 check to Joy Construction for
19 \$13,000 as part of your damages against my client?

20 A. These were items that needed to be corrected from the
21 rework that were not corrected by Joy, and so we had to
22 correct them. When I say "we", I mean me.

23 Q. Do you know specifically what Joy Construction did?

24 A. They did everything we were contracted to do with them
25 through the contract.

1 Q. Right, but do you know specifically what they did?

2 A. I guess everything that was on their contract.

3 Q. You don't know, do you?

4 A. I followed the progress.

5 Q. What did Joy Construction specifically do at your
6 house?

7 A. Let me take a look at the contract. They renovated the
8 front porch ceiling, they renovated the sheetrock.
9 Took the sheetrock down, repaired everything, painted
10 it. They restained interior doors. They removed the
11 kitchen ceiling completely, rewired the entire kitchen
12 ceiling, put it up properly the way it should have been
13 done the first time. They painted the trim, they
14 sealed granites, they corrected the fireplace that was
15 leaning, they finished the LVT flooring. I could go
16 on. This is Exhibit 2.

17 Q. You know for a fact they did everything you just
18 stated?

19 A. Fairly certain.

20 Q. But do you know for a fact?

21 A. Pretty much, Yes, sir. They did everything we hired
22 them to do and then some. Extremely satisfied with
23 them. I wish I had found them initially.

24 Q. But yet you entered into a settlement agreement with
25 them because of a dispute over project management and,

1 if I'm not mistaken, work performed, correct?

2 A. Well, I had already had one absentee builder. I sure
3 didn't want to hire another absentee builder. I dealt
4 with that for two years with IBI. They never showed
5 up. That's how the house got in the shape that it did,
6 the condition it was in. There was no oversight, there
7 was no supervision. That's how my water line got
8 placed on a neighbor's lot, that's how my power line
9 got placed on a neighbor's lot, that's why my driveway
10 is on the opposite neighbor's lot. No supervision. My
11 retention wall placed on the neighbor's lot, my house
12 filled up with mold. Wouldn't have happened had
13 somebody been there overseeing it.

14 Q. Yet you tell the bank everything is fine, correct?

15 A. Yeah, I had to. They were funding the whole deal. I
16 didn't want them to pull the plug.

17 Q. And you tell my clients everything is fine, correct?

18 A. I did not tell them everything was fine. I sent them a
19 rework list, I requested that we met and walk through
20 and looked at the issues at the property. They refused
21 to fix the issues.

22 Q. But yet you communicate with my client that they're
23 making good progress?

24 A. On some issues, they did. After the rebuilt the front
25 arch on the front doorway about five, six, seven times,

1 they got it correct. So I would say that was progress
2 after seven times. They never got it right the first
3 time, but usually by the third, fourth, fifth, sixth,
4 seventh time, they lucked into it, right?

5 Q. Did you say anything untruthful in your testimony so
6 far today?

7 A. Not that I'm aware of.

8 Q. Let me show you another exhibit. This will be
9 Plaintiff's Exhibit 23.

10 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 23, PAYMENTS
11 TO IBI BUILDERS, ATTACHED HERETO)

12 EXAMINATION RESUMED BY MR. TAROKH:

13 Q. What is that document?

14 A. It looks like payments made to IBI.

15 Q. Is everything stated true? Let me back up. Did you
16 create this document?

17 A. I'm not sure where this came from.

18 Q. If I told you that was included in your email -- excuse
19 me, your letter to Ginger Barnes --

20 A. Okay, yeah.

21 Q. Would you have any reason to doubt that?

22 A. Sounds accurate.

23 Q. Do you see that first figure February 1st, 2018 of
24 \$127,000?

25 A. Yes.

1 Q. It says draw number 1 and then it ends at draw number
2 10?

3 A. Yes.

4 Q. Is it your testimony those payments were, in fact, made
5 to my client?

6 A. It looks like they were if everything is accurate, if
7 the accounting is accurate.

8 Q. Do you know for a fact?

9 A. I don't know for a fact, no, sir.

10 Q. But yet you include this document with your letter to
11 Ginger Barnes with Western Surety Company, correct?

12 A. Yes, I did.

13 Q. And what was the purpose of that?

14 A. I think they had requested some type of itemization of
15 the amount that was paid to the builder.

16 Q. Where did you get that information reflected on this
17 document?

18 A. Must have been from the records I had.

19 Q. Now, throughout your relationship with IBI, you were
20 requesting draws on their behalf from Grand South,
21 correct?

22 A. Yes, I was.

23 Q. This will be Plaintiff's Exhibit 24.

24 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 24,
25 APPRAISAL, ATTACHED HERETO)

1 EXAMINATION RESUMED BY MR. TAROKH:

2 Q. Do you recognize this document?

3 A. Yes, I do. Yes.

4 Q. What is it?

5 A. Looks like an appraisal draw inspection.

6 Q. If you'll look at the second page on top, it says draw
7 inspection number 9. Do you see that?

8 A. Yes.

9 Q. So this document reflects the condition of your house
10 for purposes of a draw as of the date of the appraisal,
11 and that date is August 26th, 2019, correct?

12 A. Yes.

13 Q. And how many draws are reflected on this schedule?

14 A. Quite a few.

15 Q. Would you agree that there are nine draws reflected on
16 this schedule?

17 A. That's what it looks like.

18 Q. But yet in Exhibit 23 you have ten draws. How do you
19 explain the discrepancy?

20 A. Must be a typo.

21 Q. Is the \$127,000 draw in number 1 a typo or discrepancy?

22 A. It may be. It wasn't intentional.

23 Q. I'm going to show you another document. This will be
24 Plaintiff's Exhibit 25.

25 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 25, LETTER

1 FROM CHRIS MERLO, ATTACHED HERETO)

2 EXAMINATION RESUMED BY MR. TAROKH:

3 Q. Do you recognize that document?

4 A. Yes.

5 Q. What is it?

6 A. Looks like my notice to someone of a residential
7 homebuilder change.

8 Q. If I tell you it was to the City of Seneca, would you
9 have any reason to disagree with that?

10 A. No.

11 Q. And it's dated November 13th, 2019, correct?

12 A. Yes.

13 Q. And it says you've terminated IBI - this is my summary
14 - and you've hired Dustin Rampy?

15 A. Yes.

16 Q. So did you hire Mr. Rampy on November 13th, 2019?

17 A. I don't remember what day specifically.

18 Q. Would it have been a day before, couple of days before?

19 A. I just don't recall specifically what day it was.

20 Q. Would it make sense that you would immediately notify
21 the City of Seneca when you switched out builders as
22 soon as you switched out builders?

23 A. I think so, yes.

24 Q. I want to show you another document. This will be
25 Plaintiff's Exhibit 26.

1 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 26, LIST OF
2 WORK NEEDED ON MARINA BAY ON 10/12/19, ATTACHED HERETO)

3 MR. TAROKH:

4 You know what, let's take a ten minute break.

5 (OFF THE RECORD)

6 EXAMINATION RESUMED BY MR. TAROKH:

7 Q. Mr. Merlo, have you had an opportunity to look at
8 what's been marked as Plaintiff's Exhibit 26?

9 A. Yes, I have.

10 Q. What is that document?

11 A. This is just a brief summary of some of the defects I
12 noticed walking around the house, just what I could see
13 visually. I don't think it was an all-inclusive list
14 by any means or a comprehensive list, just some of the
15 ones I noticed.

16 Q. But you have 97 items on there, correct?

17 A. Correct.

18 Q. And you're saying it's not comprehensive?

19 A. That's correct. I didn't realize that there was a lot
20 of issues beyond this that were hidden that I couldn't
21 see or that materialized after the fact.

22 Q. What were those items that materialized after the fact?

23 A. Well, one, my neighbor had my water line going down his
24 lot, he had my power line going down his lot, my other
25 neighbor had my driveway going down his lot.

1 Q. Let's take the power line. My client didn't install
2 any power lines, correct?

3 A. Well, they were supposed to be onsite when they were
4 run.

5 Q. How do you know they were not onsite when they were
6 run?

7 A. Well, I'd hope they weren't onsite because they -- if
8 they were onsite, that means they witnessed them being
9 placed on my neighbor's lot. I guess I'm just assuming
10 they weren't there at the time.

11 Q. Did you make this document, Plaintiff's Exhibit 26?

12 A. Yes, I did.

13 Q. When did you make it?

14 A. Looks like October 12th of '19.

15 Q. So the same day you terminated IBI is when you went
16 around the house and made this document?

17 A. It looks to be, yes. I thought this was a good
18 starting point to correct the defects.

19 Q. Help me understand something. The termination email,
20 Exhibit 12, on October 9th, 2019, you have an email
21 that says, "John, sounds like good news on appliances.
22 C.O. is required for refi efforts. Please find October
23 rework attached." I'm going to show you what's been
24 marked as Plaintiff's Exhibit 27.

25 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 27, OCTOBER

1 EXTERIOR RE-WORK, ATTACHED HERETO)

2 EXAMINATION RESUMED BY MR. TAROKH:

3 Q. Is 27 the rework list you referenced in your October
4 9th, 2019 email?

5 A. I believe so.

6 Q. So three days roughly before you terminate my client,
7 you send them an email - 33 items, it looks like -
8 telling them the C.O. is required for refi efforts,
9 attaching Plaintiff's 27 that says October Exterior Re-
10 work, and then you terminate my client, and then three
11 days -- and then that same day, the rework list
12 expands. The same day you terminate them, it expands
13 to now 97 items; is that correct?

14 A. Yeah, I don't know that it expanded. This was just a
15 brief summary of the work that needed to be done. It
16 wasn't designed to be a comprehensive list. They
17 understood the other items that needed to be taken care
18 of because we were in communication.

19 Q. But were the other items -- but were those other items
20 that were not on Exhibit 27 that you testified that you
21 communicated with them?

22 A. I would imagine a lot of them that are listed on
23 Exhibit 26.

24 Q. You're just guessing, correct?

25 A. It's within two to three days of each other, right?

1 Q. You don't know for sure though, correct?

2 A. I would presume, yes.

3 Q. You're presuming?

4 A. Yes.

5 Q. You don't know that for a fact?

6 A. The rework list was very extensive.

7 Q. I see it's 33 items with pictures, and then --

8 A. That was not a comprehensive list. That was just a
9 summary of some of the items we mentioned and some of
10 the items we had talked about.

11 Q. So there's -- if the items listed on Plaintiff's
12 Exhibit 26 were such a big deal to you, why didn't you
13 include it on your October 9th email with the October
14 exterior rework list shown on Plaintiff's Exhibit 27?

15 A. Right, great question. We were in communication with
16 the builders and they understood what needed to be done
17 to make the project whole.

18 Q. You were in communication with who exactly, and when?

19 A. With John and Greg.

20 Q. And what specifically did they understand? I mean, you
21 just stated you presume that everything that's listed
22 on Exhibit 26 was understood by them.

