

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Honorable Mark J. Hayes, Circuit Court Judge

Appellate Case Number 2022-001826

Carolina Real Estate Holdings, LLC Appellant,

v.

Brilin Electric, LLC and W & L Services, LLC Defendants,

of which, Brilin Electric, LLC is Respondent.

RECORD ON APPEAL
VOL. II
(ROA00459 – 00716)

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1 cannot give opinion testimony. Normally when a person
2 testifies, they must testify as to what either they saw,
3 heard, or sensed by smell or something of that nature.
4 However, there is an exception when someone is qualified
5 because of education or experience.

6 They are permitted to give their opinion in
7 certain areas if the Court qualifies them that way.
8 This witness will be qualified in the area of structural
9 engineering to give opinion testimony in that area.
10 Now, that does not mean that you must accept the
11 opinion, but it is evidence for you to use in any way
12 that you see fit.

13 Yes, sir.

14 MR. DLUZNESKI: Thank you, Your Honor.

15 JOHN ABERNATHY,
16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. DLUZNESKI:

19 Q. Mr. Abernathy, the Court has qualified you as an
20 expert in the area of structural engineering. So with
21 that, I want to take you back to May of 2020. During
22 that month, did you have occasion to visit the property
23 located at suite 11, 2180 Carolina Place in Fort Mill?

24 A. Yes, I did.

25 Q. All right. And why did you visit that property?

1 A. I was contacted by Mr. Decker to come take a look
2 at a partition wall, demising wall on his property that
3 he reported had been damaged. So they wanted an
4 engineer to take a look at it.

5 Q. All right. How many visits to that property did
6 you make?

7 A. I believe a total of three.

8 Q. All right. Tell us when those visits were.

9 A. Initially I believe the first was May 4th of
10 2020. And I met with Mr. Robinson, who was here
11 previously, testified previously. Took a look at the
12 wall. I could see, you know, he explained to me that it
13 had been struck again. And I could see the bottom, the
14 bottom of the wall snaking a little bit as you looked
15 down the line of the wall.

16 And really couldn't tell that much during that
17 visit because it was covered with drywall, covered with
18 gypsum board, so I couldn't really make a decision as to
19 what was going on on the inside, which is really what I
20 wanted to see. I wanted to see the actual cold-formed
21 steel studs that were supporting the wall.

22 So I made a recommendation in my report to
23 stabilize the section that had been reportedly kicked
24 out at the bottom. So, you know, I recommend that he,
25 you know, put a couple of 2X6's down. Nail those down

1 so that the wall is at least stable at the bottom where
2 it was reported to me that it had been kicked out.

3 Q. All right. So, you just told us a lot. Let's
4 take each of your visits in turn, starting with your May
5 4th visit. What did you do and what did you observe
6 during that first visit as to the demising wall inside
7 the building at suite 11, 111, per your May 4th visit.

8 A. I just observed that the, the wall was
9 predominately covered completely with gypsum. I believe
10 there was a little bit, maybe at the bottom that had
11 been removed near the surface, but I told Mr. Robinson
12 that, you know, I needed to -- I really couldn't tell
13 that much from that. I needed to be able to see inside
14 a wall.

15 Q. All right. So, let's take a look at -- and as
16 part of that visit, did you prepare and generate a
17 written report?

18 A. I did.

19 Q. All right. Let's take a look at that report.
20 There's a binder of exhibits in front of you, and the
21 specific exhibit I want us to look at is Plaintiff's
22 Exhibit 22. And I want us -- are you familiar with that
23 exhibit?

24 A. Yes.

25 Q. Okay. Now, based on what your observations were

1 of the demising wall during your May 4th visit and you
2 told us that the gypsum board was still on the wall at
3 that time. Is that accurate?

4 A. That's correct.

5 Q. All right. So, based on your observations on the
6 wall on May 4th, what did you recommend be done at that
7 point?

8 A. I recommended that the section that was reported
9 where the damage had occurred, which, you know, I could
10 kind of see and you could see, you know, where there was
11 kind of a difference in drywall previous, I believe, in
12 that area. It was about a 12-foot section. And I just
13 wanted to make sure that, you know, before I came back,
14 if he would remove more and I could take a better look
15 at it between now and that time, I just wanted to make
16 sure that the bottom was secured so that it, you know,
17 that it wouldn't kick out, because I didn't want -- if
18 it were to kick out, a lot of that weight could be
19 shifted on the rest of the wall, which could pull the
20 remainder of the wall down, which I didn't want to
21 happen, in an extreme case.

22 You just want to take all precautions to make
23 sure that if -- you know, I was told that the bottom
24 plate, you know, had been struck and had been completely
25 knocked away from where it had been fastened. I just

1 wanted to make sure that it couldn't be moved, either
2 side before I, you know, returned to see the rest and
3 while they were working on it.

4 Q. All right. And I want to, in that regard I want
5 to refer your attention to the fourth paragraph down in
6 your May 2020 report that begins until such time. Do
7 you see that?

8 A. You're talking about in this report?

9 Q. Yeah, it's in this report. The paragraph that
10 begins: Until such time.

11 A. Oh, yes. Yes.

12 Q. Okay. You state: Until such time that we are
13 allowed to examine the wall internally, we recommend
14 temporary measures to ensure that the base of the wall
15 is stabilized and does not, quote, kick out from either
16 side.

17 Now, tell us what the term -- what did you mean
18 by the term kick out?

19 A. If anything were to impact it, you know, say a
20 vehicle. A heavy load were set down and shifted against
21 it. I didn't want it to -- you know, apparently, from
22 what I understood, the wall had been pushed or pulled
23 back into place relatively close to where it needed to
24 be. But if it were to be shifted again, mind you
25 nothing's holding it down at the time.

1 Apparently those fasteners had been sheered off
2 or broken off. But I just wanted to make sure that
3 nothing in that area where I was told that it was struck
4 could shift laterally, either direction at the base.

5 Q. Okay. All right. Now, is that a safety concern
6 for you? What were you concerned about specifically
7 with regard to the kicking out?

8 A. Yes. I did -- I wanted to -- I wanted to ensure
9 that, that, you know, that that couldn't contribute to
10 anything further developing with the wall. I didn't
11 want the wall basically to be hanging from above to the
12 beams that it was, you know, fastened to in that area,
13 because then you shift the load over to the other beams,
14 which, you know, they're distributed out because they're
15 all supposed to carry just that weight of the wall every
16 16 inches on center.

17 So if you take a group of them out, then, you
18 know, you're weakening the wall at that spot. And I
19 didn't want any further weakening of the wall. I didn't
20 want, you know, stress moved down the wall either
21 direction.

22 Q. Okay. In that same paragraph that we're looking
23 at that begins, until such time, did you make
24 recommendations as to what you believed would stabilize
25 the wall?

1 A. Yes.

2 Q. Okay. And what specifically did you recommend?

3 A. The 12-foot long 2X6's placed either side of the,
4 of the bottom, the bottom plate basically. It's a steel
5 plate.

6 Q. Okay. All right. And why did you recommend that
7 particular course of action or remedy?

8 A. It just -- again, you know, I wanted to make sure
9 that that part of the wall was stabilized.

10 Q. All right. So after this May 4th visit to the
11 property, you told us that you made a second visit to
12 the property. And when was that visit?

13 A. May 22nd, I believe. Yes, May 22nd.

14 Q. All right. So let's turn to the next exhibit,
15 Plaintiff's Exhibit 23.

16 A. Okay.

17 Q. Now, what was the purpose of your second visit?

18 A. The second visit was more of -- well the gypsum
19 was removed so that I could see what was going on in
20 that area and slightly up above it.

21 Q. All right. How much of the gypsum -- what
22 percentage of the gypsum was removed at that time?

23 A. For the entire wall you mean?

24 Q. When you went back for your May 22nd visit.

25 A. Uh-huh. Probably -- it was about halfway up. A

1 little more than halfway up the wall for most of the
2 length of the wall.

3 Q. All right.

4 A. So a little less than maybe 50 percent.

5 Q. Okay. And did that allow you to see the internal
6 structural components of the demising wall?

7 A. Yes.

8 Q. All right. Tell us what you observed during your
9 second visit to the property with regard to the demising
10 wall.

11 A. I saw a lot of the, of the cold form steel
12 sections, the studs basically. The steel studs looked
13 like they had been -- well, they had been bent. The
14 flanges and the web section of the frame, because it's
15 basically a channel shape section, c-shape section. And
16 those portions of the, of the studs had been buckled and
17 bent. And I'd been told that, you know, they had been
18 pushed back into place. But once you damaged one of
19 these to the extent that these were, you really can't --
20 they can't bend. When they're bent back into place,
21 they're obsolete. They no longer serve. They can't,
22 they can't hold the axial load that they're designed to
23 do. You basically -- you know, you, you kind of ruin
24 that individual stud. It no longer does its job.

25 Q. Okay. Now, we've heard in other testimony from

1 Mr. Robinson, as well as your testimony here this
2 afternoon, that these are steel studs, correct?

3 A. Correct. Cold form steel.

4 Q. Now, you've been qualified by this Court as an
5 expert witness in the area of structural engineering.
6 Can you give us any idea what kind of force it would
7 have taken to, to bend the steel studs in the ways that
8 you observed during your May 22nd visit?

9 A. It would, from the damage that I saw, it would
10 take -- I can't give you the exact number on it, but it
11 would take more than just an individual. You know,
12 people or persons couldn't do that. It would have to be
13 some type of machinery or vehicle impact that would
14 cause that kind of damage.

15 Q. Okay. All right. Now, so, after your May 22nd
16 visit or maybe during your May 22nd visit, what concerns
17 did you have about the condition of the internal
18 components of the wall?

19 A. I was just, I was just generally concerned that
20 you weakened so many of these studs that the integrity
21 of the wall is in question now. You know, it's bearing
22 a tremendous amount of load. Mind you, it's not bearing
23 the load of the building itself, but it is bearing the
24 weight of itself, which is, you know, thousands of
25 pounds. And as an engineer my first concern is, is life

1 and safety welfare. You know, any -- once we've opened
2 the wall and we've seen that, it has to be repaired
3 properly.

4 Q. Did seeing the internal steel structural
5 components during your May 22nd visit make your concerns
6 from the first visit more significant?

7 A. Yes.

8 Q. Okay. Tell us very briefly how.

9 A. Well, I'd seen right in the area where the
10 reported strike was, but as you got away from that area,
11 I saw additional bent studs away from the area that was
12 reported for that strike. And I saw them at different
13 locations on the studs. I saw them halfway up some of
14 the studs. Some down at the bottom. I think there was
15 roughly maybe 120, 120, 130 total studs. And I think
16 about 30 of those, I believe, I determined needed to be
17 replaced.

18 Q. So replaced in full, not just repaired?

19 A. Correct. Now, you can, you can replace -- you
20 can replace them and leave the old one in place as long
21 as you can get it back within the wall. It's not
22 hurting to keep the old stud in the wall, but you just
23 need to put up a new one beside it and screw it in at
24 the base and screw it in at the top. And that's
25 basically, I believe, what Mr. Robinson did, and I

1 directed him to do.

2 Q. All right. Now, your opinions that you're
3 offering today --

4 A. Uh-huh.

5 Q. -- and that are contained in Plaintiff's Exhibits
6 22 and 23, are those opinions, did you make them within
7 a reasonable degree of engineering certainty?

8 A. Yes.

9 Q. Okay. And did you render those opinions based on
10 your knowledge, training, and experience?

11 A. Yes.

12 Q. Okay. Now, with regard to your concerns about
13 the demising wall, you mentioned that it's not load
14 bearing. It's not holding up the building.

15 A. Correct.

16 Q. Did that make any difference in your
17 determination as to, you know, your concerns about the
18 wall?

19 A. No.

20 Q. Okay. Why not?

21 A. Basically, the wall itself is load bear -- itself
22 is load bearing. It's holding itself up, so if it
23 falls, the weight of the wall is enough to damage
24 property or injure individuals.

25 Q. Okay. So based on your observations of the

1 condition of the wall during your second visit, your May
2 22nd visit, what, if anything, did you recommend be done
3 to repair damage to the wall?

4 A. I recommended that the certain studs that I saw
5 that had been bent significantly enough to where they no
6 longer function structurally be replaced. And by
7 replaced, again, I mean by placing another stud beside
8 that stud that is not bent.

9 Again, if the studs were bent so far that they,
10 you know, that they were gonna protrude from either side
11 of the wall, obviously take the old stud out after you
12 put the new one in. But it was basically, again, I
13 believe 30 of those that -- which was maybe less than a
14 quarter, a quarter of the total number of studs on that
15 wall length.

16 Q. Okay. Now, you talked about some of the studs
17 having -- or a good number of the studs having to be
18 replaced. Were there some studs that were able to be
19 salvaged, just repaired?

20 A. Of the ones that I pointed out, no. They needed
21 to be replaced. They needed to have, you know, a stud,
22 comparable stud placed beside it. Again, you can leave
23 the old one in there if you want, but it has to have a
24 new one right beside it if it's gonna stay.

25 Q. Okay. All right. Now, let me ask you this as an

1 expert in the field of structural engineering. So,
2 we're looking at the damages to this demising wall.
3 Would going to the other side of the demising wall and
4 hitting the damaged internal structural members back
5 into alignment be an acceptable method to fix the wall?

6 A. Not to fix it, no.

7 Q. Tell us why not.

8 A. The studs that were damaged, even if you plumb
9 the wall back up, you know vertically plumb, you still
10 got these weak members. They're, you know, again,
11 trying to hold the wall the entire length of the wall
12 up, but not all the members of the wall are structurally
13 adequate. Once they're bent, they no longer are
14 effective. All the load of the wall at that location
15 you're putting -- moving -- again, you're moving
16 stresses to the other parts of the wall.

17 You're putting an undo amount of stress on the
18 remainder of the wall to hold up the damaged portion of
19 the wall, which you don't, you know, you don't want to
20 do that. You want to evenly -- 16 inches has to be a
21 complete, you know, stud that's not undamaged.

22 Q. Okay. Now, for these visits that you made to
23 this property and your inspections and these reports
24 that you generated, did you bill Carolina Real Estate
25 Holdings for that work?

1 A. I was with Integrity Consultant Group at the time
2 and, yes, we did.

3 Q. Okay. If you'll turn with me to Plaintiff's
4 Exhibit 17.

5 A. Okay.

6 Q. You might be looking at Defendant's Exhibit 17.

7 A. Okay.

8 MR. DLUZNESKI: Your Honor, may I approach the
9 witness?

10 THE COURT: Yes, sir.

11 THE WITNESS: Oh, back? Okay.

12 BY MR. DLUZNESKI:

13 Q. What is Plaintiff's Exhibit 17?

14 A. It appears to be an invoice from Integrity
15 Consultant Group, the company I was employed under.

16 Q. Okay. And who was it to?

17 A. Brad Decker.

18 Q. All right. And what was the balance that was
19 due?

20 A. \$1,757.50.

21 Q. All right. And Mr. Decker of Carolina Real
22 Estate Holdings paid this invoice as well?

23 A. Yes.

24 MR. DLUZNESKI: Okay. Your Honor, I tender the
25 witness.

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. WHITE:

4 Q. Mr. Abernathy, good afternoon.

5 A. Hey..

6 Q. You and I have never talked before, have we?

7 A. I don't think we have.

8 Q. No, we have not. Now, you first came and saw the
9 wall on May 4th, right?

10 A. That's correct?

11 Q. Of 2020. When were you contacted to come see
12 that wall?

13 A. Umm, we tried to respond within a couple weeks of
14 request, so it's hard to recall. Within two weeks,
15 maybe, previous. A week to two weeks.