23 A. You know, these 33 items, that was just a small portion
24 of what needed done. A very small portion.

25 Q. So let's play hypothetical. Let's say -- let me back

1 up. I'm looking at Exhibit 27. The first -- there's a
2 picture and it says, "Finish under the front door with
3 stone." And is that item listed on Exhibit 26, the
4 October 12th, 2019 list of work needed on Marina Bay?

5 A. I'm not certain.

6 Q. Well, take your time.

7 A. Well, I see a "flagstone on front steps is loose"
8 there.

9 Q. What number is that?

10 A. Number 2.

11 Q. Is that the same as number 1 on October -- so is number
12 2 on Plaintiff's Exhibit 26 the same as number 1 on
13 Plaintiff's Exhibit 27?

14 A. No, actually Exhibit 27, "Finish under the front door
15 with stone," I think they left a gap underneath the
16 front door of about three inches there and that needed
17 to have a stone applied underneath there.

18 Q. So what number does number 1 on Exhibit 27 correlate to
19 on --

20 A. Yeah, great question. Number 5, "Stonework done
21 incorrectly as gapped and holes." So I would refer to
22 that as a gap where they neglected to place stone
23 underneath the front door.

24 Q. Are you making that up now or is that the truth?

25 MR. JOHNSON:

1 Object to the form.

2 WITNESS:

3 A. It's a picture of gapped stone.

4 EXAMINATION RESUMED BY MR. TAROKH:

5 Q. So your testimony is that number 1 on Plaintiff's
6 Exhibit 27 is the same as number 5 on --

7 A. It appears to correspond. I think there were a lot of
8 additional places where the stonework was done
9 incorrectly and gapped, but that seems to fit the bill
10 right there.

11 Q. So why weren't those other places listed on Exhibit 27?

12 A. Oh, it would have took us just days and days and it
13 would have been a, you know, 30 page document. We just
14 -- we were trying to just summarize the highlights,
15 right? We didn't have all that time to commit to it.
16 There was a lot wrong with the house.

17 Q. So you're saying -- your testimony is, there were so
18 many issues with the house that it would have taken
19 days and days to compile a list?

20 A. Well, I mean, right here we've got -- we've got six
21 pages right here and we just barely scratched the
22 surface, right?

23 Q. Well, you testified earlier that an August 2019 rework
24 list was whittled down from -- and that's my word. Was
25 reduced down from four pages to one page, okay? And

1 then in October there's 33 items that were important to
2 you, correct?

3 A. Yes. I think a lot had gone wrong between August and
4 October evidently.

5 Q. Like what?

6 A. Well, the work was subpar, the craftsmanship was
7 terrible.

8 Q. I understand the general things, but I'm asking for
9 specificity. Like what specific work was subpar?

10 A. The deck was installed incorrectly and had to be
11 removed from the house.

12 Q. Between August -- when was that?

13 A. I don't know specifically. I don't have a timeline of
14 what was done when.

15 Q. Is the deck list on Plaintiff's Exhibit 27?

16 A. It may not have been because at the time maybe I didn't
17 recognize it, right?

18 Q. When did you first recognize the deck, the issue with
19 the deck?

20 A. When Mr. Rampy came out and looked over the project.
21 Yeah, he indicated it was done with such poor
22 craftsmanship we'd have to get an engineer involved, so
23 we did.

24 Q. Let me point you to Exhibit 24. You approved of these
25 draws, correct? It's the --

1 A. Yes.

2 Q. You approved of all these draws?

3 A. Yes, I did. Yes.

4 Q. Why did you approve of the draws if the house was in
5 such a disastrous condition?

6 A. Some of the items I wasn't aware of at the time. I
7 didn't know the water was on my neighbor's drive, I
8 didn't know the power was on, you know, the neighbor's
9 side, I didn't realize the deck was not built to code,
10 I didn't realize my driveway was on my other neighbor's
11 lot. There's a lot of things that I didn't recognize
12 because, as you stated earlier, I'm not a GC, right?

13 Q. Well, we can be here all night. This is your
14 deposition. I'm looking for specificity. So let's
15 start with those items you just said. So the water
16 line issue with your neighbor's house, what was that
17 issue specifically?

18 A. It was placed on his property.

19 Q. When did you first recognize it?

20 A. I don't know the exact day.

21 Q. About when?

22 A. It was under Dustin Rampy's timeframe.

23 Q. So it was after you terminated the contract?

24 A. (Affirmative nod).

25 Q. And what do you mean by the water line? Like

1 underneath the ground there was a water line that went
2 -- and how was that issue resolved?

3 A. It had to be dug up and relocated.

4 Q. And how much did it cost you?

5 A. I don't remember specifically.

6 Q. Well, is there anything that would refresh your memory
7 as to how much it cost you specifically?

8 A. Not really. I'm sure it shows up in the itemization of
9 what we spent to remedy IBI's shortfalls.

10 Q. What exhibit is that? What exhibit is that, the
11 itemization? Exhibit 22; is that correct?

12 A. Yes.

13 Q. So find me on Exhibit 22 the remediation of the water
14 line, please.

15 A. I guess it would be under Joy Construction's. It's in
16 there somewhere.

17 Q. Which one?

18 A. I don't know.

19 Q. You'd admit there are -- I counted nine checks to Joy
20 Construction, correct?

21 A. I believe so.

22 Q. And it's your testimony that the water line issue would
23 be somewhere in one of those nine checks?

24 A. Yes.

25 Q. And you don't remember how much it specifically cost?

1 A. I don't.

2 Q. Do you have documentation that indicates the specific
3 cost?

4 A. I have invoices from Joy Construction.

5 Q. Do you know if I was given all those invoices from Joy
6 Construction?

7 A. I suspect you were.

8 Q. If I was not, would you agreeable to give them to me?

9 A. I'd be glad to provide them.

10 Q. What's the next issue? We have the water line covered,
11 and then you said there's something with the deck?

12 A. Yeah, the deck was built improperly to the point that
13 it wouldn't pass code, wouldn't meet code. So it had
14 to be removed from the house.

15 Q. When was that?

16 A. That was during -- Dustin Rampy first noticed it. I
17 didn't notice it. He noticed it and he worked with an
18 engineer on it to correct it.

19 Q. And would your answer be the same as the previous
20 questions? Do you have -- do you know how much it cost
21 when it was repaired, proof of the payment, or would it
22 be included in one of the nine checks you sent to
23 Dustin Rampy?

24 A. Yeah, a lot of that was included in the money that I
25 sent to Dustin.

1 Q. What's the next item?

2 A. Well, the driveway, I guess. I didn't realize at the
3 time the driveway was poured on my neighbor's lot.

4 Q. But it's true you approved -- like you had given my
5 client a survey or something of that nature, correct,
6 showing your driveway?

7 A. We provided a survey.

8 Q. You did to IBI, correct?

9 A. I believe so, yeah, but IBI allowed the driveway to be
10 poured on my neighbor's lot.

11 Q. But you approved to the layout of the driveway before
12 the driveway was created, correct?

13 A. The layout that I approved was not the driveway they
14 poured. The driveway that was on the survey had a
15 circle at the bottom of it for easy ingress and egress,
16 right? That's not what we got, though. They kind of
17 did it their way to save some money.

18 Q. What do you mean?

19 A. They shortcut it.

20 Q. How?

21 A. Well, they didn't pour as much concrete as they really
22 should have so cars can back out of the drive and turn
23 around without backing up the drive. Now, a lot of
24 times what happens is we have to back up a 300 foot
25 drive. It's a terrible design. Should have been

1 engineered a lot better.

2 Q. I understand what you're saying. I don't agree with
3 it, obviously. But my question is focusing on -- you
4 said the driveway -- my client caused the driveway to
5 be on your neighbor's property, correct?

6 A. Yes.

7 Q. And so how is --

8 A. They were given full reign of the project from the day
9 we signed the contract, and I was assuming that, you
10 know, they would abide by the boundaries of our lot.

11 Q. But the boundary line was supplied by you by virtue of
12 a survey you gave them, correct?

13 A. It was flagged. The lot was flagged.

14 Q. Correct?

15 A. It was flagged correctly, yes, but they went over the
16 flags working on the neighbor's lot. So now on my
17 neighbor's side is my driveway, my irrigation, my
18 plants, my river rock. All that's on my neighbor's lot
19 now.

20 Q. How was that issue resolved?

21 A. Well, hopefully amicably and not through litigation.
22 I'm not sure it's all been resolved yet.

23 Q. It's still -- you have a dispute with your neighbor
24 about that?

25 A. Correct, yes.

1 Q. What does your neighbor say about it?

2 A. Well, you know, he's not happy.

3 Q. Has he threatened to sue you?

4 A. Well, he threatened to sue IBI when they were out
5 there, you know, dumping water on his lot, doing all
6 that stuff. So I think he's got kind of a litigious
7 bone.

8 Q. Well, didn't you meet with Dustin Rampy to discuss a
9 possible solution with your neighbor regarding that
10 issue?

11 A. I don't think we were aware of that at the time that
12 Dustin was on the project. Yeah, Dustin handled the
13 water line on my -- on the opposite side. Dustin
14 handled the water line, the power line. And then IBI
15 built a retention wall on my neighbor's lot, so that
16 whole wall had to come down and be removed.

17 Q. So your testimony is that you never met with your
18 neighbor with Dustin Rampy to discuss the driveway
19 issue, correct?

20 A. I don't remember if I did. I thought it was something
21 that came up afterwards.

22 Q. When were you first alerted about the driveway issue?

23 A. I don't recall the exact date.

24 Q. It was after you terminated IBI?

25 A. I believe so.

1 Q. And you said -- or I should ask, did you pay to
2 remediate the driveway issue?

3 A. Not yet, I haven't, no. There were so many other
4 pressing things that needed attention, it got pushed to
5 the bottom of the stack.

6 Q. Do you have an agreement with your neighbor about the
7 driveway issue?

8 A. Not really.

9 Q. Do you have an understanding --

10 A. He hasn't started building yet. He's getting ready to
11 build.

12 Q. Do you have an understanding with him? Did you guys
13 discuss a possible solution?

14 A. Thrown ideas back and forth.

15 Q. Like what?

16 A. Taking up the entire driveway and repouring it to the
17 cost of \$35,000.

18 Q. What's the next item?

19 A. Refresh my memory where we're at.

20 Q. Sure. I was asking about what items -- I was asking
21 you to correlate the items listed on Plaintiff's
22 Exhibit 26 with Plaintiff's Exhibit 22, and you said
23 there were other items that were not reflected on --
24 I'm sorry, not 22. We're correlating Plaintiff's
25 Exhibit 27 with Plaintiff's Exhibit 26. And you said

1 there were other items not listed on Plaintiff's
2 Exhibit 27 which you had discussed with my client, and
3 you discussed the water line, the deck, and you just
4 discussed the driveway. So I guess is the driveway
5 listed --

6 A. I don't believe so.

7 Q. -- on Exhibit 27 and Exhibit 26?

8 A. I don't believe so. A lot of issues came to light
9 afterwards.

10 Q. I think that was the topic. It was the water line
11 issue, the deck issue, the driveway issue. What other
12 items came to light after you terminated IBI?