16 Q. Were you contacted by Mr. Robinson or were you
17 contacted by Mr. Decker?

18 A. Mr. Decker.

19 Q. And you couldn't see the wall on May 4th, but you
20 could on May 22nd, right?

21 A. I could see more of it on May 22nd, that's
22 correct.

23 Q. If we look at Plaintiff's 23, we see those
24 pictures there. That's the demo diagnostic we're
25 hearing about where they're just cutting the sheetrock

1 to go to empty board that will lift this up, right?

2 A. Yes.

3 Q. Up towards the back of your report where it says
4 photographs, three of any ---

5 A. Yep.

6 Q. So at some point between May 4th and May 22nd the
7 wall got opened up?

8 A. Yes.

9 Q. And you said because the studs, 30 -- about 25
10 percent of the studs, if you do the math, all right? So
11 around 30, the porch is 30, about 120 foot?

12 A. I'd say between 120, 130, something that.

13 Q. In an extreme case, you said on direct, that
14 could cause a wall to fall down, right?

15 A. It's possible, yes.

16 Q. So, the likelihood that that wall was gonna fall
17 is unlikely, right?

18 A. At that time, correct, yes.

19 Q. Better safe than sorry. You know you've got some
20 studs that are busted up, you've got to fix it.

21 A. Yeah.

22 Q. That is the professional engineering
23 recommendation?

24 A. Correct.

25 Q. That's the sound, safe thing to do?

1 A. Yes.

2 Q. And just to reiterate, the only weight that this
3 demising wall bears is the wall itself, correct?

4 A. That's correct.

5 Q. And I feel confident in no way did any of these
6 studs getting banged up compromise the integrity of the
7 building and stuff?

8 A. Of the remainder of the building, that's correct.

9 Q. And nobody contacted you back in 2019?

10 A. No.

11 Q. Nobody contacted you, it sounds like, maybe
12 within a couple weeks showing up on May 4th?

13 A. From what I can recall. It's been a while.

14 MR. WHITE: Nothing further, Your Honor.

15 THE COURT: Any redirect limited to what he went
16 into?

17 MR. DLUZNESKI: No redirect, Your Honor.

18 THE COURT: Thank you, sir. You may step down.
19 Watch your step as you're stepping down. Any reason why
20 the witness cannot be excused?

21 MR. DLUZNESKI? No, Your Honor.

22 THE COURT: Thank you, sir. You may be excused
23 as well.

24 (Witness leaves witness stand.)

25 Is plaintiff ready to call their next witness?

1 MR. DLUZNESKI: Plaintiff calls Wayne Schulte.

2 THE COURT: Sir, just come right up here and let
3 the clerk of court swear you in.

4 THE CLERK: Do you swear or affirm the testimony
5 you give will be the truth, the whole truth, and nothing
6 but the truth so help you God?

7 THE WITNESS: I do.

8 THE COURT: Sir, watch your step as you're
9 stepping up, but please have a seat in the chair and
10 speak into the microphone.

11 WAYNE SCHULTE,
12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DLUZNESKI:

15 Q. Hey, Mr. Schulte.

16 A. Hey.

17 Q. If you would, please state your name for the
18 record.

19 A. Wayne Schulte.

20 Q. And in what city and state do you presently
21 reside?

22 A. Fort Mill, South Carolina.

23 Q. All right. What do you do for a living?

24 A. Right now I'm kind of between jobs a little bit.

25 Q. Okay. At some point in the past, did you have an

1 occasion to work for Carolina Real Estate Holdings

2 A. Yes.

3 Q. All right. How long did you work for CREH?

4 A. The company, well, actually, I worked for Decker
5 Inspections which was a portion of CREH.

6 Q. Okay. What was your job title?

7 A. Project manager.

8 Q. Okay. Tell us what you did on a day-to-day basis
9 while you worked for CREH. So in other words, what did
10 a typical day look like?

11 A. It would depend. I'd be out of town working on
12 certain projects out of town. And when I was in town, I
13 could supervise around some of the properties we have
14 keeping up maintenance and keeping an eye on what's
15 going on on the properties.

16 Q. Okay. How many properties would you say that you
17 serviced or help maintain or manage for CREH or Decker
18 Inspections?

19 A. There's two buildings in the Fort Mill area that
20 I've worked on.

21 Q. All right. And what are those two buildings?

22 A. One is at 2180 Carolina Place, and the other is
23 118 Academy Street.

24 Q. Okay. Did you ever have any problems or issues
25 with any of CREH's tenants?

1 A. Yes.

2 Q. All right. Was part of your role as a project
3 manager or a property manager to access CREH's
4 commercial property to inspect and make repairs?

5 A. I'll usually repair it if I see something, but
6 usually repairs that come in, they put in a work order
7 for something to be done.

8 Q. Okay. And was that CREH's general practice with
9 it's tenants.

10 A. Uh-huh.

11 Q. I'm sorry, you ---

12 A. That's a yes.

13 Q. Okay. All right. Did you ever have any issues
14 or problems with fulfilling that aspect of your job
15 duty?

16 A. Not usually, no.

17 Q. All right. So let's delve deeper into this case.
18 At some point during your tenure with CREH, did you
19 become acquainted with Brilin Electric?

20 A. Yes, I did.

21 Q. All right, when?

22 A. Right after they moved into our building. I
23 can't remember what year it was. Right after they moved
24 in.

25 Q. All right. And how did you become acquainted

1 with Brilin Electric?

2 A. Just doing different things, because I was around
3 the building checking on stuff. Then they started out
4 like any other tenant, and then it just kind of
5 escalated from there. Didn't have much interaction with
6 them near the end, just always a battle.

7 Q. All right. Tell us about your dealings and
8 interactions with Brilin Electric when they first moved
9 in to their leased premises.

10 A. Didn't notice a whole lot right in the beginning.
11 I mean, they had a lot of cars coming across from the
12 front parking lot we requested not to have them do. But
13 the very beginning wasn't too bad. And then it's just
14 items up, kept coming up to be fixed or damaged and it
15 just kept getting worse.

16 Q. Okay. So as, as Brilin's lease term progressed,
17 talk to us about how your relationship developed with
18 Brilin.

19 A. It went downhill.

20 Q. All right. What do you mean by that, just
21 generally?

22 A. Whatever I was asked to do, they wouldn't let me.
23 Or if I was asked to do something or they complain about
24 everything, I was told to keep pictures around the
25 building. Every time I went out there, they come out

1 and yell at me for taking pictures of the property.
2 Basically tried to do what I was told to do by my boss
3 and I just got harassed all the time for it.

4 Q. Okay. Was law enforcement ever called in
5 connection with any of your dealings with Brilin?

6 A. Yes, they were.

7 Q. All right. Tell us about that.

8 A. The last day I was there, they were putting in a
9 garage door that weren't supposed to be installed. And
10 they had the old doors ripped out. I called my boss,
11 Brad. He recommended -- he said to call the sheriff. I
12 called the sheriff. Then Brilin's guys came out and
13 started yelling, picking up, I don't know what it was,
14 but -- and then the sheriff said it was a civil matter,
15 there was nothing they could do about it.

16 Q. All right. Do you know who called sheriff's
17 office on that occasion?

18 A. I did.

19 Q. Okay. Why did you call the sheriff's office?

20 A. Because I was instructed to by my boss to call
21 them.

22 Q. Okay. All right. Do you know how many times law
23 enforcement was called?

24 A. I want to say two or three for that particular
25 property.

1 Q. Okay. Any of your other or CREH's, any of your
2 other or CREH's other properties that you manage? Did
3 you ever have law enforcement involvement?

4 A. Just once, at the same building, but a different
5 unit. There was a misunderstanding. They thought there
6 was something going on with the water when they were
7 making some big repairs.

8 Q. Okay. All right. And how many times -- you told
9 us that there were two or three times that law
10 enforcement was called to Brilin's premises. How many
11 times did you call law enforcement?

12 A. I believe I just called the once.

13 Q. Okay.

14 A. Maybe twice, but I can't remember for sure. It's
15 been two year or better.

16 Q. All right. And how did they respond the other
17 two times?

18 A. Pretty much it was the same thing. They just
19 come out to make sure there was no physical violence
20 going on. And instead it's a civil matter. There was
21 nothing really that could be done on their end.

22 Q. Okay. Mr. Schulte, did you ever attempt to
23 interfere with Brilin's ability to run and operate its
24 business?

25 A. No, sir.

1 Q. All right. Were the actions that you took in
2 relation to Brilin attempts to perform your job as a
3 property manager?

4 A. Uh-huh, yes.

5 Q. Did you conduct your way as a property -- did you
6 conduct yourself as a property manager with Brilin any
7 way differently than CREH's other commercial tenants?

8 A. Probably near the end, yeah. We didn't get
9 along, so it was kind of like I tried to avoid them and
10 they tried to avoid me, but it never happened.

11 Q. Okay. All right. Did you ever attempt to enter
12 Brilin's leased commercial space for the purpose of
13 inspecting or making repairs?

14 A. I've tried to get in, but when the wall was
15 damaged, I tried to see. But they had shelves in the
16 way, so you couldn't see everything in there. I've been
17 in a couple times, but it was usually short lived.
18 Usually their warehouse manager would have come out and
19 tell me I have to leave.

20 Q. All right. All right. Now, while you were on
21 site, actually on the premises at Brilin's leased
22 commercial space as the property manager, tell us about
23 some of the things that you witnessed Brilin, Brilin's
24 employees do.

25 A. They were asked not to drive on the front parking

1 lot because there was damage to it from heavy trucks.
2 It wasn't designed for that. They would constantly do
3 that. They'd have trailers where they weren't supposed
4 to. We put up barricades to direct the traffic, keep
5 them in the back of the building. And they took their
6 forklift and moved the barricades. That's happened
7 several times. The barricades were moved on multiple
8 occasions.

9 That was one of the times the sheriff was called
10 was one of the times when they moved the barricades.
11 They were put up to direct traffic to keep them off, not
12 just them but any tenant and other trucks too off the
13 front parking lot. And they just went out and moved
14 them around wherever they wanted, do what they wanted.

15 Q. All right. What else did you observe Brilin or
16 its employees do?

17 A. I've seen them wash trucks out there, stuff like
18 that. But mainly with the barricades and the damage
19 with the walls, you know? And then the last incident
20 was the garage doors they replaced. And that was pretty
21 much one of my last days with Decker.

22 Q. Okay. All right. Did Brilin cause any damage to
23 the asphalt outside their building that you witnessed?

24 A. Yes.

25 Q. All right. Mr. Schulte, you have a binder of

1 exhibits in front of you and they are numbered.. In the
2 front are the plaintiff's exhibits and in the back are
3 the defendant's exhibits.

4 A. Okay.

5 Q. I want you to turn to Plaintiff's Exhibit 5.

6 A. Picture of the asphalt here?

7 Q. Yes.

8 A. Okay.

9 Q. How did this asphalt damage happen?

10 A. That's for bringing the forklift out. They kept
11 bringing the forklift out and setting their pallets over
12 there and whatnot. And that's where they kept running
13 it over and parking trucks up in there. You had
14 barricades, so they couldn't get down that far, but they
15 kept moving them.

16 Q. All right.

17 A. So, that's exactly what that is. That's from the
18 forklift.

19 Q. All right. Did you actually witness the forklift
20 do this damage?

21 A. Several times. Well, I didn't, I didn't actually
22 see the asphalt crack under the forklift, but I seen the
23 asphalt run through these holes several times.

24 Q. Okay.

25 A. That's why I would take pictures every day to see

1 what's changed.

2 Q. Okay. Do you know of any attempt by Brilin to
3 repair this asphalt damage?

4 A. No.

5 Q. Okay. All right. Let's look at Plaintiff's
6 Exhibit 7.

7 A. Uh-huh.

8 Q. Exhibit 7 shows a, it looks like a concrete patch
9 at the bottom of one of the ramps.

10 A. Yes, that's what that is.

11 Q. Okay. Do you know anything about this patch?

12 A. The edge of the concrete was getting all busted
13 up there, and I can't remember for sure, but I believe
14 Brilin actually had somebody come in and put that,
15 trying to fix the concrete at the edge.

16 Q. Okay. Did Brilin tell you, or anybody from
17 Brilin tell you anything about the patch before they did
18 it?

19 A. No.

20 Q. All right. So Brilin just had someone come out
21 and do it?

22 A. To the best of my knowledge, yeah.

23 Q. Okay. All right. Now, speaking about the
24 parking lot outside the building, and you've mentioned
25 it a couple of times, parking barricades or jersey

1 barriers?

2 A. Jersey barriers.

3 Q. Okay. All right. Let's look at Plaintiff's
4 Exhibit 4. Does Plaintiff's Exhibit 4 show the jersey
5 barriers that you're talking about?

6 A. Yep.

7 Q. All right. Now, you mentioned a little bit about
8 this, but tell us what specifically you witnessed Brilin
9 and any of its employees do with respect to these jersey
10 barriers?

11 A. Well, that trailer, the day before that trailer
12 was not inside those jersey barriers. And if you look
13 at the weight of it, you can't get that in trailer in
14 there without removing the jersey barrier. They
15 literally came out, picked up the jersey barriers, put
16 them where they want it so they can get the trailer in
17 there.

18 Q. Okay. Did CREH request that Brilin Electric not
19 move the jersey barriers?

20 A. Yes.

21 Q. All right. How many times, would you say?

22 A. Multiple. I couldn't tell you off the top of my
23 head, but it's been multiple times.

24 Q. Okay. All right. Do you know why Brilin -- why
25 CREH put these parking or these jersey barriers up in

1 the first place?

2 A. Yeah. Well, first the parking lot was getting
3 damaged. That's why we wanted the trucks out. And then
4 we put the barriers up and the parking lot had gotten
5 too far gone, so we had it re-asphalted. And then we
6 wanted to block it off even more to make sure the truck
7 stayed where, in the back, where it wouldn't damage the
8 asphalt.

9 Q. Okay.

10 A. There's signs out there telling them trucks in
11 the rear. Everything was there.

12 Q. All right. Okay. So there's notices in the
13 parking lot talking about how CREH, the landlord,
14 desired its tenants to use the parking lot?

15 A. Yeah. And there's barricades and signs saying
16 all truck parking and trailer parking to be in the rear
17 of the building.

18 Q. Okay. All right. Let's talk about the warehouse
19 building of Brilin's lease for just a few minutes.

20 A. Uh-huh.

21 Q. You mentioned this as well. What types of doors
22 were on the warehouse?

23 A. They were rollup Overhead Doors.

24 Q. All right. Tell us about what damage that you're
25 aware of to the rollup doors of the building that

1 occurred during Brilin's tenancy.