13 A. None other that I can recall specifically.

14 Q. Have you given my client any type of notice regarding
15 the water line, deck, or driveway to allow them to
16 remediate it?

17 A. No.

18 Q. Do you intend to?

19 A. I don't think so.

20 Q. What other items?

21 A. None that I can recall specifically.

22 Q. So after you terminated my client in October 2019, the
23 only other issues that had come to light was the water
24 line issue, the deck issue, and the driveway issue,
25 correct?

1 A. That's all I can remember right off the top of my head.
2 I'm sure there were other issues, though.

3 Q. Is there anything that would refresh your memory as to
4 those other issues?

5 A. I don't think so.

6 Q. So going back to Exhibit 26, why didn't you include
7 this list - "this list" meaning the list of work needed
8 as shown on Exhibit 26 - on your October exterior
9 rework list which is Plaintiff's Exhibit 27?

10 A. Yeah, like I said, this was just a cursory walk around.
11 I just walked around the house and saw what I could see
12 and put it on paper. It wasn't designed to be a
13 comprehensive list of all the defects that were wrong
14 with the property.

15 Q. So what did you do -- because you sent this list
16 October 9th -- do you remember -- when I say "this
17 list", you sent this -- you sent Plaintiff's Exhibit 27
18 on October 9th, 2019, correct? I'm looking at your
19 email, the termination email. October 9th, 2019, you
20 say, "Please find October rework attached," correct?

21 A. Okay.

22 Q. Is that correct?

23 A. I believe so.

24 Q. Do you want to look at Exhibit 12 to be sure and make
25 sure we're on the same page?

1 A. (Witness reviews document). I believe so.

2 Q. And you send him what's been marked as Plaintiff's
3 Exhibit 27, okay?

4 A. Okay.

5 Q. And then three days later you come up with this list,
6 October 26th, correct?

7 A. Yes.

8 Q. So is it fair to say you created Plaintiff's Exhibit 27
9 -- excuse me, what's been marked as Plaintiff's Exhibit
10 27 on October 9th, 2019, the same day you sent that
11 email?

12 A. The list of monthly rework was kind of ongoing, and so
13 there was obviously some rework leftover from the
14 months before.

15 Q. Would it be fair to describe this monthly rework list
16 as a rolling list?

17 A. Yes.

18 Q. So you would have items on there, my clients would
19 address them, those items would come off the list, you
20 would look at -- you'd find additional items, add them
21 to the list, and it kind of rolled that way? Is that a
22 fair --

23 A. Yes.

24 Q. Let's go through Exhibit 26.

25 A. Okay.

1 Q. So all of these -- are these 97 items -- do they
2 comprise the sum of \$215,523.20 as set forth in your
3 affidavit? I'm looking at paragraph 11 of your
4 affidavit, your affidavit is Plaintiff's Exhibit 4.

5 A. Yeah, I believe that would comprise a lot of the work
6 that was done at the house.

7 Q. Let's go to your affidavit again, Plaintiff's Exhibit
8 4. Let's look at paragraph 11 where you have replacing
9 diseased landscape. Do you see that?

10 A. Yes.

11 Q. Do you know how much you spent to do that?

12 A. It looks like \$600 according to Exhibit 22.

13 Q. Show me where on Exhibit 22 specifically.

14 A. Back page, it says landscape.

15 Q. And how was that my client's fault?

16 A. Well, the landscape that was put in was diseased. It
17 had died.

18 Q. Do you know why it died?

19 A. I was told it was diseased.

20 Q. Who were you told by?

21 A. The gentleman that looked at the plants.

22 Q. Who was that?

23 A. I don't recall who did -- I don't recall who did the
24 work.

25 Q. When did you replace the diseased landscape?

1 A. I'm not certain, but I have receipts and I'll be glad
2 to provide those.

3 MR. TAROKH:

4 Thank you. Townes, will you get --

5 MR. JOHNSON:

6 Yeah, we'll get them to you.

7 EXAMINATION RESUMED BY MR. TAROKH:

8 Q. The next item, move retaining wall?

9 A. Yes.

10 Q. What is that about?

11 A. IBI placed my retaining wall on my neighbor's property
12 and they demanded it be moved.

13 Q. Was it remediated?

14 A. Yes.

15 Q. When?

16 A. I guess under Dustin Rampy.

17 Q. You don't know for certain?

18 A. I don't know the specific date.

19 Q. Who moved it?

20 A. I don't know the specific contractor or the
21 subcontractor that did it.

22 Q. Do you remember how much you spent on it?

23 A. Not precisely, I don't.

24 Q. Generally how much did you spend on it?

25 A. I don't recall the amount.

1 Q. Would it be listed on Plaintiff's Exhibit 22 anywhere?

2 A. Maybe under the Joy Construction costs.

3 Q. What about the next item, remove power lines positioned
4 under neighbor's proposed driveway? How was that issue
5 remediated?

6 A. It was moved.

7 Q. Who moved it? Who moved the power lines?

8 A. I would imagine the power company had to come back out
9 and move them.

10 Q. Was this under Dustin Rampy's project?

11 A. I think so.

12 Q. How much did that cost?

13 A. I'm not certain.

14 Q. It sounds like what you did -- and correct me if I'm
15 wrong. It sounds like in order to come to that \$215,000
16 figure in your affidavit in paragraph 11, you just
17 added the checks you expended to Joy Construction and
18 other folks. I'm looking at paragraph -- excuse me,
19 Plaintiff's Exhibit 22. And everything you expended
20 after you hired Joy, you tallied it up and put it in
21 affidavit; is that correct? Is that how you came to
22 that number?

23 A. The money that we spent for the rework totals \$215,523.
24 That sounds fairly accurate.

25 Q. So what exactly is rework? What do you mean by rework?

1 A. Work that had to be redone after it was done improperly
2 the first time.

3 Q. Who told you it was done improperly the first time?

4 A. I guess my neighbor when he called me and said, "Hey,
5 your power line's 12 feet on my drive. Get it off
6 there." And then I guess he did, right?

7 Q. What about the other items? This is -- how did you get
8 your information that these items needed rework?

9 A. Well, are you talking about -- rephrase the question
10 for me so I can understand it a little better.

11 Q. Certainly. It sounds like you just added everything
12 you spent on the house after the time you terminated my
13 client and after your relationship with Joy
14 Construction ended and came up with a sum of \$215,000,
15 correct?

16 A. That sounds fairly accurate, yeah. That was for the
17 rework that needed to be accomplished at the house, and
18 it's not a comprehensive list. There's other expenses
19 outside of that and there's other issues that kind of
20 still need remedied.

21 Q. So your testimony is, when I look at the invoices -- or
22 excuse me. Are you saying that when I look at the
23 invoices from Joy Construction for each item, every
24 single one of those invoices was for what you consider
25 rework? In other words, remediation; is that correct?

1 A. That sounds accurate.

2 Q. Was there anything included that you paid Joy
3 Construction that was not for rework?

4 A. Could you give me an example?

5 Q. Sure. Do you have a wine cellar in your house?

6 A. Yes.

7 Q. And was the wine cellar in the original scope of
8 contract with my client?

9 A. I don't think it was, no.

10 Q. But you paid Joy Construction for the wine cellar?

11 A. I did not.

12 Q. You didn't?

13 A. (Negative response).

14 Q. Why not?

15 A. I don't think they did the wine cellar.

16 Q. So it's your testimony, then, that Joy Construction did
17 not construct the wine cellar in your house?

18 A. Yes, sir.

19 Q. So everything that you state as being expended -- when
20 I say "everything", the sum of \$215,000, that figure,
21 that was all for remediation? You didn't have him do
22 anything extra or additional?

23 A. Not that I'm aware of.

24 Q. So all they -- I want to be sure. All Joy Construction
25 did and after you terminated Joy -- excuse me, after

1 your relationship with Joy Construction terminated,
2 everything you did afterwards was to repair alleged
3 defects?

4 A. Yes.

5 Q. Nothing extra? Nothing additional?

6 A. Not that I'm aware of.

7 Q. The next one in paragraph 11 of your affidavit, it says
8 septic containment system. Was that something that was
9 discovered after you terminated Joy Construction?

10 A. No, during Joy Construction.

11 Q. Do you remember how much you spent on that and when it
12 was remediated?

13 A. Not specifically. They said the tank was installed
14 improperly, it didn't function, it didn't work, and I
15 know work was done to it to correct it.

16 Q. Is there anything you list in your affidavit, the
17 alleged defects -- and I'm looking specifically at
18 paragraph 9 and paragraph 11. Are any of those items
19 caused or attributable to Joy Construction?

20 A. I would say no. Joy Construction did nothing but
21 benefit this project. They solved problems. They
22 didn't correct any -- they didn't create any problems.

23 Q. But is it possible they could have created problems?

24 A. I don't think so. Phenomenal builders. Probably some
25 of the best in the upstate. I hate that they moved

1 away to the state of Georgia. We could really use them
2 here.

3 Q. But the settlement agreement, Plaintiff's Exhibit 8,
4 again, it references issues or disputes regarding work
5 performed and project management and the amounts due?

6 A. If there were any, they must have been so minuscule
7 that I don't even recall them.

8 Q. The electrical system -- I'm looking at the next item
9 after septic containment system in paragraph 11.
10 What's that about?

11 A. Where are you at again?

12 Q. Paragraph 11 of your affidavit, Exhibit Number 4.

13 A. Yeah, the electrical system was an absolute mess.
14 Dustin Rampy had guys came out that rewired the
15 majority of the house, then even afterwards gave us
16 trouble. You go into a room, turn the light on,
17 breakers would blow. It came down to the point that
18 they just recommended we take out all the panel boxes
19 and replace them, and we did.

20 Q. After you hired Joy Construction and after they worked
21 on the electrical system, you still had -- you had the
22 same -- you had electrical issues?

23 A. Well, it was because of IBI. They didn't wire anything
24 correctly.

25 Q. But you just testified - correct me if I'm wrong - that

1 Joy Construction remediated the electrical system,
2 correct?

3 A. They did what they could. They couldn't fix
4 everything. They just did what they could.

5 Q. What did they do?

6 A. They rewired a lot of the house. It just wasn't
7 enough. They couldn't correct all the defects.

8 Q. How do you know that? And what defects?

9 A. Well, when you would go into a room and turn a light
10 on, it would blow out the breakers for two rooms. The
11 electrical panel that they installed was overheating.
12 It was 140 degrees.

13 Q. Who installed?

14 A. IBI's subcontractors.

15 Q. But then you subsequently hired Joy Construction,
16 correct?

17 A. Correct, yes.

18 Q. To remediate the electrical issues, correct?

19 A. They go what they could. They still didn't get
20 everything.

21 Q. And after -- why was that?

22 A. They did the best they could with a very bad scenario,
23 I guess.

24 Q. Explain that. Let's explore that. So you had issues
25 with the electrical system?

1 A. Yes.

2 Q. You hired Joy Construction company to remediate the
3 electrical system and you still have issues?

4 A. I think it was a small scope of their work, yeah.

5 Q. Like what? How small?

6 A. I don't remember the actual amount that we spent with
7 them, but they -- they did everything they could to try
8 to make it right.

9 Q. Do you have documents that demonstrate exactly what
10 they did?

11 A. I think we have invoices, if that helps.

12 Q. The next item, ceilings not level and need removed and
13 repaired?

14 A. They were removed and repaired. Yeah, the kitchen
15 ceiling was a wreck. They put it up, didn't plan out
16 the wiring properly, the lightning was all in the wrong
17 places. Their contractors stepped all over the floors,
18 then they went ahead and stained it.

19 Q. Their contractors did what with the floors?

20 A. Well, they stepped -- the boards were in the garage.
21 So they stepped on them, left footprints on them, then
22 put them up in the kitchen, then they stained those
23 boards. They didn't even bother sanding them or doing
24 anything to them. We had a whole ceiling had to be
25 completely removed. All the wiring had to be redone in

1 the kitchen.

2 Q. The wiring needed to be redone, so isn't that an
3 electrical issue? Was the electrical system in the
4 kitchen remediated?

5 A. I believe so, yes.

6 Q. So what are the current electrical issues now?

7 A. In the house now?

8 Q. Uh-huh (affirmative).

9 A. I think they've been solved.

10 Q. How did you solve them?

11 A. Well, we replaced the entire panel box.

12 Q. Who replaced the entire panel box?

13 A. I hired someone to replace the entire box.

14 Q. Who was that?

15 A. I don't even think that invoice is on here, but I'll be
16 glad to get you a copy of that invoice.

17 Q. When did you -- well, my question was, who repaired it?

18 A. I'm not sure what vender it was. We had three or four
19 electricians come out there. A lot of folks quoted it.
20 We had the electric company came out there, they took
21 apart their side, they took apart the box up on the
22 top. It was just a continuing issue. The boxes were
23 overheating, they were getting to 140 degrees. It was
24 a fire hazard. We thought the house was going to burn
25 down.

1 Q. But this was after Joy Construction worked on the
2 electrical system, correct?

3 A. Yeah, they didn't work on the panel boxes per se. I
4 think a lot of what they did was the wiring inside the
5 house, and that originated from the panel boxes.

6 Q. How do you know it originated from the panel boxes?

7 A. Well, I hired an electrician and that's what he told
8 me. I guess I just trusted him at his word.

9 Q. Let me show you an email -- excuse me, a document that
10 will be marked as Plaintiff's Exhibit 28.

11 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 28, EMAIL,
12 ATTACHED HERETO)

13 EXAMINATION RESUMED BY MR. TAROKH:

14 Q. Do you recognize that document?

15 A. Yes, I do, yes.

16 Q. What is it?

17 A. Looks like an email from me to Dustin.

18 Q. Do you see your sentence where you say, "The cedar on
19 the back deck also looks great"? What is that? What's
20 the cedar?

21 A. I'm not sure what that refers to.

22 Q. And do you see in that same paragraph it says, "Maybe
23 by adding some boxing or such"?

24 A. Oh, this -- I think this is after they -- maybe after
25 they stained it, I guess, and we talked about adding

1 boxing. We never did, though. We never added any
2 boxing.

3 Q. Did they add cedar to the back deck? I guess obviously
4 they did. Was that a remediation?

5 A. I think so because it wouldn't meet the code.

6 Q. What do you mean by that?

7 A. He spoke with an engineer. It was deemed unsafe, so
8 they had to put some provisions in place.

9 Q. Do you see the next page? This is Dustin's email to
10 you --

11 A. Uh-huh (affirmative).

12 Q. -- dated January 14th, 2020. His second paragraph he
13 says, "We are glad that you like the crow's foot."
14 What's the crow's foot?

15 A. I think that would have had to do with the bracing on
16 the back porch.

17 Q. Was that a remediation or was that an addition?

18 A. That's a good question. I'm not positive.

19 Q. So it's possible that could have been an addition?

20 A. I think it is possible.

21 Q. And do you see the next sentence -- the next paragraph
22 he says, "The electricians are coming back Thursday to
23 make change to the water heater wiring," correct?

24 A. Yes.

25 Q. So it looks like Dustin Rampy had hired electricians

1 obviously. Do you know who those electricians were?

2 A. I don't recall.

3 Q. Go back to the next page, that first page. Right
4 before your signature block you say, "I see we also
5 rallied the electrician. Kudos there." What does that
6 mean?

7 A. Sounds like they were working onsite maybe when I got
8 out there.

9 Q. Let me show you another document that will be marked as
10 Plaintiff's Exhibit 29.

11 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 29, EMAIL,
12 ATTACHED HERETO)

13 EXAMINATION RESUMED BY MR. TAROKH:

14 Q. Do you recognize that document?

15 A. Yes, I do.

16 Q. Do you see the subject line that says "Merlo barn
17 door"?

18 A. Yes.

19 Q. What is a barn door? What is that?

20 A. That was the door that went over the pantry and the
21 laundry room. When IBI ordered them, they ordered the
22 wrong size. So it had to be replaced.

23 Q. Was that listed -- was the barn door listed on one of
24 your remediation -- on one of your -- on your rework
25 list? I'm referencing November 27th -- I'm sorry,

1 Plaintiff's Exhibit 27, the document entitled October
2 exterior rework. Is the barn door issue --

3 A. Yes, it is, number 20. "Pantry door is too small.
4 Need a door that fits."

5 Q. So that's the barn door you're referencing?

6 A. Yes.

7 Q. If you'll look at page 5. If you'll look at the lower
8 left-hand corner, it says 5 of 10. It's an email from
9 Dustin Rampy.

10 A. Yes.

11 Q. Do you see on one of the items it says, "Landscaping
12 and stone contractor will be making a site visit to
13 establish schedule and planning." What is that about?

14 A. They were remediating the diseased landscape and the
15 stone that wasn't done properly.

16 Q. What do you mean by stone that wasn't done properly?

17 A. Like our previous reference under the front door, they
18 just left a gap and didn't put the stone in there.

19 Q. And then the next one, "Ethan from Yoders will be
20 coming to look at deck, EZ Breeze system, and
21 window/sliders."

22 A. Yes.

23 Q. What is the EZ Breeze system?

24 A. It's a system that closes in the room outside.

25 Q. Was that in the original scope of work between you and

1 IBI?

2 A. I don't believe that it was.

3 Q. So that would not be a remediation, correct?

4 A. Well, the way they did that area, for some reason we
5 had to redo that. I don't recall exactly why it had to
6 be redone. Yeah, I don't recall. It dates back a
7 little bit, but there's a reason we did that. I'm not
8 sure if it was cheaper or why. I just don't recall.

9 Q. So to be clear, the EZ Breeze system was not within the
10 scope of your work with IBI, correct?

11 A. I don't believe it was.

12 Q. Did you include the cost of the EZ Breeze system as
13 part of your remediation damages?

14 A. Yes, we did, yeah, because it had to be -- it had to be
15 finished. That exterior portion had to be finished.

16 Q. Explain to me why my client should be responsible for
17 the cost you incurred to finish the project when you
18 fired them?

19 A. Well, they left the project in a state of disarray and
20 we had to hire another contractor to come in and remedy
21 it.

22 Q. Would you agree with me that remediation of defects and
23 completion of project are two different things,
24 correct?

25 A. Yes.

1 Q. So that item was just to complete the project, not to
2 remediate defects. But yet you include that amount,
3 whatever that amount was, as part of your total sum of
4 damages, the \$215,000 figure, correct?

5 A. I think it had to do something with the framing on
6 there. All the framing had to be redone. And when we
7 priced all the framing to be redone, it may have been
8 cheaper just to do the EZ Breeze to correct it.

9 Q. If you'll look at page 8 of 10 in Plaintiff's Exhibit
10 29.

11 A. Yes.

12 Q. You state, "Dustin and Christa, thank you for the
13 continued progress." I'm looking at the December 9th,
14 2019 email. "Please order the pantry door as quoted."
15 What's the pantry door?

16 A. The barn door.

17 Q. And then your last paragraph says, "In addition, the
18 garage breakers continue to trip and cannot be reset.
19 There must be something going on with the circuit.
20 Perhaps an electrician can evaluate while onsite."

21 A. Yeah, the electrical was an ongoing issue.

22 Q. Now, the next page, page 9 of 10 of that same exhibit,
23 it looks like -- Nikki Merlo, is that your wife?

24 A. Yes.

25 Q. It looks like your wife asked, "Is it too late to go

1 with the clear glass pantry door? Chris was not aware
2 of the price difference \$300 to \$1,600." Which one did
3 you go with?

4 A. I think we went with the cheaper one, yeah.

5 Q. Look at the next email on that same page, December 9th,
6 2019, 1:49 p.m. Mr. Rampy, he tells you, "I'll check
7 back with the electricians. They were trying to shift
8 around some items to get out there the beginning of
9 this week to check the breakers. I'll keep you updated
10 on my progress." Do you see that?

11 A. Yes.

12 Q. And did he ever keep you updated on his progress?

13 A. He did, yes.

14 Q. And what did he say?

15 A. I don't remember about that one thing specifically.

16 Q. So it sounds like he took charge of correcting the
17 breaker issue or looking into the breaker issue,
18 correct?

19 A. He tried. He did his best.

20 Q. Do you remember what you spent to remediate the
21 electrical issue, the electrical breaker issue?

22 A. Not specifically.

23 Q. But it's your testimony that whatever you spent would
24 be in that \$215,000 figure?

25 A. Not all of it.

1 Q. Why not all of it?

2 A. Because I paid out of my own pocket to have the panel
3 box taken out and a new one put in, and I'm glad to
4 provide that receipt to you.

5 Q. Please do.

6 A. That was after Dustin Rampy.

7 Q. Was it -- when was that?

8 A. I just know it was after Dustin Rampy. I'm not sure of
9 the exact time. It just ended up having too many
10 issues and it was a fire hazard. I couldn't have my
11 kids staying in a house where the panel box got to 140
12 degrees, and it's kind of hard to sleep at night. I
13 put a fan on it and ran the fan continually and I kept
14 the fire extinguisher beside it, and then finally we
15 just replaced it.