2 A. They, they were bulged outward. It looked like
3 they had been hit several times by forklifts and stuff,
4 you know, moving equipment around, is what it looks
5 like.

6 Q. All right. Did any of Brilin's employees or
7 agents or owner ever tell you that a forklift caused the
8 damage?

9 A. No.

10 Q. Okay. How did you determine that a forklift is
11 what caused it?

12 A. Pretty much by looking at the height of the dent
13 and the height of the forks and every place else the
14 forks had been stuck through the building.

15 Q. All right.

16 A. So, I know what the doors looked like before they
17 took over the space.

18 Q. Okay. And how did the doors look before Brilin
19 moved in?

20 A. They were nice and straight. Nothing wrong with
21 them. They were aged, but they weren't dented or caved
22 in or pushed out.

23 Q. All right. Are you aware of either or both of
24 the damaged rollup doors being replaced by Brilin at
25 some point?

1 A. They were pointing -- they were changing the
2 door. That was like about my last day there, so I don't
3 know what the outcome. That's the last time we called
4 the sheriff.

5 Q. Okay. All right. So, so tell us about that day.
6 Were you on site that day?

7 A. I showed up there and I realized when I showed
8 up, just checking on the property and I seen they were
9 tearing the doors out, I had called Brad and let him
10 know what was going on. He told me to go in and stop
11 them, find out.

12 I went inside to try to find out what was going
13 on, I was told to get off the property. So I called
14 Brad back and he told me to call the sheriff. And then
15 we called the sheriff. Then they informed us it was a
16 civil matter.

17 Q. All right. What caused, what caused you to go to
18 the property that day in the first place?

19 A. That's what I do every day. When I wasn't out of
20 town on other projects, I went around to all the
21 properties every day.

22 Q. Okay. All right. And when you went in to voice
23 a concern to Brilin, was that a new experience for you
24 or have other commercial tenants of CREH told you to get
25 off the property?

1 A. Only Brilin. I've never been thrown off any
2 other properties. I didn't get to talk to the owner of
3 Brilin. I talked to his warehouse manager, I guess is
4 what he was.

5 Q. Okay. All right. Let's talk about the demising
6 wall inside the warehouse space. So we have Brilin's
7 warehouse space, and then next to it, who was in the
8 space next to Brilin?

9 A. Two Men And A Truck.

10 Q. Okay. So, are you aware of any damage that was
11 caused to that demising wall during Brilin's tenancy?

12 A. Yes, I am.

13 Q. All right. Tell us about that.

14 A. One of the times I was in the building. It was
15 getting near the end of the lease, we noticed the
16 building was -- the wall was pushed in. There were
17 holes in it from, it looked like, forks going through
18 it. There was a bunch of shelves though. Couldn't see
19 to go down to Two Men And A Truck side because they had
20 a bunch of stuff stacked up against there. And they got
21 stuff cleared out so we could see.

22 The wall pushed out at the bottom, probably
23 between a foot to 18 inches, maybe and two foot in some
24 places. There was holes broken through it, protruding
25 through it. At some point they removed the shelves,

1 pulled the shelves out of the way, and I came by to
2 check on it and they had some drywall crew in there
3 straightening it.

4 They were on Two Men And A Truck side, trying to
5 straighten it. Beating it with sledge hammers and
6 rehanging drywall.

7 Q. All right. Did -- do you know who Brilin had in
8 there doing work on the demising wall?

9 A. I don't.

10 Q. You don't, okay. And you personally observed
11 them, members of that crew, beating it with sledge
12 hammers?

13 A. Yes, sir.

14 Q. Okay. Where on the wall, on the height of the
15 wall were they doing that?

16 A. Down at the bottom.

17 Q. At the bottom of the wall?

18 A. The majority of it, but the bottom plate is
19 marking it. As Mark and them talked about it earlier,
20 the bottom plate was pushed way inside to the Two Men
21 And A Truck side of the building.

22 Q. Okay. Now, before you arrived on site that day
23 and saw the crew there working -- well, first of all, do
24 you remember what year that work was done?

25 A. Sometime in the beginning of 2019 or the end of

1 2018.

2 Q. Okay. Did you know when you arrived on site that
3 day, that there would be a crew doing work on the
4 demising wall?

5 A. I knew they were talking about getting something
6 done, but I didn't know when it was. I didn't have no
7 idea exactly when it was gonna start, no.

8 Q. Okay. So you never approved a start date for the
9 project?

10 A. No.

11 Q. Okay. Did you, when you arrived on site and saw
12 the people working on the demising wall, did you ask
13 them who they were?

14 A. I informed Brad. He had to make sure they had
15 their W-2's or their Certificate of Insurance and stuff.
16 And I believe our office manager at the time, Frank, I
17 believe, contacted Bryon about it, but I don't know for
18 sure.

19 Q. Okay. How long did you stay?

20 A. 20 minutes or so.

21 Q. All right. Did you supervise the crew at all
22 doing the work?

23 A. No.

24 Q. All right. Do you know how long they were there
25 doing the work?

1 A. I believe it was just one day, maybe. Maybe a
2 little bit the next day, but I don't know for sure.

3 Q. Okay. And you said -- so during that entire
4 couple day time span, you were there for about 20
5 minutes?

6 A. For the wall part, yes. I mean, I go by every
7 day and look at this stuff at the building, but they
8 were in there just beating stuff around. My main
9 concern was the drywall. They got it straight, but I
10 wouldn't know if they got everything back right at that
11 point. My concern was also that the drywall be fire
12 rated. Mine between the two spaces.

13 Q. All right. Did you have any conversations with
14 Mr. Russell or anybody else at Brilin that day about the
15 work to the demising wall?

16 A. No.

17 Q. Okay. Did you supervise that work?

18 A. No.

19 Q. Did anyone from Brilin, including Mr. Russell,
20 ask you to supervise that work?

21 A. No.

22 Q. The crew that was there doing the work, did you
23 hire them?

24 A. No.

25 Q. Okay. Did you participate in hiring them?

1 A. Nope.

2 Q. All right. After, did you return after they
3 completed the work on the demising wall?

4 A. Yes.

5 Q. All right. Do you know how soon after?

6 A. I can't remember for sure, but the first thing I
7 know is that it was pushed way out at the bottom. They
8 didn't get it straight. And I took pictures. The
9 photos should be around somewhere, but I also sent those
10 to our office.

11 Q. Okay.

12 A. Let them know what was done wasn't, wasn't
13 satisfactory.

14 Q. Did you, did you pass that information on to
15 anyone with Brilin that day?

16 A. No. I had as little contact with Brilin as
17 possible.

18 Q. Okay. Did you talk to Brilin or the crew at all
19 about the work?

20 A. No.

21 Q. All right. Did you tell anyone from Brilin or
22 the crew that you approved the work or that the work
23 looked good?

24 A. No.

25 Q. Okay. Mr. Schulte, after -- did you cause any

1 damage to the demising wall?

2 A. Did I cause damage?

3 Q. Yeah.

4 A. No.

5 Q. Did you witness anyone from CREH cause any damage
6 to the demising wall?

7 A. No.

8 Q. Were you present for either of the two
9 inspections that John Abernathy performed?

10 A. No.

11 Q. Were you present when any repairs to the wall
12 were made after Brilin vacated the space?

13 A. No.

14 Q. All right. Now, other than the demising wall, I
15 want to take a look at some ductwork inside the
16 building. Were you aware of any repairs that Brilin
17 made to the ductwork?

18 A. I don't know what the exact repairs were, but
19 there was some flexible ductwork that was damaged along
20 that same wall up above the shelf that they had put in
21 place.

22 Q. Okay. If you'll look with me at Plaintiff's
23 Exhibit 11. Does Plaintiff's Exhibit 11 show the
24 ductwork that you're talking about?

25 A. That appears to be it, and it looks like it's

1 been repaired.

2 Q. Okay. Well, what else did Brilin do with that
3 ductwork that you're aware of?

4 A. I honestly don't know.

5 Q. Don't know?

6 A. I know it was damaged before and that picture
7 looks like it's not damaged.

8 Q. Okay. All right. Finally, let's turn to
9 Plaintiff's Exhibit 24. What does Plaintiff's Exhibit
10 24 show?

11 A. That looks like a picture of the dog bed they had
12 in there.

13 Q. All right. What can you tell us about the dog
14 bed, the carpets? Were there carpets inside that
15 office?

16 A. One of the last things I done was go through
17 there, by the instructions of my boss. Went to check
18 out carpets and stuff to see what we'd have to do for
19 the next tenant and whatnot. And there was pet stains
20 on the carpet and whatnot. I don't know if they cleaned
21 up or replaced the carpet, because I was no longer
22 employed there shortly after that, but there was pet
23 stains on the carpet and the dog bed was just a picture
24 showing that they got a pet sitting there.

25 Q. All right. Mr. Schulte, you testified that you

1 were out at the property, that you took photographs of,
2 I guess, what was going on out at the property.

3 A. Yeah. And it wasn't just their building. It was
4 all the way around the property. I took pictures in
5 front of the building, down at the other people places,
6 other tenant spots, but they took offense to be taking
7 pictures, so...

8 Q. Okay. Did you ever go, other than what you just
9 told us about, did you ever go into the warehouse space
10 or the office area and cause any issues?

11 A. No.

12 Q. Okay. For the photos that you took, were they
13 closeups? Did you take them from a distance?

14 A. Most of them were close-ups. You know, the ones
15 outside. The ones outside were closeup. The ones
16 inside, I mean, the only one time I got inside was
17 occasionally, so...

18 Q. All right. Tell us what interactions you had
19 with Brilin's employees outside the warehouse.

20 A. We was in argument. His warehouse manager, no
21 matter the time, every time I went around there, they
22 come out wanting to know what I'm doing. Starts telling
23 me to leave them alone, I shouldn't be over there. I'm
24 harassing them and whatnot, so...

25 Q. All right. And you've testified that your

1 behavior with respect to Brilin and Brilin's premises
2 was no different from any other commercial tenant?

3 A. No, sir.

4 MR. DLUZNESKI: Okay. Your Honor, I tender the
5 witness.

6 THE COURT: Yes, sir.

7 MR. WHITE: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. WHITE:

10 Q. Thank you, Your Honor. Good afternoon, Mr.
11 Schulte, how are you?

12 A. Good, how are you?

13 Q. I'm good. You and I have never talked before,
14 have we?

15 A. No, sir.

16 Q. Now, you actually are not employed by -- at the
17 time, the relevant time being 2019, 2020, you were
18 employed by Decker Inspections, correct?

19 A. Up until 2019.

20 Q. Okay. It wasn't 2020, early 2020?

21 A. Oh, I believe it was 2019. It was when COVID
22 hit.

23 Q. Moving into 2020. Does that sound right?

24 A. It was April. Okay, 2020 then.

25 Q. And you were a 1099 employee, right? Independent

1 contractor?

2 A. No.

3 Q. You were paid ---

4 A. No, I was a salary employee.

5 Q. Okay. And you say you were being told what to do
6 when your boss told you what to do, right?

7 A. Yep.

8 Q. When he tells you to go takes pictures, you go
9 take pictures?

10 A. Yep.

11 Q. Now, I didn't hear who your boss is. Your boss
12 is Brad Decker, right?

13 A. Yep.

14 Q. Your testimony on direct was that you never
15 interfered with the operation of Brilin at any time.

16 A. Not under my opinion, no. I mean, I did what I
17 was told, which would put the barricades in place and
18 whatnot, but that wasn't intended to interfere with
19 their visits or nothing. They were still given ample
20 room. They could access their building, do what they
21 got to do.

22 Q. Wasn't intended to interfere, but it did because
23 they couldn't use the ramp because the jersey barriers,
24 right?

25 A. Well, they could use the ramp it shows in there.

1 We left them a little bit of room, but they decided it
2 wasn't enough and moved the jersey barriers.

3 Q. Well, a little bit of room was because they moved
4 the jersey barriers, right?

5 A. No. They had room. The jersey barriers were put
6 halfway down the parking lot. The parking lot down that
7 side of the driveway splits between our building and
8 somebody next door that we don't own that property. And
9 those jersey barriers were put right down the middle, so
10 they were keeping them off the other people's property
11 too.

12 Q. Yeah, but look at Plaintiff's Exhibit 4. Let me
13 know when you're there, Mr. Schulte.

14 A. Okay.

15 Q. You see those jersey barriers in the back right,
16 right?

17 A. Yep.

18 Q. Like those are blocking off this whole side area,
19 including the ramp, unless you move them, right?

20 A. Yes.

21 Q. You can't get a forklift into that warehouse,
22 down that ramp, through that asphalt, back where those
23 vans and trucks are --

24 A. That's right.

25 Q. -- unless you move one of those jersey barriers.

1 A. That's right. That's why we didn't want the
2 forklift on the asphalt. It kept tearing up the
3 asphalt. That's what the jersey barriers were put there
4 for.

5 Q. So why was the forklift on here?

6 A. Yeah, but they were making clear of that. And
7 they were given a little bit of room with the damage
8 that they're gonna have, a little bit of damage to
9 repair.

10 Q. But it's a commercially usual thing due to the
11 forklift that a lighted industrial warehouse space like
12 this, is it not Mr. Schultes?

13 A. Not on the asphalt side where it's not designed
14 for a forklift. The forklift has got the little small
15 tire that contains all the way to one little area. It's
16 not like a car.

17 Q. The asphalt wasn't paved with sufficient material
18 to bear the load of a forklift, right, Mr. Schulte?

19 A. It was bear -- it was put down to prepare for a
20 parking lot.

21 Q. That's not a parking lot, Mr. Schulte, is it?

22 A. Right. That don't -- that's my issue when -- I'm
23 telling you what I did when I was there.

24 Q. That's not a parking lot, is it, Mr. Schulte?

25 A. Yeah, it's a drivethrough. It's a drive. It's a

1 parking lot. It's a driveway.

2 Q. You guys didn't want anybody driving through it.
3 That's why there's jersey barriers in the foreground.

4 A. We didn't want big trucks and forklifts on it,
5 and we blocked the whole thing so they couldn't get out
6 there.

7 Q. Yeah. This front --

8 A. Okay.

9 Q. -- this part right here, that's where you all
10 blocked it off so people couldn't use it for anything.

11 A. Uh-huh.

12 Q. It's not even a driveway, is it?

13 A. Yep.

14 Q. And you were told by Mr. Decker to do that?

15 A. Everything I did out there I was told by Mr.
16 Decker.

17 Q. Put those jersey barriers out there so they can't
18 drive the forklift on that asphalt, right?

19 A. Yep.

20 Q. You called the cops multiple times on Brilin, did
21 you not?

22 A. Not multiple, no.

23 Q. I thought you just testified to at least twice,
24 right?

25 A. Well ---

1 Q. When they put the garage doors in ---

2 A. I think multiple as thinking like five or ---

3 Q. Well, multiple to me means more than one.

4 A. Okay.

5 Q. So twice you called the cops on them, right?

6 A. Yep.

7 Q. For the -- when they were putting the garage
8 doors in.

9 A. Yep.

10 Q. What was the other time?

11 A. When that trailer was inside the barricades where
12 it shouldn't be.

13 Q. Right. What's wrong with the trailer being
14 inside the barricades?

15 A. Well, they used the big truck to get it in there,
16 which we don't want trucks in the parking lot.

17 Q. Okay. But what's wrong with the -- what's wrong
18 with them just putting a trailer right there?

19 A. Because they came through the front of the
20 property to get there where we don't want trucks ---

21 Q. The security barriers are right there.

22 A. How did they back the trailer up there? That's
23 the front of the parking lot where the top of the
24 trailer is sitting, so they came through the front.