16 Q. Let me show you another document. This will be
17 Plaintiff's Exhibit 30.

18 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 30, EMAILS,
19 ATTACHED HERETO)

20 EXAMINATION RESUMED BY MR. TAROKH:

21 Q. Is this in reference to that same EZ Breeze system we
22 were discussing?

23 A. Yes.

24 Q. It looks like on the second page, page 2 of 7, you
25 asked -- or they asked you, "Please see attached Scenix

1 quote." They're basically asking you to choose between
2 EZ Breeze and Scenix?

3 A. That sounds accurate.

4 Q. Do you know why you went with the EZ Breeze system
5 instead of Scenix?

6 A. I don't recall.

7 Q. Was the EZ Breeze system more expensive than the Scenix
8 system?

9 A. I just don't recall.

10 Q. But that would be reflected on an invoice from Joy
11 Construction, correct?

12 A. I think so.

13 Q. Let's go to your affidavit again. Exhibit 4, paragraph
14 11, the next item, exterior soffit to cement board.

15 A. Yes.

16 Q. What's that about?

17 A. In the contract, it was supposed to be cement board,
18 and IBI chose to save some money and do it in vinyl.

19 Q. When did you discover that?

20 A. Well, as they were doing it.

21 Q. Did they remediate it?

22 A. No, they did not.

23 Q. Was it on your rework list?

24 A. I don't think so. There was a whole list of items that
25 we just passively accepted during the build process to

1 move forward.

2 Q. Do you admit in October 2019 you were asking my client
3 to request a certificate of occupancy?

4 A. Yes.

5 Q. And you wanted then to request a certificate of
6 occupancy?

7 A. I believe so.

8 Q. And you did that with all these what you claim to be
9 rework items outstanding, correct?

10 A. I believe so, yes.

11 Q. And why was that?

12 A. I had faith that they were going to come through, work
13 a miracle and get them all taken care of. They
14 promised they would.

15 Q. And then something happened the night of October 11th,
16 I believe it was?

17 A. I came to my senses and realized I was sunk.

18 Q. Did you have a deal or agreement worked out with Rampy
19 prior to you terminating IBI?

20 A. Not that I'm aware of.

21 Q. Did you tell Dustin Rampy, "We'll go with you and your
22 construction company," before you terminated IBI?

23 A. I don't think I did. I'd have to go back and look at
24 the dates on emails, but I don't believe so.

25 Q. Let's skip to -- in paragraph 11 to the not working or

1 missized appliances. Do you see that item?

2 A. Yes.

3 Q. Tell me about that.

4 A. Well, I don't know where to start. You know, the
5 appliances that were ordered didn't fit. They didn't
6 fit the openings. The refrigerator upstairs wouldn't
7 fit the opening. It was too tall.

8 Q. Who did you buy the appliances from?

9 MR. JOHNSON:

10 Object to the form.

11 WITNESS:

12 A. Well, IBI bought them from White's Appliances.

13 EXAMINATION RESUMED BY MR. TAROKH:

14 Q. Were you responsible for the payment of the appliances?

15 A. Not that I was aware of. Not directly to White's.
16 Through IBI, right?

17 Q. Well, explain that. Why do you think it was IBI's
18 responsibility?

19 A. I didn't contract with anyone outside of IBI to take
20 the house from A to Z.

21 Q. Was White's Appliances the only appliance supplier you
22 utilized during your term with IBI?

23 A. No.

24 Q. Who else?

25 A. We ordered some microwaves from a group upon the advice

1 of their cabinet guy, and they never came.

2 Q. Why haven't you paid White's Appliances for the
3 appliances?

4 A. Well, I never had a contract with White's. I had a
5 contract with IBI.

6 Q. Isn't it true you terminated the contract the same day
7 the appliances were being delivered?

8 A. I don't recall the timing of that.

9 Q. I'm going to show you an invoice -- a document which
10 will be marked as Plaintiff's Exhibit 31.

11 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 31, INVOICE
12 FROM WHITE'S APPLIANCES, INC., ATTACHED HERETO)

13 EXAMINATION RESUMED BY MR. TAROKH:

14 Q. What is this document?

15 A. It looks like the White's Appliance invoice.

16 Q. Identify for me what appliances on this invoice are in
17 your house.

18 A. Well, looks like most of them are. I know this
19 PureWash system is missing.

20 Q. It's missing?

21 A. Yeah, it wasn't delivered.

22 Q. Was there anything else that was not delivered?

23 A. The rest of it looks like it was delivered.

24 Q. So all these appliances are in your house currently?

25 A. Yes.

1 Q. Did you pick out these appliances?

2 A. Yes, we did. Yes.

3 Q. Did you coordinate the selection of these appliances
4 with White's Appliances?

5 A. Yes, we did.

6 Q. Do you remember what your appliance allowance was in
7 your contract with IBI?

8 A. I don't recall specifically.

9 Q. Did you go over your allowance with IBI for appliances?

10 A. I'm not certain.

11 Q. But it's possible you did?

12 A. It is possible, yes.

13 Q. Did you coordinate directly with White's Appliances to
14 have the appliances delivered to your house?

15 A. I suppose we did.

16 Q. Do you know that for a fact?

17 A. Somebody coordinated with them. If it wasn't us, it
18 was IBI.

19 Q. Did you directly coordinate with White's Appliances --

20 A. I just don't recall.

21 Q. -- to have the appliances delivered to the house?

22 A. I don't recall.

23 Q. After they were delivered, did you know that they were
24 going -- White's Appliances was going to come back to
25 install them? "Them" as in the appliances.

1 A. I wasn't aware of that.

2 Q. Did you change the locks to your house after appliances
3 were delivered?

4 A. We changed the code on the door or the -- let's see, I
5 think we changed the locks when IBI was fired. Yeah,
6 when IBI was fired, we changed them.

7 Q. Did you change the locks or change the code and/or --
8 did you change the locks and/or change the code after
9 the appliances were delivered?

10 A. That would have been after they were delivered,
11 correct.

12 Q. So, yes?

13 A. Yes, I believe so.

14 Q. Did you allow White's Appliances to come back and
15 retrieve the appliances?

16 A. No, we did not.

17 Q. Why not?

18 A. We felt like we had already overpaid, that John was
19 responsible for that.

20 Q. Why do you feel like you overpaid IBI?

21 A. Well, I think we were ahead with our payments.

22 Q. What do you mean by that?

23 A. Well, for the work that needed to be redone which is
24 evidenced by the \$240,000 we spent, we were ahead with
25 payments.

1 Q. When did you calculate that \$215,000 we've been talking
2 about? When was the first time you calculated that
3 figure?

4 A. I guess it was August 2020, maybe.

5 Q. So how do you know you overpaid my client when you sent
6 the termination email?

7 A. Well, judging by the amount of rework that was left to
8 make the house whole, I was approximating. There was a
9 lot left.

10 Q. What was the basis of your approximation?

11 A. Well, the list that I put together after walking around
12 the house.

13 Q. Right, but what did you tie that to? Like what did you
14 tie the value to, the value of the repairs?

15 A. By that time I may have had the proposal from Dustin
16 Rampy.

17 Q. So your testimony is, on October 12th, 2019, the day
18 you terminated IBI --

19 A. Oh, no, I didn't have --

20 Q. -- you had the proposal of Dustin Rampy; is that your
21 testimony?

22 A. No, no, that's inaccurate.

23 Q. Well, explain what you just stated. You said "at that
24 time". I don't want to misstate, but you said you may
25 have had a proposal from Dustin Rampy.

1 A. No, I didn't have that proposal yet. I think I was
2 just trying to figure it in my head, right?

3 Q. You were trying to what?

4 A. Figure it in my head.

5 Q. Well, that's what I'm asking about. How did you figure
6 that in your head?

7 A. The amount of rework that needed to be done?

8 Q. Yeah, how did you put a figure to that at the time of
9 the termination?

10 A. Well, I knew it would be substantial.

11 Q. You were guessing at that, weren't you?

12 A. I think I was fairly accurate with the amount that we
13 spent afterwards.

14 Q. But at the time, what was your basis to say, "I paid
15 them too much"? What was that basis? Where did that
16 come from? What was that based on?

17 A. I don't recall.

18 Q. Can you hand me, please, Plaintiff's Exhibit 12? That
19 should be the termination letter. You state on October
20 12th, 2019, "I truly hope we could come to some type of
21 consensus regarding the financial component," correct?

22 A. Yes.

23 Q. And you also say, "My advisors are telling me I may
24 have overpaid already with the costs incurred on my
25 side."

1 A. Yes.

2 Q. Who were your advisors?

3 A. I may have been talking to Townes at the time.

4 Q. Who else?

5 A. I think that's all.

6 Q. So why did you say -- why did you reference advisors,
7 plural?

8 A. Might have been a typo.

9 Q. So just to be clear, you didn't -- or let me ask you
10 this. Did you discuss with Dustin Rampy terminating IBI
11 before you terminated IBI?

12 A. I don't believe I did.

13 Q. Well, did you?

14 A. I don't recall specifically.

15 Q. Were you speaking to Dustin Rampy at the time you
16 terminated IBI?

17 A. I don't recall. It dates back awhile.

18 Q. Do you have Dustin Rampy's cell phone number?

19 A. I did at one time.

20 Q. Is it still in your cell phone?

21 A. I'm not certain. I haven't spoken with him since we
22 did the settlement agreement.

23 Q. Will you check your cell phone and see the last time
24 you spoke with Dustin Rampy?

25 A. (Witness checks cell phone). Looks like April the 6th,

1 2020.

2 Q. Will you check your cell phone and let me know if you
3 communicated with Dustin Rampy on the same day you
4 terminated the contract with my client?

5 A. And that was on October the --

6 Q. 12th, 2019.

7 A. (Witness checks cell phone). The first correspondence
8 I see is from October 23rd, 2019.

9 Q. What date was that?

10 A. October 23rd of 2019.

11 Q. Before that date.

12 A. I don't have anything before that.

13 Q. So the very first time you spoke with Dustin Rampy was
14 -- what date was that again?

15 A. This was October 23rd and he says, "Good morning. I'm
16 over at your house trying to get pictures. Working on
17 your quote. Just wanted to let you know that I'm going
18 inside in a few minutes," and I said okay. So that was
19 October 23rd, so we hadn't put a contract in place yet.
20 He hadn't really fully evaluated the property.

21 Q. Did you discuss your intent to terminate the contract
22 with IBI with Dustin Rampy before you terminated the
23 contract?