25 Q. So you don't like the fact that they put the

1 trailer there, right? That was the problem, right?

2 A. When I asked them to move it, that's when their
3 argument started. That's when the cops came in.

4 Q. You didn't like the fact that the trailer was
5 parked right there. You didn't like it.

6 A. Nobody did. We just paved the parking lot.

7 Q. Well, what's wrong with it?

8 A. Because it's a brand new parking lot that was
9 being paved from trucks driving over it, and we just
10 spent a lot of money fixing the parking lot and we don't
11 want them tearing it up again.

12 Q. From just having the trailer there. How's that
13 tearing it up?

14 A. How did the trailer get there? They didn't pick
15 it up and sit it down.

16 Q. So you think just backing it up, that's gonna
17 tear it up?

18 A. Twisted the tires, whatever, yes. Twisted the
19 tires on the parking lot will tear it up.

20 Q. Now, you said you took pictures every day, right?

21 A. Not every day, but most days.

22 Q. Your testimony on direct was you took pictures
23 everyday ---

24 A. Just about, yeah. And sometimes ---

25 Q. Were you told to take pictures by Mr. Decker?

1 A. I was told to take pictures of the property on my
2 daily routes. If it's anything out of the ordinary,
3 anything that don't look right, keep up with so we know
4 what's going on. That way we can tell when damages
5 happen that weren't there before. Yeah. I've got, I've
6 got lots of pictures.

7 Q. How many suites, units, whatever you want to call
8 them, were in this particular building?

9 A. At the time there was, oh, I think, one, two -- I
10 think four.

11 Q. Four suites? Four units, whatever you want to
12 call them, right?

13 A. Yeah.

14 Q. And you were only taking pictures of Brilin,
15 right?

16 A. No, that's not true.

17 Q. You're taking pictures of everybody?

18 A. Uh-huh.

19 Q. And you wouldn't tell people when you were
20 coming, would you?

21 A. Didn't make nothing. I didn't realize I had to
22 tell them, because that was part of my job.

23 Q. All right. So the answer is no, you didn't tell
24 people when you were coming in the building to take
25 pictures of the building, right?

1 A. Most people I didn't have to tell them. I just
2 go in and talk to them. They were always friendly. I
3 never had a problem.

4 Q. You just show up and take, what you said on
5 direct, close-up photographs unannounced, right?

6 A. Outside the building, absolutely.

7 Q. Because that's what Brad Decker told you to do.

8 A. Yep.

9 Q. Okay. And like you also said, you got in
10 occasionally. You were able to get inside every now and
11 then to take pictures on the inside?

12 A. Uh-huh.

13 Q. That's what Mr. Decker wanted you to do, get in
14 there and take as many pictures as you want?

15 A. It wasn't just their property, though. It was
16 all the properties. I've got pictures of our other
17 building. I've got pictures of the other unit that the
18 other tenants, spots at the same property. It's not
19 like I was targeting them.

20 Q. And it's your testimony here today that you did
21 not oversee the installation in 2019 of the drywall on
22 the Two Men And A Truck side?

23 A. Uh-huh. That's correct.

24 Q. Your testimony here today is you were there for
25 20 minutes?

1 A. Roughly. It was over two years ago. I can't
2 remember exactly how long, but I know I didn't have no
3 supervision. I wasn't in charge of supervising or
4 hiring or anything else to do with that job.

5 Q. So is it 20 minutes or not, because you seemed
6 pretty confident about 20 minutes on direct.

7 A. More or less, yeah, roughly. I mean, it might
8 have been 18, but it was like 20 minutes, in that
9 general area.

10 Q. And you never approved the start date of that
11 project?

12 A. I never approved nothing on that project.

13 Q. It's your testimony today that you did not tell
14 Brilin you need to come on the other side in another
15 tenant's premises to fix the drywall?

16 A. Nope.

17 Q. They just magically showed up all on their own?

18 A. I guess, because the Two Men And A Truck moved
19 some pallets and stuff in order for them to get to that
20 wall, but I had nothing to do with it.

21 Q. And the job was not satisfactory to you?

22 A. No.

23 Q. And it's also your testimony, I think we heard
24 now two people, that your testimony is you saw people
25 taking a sledge hammer to the wall?

1 A. They had a piece of wood with like a 12-foot,
2 10-foot piece of 2X4, 2X6 on the floor and they're
3 hitting it with a sledgehammer trying to push the wall
4 over.

5 Q. Right. So they're not actually banging the
6 drywall with a sledgehammer. They're just knocking a
7 piece of ---

8 A. Try to knock. The wall down.

9 Q. (Inaudible.)

10 A. That's what I said, they're trying to knock the
11 wall back in. Yeah. I never said they were damaging
12 it.

13 Q. (Inaudible.)

14 A. Right.

15 Q. And that happened during the 20 minutes that you
16 were there?

17 A. Uh-huh.

18 Q. When did you stop working for Decker Inspections,
19 Mr. Schulte?

20 A. April of 2020, I guess.

21 Q. And why did you stop working for them?

22 A. COVID.

23 Q. COVID. So you got let go?

24 A. Yep.

25 Q. Have you ever seen a copy of this lease in this

1 case, Mr. Schulte?

2 A. Probably when they first moved in, but I couldn't
3 tell you for sure. I don't know.

4 Q. You don't know what it says?

5 A. I've seen -- some leases I've seen and some of
6 them I haven't. I don't -- I honestly don't know.

7 Q. And you don't really know what it said back in
8 2020, do you?

9 A. No.

10 MR. WHITE: Nothing further, Your Honor.

11 THE COURT: Any redirect limited to what he went
12 into?

13 MR. DLUZNESKI: No redirect, Your Honor.

14 THE COURT: Thank you, sir. You may step down.
15 Watch your step as you're stepping down.

16 (Witness leaves the witness stand.)

17 Lawyers approach.

18 (Bench conference was held off the record.)

19 Give me just a moment, ladies and gentlemen. Why
20 don't you stand up and stretch your legs just for a few
21 moments. Ladies and gentlemen, this is one of those
22 times. Remember I told you there would be times where
23 I've got to take up matters of law with the attorneys
24 that I can't do while you're sitting over there? This
25 is one of those times.

1 I'll ask that you retire back to the jury
2 deliberation room. Do not talk about the case. Do not
3 do any type of independent research or investigation.
4 We'll get you back just shortly.

5 (Jury leaves courtroom at 3:56 p.m.)

6 Yes, sir.

7 MR. DLUZNESKI: Thank you, Your Honor. Your
8 Honor, we have one final witness on our witness list,
9 Mr. Trip Moore, who is the owner of Two Men And A Truck.
10 Two Men And A Truck occupied the adjoining commercial
11 space from Brilin Electric during Brilin's tenancy. Due
12 to previous scheduled commitments, Mr. Moore has been
13 able to be here with us up to this point.

14 I just conferred with my client, and it's my
15 understanding that he has had communications with Trip
16 Moore. Trip Moore is on his way back to South Carolina
17 from those out-of-state commitments in Cleveland, Ohio
18 as we speak, and he will be here first thing tomorrow to
19 testify.

20 So at this time, we would request that the Court
21 allow us to call Trip Moore as our final witness first
22 thing tomorrow. I do not envision his testimony will
23 take long at all, but I would respectfully request that
24 the Court indulge the plaintiff and allow us to call Mr.
25 Moore as our final witness first thing tomorrow.

1 MR. WHITE: If I may, Your Honor?

2 THE COURT: Yes, sir.

3 MR. WHITE: We would object to this witness. We
4 don't believe he's relevant in any way. I've had an
5 opportunity to speak with Trip Moore, and I frankly
6 don't know what he is going to offer in terms of
7 substantive evidence that will assist the plaintiff in
8 any way and proving up any of the elements of any of
9 their causes of action.

10 I think this testimony is designed in some form
11 or fashion to just make Mr. Russell the principle of the
12 defendant, look like a not nice guy, or something to
13 that effect. Interactions with, with Brilin, with Mr.
14 Russell, I don't see how any of that is relevant.

15 And I would also make an objection under 403 as
16 well. I think it's a waste of time. I think it's
17 distracting. It's gonna confuse the jurors, and it just
18 doesn't add anything to the plaintiff's case in chief,
19 Your Honor.

20 THE COURT: Any reply?

21 MR. DLUZNESKI: No reply, Your Honor.

22 THE COURT: All right. I have to agree with
23 defense counsel. I'm not seeing how an adjoining
24 property owner, unless he's gonna testify to something
25 new that has not been presented, is going to be relevant

1 to this case that this Court needs then to suspend the
2 conduct of this trial to allow this person to come in as
3 part of your case in chief.

4 MR. DLUZNESKI: Well, and, Your Honor, I would
5 say that some of these repairs, the temporary repairs
6 that have been mentioned by -- to the demising wall that
7 had been testified to by the plaintiff's witnesses in
8 this case were on Mr. Moore's side of this space. Mr.
9 Moore can certainly offer some testimony that maybe
10 other witnesses for the plaintiff were not able to about
11 what occurred regarding the repairs to the demising wall
12 on his side. The timeline for that. The conduct
13 involved in that, and the interactions between the
14 various parties. So I think from that perspective, Your
15 Honor, Mr. Moore, may be in a position to offer
16 testimony that other witnesses for the plaintiff have
17 not been able to provide.

18 THE COURT: Have you deposed this witness?

19 MR. DLUZNESKI: We have not, Your Honor.

20 THE COURT: Then how do you -- then what
21 assurance do you have to give the Court, if that's gonna
22 be his testimony?

23 MR. DLUZNESKI: From my conversations with him, I
24 believe that that -- he will have something to offer in
25 that regard.

1 THE COURT: Okay. All right. Anything else?

2 MR. WHITE: Very briefly, Your Honor. Just
3 proffering as an officer of the court. I just think
4 that my interview of Mr. Moore, the wall being pushed
5 out had no impact on their business operations in any
6 way. And as you have heard through other testimony, Two
7 Men And A Truck has actually moved from what we've been
8 calling the Two Men And A Truck side to the Brilin side.
9 And there was really not much of any delay in that
10 regard either. So it really hasn't been any impact
11 whatsoever to the tenant. And, again, what does that
12 have to do with anything in terms of the plaintiff's
13 case in chief anyway? Thank you, Your Honor.

14 THE COURT: All right. But you -- likewise, you
15 haven't deposed this witness?

16 MR. WHITE: I didn't see a need to, Your Honor.

17 THE COURT: All right. The lawyers have
18 requested four days worth of trial of this case and we
19 have been -- we, being everybody that's been involved
20 with this case, trying to get this case to move on.
21 We've reached a point in the trial where I've
22 conferenced with the lawyers and I think that it's time
23 that I'm not going to extend the opportunity for
24 plaintiff to present anymore in his case in chief by
25 calling this witness. I have yet to hear anything that

1 this witness will add to what has already been presented
2 to this jury. I've heard that this witness may
3 complement and maybe further support other testimony
4 that's presented by other witnesses that have already
5 been called in this case. And so I'm not going to grant
6 the request to delay moving on with this case.

7 With that being said, you have the opportunity,
8 and I would not exclude my ruling -- my ruling would not
9 exclude you using Mr. Moore in some type of reply,
10 because you will have the opportunity to present a reply
11 to anything that the defense says. So you can get Mr.
12 Moore here, and if you feel like that something has come
13 up, then you can present Mr. Moore through your reply.

14 So I'm not saying don't call him, but not calling
15 him now at this juncture in the case, I don't think it
16 adds anything to or in any way prejudices your case at
17 this juncture. You can call him later. .

18 MR. DLUZNESKI: Sure. I understand, Your Honor.

19 THE COURT: Okay. So, we now have the jury out.
20 I know we have motions typically -- and my understanding
21 is you're now going to rest; is that correct?

22 MR. DLUZNESKI: Yes, Your Honor, barring any
23 reply from Mr. Moore, plaintiff would rest.

24 THE COURT: Okay. Well, reply doesn't -- you
25 rest your case. Mr. Moore will come up in reply in the

1 event he's needed to address anything that the defense
2 has.

3 What I would suggest for efficiency of time is to
4 go ahead and rest now. Let's do the motions while the
5 jury is out. Then you can rest in front of the jury if
6 I -- in the event I deny his motions, then you can rest
7 in front of the jury, then we'll move to the defense
8 case. That way we don't have to bring them back in and
9 bring them back in. Any problem with doing that,
10 counsel?

11 MR. DLUZNESKI: No, Your Honor.

12 MR. WHITE: No, Your Honor.

13 THE COURT: Okay. Okay. With that being said,
14 bring the forelady out. I'm gonna send the jury home
15 for the day and we're gonna do these motions.

16 (Forelady enters the courtroom at 4:04 p.m.)

17 Madam Forelady, you're gonna get your exercise
18 coming in and out.

19 MADAM FORELADY: That's okay.

20 THE COURT: We are going to take up some more
21 matters of law with the attorneys. It might not be that
22 quick, as what I thought. And so I would like to inform
23 the jury that you all's work is done for the day. But
24 ask them to remind them the two instructions. No
25 investigation, no discussion of the case, and ask them

1 to be back in the jury deliberation room by 9:30 in the
2 morning. Thank you very much.

3 (Madam Forelady leaves the courtroom at 4:05
4 p.m.)

5 All right. So Plaintiff want to rest on the
6 record?

7 MR. DLUZNESKI: Yes, Your Honor, plaintiff rests.

8 THE COURT: All right. Yes, sir?

9 MR. WHITE: May I have one moment, Your Honor?

10 THE COURT: Okay. All right.

11 MR. WHITE: Your Honor, at this time the
12 defendant would like to make a motion for a direct
13 verdict on plaintiff's first cause of action, third
14 cause of action, and fifth cause of action.

15 The first cause of action is negligence. Your
16 Honor, this cause of action is barred by the economic
17 loss rule of duties, rights, responsibilities of
18 defendant Brilin with respect to plaintiff, CREH, are
19 governed exclusively by the contract. And the second
20 cause of action does allege a breach. So the negligence
21 and gross negligence claims should be dismissed on that
22 basis.

23 The fraudulent misrepresentation, we have not
24 seen evidence of intent to deceive. And this goes along
25 with the civil conspiracy as well. There has not been

1 any intent to conceal any damage that may or may not
2 have happened to the demising wall by potentially or
3 possibly Brilin Electric or, for that matter, W&L
4 Services as it pertains to civil conspiracy.

5 As far back -- you heard evidence from Mr.
6 Robinson that he had concerns about the wall as far back
7 as 2019. There was an opportunity when the sheetrock
8 was removed from the wall in 2019 for anyone to look at
9 it. You've heard Mr. Schulte, the property manager say
10 that he was there and had an opportunity to look at it.