24 A. Not that I remember.

25 MR. TAROKH:

1 Let's take two minutes.

2 (OFF THE RECORD)

3 EXAMINATION RESUMED BY MR. TAROKH:

4 Q. Mr. Merlo, did you give me everything I requested
5 relative to Dustin Rampy and Joy Construction in
6 discovery?

7 A. I believe I did.

8 MR. TAROKH:

9 And if not, counsel, will you provide it to me?

10 MR. JOHNSON:

11 Absolutely.

12 EXAMINATION RESUMED BY MR. TAROKH:

13 Q. Mr. Merlo, what are you writing?

14 A. I was writing to remember to send the scans -- the
15 clear scans of the checks to Townes so you can -- and
16 also make sure we've got all the emails from Dustin
17 Rampy, make sure he has everything.

18 Q. Let's go back to the draw schedule approval exhibit.
19 That should have been one of the most recent ones.

20 MR. JOHNSON:

21 Exhibit 24.

22 EXAMINATION RESUMED BY MR. TAROKH:

23 Q. That sounds right. Now, Mr. Merlo, were there any
24 draws taken for appliances on that document?

25 A. I can't tell. It does look like there's a number one

1 out beside appliances.

2 Q. It's true that you never paid my client for the
3 appliances, correct?

4 A. Well, it was all figured in as a package price.

5 Q. You never specifically paid my client for the
6 appliances, correct?

7 A. I'm not sure how they allocated the funds I gave them.

8 Q. And it's true that my client never received a draw from
9 the bank for the appliances, correct?

10 A. I'm not sure.

11 Q. Are you familiar with that document?

12 A. Yes.

13 Q. And what exhibit is that?

14 A. 24.

15 Q. And do you know how that draw schedule works?

16 A. Not precisely.

17 Q. So it's your testimony you don't know whether my client
18 was paid or not on the appliances from the bank,
19 correct?

20 A. And so your question is, was he paid after the
21 appliances were delivered; is that accurate?

22 Q. I'm sorry?

23 A. Is it accurate to say, was he paid after the appliances
24 were delivered? Because I don't think he got any draws
25 after the appliances were delivered.

1 Q. My question was, did he receive a draw for the
2 appliances from the bank?

3 A. Yeah, I can't tell by this one way or another. I'm not
4 certain.

5 Q. You made no payments to my client after you changed the
6 locks on the house that night, correct?

7 A. No, sir, there was no payments made after termination.

8 Q. Why do you think that IBI is supposed to pay for the
9 appliances in your house?

10 A. I think we had an allowance on the contract for the
11 appliances.

12 Q. But you exceeded that allowance, correct?

13 A. I don't recall what that allowance was.

14 Q. Didn't you testify previously that the appliance
15 allowance was exceeded?

16 A. I'm not sure what the allowance was.

17 Q. Do you believe the appliances were sold to my client?

18 A. Yes.

19 Q. Why?

20 A. Well, they're the only ones that have the account with
21 White. I didn't have any type of account with White's
22 Appliances.

23 Q. Have you ever -- before this project, did you ever
24 build a house or have a house built?

25 A. Not personally.

1 Q. What do you mean by that, not personally?

2 A. I was involved with the construction of one for my
3 stepfather 25 years ago. It wasn't my house. I was
4 just helping with it a little bit, that's all.

5 Q. How did you help him?

6 A. I think I helped him get the loan.

7 Q. What proof do you have that you don't owe White's
8 Appliances for the appliances?

9 MR. JOHNSON:

10 Object to the form.

11 WITNESS:

12 A. I didn't have an account with White's Appliances. I
13 had an account -- I had a contract with IBI.

14 EXAMINATION RESUMED BY MR. TAROKH:

15 Q. But you're using the appliances, correct?

16 A. Yes, I am. Yes.

17 Q. And the appliances have gone unpaid, correct?

18 A. I'm not sure if IBI's paid them or not.

19 Q. If I tell you IBI has not paid for the appliances, do
20 you think it's right for you to continue to use the
21 appliances?

22 A. I think that's between IBI and White's Appliances.

23 Q. And explain that. Like explain that for me. Because
24 the way I see it is, you have full use of the
25 appliances, there was an opportunity for White's

1 Appliances to retrieve the appliances, you prevented
2 them from doing that. And why do you think that you
3 should not pay for the appliances?

4 MR. JOHNSON:

5 Object to the form.

6 WITNESS:

7 A. If I wanted to GC the project and create a hundred
8 accounts, I would have done that myself. I hired IBI
9 to do that for me. They were supposed to be the GC's
10 on the project. There were supposed to create the
11 accounts with the subcontractors and pay those
12 subcontractors.

13 EXAMINATION RESUMED BY MR. TAROKH:

14 Q. But you didn't pay my client for the appliances,
15 correct?

16 A. Your client breached the contract.

17 Q. That's not my question. You're not answering my
18 question. You didn't pay my client for the appliances,
19 correct?

20 A. Your client didn't fulfill his side of the obligation
21 after 695 days.

22 Q. I'll ask it again. Did you pay my client for the
23 appliances?

24 A. I'm not sure how your client allocated the funds that I
25 paid him.

1 Q. Well, let's go into that. What funds did you pay my
2 client? Do you know?

3 A. Yes. Looks like we paid them check number 4733 of
4 \$3,200 on Exhibit 22, and there's several other checks
5 that are on there.

6 Q. So how much total did you pay my client?

7 A. Personally or including Grand South Bank?

8 Q. Personally.

9 A. It looks like \$25,700.

10 Q. That's all you paid my client?

11 A. Personally. That doesn't include Grand South Bank.

12 Q. Did your wife pay my client?

13 A. No.

14 Q. When you say personally, that's inclusive of you and
15 your wife only paid my client that amount?

16 A. Correct, yes.

17 Q. I'm going to show you two -- I don't have copies. I'm
18 going to show you what will be marked as Plaintiff's
19 Exhibit 32 and 33.

20 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 32, HOUSE
21 PLANS, ATTACHED HERETO)

22 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 33, HOUSE
23 PLANS, ATTACHED HERETO)

24 EXAMINATION RESUMED BY MR. TAROKH:

25 Q. Do you recognize those documents?

1 A. Yes, it looks like my floor plan.

2 Q. Which one is your floor plan? Exhibit 32 or 33?

3 A. (Witness reviews documents). Well, they both look the
4 same.

5 Q. Are they the same?

6 A. They appear to be the same.

7 Q. So it's your testimony Exhibit 32 and Exhibit 33 are
8 the same?

9 A. No, I see some differences now.

10 Q. So which one is your plan?

11 A. 33.

12 Q. And how do you know that?

13 A. The kitchen has been added downstairs.

14 Q. In this case, you're claiming that the use of your
15 plans -- you've alleged the use of your plans by my
16 client has lowered the value of your house; is that
17 correct?

18 A. Yes.

19 Q. And how is that the case?

20 A. Well, when I bought the plan from Donald Gardner, they
21 guaranteed me that nobody had built this house.

22 Q. Which plan? What exhibit are you referencing?

23 A. Well, I guess Exhibit 33.

24 MR. TAROKH:

25 Let's just take a quick two minutes.

1 (OFF THE RECORD)

2 EXAMINATION RESUMED BY MR. TAROKH:

3 Q. So your testimony is, your plans are what's been marked
4 as Plaintiff's Exhibit 33, correct?

5 A. Yes, sir.

6 Q. And in your affidavit, Exhibit 4, I'm looking at
7 paragraphs 13 and 14. "Additionally, on or around
8 December 29th, I learned that plaintiff, by and through
9 its principals, took my architectural plans and design
10 without authorization and used same to build a spec
11 home for their own benefit, thereby reducing the value
12 of the subject property." And you also state in the
13 next paragraph, "Based on the delay, the defects, and
14 the unauthorized use of the project's plans, I do not
15 know any monies to the plaintiff and, instead, am
16 entitled to judgment against plaintiff." So how is it
17 that the value of your property is reduced because of
18 the plans?

19 A. Well, they could be of one house. You have a unique
20 house. I think it would command a premium. If there's
21 ten houses in a subdivision and they're all the same,
22 it's hard to expect a premium there.

23 Q. Well, is that true? Did they build a house with your
24 plans?

25 A. I suspect they did. It looked --

1 Q. But you don't know for certain?

2 A. I never did go in the house, uh-uh (negative).

3 Q. So you don't know whether or not they did build a house
4 with your plans?

5 A. Not with certainty. It just looked to be my plan from
6 the outside.

7 Q. Where was the address of that house?

8 A. I don't recall.

9 Q. How do you know it was the same as your house?

10 A. When I found it online, I thought it was my house.

11 Q. What caused you to search for it online?

12 A. I'm in real estate, so --

13 Q. I understand you're in real estate, but there are a lot
14 of houses online, correct?

15 A. Yeah, but I'm always looking at houses online. That's
16 kind of my business.

17 Q. So how did you happen on a house with your exact same
18 plans, as you claim?

19 A. Just by luck, I guess.

20 Q. Well, explain how you did that. Did you use a internet
21 search engine?

22 A. I think you so, yes. Or maybe like a realtor.com
23 flipping through houses and I said, "Wait a minute,
24 there's mine."

25 Q. Why were you flipping through houses?

1 A. That's my business. That's what I do.

2 Q. But you don't deal with residential business -- excuse
3 me, you don't deal with residential houses, correct?

4 A. We have a residential division.

5 Q. Do you remember why you were flipping through houses?

6 A. Sometimes we just do that randomly.

7 Q. What caused you to look through residential houses that
8 day?

9 A. It's something I traditionally would do.

10 Q. Did you search for -- so your testimony is, one day you
11 got on the internet and you were looking at residential
12 houses?

13 A. Yes.

14 Q. At residential properties, houses. Do you remember the
15 purpose of why you were searching for residential
16 residences -- excuse me, for houses?

17 A. I don't recall specifically. I just came across it in
18 my course of natural business, and at first I thought
19 it was mine because it looked very similar.

20 Q. What did you do to verify that it was, in fact, yours,
21 so to speak? That it was your same plans.

22 A. I looked at the pictures outside and inside and it
23 appeared to be my plan.

24 Q. So you looked at the inside?

25 A. Well, the pictures online. I didn't physically walk

1 through the house.

2 Q. And you don't recall the address of that house?

3 A. I don't.

4 Q. You didn't send a copy of a link to that house to
5 anybody, or did you?

6 A. I may have sent it to Townes.

7 Q. Who else?

8 A. I think that's all.

9 Q. Did you send it to Don Gardner?

10 A. I don't think I did.

11 Q. Did you send it to anyone working for or with Don
12 Gardner?

13 A. I don't believe I did. It's been awhile back. I don't
14 think I did, though.

15 Q. So you were randomly looking at houses on the internet?

16 A. Yes.

17 Q. You found a house that looked like your house, you
18 reviewed the pictures of the house, notified your
19 attorney, and you didn't do anything else?