11 You have evidence of the Brilin -- excuse me,
12 W&L's invoice that talks about how -- and let me just
13 cite you that exhibit exactly, Your Honor. Defense
14 Exhibit 15, labor to fix wall that had been knocked out
15 of bottom plate. That's kind of the worst civil
16 conspiracy if you're just gonna sit there and kind of
17 talk about it in your invoice.

18 And so, there was no effort by Brilin to conceal
19 any damage that it allegedly caused to the demising wall
20 in any way, let alone even have an opportunity to even
21 make a representation to that effect, Your Honor.
22 Because in this case, Brilin was sued on March 27th,
23 2020.

24 And as the evidence showed from Defendant's
25 Exhibit 14, per the request of plaintiff and plaintiff's

1 counsel, all communications from that point onward were
2 through the lawyers. So there wasn't even an
3 opportunity for Brilin or any agent of Brilin to even
4 make such a representation that can even be construed as
5 a fraudulent misrepresentation with any intent to
6 deceive.

7 Furthermore, and I'll be brief. Just a few more
8 points. If you go to Plaintiff's Exhibit 3 on page 2,
9 top paragraph: Furthermore, Carolina Real Estate
10 Holdings has relayed to us that employees and their
11 agents of Brilin Electric caused damage to an interior
12 demising wall between Brilin's Electric's lease base and
13 the commercial space leased by Two Men And A Truck as a
14 direct result of negligent forklift operation. And
15 this, Plaintiff's Exhibit 3 is dated September 24th,
16 2019.

17 So it's been known that there was some damage.
18 It may not have been known to what extent the damage
19 was, but we have heard no evidence whatsoever that
20 either Brilin or W&L Services did anything with any
21 intent to deceive, with any intent to conceal, anything
22 of that nature. And, therefore, the fraudulent
23 misrepresentation and civil conspiracy claims should be
24 dismissed with prejudice, along with the negligence and
25 gross negligence claims, Your Honor. Thank you.

1 THE COURT: Yes, sir.

2 MR. DLUZNESKI: Thank you, Your Honor. I'm going
3 to start my comments with the first cause of action,
4 negligence, gross negligence, and then I'll move on to
5 fraudulent misrepresentation and several conspiracy. As
6 far as the negligence goes, as the Court's aware, one of
7 the elements of negligence is to what duty did Brilin
8 Electric owe to its landlord, Carolina Real Estate
9 Holdings?

10 And under the Miller v. City of Camden case,
11 which is 317 S.C. 28. It's a Court of Appeals case from
12 1994 that the Court in that case said, even if there is
13 no duty to act, so...

14 And I would submit that there was a duty between
15 Brilin Electric and its commercial landlord. In this
16 case, Carolina Real Estate Holdings. But even if that's
17 not the case. Even if the Court determines that there
18 was no duty that Brilin owed to CREH, the Court in
19 Miller said that even if there is no duty act, the
20 defendant who acts voluntarily assumes a duty to use due
21 care.

22 In this case there's been a lot, a plethora of
23 witness testimony about the defendant's use of the
24 warehouse space, particularly its use of the forklift
25 within the warehouse space. And we believe during our

1 cross-examination of Mr. Russell in defendant's case in
2 chief, one of the pieces of evidence that will come out
3 to the jury is that Mr. Russell admitted to Mr. Decker
4 on one or more occasions during Brilin's lease term that
5 Brilin caused damage using a forklift. And we've heard
6 and seen evidence of that here today.

7 So, Brilin's actions in those regards were
8 voluntary. And because Brilin acted and used the
9 warehouse space pursuant to the lease agreement for the
10 three-year lease term, we would submit that Brilin owed
11 a duty to use due care.

12 And it is a question for the jury to determine
13 whether based on the testimony and evidence that's been
14 presented, whether or not Brilin used due care. So we
15 would ask the Court to deny defendant's motion for a
16 directed verdict on the first cause of action.

17 As far as the fraudulent misrepresentation goes,
18 our fraudulent misrepresentation claim is making
19 misrepresentations the defendant knew to be false
20 regarding the demising wall. Now, the Court heard
21 testimony and the jury heard testimony today that there
22 were temporary repairs done to the demising wall in
23 2019.

24 There was also evidence and testimony that
25 Carolina Real Estate Holdings was not afforded any

1 opportunity to not only supervise that work, but inspect
2 the work and approve it after the work was completed.
3 And the testimony from Mr. Decker and the testimony from
4 Wayne Schulte that plaintiffs have presented in this
5 case bring that out. And, again, we have not heard the
6 defendant's case in chief at this point, so we would ask
7 the Court to deny that as well, so we can elicit
8 testimony from the defendant's witnesses on that count.

9 As far as the civil conspiracy charge goes, Your
10 Honor, there is also a case law that we would present at
11 this point in that regard. The civil conspiracy was
12 between Brilin Electric and W&L Services. Now, one of
13 the defendant's exhibits was an invoice from W&L.

14 And the invoice said that it repaired damage to
15 the demising wall that had been kicked out at the
16 bottom. So our claim for civil conspiracy is that
17 Brilin and W&L Services, and the Court heard testimony
18 from Wayne Schulte, that he was on site for 20 minutes.
19 He didn't see all the work that was done. He didn't see
20 exactly what they were doing, other than hitting the
21 bottom of the wall with sledgehammers.

22 You didn't get a chance to come back and inspect
23 the work or approve the work after the work was
24 completed. And the work that was done was not
25 acceptable to him. And the Court also heard testimony

1 from Mr. Decker, as well as our two experts, that the
2 work that was done in 2019 was not acceptable and did
3 not make the wall structurally sound from the damage.

4 As far as civil conspiracy goes, Lee versus
5 Chesterfield General Hospital. And the key strike to
6 that is 289 S.C. 6. It's another South Carolina Court
7 of Appeals case from 1986. And the Court of Appeals
8 indicated in that case that the gravamen of a civil
9 conspiracy is the damage resulting from an avert act
10 done pursuant to the combination, not the agreement or
11 combination per se.

12 In this case, the overt acts was the work done on
13 the demising wall and the patching of the demising wall
14 up that involved Brilin Electric and W&L Services. Now,
15 the Court heard that CREH was not involved in that
16 process. The Court heard that from Wayne Schulte on
17 direct examination.

18 So, in order for W&L Services to have been
19 involved in that or had been able to do that, Brilin had
20 to be involved in that. Brilin was the property owner
21 on one side of the wall. There's also case law,
22 Exchange Bank of Megett vs. Bennett, 193 S.C. 320.
23 That's a South Carolina Supreme Court case from 1940.

24 And what the Supreme Court said in that case is
25 that when a civil conspiracy is claimed, the plaintiff

1 has the right to sue and to proceed to trial against as
2 many actors of the civil conspiracy as the plaintiff
3 desires. There's no requirement, in other words, that
4 the plaintiff files suit and proceed to trial in the
5 action against all of the co-conspirators in the case.
6 In this case, Your Honor, we are moving forward with the
7 action against Brilin Electric, which we submit, based
8 on the evidence, was one of the co-conspirators involved
9 in this wall damage.

10 And going back very briefly, the case that I just
11 cited, one of the elements of a civil conspiracy is
12 damage caused to the plaintiff by way of this
13 combination between Brilin Electric and W&L Services.
14 We've talked about the demising wall at length during
15 the plaintiff's case in chief. We've seen the damages
16 that plaintiff has had to pay to have that wall
17 inspected, determine the root cause to repair that wall
18 and make sure it was structurally sound.

19 So there was certainly damage that we have
20 quantified on the record of this case in furtherance of
21 our civil conspiracy claim against Brilin. So, Your
22 Honor, we would respectfully request that the Court deny
23 all of defendant's motions for directed verdict.

24 THE COURT: Reply?

25 MR. WHITE: Very briefly, Your Honor. I just

1 wanted to add one point and then just give you a couple
2 of case cites. You heard the expert. We stipulated
3 that the engineer is an expert in structural
4 engineering. That he had to get the wall opened up to
5 see what was going on in there. You've heard no
6 evidence in the plaintiff's case in chief that Brilin
7 had any knowledge as to what the integrity of those
8 studs were at any point.

9 So how are they -- how are -- no one, no one
10 knew. No one knew and Brilin certainly wasn't gonna
11 tear open that wall because it's not their wall. That's
12 why they wanted to do the final walkthrough, which was a
13 commercially reasonable thing and standard practice in
14 South Carolina commercial landlord/tenant relationships.

15 Even the expert said, when he got there four days
16 after the tenancy was ended on its natural terms. And
17 CREH got back in possession of the premises. I don't
18 know what's going on. And Mr. Robinson was like, yeah,
19 I think there's some issues here. His issues were all
20 the way up to 2019 because it was pushed out of place.

21 So, you know, it's really a question of like,
22 well, what -- we don't really know what the extent is.
23 That's, again, why we wanted to do the walkthrough,
24 which they refused to do. And they started doing all
25 their stuff the moment they got possession. So they

1 obviously knew they needed to do something. Something
2 needed to be happening. So it's very confusing as to
3 how this, this was all concealed from them, when Mark
4 Robinson testified that he went into the space the day
5 CREH got it back. So I just wanted to add that factual
6 point.

7 Just with the economic loss doctrine, Your Honor,
8 I just wanted to cite to Tommy L. Griffin Plumbing and
9 Heating Co. That's 320 S.C. 49. A breach of a duty
10 which arises under the provisions of a contract between
11 the parties must be redressed under contract and a court
12 action will not lie. A breach of a duty arising
13 independently of any contact between the parties,
14 however may support a tort action.

15 These are all economic damages they're claiming.
16 There's no duty independent of what's set forth in the
17 contract. A negligence action cannot arise where two
18 parties are in privity of contract without a special
19 relationship between the alleged tort fees or an injured
20 party not arising in contract.

21 That's Brandon Mill, LLC 2019 WL 3458688, that's
22 a federal district court of South Carolina case from
23 July 13th, 2019, which cited to Tommy L. Griffin
24 Plumbing and Heating.

25 And then with the civil conspiracy, just case law

1 to add for Your Honor's consideration, Paradis v.
2 Charleston County School District, 433 S.C. 562, a 2021
3 case. A plaintiff asserting a civil conspiracy claim
4 must establish the combination or agreement of two or
5 more persons to commit an unlawful act or lawful act by
6 unlawful means, together with the commission of an
7 overact in furtherance of the agreement and damages
8 proximately resulting from -- to the plaintiff.

9 And this case also reaffirms the notion that a
10 civil conspiracy is an intentional tort and that
11 plaintiffs must demonstrate an intent to harm. Where is
12 the evidence that there was some intent to harm the
13 plaintiff here? We have quite the opposite. What
14 Brilin was trying to do was fix the Two Men And A Truck
15 side at CREH's assistance on the 2019 side. And once it
16 got all its stuff out, in 2020 when the lease was up, it
17 was gonna fix that side. Per the direction of CREH at a
18 final walkthrough, which CREH simply refused to do.

19 And if CREH had gone in there and done their, you
20 know, diagnostic, which is a diagnostic, which is a
21 fancy way of just saying cutting a hole in the drywall
22 and saying, hey, look, it's not just the drywall that
23 needs to get fixed, it's the, it's the studs too, then
24 they would have gotten fixed. We asked that question to
25 Mr. Decker. Do you have any reason to believe they

1 wouldn't have fixed that if they would have known about
2 it?

3 So, there's no fraudulent misrepresentation here,
4 and there certainly wasn't a civil conspiracy between
5 the company that was hired to do some drywall work and
6 the tenant, who was just trying to fix whatever they
7 could to get the landlord off their back. Thank you,
8 Your Honor.

9 THE COURT: Question. Let's say that plaintiff
10 establishes a factual foundation that applies to a
11 theory in this case that says that your client should be
12 responsible for the payment of the wall, the extra cost
13 that had to -- that has been presented to, to make the
14 wall as the way plaintiff wanted the wall to be made, is
15 that damage recoverable under the lease if plaintiff
16 also establishes a breach of the lease?

17 MR. WHITE: I think it's recoverable under the
18 lease. In this case, Your Honor, we would certainly be
19 arguing, we have our counterclaim that there was a
20 breach of the implied ---

21 THE COURT: We'll get to those counterclaims.
22 I'm asking about plaintiff's claims.

23 MR. WHITE: I think it's a breach argument. If
24 anything it's worse for defendant because they spent all
25 that money patching up their side, and then all that

1 drywall got torn down. Studs got fixed and then the
2 drywall went back up. It would have been a lot easier
3 if we just did it all at once, you know?

4 THE COURT: Okay, humor me. Okay. At this
5 juncture at this motion that's made, I have to view the
6 facts that have been presented to the -- before the
7 Court in a likeness most favorably to the plaintiff,
8 okay?

9 MR. WHITE: Yes, Your Honor.

10 THE COURT: So, let's take a look at this wall.
11 And the plaintiff has presented some monetary damages
12 that are associated with this wall. If the plaintiff is
13 successful in establishing that this wall was bad and
14 what the -- and what they needed to do to the wall is
15 appropriate, is that damage recoverable under the breach
16 of contract claim that plaintiff is seeking against your
17 client?

18 MR. WHITE: Yes. Subject to our affirmative
19 defense counterclaim.

20 THE COURT: I understand, subject to your
21 affirmative defenses we have not heard.

22 MR. WHITE: Yes, Your Honor.

23 THE COURT: All right. Tell me about this
24 economic loss rule. Mr. Plaintiff, tell me about this
25 economic loss argument that counsel's making. What

1 damages have presented to this jury that you intend to
2 ask them to award that is not recoverable under the
3 terms of the lease?

4 MR. DLUZNESKI: Well, I think, Your Honor, that
5 goes to the damages, the various damages that we
6 presented as evidence that Brilin caused to this
7 property by the reckless use of this forklift. And I
8 understand that recklessness is a level above due care,
9 and that's something that the jury is tasked to
10 determine.

11 THE COURT: Okay. Now, answer my question. I'm
12 talking about the damages.

13 MR. DLUZNESKI: Right.

14 THE COURT: What damage are you going to argue is
15 recoverable by your client that is not also recoverable
16 under the breach of contract claim, if you establish
17 that the particulars? I know that you've gone through
18 different items through this trial as to what the
19 defendant has done bad and that you've given dollar
20 amounts for those things. What, what damage is not
21 covered within the parameters of the breach of cause of
22 action?

23 MR. DLUZNESKI: Well, I think the wall would be
24 one of those damages, because the lease agreement,
25 unless I'm mistaken, does not obligate the tenant to

1 make repairs to the wall. I think that the damages
2 related to the wall would be covered by negligence and
3 gross negligence, if the jury finds those. But I don't
4 know that the lease agreement itself includes a
5 provision that says for a non-load bearing wall, such
6 as, you know, we've had testimony that this demising
7 wall was not load bearing, it wasn't holding up the
8 building. That would be recoverable under plaintiff's
9 cause of action for gross negligence and gross
10 negligence [sic].

11 THE COURT: So it's not a violation of the lease
12 for any of the allegations that I've heard made against
13 defendant for any of the damage to the wall.

14 MR. DLUZNESKI: The only, the only provision of
15 the lease agreement I can think of that would cover that
16 would be -- and I forget which specific provision, but
17 that the tenant has to return the premises in as good of
18 a condition to the landlord at the end of its lease term
19 as it received at the beginning of its lease term. The
20 lease does not include negligence -- negligent or
21 reckless acts by the tenant that caused damage to the
22 premises.

23 THE COURT: So a tenant under the terms of the
24 lease can act negligently, I mean, while he's at the
25 property or, in fact, used the property for a purpose

1 that's intended to -- for its lease or reasonably --
2 commercially reasonable use of the property and then
3 caused damage to something that I would classify as
4 being capital in nature versus personal property, and
5 then the tenant doesn't have to pay for that under the
6 terms of the lease?

7 MR. DLUZNESKI: Under the terms of the lease I
8 think those -- I mean, if we were to construe that the
9 provision regarding returning the property to the
10 landlord in as good of a condition as it received it, I
11 think that we could have that included in there, but
12 we're talking about negligence on the part of Brilin
13 Electric after being told by the plaintiff ---

14 THE COURT: Okay. I'm not -- I'm not asking you
15 questions about the theory of liability. I'm asking
16 about the damages. I want to know, because I believe
17 his economic loss rule is probably a very good argument,
18 because the economic loss rule, the way I understand it,
19 and have applied it in cases, is meant that you don't
20 allow parties who have this obligation and
21 contractually have joined them together, that you don't
22 allow -- the economic loss rule doesn't allow you then
23 to go outside of that contract, which is a written
24 document that defines the duties that both parties
25 agreed to in advance, that this is what -- this defines

1 our relationship.

2 And so that if this contract is breached, then
3 the damages are gonna be defined by those parties within
4 that document. The economic loss rule, the way I
5 understand it, does not allow parties to go outside of
6 that document to create new duties, than to be able to
7 come to court and say, okay. Well, in addition to this,
8 then you also have negligence.

9 The economic loss rule, as I understand it,
10 prevents parties from sort of double dipping in
11 theories. It sort of is an efficient way that the Court
12 can operate itself and manage what you present to a
13 jury. So I'm asking questions for the purposes of
14 determining what damages that are outside that you
15 presented are not gonna be covered by this breach of
16 contract claim that you have against the defendant.

17 MR. DLUZNESKI: And if the Court takes that
18 position based on the economic loss rule, I think I
19 could still argue to the jury that these damages are
20 recoverable. My argument as to negligence is even --
21 the defendant still owes a duty to the plaintiff, under
22 the law.

23 THE COURT: Oh, I am not disagreeing with you.
24 Yes.

25 MR. DLUZNESKI: Right.

1 THE COURT: Still owes that duty.

2 MR. DLUZNESKI: So I think that's the perspective
3 that we're taking, that there was something in addition
4 to a breach of contract here. There was negligent
5 behavior on the part of the defendant. There was
6 reckless behavior on the part of the defendant. And
7 primarily, if the jury finds that the defendant acted
8 recklessly in this case which, of course, our position
9 is that it is, the jury is free to award punitive
10 damages and contract does not allow the jury to do that.

11 THE COURT: And he hasn't made his motion as to
12 directed verdict on punitive damages. Okay. Question,
13 what are you saying or what evidence has been presented
14 to the jury that you intend to argue was negligent by
15 this defendant in regards to that wall?

16 MR. DLUZNESKI: To the wall, there has been
17 testimony and evidence presented about the defendant
18 hitting the wall with a heavy piece of equipment. John
19 Abernathy testified ---

20 THE COURT: You're talking about the forklift
21 thing?

22 MR. DLUZNESKI: Yes. Yes. And, you know, there
23 was evidence presented. There was a picture of the
24 demising wall itself with puncture marks in it. There's
25 been witness testimony that those puncture marks are the

1 teeth, if you will, of a forklift.

2 John Abernathy testified when I asked him, what
3 do you, in your professional opinion, attribute that
4 damage to the wall to? So in other words, how much
5 strength had to have hit this wall to cause the damage
6 that you observed? And his testimony was that it was
7 something outside of an individual. It had to be some
8 piece of equipment to be able to exert that much force
9 to bend these steel studs out of place as badly as they
10 were.

11 THE COURT: So if I'm viewing the evidence in the
12 light most favorably to you at this point, it is going
13 to be the negligent operation of the forklift that
14 caused the damage to the wall that then resulted in all
15 these bad things happening to the wall being bowed out
16 and all that bent, bent things.

17 MR. DLUZNESKI: That's correct, Your Honor. And
18 the negligent operation of the forklift. And there's
19 also been testimony on this caused the majority, if not
20 all of the damages to the property that we're talking
21 about. It caused damage to the rollup doors. It caused
22 damage to the asphalt pavement outside, even after Mr.
23 Schulte testified that CREH told Brilin and put Brilin
24 on notice multiple times, look, don't use a forklift
25 outside. So I think that's our argument that we would

1 argue to the jury in closing. And I think that there's
2 ample evidence that, you know, we have a basis to argue
3 that at this point based on the testimony and evidence
4 that we presented.

5 THE COURT: Okay. All right. Thanks for, thanks
6 for that.

7 MR. WHITE: Can I be briefly heard?

8 THE COURT: Yes, sir.

9 MR. WHITE: I wholeheartedly disagree with that
10 negligence theory.

11 THE COURT: Well, I have to look at the facts
12 most favorable in light to him.

13 MR. WHITE: I know you do, Your Honor. But the
14 lease, section 11 establishes a duty to repair on behalf
15 of the tenant, and a duty, 11(b) to return the premises
16 to landlord at the expiration of the termination of the
17 lease in as good as condition and repair as on the lease
18 commencement date. And they specifically in their
19 second cause of action as to breach, Brilin breached the
20 agreement by failing to maintain the subject property,
21 including the building located thereon in good order and
22 repair during the lease term provided for in the
23 agreement.

24 The duties are established right there by the
25 lease. Also, there was a comment about whether this

1 demising wall is a capital structure or not. I would
2 respectfully disagree, Your Honor. But even if it is
3 ---

4 THE COURT: Okay. And that was my term, so maybe
5 I injected something that I shouldn't have. In my mind
6 I was delineating between personal property versus real
7 estate.

8 MR. WHITE: Fair enough, Your Honor. But the
9 lease specifically covers capital. Maybe that's why I'm
10 thinking of it that way. So section 10 establishes
11 repair duties by the landlord. And it says that the
12 landlord agrees to keep in good order the repair,
13 foundation, structural support in exterior walls of the
14 building located on the premises.

15 So, we've heard the testimony that this is not a
16 structural support, this is simply a demising wall that
17 separates two different suites or units, whatever you
18 want to call within the building itself. However, even
19 if it were considered a capital repair, it says that
20 provided the landlord shall not be responsible for
21 repairs or capital repairs or replacements rendered
22 necessary by the negligence or intentional wrongful acts
23 of tenants, its employees, agents, invitees, or
24 contractors.

25 All these duties are established by the lease.

1 These are all economic damages that have been put
2 forward. There is no basis to go beyond breach of
3 contract. This is exactly what the economic loss rule,
4 the economic loss doctrine is designed to prevent.

5 And, yes, punitive damages are wholly
6 inappropriate, which I haven't made that motion yet,
7 because I don't need to make that motion -- well, maybe
8 I need to make that motion, depending on how my DV
9 motion goes on this first cause of action. But once we
10 kick the negligence and gross negligence, it's all about
11 economic damages under the breach of contract claim,
12 Your Honor.

13 THE COURT: Okay. I'm gonna move on to another
14 argument, unless you have something else to say on that
15 one, briefly.

16 MR. WHITE: Just very briefly. On the punitive
17 damages side, Your Honor ---

18 THE COURT: Don't worry about that. We're not
19 gonna address that.

20 MR. WHITE: Okay. Fair enough, thank you.

21 THE COURT: Civil conspiracy, my understanding of
22 civil conspiracy would have required a showing of -- and
23 maybe I'm misusing the word, so don't hold me to the
24 legal definition of this, but I thought there had to be
25 a special damage in order to recover in civil

1 conspiracy. Is that true?

2 MR. DLUZNESKI: Your Honor, I believe, and if I
3 remember correctly, I actually looked at this case,
4 Paradis versus --- it's a -- and I don't have the key
5 site to it, Your Honor. It's a recent case. Paradis
6 versus Charleston County School District. The key sight
7 is 433 S.C. 562.

8 THE COURT: Uh-huh.

9 MR. DLUZNESKI: The 2021, South Carolina Supreme
10 Court case, the Supreme Court ruled in that case that we
11 no longer have to allege or prove special damages to
12 maintain a cause of action for civil conspiracy.

13 THE COURT: I remember that case. Thanks for
14 pointing that out.

15 MR. DLUZNESKI: Thank you.

16 THE COURT: Anything? Yes, sir.

17 MR. WHITE: No, Your Honor.

18 THE COURT: Okay.

19 MR. WHITE: Just leaning forward.

20 THE COURT: All right. Okay. I'm gonna step in
21 the back for a few moments. Thank you very much.

22 MR. DLUZNESKI: Thank you, Your Honor.

23 (Court concluded at 4:26 p.m.)

24

25 --- THIS CONCLUDES DAY TWO OF TRIAL ---

1 CAROLINA REAL ESTATE HOLDINGS VS. BRILIN ELECTRIC

2 DAY THREE OF TRIAL

3 THE COURT: (Audio starts here.) At the end of
4 the day, we took the directed verdict motions made by
5 the defense. And I need to go on the record and make my
6 ruling. The -- I had a conference with the attorneys
7 afterwards in chambers and shared much of my ruling with
8 them.

9 I will grant the motion in regards to the causes
10 of action -- let me get my numbers right. In regards to
11 the negligence and gross negligence claims, I do think
12 that economic loss rule will prevail in regards to those
13 motions, especially -- and also, I think the terms of
14 the lease are going to cover any claims of negligence as
15 well. So the first cause of action will be gone. I
16 don't think this is a fraudulent -- a case that deals
17 with fraud, based on the evidence that's been presented
18 so far.

19 On the civil conspiracy claim, I did take a look
20 at the Paradis versus Charleston School District case.
21 That case issued in 2021, the Supreme Court did remove
22 the element of special damages as part of South
23 Carolina's juris prudence on civil conspiracy.

24 So tell me, refresh my memory. What is your
25 position on the civil conspiracy claim as to why I

1 should grant the directed verdict motion? Am I throwing
2 you off this morning?

3 MR. WHITE: Let me grab my folder real quick,
4 Your Honor --

5 THE COURT: Sure.

6 MR. WHITE: -- with that information handy. You
7 know, the combination of an agreement between two or
8 more persons who commit an unlawful act or a lawful act
9 by unlawful means to go to the commission of an
10 overactive agreement. There simply was no agreement
11 here in this case. They just fell in the elements, Your
12 Honor.

13 There was no agreement. There's been no evidence
14 to suggest there was even an agreement between W&L
15 Services, Brilin Electric to, I guess, commit some sort
16 of act or omission with respect, I guess, concealing the
17 extent of the damage to the demising wall that might
18 have been caused by Brilin or any agents thereof. And
19 so, I just don't see where there was that intent to
20 harm, because I don't see where there was any agreement
21 to do that.

22 CREH told Brilin to fix the wall on the one side.
23 They got W&L to do it, and they tried to do it on the
24 other side. But there simply was no agreement to do
25 anything that could do harm or even intend to do harm

1 against the plaintiff in this case, Your Honor.

2 THE COURT: Yes, sir.

3 MR. DLUZNESKI: Thank you, Your Honor. Your
4 Honor, the Court heard testimony yesterday from Wayne
5 Schulte. Wayne Schulte was the, again, the property
6 manager for CREH that was supervising Brilin lease
7 space, as well as all the other commercial properties in
8 that area that CREH owned.

9 Wayne Schulte testified that he did not instruct
10 W&L Services as to the start date for the work. He did
11 not supervise the work. He did not approve the work.
12 He was only there for 20 minutes. So I think the
13 testimony of Wayne Schulte shows that CREH did not
14 arrange for this work to be done. Did not orchestrate
15 this work to be done.

16 The work was done to the demising wall on -- in
17 Brilin Electric's leased space. So if CREH did not
18 arrange for the work to be completed or even, even
19 schedule a start time for the work, the only other party
20 who could have done that would have been Brilin
21 Electric. It was Brilin Electric's leased space.

22 And although they may not have had a written
23 agreement for that work, if there was no agreement
24 between Brilin Electric and W&L Services for the repairs
25 to the wall, how did W&L Services know what's good work

1 to perform? How did they know when to get started? How
2 did they know what they were supposed to do there? How,
3 how did W&L Services get into that, that space to do the
4 repair work?

5 Your Honor, we would submit that while there is
6 not a written agreement between W&L Services and Brillin
7 Electric, there had to have been a verbal one.
8 Otherwise, it doesn't make logical sense as to why W&L
9 was there when they were, what they did there, how they
10 were able to get into the property.

11 Having said that, Your Honor, we do understand
12 that the intent to harm is an issue for the plaintiff,
13 based on the evidence that's been presented. The Court
14 addressed that with us yesterday and I understand,
15 again, that that's an issue, but our position is polar
16 opposite from the defense as far as the agreement goes.

17 THE COURT: Thank you for that. Let me ask you
18 another question. The elements of civil conspiracy,
19 though, not include the combination with an agreement of
20 two or more persons to do something, but that something
21 has to be that they are an agreement or that they're in
22 a combination to commit one in either an unlawful act
23 that harms a party, or the other one is to do a lawful
24 act by an unlawful means. So, which is it that
25 plaintiff's contention occurred here?

1 MR. DLUZNESKI: I think that the plaintiff's
2 position is that the -- that the -- it was an unlawful
3 act to damage plaintiff's property. And, again, that
4 wraps up the damages. It's also damaged the property.
5 I think that's an unlawful act. That's the overt
6 unlawful act that the plaintiff is saying is the basis
7 for the civil conspiracy.

8 THE COURT: All right. But -- okay. The
9 plaintiff is also claiming that the damages to the wall,
10 any damages that can be proved that was done to the
11 wall, it's plaintiff's position that that is the
12 contractual responsibility of the defendant, because
13 the defendant -- plaintiff, if I understand it
14 correctly, plaintiff then has breached their obligations
15 under the terms of the lease?

16 MR. DLUZNESKI: The defendant has breached.

17 THE COURT: Yeah, the defendant has breached,
18 yes.

19 MR. DLUZNESKI: Yes. Yes. That is correct.
20 That's correct.

21 THE COURT: So, is -- okay. All right. Do you
22 want to respond?

23 MR. WHITE: No, Your Honor.

24 THE COURT: Yeah. All right. I'm struggling
25 with the civil conspiracy based on my understanding of

1 what civil conspiracy consists of and the facts that
2 I've heard in this case, because the, the act, which is
3 being complained of as part of the theory of civil
4 conspiracy is covered by the terms of the lease that
5 what the defendant -- that plaintiff in his other cause
6 of action says it's the responsibility of the defendant
7 to do.