20 A. Correct.

21 Q. But you don't know for a fact that this house is, in
22 fact, the same as your house, correct?

23 A. Just looked like the same plan to me.

24 Q. And you didn't write down the address or anything of
25 that nature?

1 A. I'm sure it was in the email.

2 Q. Your email to Townes?

3 A. Yes. I didn't memorize it, though.

4 Q. And explain to me -- so were there other houses that
5 you found?

6 A. As far as -- that looked the same as mine?

7 Q. Uh-huh (affirmative).

8 A. This was the only one I came across.

9 Q. And what did you do after you emailed Townes? Like did
10 you continue your search for other houses that may be
11 similar to the -- that may have utilized the same
12 plans?

13 A. That wasn't my intent at all. I just came across it by
14 circumstance. I wasn't intentionally hunting for it.

15 Q. And explain to me how -- if that was true, how using
16 your plans to build another house reduces the value of
17 your house.

18 A. My house is no longer unique. There's more of them.

19 Q. But that's based on speculation, correct?

20 A. Perhaps.

21 Q. Let me show you another document. This will be
22 Plaintiff's Exhibit 34.

23 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT 34, EMAILS,
24 ATTACHED HERETO)

25 EXAMINATION RESUMED BY MR. TAROKH:

1 Q. Let me go back. Between the plans marked as
2 Plaintiff's Exhibit 32 and Plaintiff's Exhibit 33, your
3 testimony is, your plans are what's been marked as
4 Plaintiff's Exhibit 33, correct?

5 A. I believe so.

6 Q. And you don't own what's been marked as Plaintiff's
7 Exhibit 32, correct?

8 MR. JOHNSON:

9 Object to the form.

10 WITNESS:

11 A. I believe this was my plan prior to the renovations
12 that Don Gardner did for me.

13 EXAMINATION RESUMED BY MR. TAROKH:

14 Q. What document are you referencing?

15 A. 32.

16 Q. So do you own those plans, what's been marked as
17 Plaintiff's Exhibit 32?

18 A. Well, we did renovations to this here. Donald Gardner
19 did it for us. I think this was the initial plan.

20 Q. Do you own the plans that have been marked as
21 Plaintiff's Exhibit 32?

22 A. Well, I guess not. We didn't build that plan.

23 Q. If you'll look at paragraph -- excuse me, if you'll
24 look at Exhibit 34. The bottom of the page is an email
25 dated January 17th, 2020.

1 A. Yes.

2 Q. You email Farris. It looks like he's the office
3 manager of Joy Construction, correct?

4 A. She.

5 Q. She, excuse me. You say the wine -- your second
6 sentence, "The wine cellar should have power run to
7 three walls from the light up top. Have a great
8 weekend." Just to be sure, the wine cellar was or was
9 not part of the original scope of work with IBI?

10 A. Was not, and Joy Construction did not complete the wine
11 cellar. As a matter of fact, I don't -- I don't think
12 they even ran that electrical down from the light up
13 above. No, I don't even think they did that.

14 Q. Did you pay Joy Construction for anything related to
15 the construction of a wine cellar?

16 A. I don't believe I did, no. If I did, maybe those --
17 maybe that electrical, but I don't even remember them
18 doing that.

19 Q. I'm going to show you another document which will be
20 marked as Plaintiff's Exhibit 35.

21 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 35, EMAILS,
22 ATTACHED HERETO)

23 EXAMINATION RESUMED BY MR. TAROKH:

24 Q. Do you recognize that document?

25 A. Yes.

1 Q. If you'll look at the second paragraph in the middle,
2 he states, "I did receive a check for \$20,000
3 yesterday. I'm having a difficult time though because
4 we are staying in the rears at all times on the job.
5 It's forcing me to finance the work on your home
6 through other jobs or my personal funds until
7 reimbursement is made. We really need to discuss a
8 better system since this puts financial strain on me
9 and my company." Do you agree with what he said, with
10 what I just read?

11 A. Well, we were simply trying to synchronize payments
12 then after the work was completed.

13 Q. You were trying to synchronize payments? And I don't
14 want to misstate. I don't think I heard you correctly.
15 Until the work was completed?

16 A. After the work was completed. So he was completing the
17 work, then we were making the payment, right.

18 Q. When you say work, like different particular scopes of
19 work?

20 A. Well, the rework that was on his quote.

21 Q. The entire rework?

22 A. Yes.

23 Q. You were trying to synchronize payments -- say that
24 again. I'm sorry, I don't think I'm understanding.

25 A. Well, after he completed a section of the rework, we

1 would fund him a payment.

2 Q. So do you agree that you were in arrears with him at
3 the time of this email?

4 A. I think we could have been.

5 Q. And if you'll look at the next paragraph, you meet with
6 Deno White, lot 11. Is that your neighbor?

7 A. That is one of my neighbors, yes.

8 Q. Is that your neighbor regarding the sidewalk
9 encroachment issue that you claim?

10 A. No, this revolves around the retaining wall.

11 Q. Has the retaining wall issue with your neighbor been
12 resolved?

13 A. Yes, it was completely moved.

14 Q. Did Mr. Grissinger's bond company pay you on your bond
15 claim?

16 A. They did not.

17 Q. What's the last thing they told you about your claim?

18 A. I don't recall.

19 Q. When was your last communication with the bond company?

20 A. I don't recall specifically.

21 Q. Have they denied your claim?

22 A. I can't remember if it's still open or if they denied
23 it. I just don't recall.

24 Q. Do you claim over -- and this is an approximate figure.
25 You claim over \$2 million in lost business or lost

1 business revenue, correct?

2 A. Yes.

3 Q. What's that based on?

4 A. Well, we had to pay to have the rework completed. And
5 so in doing that, we needed funds. So we had to sell a
6 property that generated a lot of income, that would
7 have generated a lot of income indefinitely, to pay for
8 the rework of IBI.

9 Q. So how is that lost business income?

10 MR. JOHNSON:

11 Object to the form.

12 WITNESS:

13 A. Well, we didn't realize the income after we sold the
14 property.

15 EXAMINATION RESUMED BY MR. TAROKH:

16 Q. I don't understand that response. Can you repeat it,
17 please?

18 A. Sure. We needed the capital to fix the work that IBI
19 screwed up, and so we sold a property to pay for it.
20 That property generated income every year and now we no
21 longer own it because we needed the money from the
22 property to pay for the rework of IBI.

23 Q. How did you calculate the \$2 million figure? And
24 that's a rounded number.

25 A. Yeah, great question. I think the property generated

1 about \$50,000 a year.

2 Q. Do you know that for certain or that's a guess?

3 A. That's a round estimate.

4 Q. So your claim for \$2 million of lost business revenue
5 is because you claim there's alleged defects at your
6 house that you had to have capital to pay someone to
7 remediate those defects, and to get that capital you
8 had to sell a rental house you owned?

9 A. Correct, yes.

10 Q. That's your logic?

11 A. Yes.

12 Q. Earlier you testified - and correct me if I'm wrong -
13 that you paid Mr. Rampy -- what was it? How much total
14 did you pay Mr. Rampy?

15 A. I don't recall the exact amount.

16 Q. But everything you paid him is reflected on one of
17 these exhibits?

18 A. Yes, sir, it is. Yes.

19 Q. You didn't pay him in cash or anything of that nature?

20 A. Not that I remember.

21 Q. How much total did you pay Mr. Rampy? If we can take a
22 look at that exhibit. It should be the -- you tell me,
23 Mr. Merlo. It should be the Bank of America exhibit.

24 MR. JOHNSON:

25 Exhibit 7.

1 WITNESS:

2 A. Maybe \$150,000.

3 EXAMINATION RESUMED BY MR. TAROKH:

4 Q. Take your time to add it, please.

5 MR. JOHNSON:

6 Can we stipulate that it's \$150,900?

7 MR. TAROKH:

8 I don't want to stipulate to that at this point.

9 EXAMINATION RESUMED BY MR. TAROKH:

10 Q. There's another document I want to ask you about. It's
11 that document.

12 A. This one?

13 Q. The one in front of you. I think that's the document.

14 MR. JOHNSON:

15 Exhibit 22.

16 EXAMINATION RESUMED BY MR. TAROKH:

17 Q. That's it, yeah. Exhibit 22. So looking at Exhibit 22
18 and 7, I believe, and any other source of information
19 that you know, what is the total amount that you paid
20 Mr. Rappy?

21 A. \$150,000.

22 Q. Didn't you testify earlier that you would have paid IBI
23 if they would have done what they were supposed to do?
24 Was that your testimony?

25 A. Absolutely.

1 Q. So it sounds like either way you would have had to pay
2 for the construction of your house, correct?

3 A. Absolutely. I just wanted it done.

4 Q. So why is it that you claim more than \$2 million in
5 business loss against my client? Do you understand?
6 It's like either way you would have to pay that money.
7 So is your --

8 MR. JOHNSON:

9 Object to the form.

10 EXAMINATION RESUMED BY MR. TAROKH:

11 Q. Is your testimony -- I mean, right? Am I right? You
12 would have to have paid somebody. You just happened to
13 pay Joy Construction in order to pay -- is that
14 correct?

15 A. We did pay Joy Construction, yeah, \$150,000.

16 Q. And you would have paid that to my client, presuming
17 that was -- excuse me. You would have had to have paid
18 my client if they, as you claim, did what they were
19 supposed to have done, correct?

20 A. Correct, yeah.

21 Q. So either way you would have had to have sold your
22 beach house property to pay my client, correct?

23 MR. JOHNSON:

24 Object to the form.

25 WITNESS:

1 A. No.

2 EXAMINATION RESUMED BY MR. TAROKH:

3 Q. Why not?

4 A. Because we would have got the refinance and those funds
5 would have paid it. They forced us to sell the
6 property because we needed cash.

7 Q. Why couldn't you refinance your loan when the project
8 was with Joy Construction?

9 A. We didn't have a C.O. Once we got the C.O., they had a
10 mechanic's lien on us, so we can't refinance it.

11 Q. What's your intention with the property? Do you plan
12 to live there?

13 A. Yes, I live there now.

14 Q. Excuse me, that was a -- do you plan to live there for
15 the next year?

16 A. I suppose so.

17 Q. Do you plan to rent it out?

18 A. Uh-uh (negative).

19 Q. Or to sell it?

20 A. It's not on the immediate horizon, I guess. Never say
21 never.

22 MR. TAROKH:

23 Let's take a quick five minutes.

24 (OFF THE RECORD)

25 EXAMINATION RESUMED BY MR. TAROKH:

1 Q. Mr. Merlo, I'm going to hand you what will be marked as
2 Plaintiff's Exhibit 36.

3 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 36, EMAILS,
4 ATTACHED HERETO)

5 EXAMINATION RESUMED BY MR. TAROKH:

6 Q. Now, Mr. Merlo, do you see that email on the first page
7 dated May 15th, 2019?

8 A. Yes.

9 Q. It's to you -- Chris, Greg, and Nikki?

10 A. Yes.

11 Q. What was the circumstance of this email?

12 A. It looks like there were issues that weren't being
13 addressed and the project was slowing down.

14 Q. You admit that my client sent you a very detailed
15 email, correct?

16 A. Yes.

17 Q. And if you'll go to the last paragraph of that email,
18 it's on Merlo 610. I think you're on the right page,
19 the last paragraph.