8 And since the defendant didn't do it right, then
9 he is somehow committing an unlawful act when he hired
10 someone to do that. I just think that's a stretch.

11 And that's not a real legal word. I think that
12 doesn't fit into that legal element of what civil
13 conspiracy is supposed to encompass with the idea that
14 two people have joined together to commit an unlawful
15 act that then harms another party.

16 So I'm gonna grant the motion, directed verdict
17 motion on the civil conspiracy. But I still think,
18 based on what's been presented to me, that the damages
19 that are being sought by the plaintiff are still
20 recognized -- are still encompassed when you take a --
21 again, taking a look at the facts most favorably at this
22 juncture in a light most favorably to the plaintiff.
23 All of those damages that plaintiff is seeking or has
24 announced, as I perceived them in this trial is still
25 covered under the terms of the lease and under the cause

1 of action that remains for the breach. I think you
2 phrased it as breach of contract.

3 MR. DLUZNESKI: Okay.

4 THE COURT: All right. Anything else?

5 MR. DLUZNESKI: No, Your Honor.

6 MR. WHITE: No, Your Honor.

7 THE COURT: All right. I think that all the jury
8 is in. Are you ready to call your first witness?

9 MR. WHITE: We are, Your Honor.

10 THE COURT: All right. Do you want to bring --
11 bring them in.

12 (Jury enters courtroom at 9:52 a.m.)

13 THE COURT: Madam Forelady, ladies and gentlemen,
14 thank you for your patience while we took up matters of
15 law, not only yesterday, but also some time this morning
16 as well. And, again, I apologize for having to exclude
17 you, but as I previously announced, in deciding matters
18 of law that apply to this case, sometimes it is required
19 that I make comments about the facts.

20 And so, I have to be sure that I remove you all
21 from the courtroom, that when I comment about the facts
22 of the case, you all don't hear my comments. So I
23 apologize for having to exclude you, but I thank you for
24 your patience while we took care of those matters of
25 law.

1 At this time, yes, sir?

2 MR. DLUZNESKI: Your Honor, the plaintiff rests
3 its case.

4 THE COURT: Okay. Thank you, sir. Madam
5 forelady, ladies and gentlemen, at this time we will
6 begin with the presentation of the defendant's case. Is
7 the defendant ready to call their first witness?

8 MR. WHITE: Yes, Your Honor. The defendant calls
9 Mr. Jim Hemphill.

10 THE COURT: Mr. Hemphill?

11 MR. WHITE: Yes.

12 THE COURT: Come right up here and let the clerk
13 of court swear you in.

14 THE CLERK: If you'll place your left hand on the
15 Bible and raise your right. Do you solemnly swear or
16 affirm the testimony you give this court should be the
17 truth, the whole truth, and nothing but the truth so
18 help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you. Please be seated.

21 THE COURT: Watch your step, stepping up. Have a
22 seat in the chair and just speak into the microphone,
23 sir, if you would.

24 JIM HEMPHILL,

25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. WHITE:

3 Q. Good morning, Mr. Hemphill.

4 A. Good morning.

5 Q. Would you, please, introduce yourself to the
6 jury? Tell them who you are and who you work for.

7 A. My name is Jim Hemphill. I'm the owner of
8 Southern Fireplace and Garage.

9 Q. And what does your company do, Mr. Hemphill?

10 A. We do fireplaces and garage doors.

11 Q. Okay. Are you familiar with the premises in this
12 case?

13 A. Yes, I am.

14 Q. Did you have the opportunity to install garage
15 doors on the premises in this case?

16 A. Yes, sir, I did.

17 Q. All right. Tell the jury a little bit about how
18 you got involved in that.

19 A. I received a call from Bryon, I believe it was in
20 October of 2019. And Bryon stated that he was coming
21 close to the end of his lease and he had a couple of
22 garage doors that needed replaced on the building and
23 asked me if I'd come take a look at them and give him a
24 price on replacing the door.

25 Q. Okay. Mr. Hemphill, we've got a binder right

1 there. That's got all the exhibits in there. If you
2 could kindly flip through the Defendant's Exhibit 1.
3 It'll be the first exhibit past that little blue sticky
4 note.

5 A. Okay.

6 Q. What is Defendant's Exhibit 1, Mr. Hemphill?

7 A. That is the quote that I had given to Bryon to
8 replace the two doors that was damaged on the building.

9 Q. And that quote is for \$4,943.00?

10 A. Yes, sir. Uh-huh.

11 Q. If that quote would have been for just one door,
12 would it have been just 50 percent of that quote?

13 A. The 12X12 door would have been a little bit more,
14 but they would have been close to the same, same price,
15 yes, sir.

16 Q. Approximately \$2500?

17 A. Yes, sir.

18 Q. All right. Would you flip to Defendant's Exhibit
19 2.

20 A. Yes, sir.

21 Q. What is Defendant's Exhibit 2, Mr. Hemphill?

22 A. This is the manufacturer's brochure on the
23 rolling sheet doors that we gave an estimate to place on
24 the building, sir.

25 Q. Okay. We're gonna talk about that in a minute,

1 the specs, but I want to get this out of the way because
2 we had a little conflicting testimony on this yesterday.
3 How many garage doors are on the premises?

4 A. I believe there's seven or eight on the building.
5 On the space that Brilin leased there's three doors.

6 Q. And are there -- well, describe where they are on
7 the, on the ---

8 A. On the tenant -- on Bryon's space, one of the
9 doors is on the side of the building, which is a pass
10 through between his building and the building next to
11 it. And the other building is -- the other door is on
12 the back of the building.

13 Q. Are they load -- the two back on loading ---

14 A. On the loading docks, correct.

15 Q. Which two garage doors did your company replace,
16 Mr. Hemphill?

17 A. So we replaced the one on the drive out door on
18 the side of the building and we replaced, if you're
19 looking straight at the back of the building, we
20 replaced the second door from the end on the back of the
21 building.

22 Q. Okay. Let's go to Defendant's Exhibit 3. We'll
23 bounce back to two in a minute. What is that picture?
24 That first page -- there's two photos there, but the
25 first photograph, what does that depict, if you know,

1 Mr. Hemphill?

2 A. Okay. The door on the -- the picture of the door
3 on the left that has the National Power Corp painted on
4 the door. That was the existing doors that, that are on
5 the building. The picture on the right is the door that
6 we installed replacing the doors on the building.

7 Q. All right. Go to the second page, Mr. Hemphill.
8 Thank you for that. Just to move things along, is that
9 just simply a further out picture of what we just looked
10 at on that first page?

11 A. That is correct.

12 Q. Okay. So the left one is original. Right one is
13 one of the ones you replaced?

14 A. Yes.

15 Q. The other door you replaced is the one on the
16 side?

17 A. On the side of the building.

18 Q. But looking at this picture, it's actually off,
19 off to the left around the side, right?

20 A. Yes.

21 Q. Okay. And then that third picture there on the
22 third page with the two pictures on it. What are we
23 looking at there?

24 A. All right. This is the warning label on the
25 bottom of the garage door, and then the manufacturers.

1 Q. Manufacturer's name?

2 A. Uh-huh.

3 Q. So, the doors that you replaced are still there
4 to this day, correct?

5 A. Yes.

6 Q. How do you know that?

7 A. I drove by the space the other day. You can see
8 it from the interstate. I drive by the building every
9 day going to work.

10 Q. Okay. Let's go back to 2. Tell the jury why you
11 recommended Mr. Russell replace the two garage doors
12 that had been damaged with -- it's Amarr, right? That's
13 how you say it?

14 A. Uh-huh.

15 Q. With Amarr doors. (Inaudible.)

16 A. Because it's what was on the building. The doors
17 that were on the building are actually a Janus door
18 that's manufactured as a private label for Amarr. So
19 the doors that were on the building, the other seven or
20 eight doors, we matched it exactly what was on the
21 building. Same color that was on the building. Same
22 style that was on the building. We put it back like it
23 was.

24 Q. What was the color? What was the name of the
25 color?

1 A. Buckskin.

2 Q. And we see that on Defendant's 1, right? Where
3 it says color, buckskin?

4 A. Correct, sir.

5 Q. -- okay. You're aware that the plaintiff in this
6 case wanted somebody to put other -- they wanted to use
7 one of their preferred vendors; is that correct?

8 A. Overhead Door, correct. Uh-huh.

9 Q. Look for me, please, at Plaintiff's Exhibit 10,
10 which is in the front of the book. Are you familiar
11 with Overhead Doors?

12 A. Yes, I am. Uh-huh.

13 Q. Okay. Have you seen this invoice before? This
14 quotation? Excuse me.

15 A. No.

16 Q. Okay. When you look at this. When you -- well,
17 let me back up. You're aware of the specs. You may not
18 have seen this quote, but you're aware of the specs of
19 what Overhead recommended, right?

20 A. Correct. And this is not the same quote that I
21 saw.

22 Q. Okay. What quote did you see?

23 A. Okay. The original quote that was sent to me was
24 for \$4,000-and some dollars. It was not for \$7,913.

25 Q. So that was a quote they got back in November of

1 2019, right?

2 A. Correct. Uh-huh.

3 Q. Okay. So this was the latest and greatest quote,
4 which I probably wasn't smart enough to send you, but I
5 sent you the old quote.

6 A. Uh-huh.

7 Q. Tell me why these doors are not like with what's
8 on the building.

9 A. Appearances is totally different than what is on
10 the building.

11 Q. When you say appearance, what do you mean?

12 A. Okay. So the doors that are on the building is a
13 rolling sheet. And what that means is most of the time
14 it's a continuous piece of metal that's formed into the
15 ridges that you see on the door. The model 600 that
16 Overhead Door quoted is a slat door. And that means it
17 has individual metal slats that are, that are coupled
18 together that form the door. So when you look at the
19 doors from the outside, the appearance is totally
20 different. When we, when we went out to quote it, we
21 tried to match exactly what was on the building so the
22 appearance was the same.

23 Q. What about color? Are you familiar with the
24 color options for the doors that plaintiff wanted to put
25 on using their preferred vendor?

1 A. Yes. The, the model 600 is only available in
2 white and brown.

3 Q. And, in fact, if we look at Plaintiff's Exhibit
4 10, that's the third bullet down under the Overhead Door
5 model 612 away rolling steel service door, right? It's
6 right there in the quote, right?

7 A. Yes, sir.

8 Q. So would you consider, and I might have missed it
9 thinking about my next question, did you mention whether
10 or not the doors you put on there were insulated or not?

11 A. They are. We put insulation on the door because
12 that's what was on the space.

13 Q. The pre-existing doors were insulated?

14 A. Correct.

15 Q. The Overhead Door, is that an insulated door?

16 A. No, it's not.

17 Q. What's the significance of an insulated door?

18 A. Well, if it's a condition space, you know, it's
19 gonna give you a higher R value that's gonna allow you
20 to condition the space, whether it's heated or your AC.

21 Q. So losing heat and or cooling by way of going
22 through the metal?

23 A. Correct.

24 Q. In your opinion, did you put like kind of doors
25 on the, on this -- on the premises?

1 A. Yes.

2 Q. You're actually familiar with these buildings to
3 some extent, beyond just having done this job, correct?

4 A. Yes, sir. My business was located on Carolina
5 Place Road for five years.

6 Q. And you're aware that, like, there's a -- CREH,
7 when they bought their buildings. Tell the jury what
8 was going on, you know, with your landlord and stuff
9 like that, in terms of how these buildings are acquired.

10 A. My landlord bought the buildings at a
11 foreclosure. They sat empty for some time on that
12 street. The gentleman that owned them, Jack, the
13 building into foreclosure. And my landlord bought those
14 two buildings out of foreclosure.

15 Q. What about CREH, did Jack own that building as
16 well?

17 A. I'm not sure if Jack owned that building or not.
18 I know there was several buildings on Carolina Place
19 Road that Jack owned that went into bankruptcy.

20 Q. Was his building in foreclosure?

21 A. I'm not sure.

22 MR. WHITE: Nothing further, Your Honor. Tender
23 the witness.

24 THE COURT: Yes, sir.

25 MR. DLUZNESKI: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. DLUZNESKI:

3 Q. Good morning, Mr. Hemphill?

4 A. Good morning. How are you?

5 Q. Good. Mr. Hemphill, we have not met or spoken
6 previously, have we?

7 A. No, sir.

8 Q. Okay. Mr. Hemphill, how long have you worked for
9 Southern Doors?

10 A. I started the company in 2010.

11 Q. Okay. So are you the owner of the company?

12 A. Yes, sir, I am.

13 Q. Okay. All right. Now, who hired you to replace
14 the doors at the property that we're here about this
15 week?

16 A. Brilin Electric. Bryon.

17 Q. Okay. Did you confirm or ask Mr. -- you're
18 referring to Mr. Russell, Bryon Russell?

19 A. Yes. Uh-huh.

20 Q. Okay. Did you confirm whether or not he was
21 actually the owner of that property?

22 A. No, sir.

23 Q. Okay. So you didn't ask Mr. Russell when he
24 called you, you're on the property that we're about to
25 do work at?

1 A. I knew he wasn't the owner. I didn't need to ask
2 him.

3 Q. Okay. All right. Did you ask him who the owner
4 was?

5 A. No, sir.

6 Q. Did you ask him if he had spoken with the owner
7 about this work?

8 A. No, sir.

9 Q. Okay. Did you talk to him at all about whether
10 it was acceptable or okay with the property owner for
11 you to come out and do this work?

12 A. Why would I need to?

13 Q. Okay. Now, the doors that you replaced, they
14 were damaged, were they not?

15 A. Correct.

16 Q. Okay. Did Mr. Russell tell you how that damage
17 occurred?

18 A. No, sir.

19 Q. He did not. All right. I think that you
20 testified on direct that one of the doors that you
21 replaced -- this is Plaintiff's Exhibit 8. If you'll
22 turn to Plaintiff's 8 for us. It's this photograph.
23 It's blown up.

24 A. Okay. I don't --

25 Q. Do you see that?

1 A. Yes, I do.

2 Q. All right. Is this one of the rollup doors that
3 you replaced? You see down here in the far left-hand
4 corner?

5 A. It's the upper right-hand corner.

6 Q. Right here?

7 A. Yes. Uh-huh.

8 Q. That's one of the rollup doors that you replaced?

9 A. I can't tell from the picture. It's only the
10 corner of the detail.

11 Q. All right. So, there's a -- there's a rollup
12 door leading out onto a concrete ring, right?

13 A. Yes, sir. Uh-huh.

14 Q. Okay. Was that rollup door one of the two that
15 you replaced?

16 A. Correct. On the side of the building, yes, sir.

17 Q. Okay. All right. Tell us about what -- how did
18 you replace that door? How did you take the old one off
19 and put the new one on? Tell us a little bit about that
20 process.

21 A. On this particular style door there's a bracket
22 that goes on each side of the door that has three lag
23 screws, and it's simply held up by that bracket. There
24 are two tracks that run down each side, but the tracks
25 don't hold the door any way. They're held up by the

1 brackets that are on the end.