20 A. Yes.

21 Q. Mr. Montgomery states, "Chris, this business grants
22 enough stress as it is. It certainly does not help us
23 when a client extends additional stress to two people
24 that are going above and beyond to help them.
25 Disappointment is an understatement. At this point, if

1 you think it would be beneficial for you to find
2 someone else to finish your home at a better price and
3 timing, Greg and I will be supportive of this, only in
4 an effort to please you further. We certainly do not
5 need the additional stress provided from you as well as
6 the added financial burden to fund the project. If
7 this is the direction you wish, we will do all we can
8 to help, I assure you; however, we do suggest doing
9 this in amicable direction for both." Would you admit
10 that IBI is telling you in this email that if you're
11 not happy with them, find another builder?

12 A. Yes.

13 Q. But you decided to stay with them, correct?

14 A. Yes, I wanted to fulfill my agreement that I made in
15 the contract.

16 Q. Did you fulfill your agreement that you made with them?

17 A. I did not. I tried, 695 days.

18 Q. My question was, did you fulfill your agreement?

19 A. I gave them 695 days. Everybody has their breaking
20 point. They pushed me to my breaking point.

21 Q. So you admit you did not fulfill your obligation to my
22 client?

23 A. Correct.

24 Q. I'm going to point you to another document. It may
25 already be an exhibit.

1 MR. TAROKH:

2 Can we go off the record for just a second?

3 (OFF THE RECORD)

4 EXAMINATION RESUMED BY MR. TAROKH:

5 Q. Mr. Merlo, you have Plaintiff's Exhibit 14, which is
6 your amended answer to my client's interrogatories, the
7 first set. If you'd turn to page 8, please. Let me
8 know when you're there.

9 A. Yes, I'm there.

10 Q. If you look at interrogatory number 17, it states,
11 "Identify with specificity the facts and evidence
12 supporting the allegation of plaintiffs breached the
13 contract by 'failing to convey truthful information
14 about the project'", et cetera. And in the response
15 you state - I'm looking at the second sentence -
16 "Specifically, plaintiff failed to truthfully
17 communicate with defendant as follows," and I'm looking
18 at number 5. You state, "Greg Grissinger verbally
19 telling Merlo that the project was only 30 to 45 days
20 from being finished at multiple unknown times and
21 dates, as well at the February 19th email from John
22 Montgomery (as shown on Merlo 589) regarding the house
23 expected completion date of May 1st, 2019." Do you see
24 that part?

25 A. Yes.

1 Q. I'm going to hand you another document which will be
2 marked as Plaintiff's Exhibit 37.

3 (COURT REPORTER MARKS PLAINTIFF'S EXHIBIT NUMBER 37, EMAILS,
4 ATTACHED HERETO)

5 EXAMINATION RESUMED BY MR. TAROKH:

6 Q. I've handed you what's been marked as Plaintiff's
7 Exhibit 37. I'm looking at the -- there's a second
8 email, the second full email dated February 19th. I
9 believe that's 2019. You state, "John, I'm working
10 with my lender on a HELOC loan to cover some of the
11 overages in the budget. The lender wants to know a
12 move-in date so they can rate lock the loan and prepare
13 for an appraisal. Can you help on this one? I wasn't
14 sure what date to give them." Why did you ask my
15 client that?

16 A. I was anxious to finish the house after a year and a
17 half. Remember the contract was just for 12 months.

18 Q. Was it for 12 months?

19 A. Yes.

20 Q. If you'll look at Exhibit 11, please. Do you see the
21 first page, paragraph I(A)? It states, "IBI agrees to
22 complete the work to the best of its ability in a
23 period of 12 months," etc. And then the second
24 sentence says, "This is an estimated completion time
25 only." And you admit -- excuse me, you agree that

1 "only" is bold and underlined, correct?

2 A. Yes.

3 Q. And it also states, "And it's understood that there are
4 many variables that can potentially delay the timing of
5 construction." And then the next subparagraph,
6 paragraph B, goes on to discuss the estimated
7 completion date, correct?

8 A. Yes.

9 Q. So you'd agree, then, that the 12 months was not a date
10 certain. It was an estimation, correct?

11 A. We were told it would be done in 12 months. The
12 project was mismanaged from day one. We gave them 695
13 days. Other houses in the subdivision twice the size
14 of my house were built in six months. The project was
15 mismanaged at all levels.

16 Q. But those other houses in your subdivision, those are
17 just tract homes, correct?

18 A. No, they're custom-built houses.

19 Q. The homes you reference in your neighborhood as being
20 completed before your home was completed, were all of
21 those tract homes or custom-built homes?

22 A. Custom-built houses. Why don't we talk about the
23 houses that IBI started after mine and finished before
24 mine?

25 Q. Well, I'm asking the questions, Mr. Merlo. So you just

1 stated that you were told that construction would be
2 completed in 12 months.

3 A. Correct.

4 Q. When were you told that?

5 A. At the time that we drew the contract. Other folks
6 were telling us six to nine months to build the house.
7 We agreed to go with IBI. They were the higher price
8 of the contract because we wanted it done
9 professionally.

10 Q. Why did you sign the contract with that language
11 regarding the completion date in it?

12 A. Well, it's the contract they sent me, so I signed it.

13 Q. So let me go back to the amended answers to
14 interrogatories that's right in front of you. I forget
15 the exhibit number. Exhibit 14.

16 A. Yes.

17 Q. And again you reference at Bates stamp number 589 where
18 you are stating that IBI failed to truthfully
19 communicate with you?

20 A. Yes, that's correct.

21 Q. And if you'll look at Exhibit 37, there's that email --
22 that's Bates stamp number 589 and you state, "Let me
23 know a move-in date," et cetera, and then he responds -
24 -

25 A. May 1st.

1 Q. I'm sorry?

2 A. It says May 1st.

3 Q. But that's not all it says, correct?

4 A. Correct. That's all I saw at the time.

5 Q. But he says other things in his email, correct?

6 A. It was 18 months into a 12 month build underwater,
7 right?

8 Q. He underlines the word "guess" before saying May 1st;
9 isn't that true?

10 A. He does, yeah. He should know. He's the builder
11 though, right?

12 Q. And he explains to you --

13 A. His guess would have been a lot better than my guess.

14 Q. So it is a guess?

15 A. It's a guess, yeah.

16 MR. TAROKH:

17 Let me take five minutes. Let's go off record.

18 (OFF THE RECORD)

19 EXAMINATION RESUMED BY MR. TAROKH:

20 Q. Mr. Merlo, have you posted any comments about IBI, John
21 Montgomery, or Greg Grissinger on social media?

22 A. Not yet.

23 Q. What did Joy Construction do with the materials they
24 had replaced?

25 A. I still have some. I have the panel box sitting in my

1 garage. There's a handful of other components sitting
2 out there that we figured we'd better hold on to.

3 Q. Did Joy Construction throw away anything, any materials
4 that IBI installed?

5 A. Yes, they did.

6 Q. And what were those?

7 A. Just in the course of construction, I mean, they threw
8 away a lot of stuff. I know that got a dumpster and
9 filled it up a couple of times.

10 Q. Did you instruct them to save those materials?

11 A. I did not. I did not want the molded sheetrock and all
12 that stuff, no.

13 Q. While they were doing the -- while they were working on
14 the -- while Joy Construction was working on the
15 project, did you tell them that you were in litigation
16 with IBI?

17 A. I think I may have.

18 Q. And that communication would have been to Dustin Rampy?

19 A. Yeah, maybe verbally I may have mentioned that.

20 Q. Didn't you think it was important to save the materials
21 that you were claiming as defective?

22 A. I did not think it was important. I took a lot of
23 pictures. I took a picture gallery of them taking out
24 the materials that weren't proper and putting the new
25 stuff in. So I have documentation of it.

1 Q. Have I been given all that documentation in discovery?

2 A. I believe so. If not, we're glad to share it with you.

3 MR. TAROKH:

4 Counsel, you'll get me those documents?

5 MR. JOHNSON:

6 Yeah, I think all of that has been provided.

7 EXAMINATION RESUMED BY MR. TAROKH:

8 Q. Did you upgrade the porch floor to synthetic decking?

9 A. No.

10 Q. You didn't spend \$8,000 or somewhere around there to
11 upgrade the decking to synthetic decking when Joy
12 Construction was working on the project?

13 A. No, they removed the wooden deck, put the wooden deck
14 back on.

15 Q. Did you upgrade the lights and speakers on the dock
16 with Joy Construction to approximately \$10,000?

17 A. I don't have any speakers on the dock.

18 Q. What about the lighting?

19 A. I have -- I have some lighting on the dock.

20 Q. Was that lighting there -- or was that lighting
21 installed by IBI or Joy Construction?

22 A. Yeah, I think IBI attempted to install it and maybe
23 it's one or two lights.

24 Q. Did Joy Construction give -- provide any upgrades to
25 the work that IBI performed on the project?

1 A. Not that I'm aware of.

2 Q. Regarding that \$215,000 figure we've been talking about
3 today, in a percentage, how much of that was
4 remediation and how much of that was completion?

5 A. I think the majority of it is remediation.

6 Q. Can you put a figure to that, approximately?

7 A. 98 percent.

8 Q. So Joy Construction did not provide any upgrades to
9 your property, correct?

10 A. They may have wired those plugs in the wine cellar that
11 you questioned me on earlier, if that's considered an
12 upgrade.

13 Q. Did Joy Construction only make repairs to the alleged
14 defects for you?

15 A. I believe so.

16 MR. TAROKH:

17 Let's go off record for two seconds.

18 (OFF THE RECORD)

19 MR. TAROKH:

20 Mr. Merlo, I'm finished with my deposition.

21 EXAMINATION BY MR. JOHNSON:

22 Q. I will have just one quick question. Mr. Merlo, you
23 testified throughout this deposition about the defects
24 that you had to remediate with the project; is that
25 correct?

1 A. Yes, correct.

2 Q. At one point you stated that you had not met your
3 obligations under the contract. Is that in the context
4 of the defects you did not pay IBI because you were
5 aware of all of the defects and remediation work that
6 needed to be done?

7 MR. TAROKH:

8 Objection, form.

9 WITNESS:

10 A. Yes, that's correct.

11 MR. JOHNSON:

12 That's all I have.

13 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION CONCLUDED
14 AT 6:32 P.M.)
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Lisa M. Nowell, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript.

That the deponent was duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Lisa M. Nowell, CVR
Notary Public for S.C.
Commission Expires: 11/22/23