2 Q. Okay. Are there lentils or a lentil on -- above
3 this door?

4 A. Yes, sir. There's steel there, yes, sir.

5 Q. Okay. All right. So, so what interaction or
6 contact, if any, did you have during the door removal
7 and replacement process with the lentil?

8 A. Well, we removed the door that was there and we
9 resecured the new door in the exact space that the old
10 door was mounted.

11 Q. Okay. So you didn't do anything to the lentil or
12 any of the structural components of the door?

13 A. No, sir.

14 Q. Okay. All right. How did you determine what
15 type or model of rollup doors to install?

16 A. We went out and did a visual inspection, sir.

17 Q. Okay. All right. And then you inspect it based
18 on that visual inspection?

19 A. Correct.

20 Q. Okay. Now, you testified on direct that the
21 doors that you replaced were quite common.

22 A. Yes, sir.

23 Q. Okay. Before you replaced those doors -- are you
24 familiar with Mr. Decker?

25 A. I spoke to him on the phone before, yes.

1 Q. Okay. Did he talk to you about any concerns that
2 he had about the rollup doors that you were replacing
3 the damaged doors with?

4 A. Yes. Uh-huh. Yes, sir.

5 Q. Okay. And what did he tell you in that regard?
6 Tell us what his concerns were?

7 A. He told me that he wanted the slat doors
8 installed on there.

9 Q. All right. Did he say why?

10 A. No, sir.

11 Q. Okay. All right. And you testified earlier that
12 you did not get Mr. Decker's approval as the landlord?

13 A. No, sir.

14 Q. Okay. You also testified that prior to the
15 Overhead Door quote that's in evidence for about \$9,000
16 -- or about \$9,000, that you saw a prior quote for about
17 4,000; is that correct?

18 A. Correct.

19 Q. All right. Now, that quote was for just one
20 door.

21 A. It was for one door and it was for some weather
22 stripping and some storm shield. There was about \$1900
23 that was on the quote with some other items that didn't
24 pertain to the damage.

25 Q. Okay.

1 A. But, yes, there was one garage door on the quote.

2 Q. All right. And, again, we're talking about two
3 garage doors that were damaged here, not just one?

4 A. Yes. Uh-huh.

5 Q. Okay. All right. Now, is it a normal practice
6 for Southern Doors to remove doors on a property that's
7 not owned by the person that you're actually doing work
8 for?

9 A. Yes.

10 Q. How often does that happen?

11 A. On the commercial side quite a bit. If you have
12 a tenant that's in a space and their lease requires them
13 to repair any damages that they do to the building then,
14 yes, it's common for us to go out and repair damages and
15 never have any interaction or contact with the owner
16 whatsoever.

17 Q. All right. On those other jobs, however, is it,
18 is it common practice for the landlord to give any kind
19 of approval?

20 A. No.

21 Q. So that's not something that you see?

22 A. It's not a common practice, no, sir.

23 MR. DLUZNESKI: Okay. Your Honor, I think that's
24 all I have.

25 THE COURT: Any redirect, limited to what he went

1 into?

2 MR. WHITE: Yes, Your Honor, very briefly.

3 THE COURT: Yes, sir.

4 REDIRECT EXAMINATION

5 BY MR. WHITE:

6 Q. Mr. Hemphill, how would you characterize that
7 conversation you had with Mr. Decker? Be honest with
8 the jury.

9 A. I personally felt Mr. Decker was wanting
10 something replaced on the building that was -- wasn't
11 the same product that was on the building. It was a
12 different product. I personally felt it was a bit
13 unrealistic.

14 MR. WHITE: Nothing further, Your Honor.

15 THE COURT: Anything new?

16 MR. DLUZNESKI: Just very briefly, Your Honor.

17 RECROSS-EXAMINATION

18 BY MR. DLUZNESKI:

19 Q. Mr. Hemphill, what date were those two garage
20 doors ordered?

21 THE COURT: You've got to limit it to what he
22 brought up. Go ahead and answer the question, sir.

23 THE WITNESS: It was sometime, I think, in
24 November or December of 2019. We -- I did the site
25 check on the job in October, and I think we ordered the

1 doors late November, first part of December.

2 MR. DLUZNESKI: All right. That's all I have,
3 thank you.

4 THE COURT: Thank you, sir. You may step down.
5 Watch your step as you're stepping down. Any reason why
6 the witness cannot be excused?

7 MR. WHITE: No, Your Honor.

8 MR. DLUZNESKI: No, Your Honor.

9 THE COURT: Thank you, sir. You may be excused
10 as well. Is the defendant ready to call their next
11 witness?

12 MR. WHITE: Yes, Your Honor. The defendant calls
13 Mr. Craig King.

14 THE COURT: Mr. King, come right up here in front
15 of the clerk of court and she'll swear you in.

16 THE CLERK: Place your left hand on the Bible and
17 raise your right hand. Do you solemnly swear or affirm
18 the testimony you give this court today be the truth,
19 the whole truth, and nothing but the truth so help you
20 God?

21 THE WITNESS: Yes, ma'am.

22 THE CLERK: Thank you. You may have a seat.

23 THE COURT: Sir, have a seat in the chair and
24 please speak into the microphone.

25 CRAIG KING,

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. WHITE:

4 Q. Mr. King, good morning.

5 A. Good morning.

6 Q. Please introduce yourself by stating your name to
7 the jury and tell us who you work for.

8 A. My name is Craig King. I've worked for Brilin
9 Electric since October of 2017.

10 Q. And what do you do for Brilin Electric?

11 A. I am currently a purchasing manager for the
12 company. I was a warehouse manager when I was hired.

13 Q. Were you the warehouse manager for the premises
14 in question in this phase?

15 A. Yes.

16 Q. In this case?

17 A. Yes. I became the -- I moved into my new role
18 probably about May of 2020.

19 Q. Now, describe your duties when you were the
20 manager of the warehouse at the old premises off of Rout
21 160 Carolina place.

22 A. I overseen all the logistics of the material
23 coming and going from the operation. I handle all the
24 materials, as far as getting it out to the crews. Make
25 sure all of the crews needed all the material -- had all

1 the material they needed for the job. I ordered all of
2 our inventory. Overseen all of the inventory for the
3 property. I was actually over the vehicle maintenance,
4 which has nothing to do with the warehouse, but we
5 overseen the vehicles. Just basically anything outside,
6 that had to do with outside the company I overseen.

7 Q. How did you all get the materials that you all
8 would use for your jobs in and out of the warehouse?

9 A. Through, usually we would use one of the doors
10 that's in question to the rear parking lot. We would
11 have a box truck from one of our numerous vendors come
12 and deliver the material. Then we would receive it into
13 the warehouse with a forklift or a pallet jack.

14 Q. Put it on the pallet, put it in the warehouse,
15 take it out on the pallet, right?

16 A. Take it out on the pallet. Then our crews in the
17 morning, we would have 17 to 20 crews that we would
18 facilitate in the parking lot in the morning. We would
19 take out the material outside to the parking lot so all
20 the crews could grab the material, then they would go
21 about their day.

22 Q. Then you all would use the side garage door?

23 A. We'd use the side door for that, yes, sir.

24 Q. And if that was restricted in any way, jersey
25 barriers, whatever, how much would that impact you all's

1 operations?

2 A. Detrimental. It would, it would shut us down for
3 -- it would slow us down tremendously. We could
4 facilitate our crews, about 18 crews in about 45 minutes
5 to an hour. It would take about three hours to
6 facilitate the same amount. The crews would have to
7 carry everything out by hand.

8 Q. How come you all never used the loading bays in
9 the back?

10 A. As far as for the crews?

11 Q. Right. For loading and unloading.

12 A. Because our crews are in vans and the dock was
13 about yay high off the ground, so it would be a lot of
14 handing down, which then becomes a safety issue for the
15 crews lifting and lowering the material down. Some of
16 this material is 100, 100 pounds an item. Raising and
17 lowering, so it just becomes a safety issue for all
18 parties involved.

19 Q. How would you describe -- well, let me ask you,
20 this first. Did you have any opportunity as the manager
21 to interact with tenants that were also co-tenants of
22 the building?

23 A. Yes.

24 Q. And when I say Keller, do you know who I'm
25 talking about?

1 A. Yes. That's the neighbor to the, I guess, if
2 you're looking at the building from the front of the
3 building, it would be to the right-side of the building.

4 Q. Did you have an opportunity to interact with
5 Keller at all?

6 A. Yes. I actually checked in with them regularly
7 to make sure that we were compliant with everything.
8 And then because we have a lot vehicles that come in and
9 out of our business. And a lot of employees. I wanted
10 to make sure everything was okay with their operation as
11 well and we weren't bothering them in any way, shape, or
12 form. And then also with the other tenants in the
13 building as well.

14 Q. How would you describe your interactions with the
15 Keller folks?

16 A. Good. Good.

17 Q. How would you describe your interactions with the
18 co-tenants in the building you all were in?

19 A. Good. I felt like we had a good relationship
20 with everybody.

21 Q. How about Two Men And A Truck?

22 A. Good. Good.

23 Q. Did you feel like Brilin ever had any issues with
24 co-tenants or Keller?

25 A. No, not at all.

1 Q. How about ---

2 A. Not while I was employed, no.

3 Q. Sorry, go ahead.

4 A. Not while I was employed, no.

5 Q. Do you feel like you had any issues at any point
6 with the property manager?

7 A. The property manager I never met, but his
8 facility, his maintenance guy, yes, I did. I felt like
9 I was constantly harassed by him.

10 Q. The guy you're calling the maintenance guy, I'll
11 probably be calling him the property manager.

12 A. Okay.

13 Q. Mr. Wayne Schulte.

14 A. Wayne Schulte, yes.

15 Q. All right.

16 A. I know him as Wayne.

17 Q. And you said harassment. What do you mean by
18 harassment?

19 A. Just, he would constantly sit outside, take
20 photos of us. He would just show up randomly for
21 service, which I understand you have to service things
22 in a proper dock air conditioning. I would ask for him
23 to schedule that. No problem with him coming into the
24 property. But when he would come, we would have to shut
25 operations down for an hour so the guys could come in

1 and set up ladders, access the AC units, the air
2 handles, which would just shut us down, especially when
3 we were receiving material. So I would just ask for
4 cooperation to schedule it so we could kind of be on the
5 same page so he would just show up. And other times he
6 would just show up randomly, knock on the door and just
7 -- I felt harassed by the guy constantly.

8 Q. So when you say harassed, basically -- don't let
9 me put words in your mouth -- Mr. Schulte would be
10 coming through the premises unannounced on a frequent
11 basis?

12 A. Yes. Yes. He also had barriers set outside of
13 our wall that would shut us down.

14 Q. Now, when you talk about the warehouse and
15 throughout this trial with the office area -- I call it
16 the office area. I think we've also heard the term flex
17 space. Do you know what I'm talking about when I say
18 office area or flex space?

19 A. The internal office?

20 Q. Yes.

21 A. Okay, yes.

22 Q. Do you all have -- how many personnel did you all
23 have up there typically?

24 A. Four that would be there all day. And then with
25 the supervisors, roughly about 10 to 11 people in the

1 morning. And then it would go down to about four.

2 Q. Would you describe to the jury interactions that
3 office space had with Mr. Schulte? Did that become an
4 issue at any point?

5 A. I can't speak on that. I'm not 100 percent sure.
6 I was really busy in the morning when the guys were
7 there, so I'm just not aware of the -- I would be
8 handling the crews in the morning. My morning was
9 really heavy from six to eight. They would leave about
10 8:30.

11 Q. Now, we've heard testimony about the summer of
12 2019, the drywall installation on the Two Men And A
13 Truck side.

14 A. Okay.

15 Q. When I say that, do you know what I'm talking
16 about?

17 A. Yes.

18 Q. Okay. Tell me how that came about and what your
19 role was in it.

20 A. Okay. So, I -- it was brought to me that there
21 was some damages on the wall on the Two Men And A Truck
22 side. And my boss and -- I don't know the names of the
23 people that were involved. They came to me and said we
24 need to get this fixed. They had set up a time. Walked
25 the warehouse with the tenant, Two Men And A Truck.

1 And they come to me, so I reached out to a
2 drywall company that I knew of. Prior to working for
3 Brilin, I used to work for a paint and drywall company.
4 So I used a crew that I was very comfortable with that I
5 knew that would do a good job.

6 Call them, they came. Basically we fixed the
7 drywall. They fixed the drywall. They opened it up.
8 We took a lot of photos. Had Two Men And A Truck look
9 at it. Wayne looked at the property as well and they
10 fixed it. I mean, it was ---

11 Q. And I'll start calling Mr. Schulte Wayne too.

12 A. Sorry. Sorry.

13 Q. No, that's okay. You don't have to apologize.

14 A. I never heard Schulte until today. That's the
15 first time I've heard it.

16 Q. I'll call him Wayne. What was Wayne's
17 involvement before the -- did you all have a site visit
18 before the crew actually came and did the drywall job?

19 A. Yes.

20 Q. Was Wayne part of that?

21 A. Yes.

22 Q. What was Wayne's involvement in that initial site
23 visit with the work crew?

24 A. Just -- excuse me? What was the ---

25 Q. The site visit. What did you think the site

1 visit showed through what needed to be done, that sort
2 of thing? What was the (inaudible.)

3 A. So, the -- just kind of pointed out, showed the
4 sheetrock, that it was damaged. They exposed the
5 sheetrock that was damaged and then basically told them
6 to fix -- what they needed to fix in the warehouse. The
7 drywall crew never did a walk prior to the day that it
8 was fixed. They came the day that it was fixed.

9 Q. Who did the walkthrough at the prior walkthrough?

10 A. Bryon, me, Trip, I think was the guy's name. It
11 was Two Men And A Truck, we'll say Two Men And A Truck.
12 And that guy Wayne was there.

13 Q. So the tenants and property manager, Wayne --

14 A. Yep.

15 Q. -- were like, all right, this is what needs to be
16 done?

17 A. Yep.

18 Q. So who is the one saying this is what needed to
19 get done?

20 A. Wayne. With the drywall guys, yes.

21 Q. And then how many days after that visit, did the
22 crew show up to actually do the job?

23 A. They fixed it that day. Or, no, no, no. The
24 drywall, the drywall company and Wayne were the same
25 day. The walkthrough with my boss and Two Men And A

1 Truck were a couple of days prior that was addressed,
2 these are what needs to be fixed. Then when the
3 sheetrock guy showed up, then it was Wayne, pointed out
4 what needed to be fixed. It was already predetermined
5 prior to the sheetrock guys getting there.

6 Q. All right. And I think you said ---

7 A. Am I saying that correctly?

8 Q. All right. Let's just back up. I just want to
9 untangle that a little bit.

10 A. Yeah. Yeah. Sorry.

11 Q. The two tenants and Wayne walked to the Two Men
12 And A Truck side, and then your crew came a couple days
13 later?

14 A. Yes.

15 Q. And then Wayne tells them exactly what they
16 needed to do?

17 A. Yes.

18 Q. Okay. How long was Wayne on site the day --
19 well, let me back up. How many days does it take for
20 the crew to fix the problem on the Two Men And A Truck
21 side?

22 A. I think it was one day, maybe two. I can't -- I
23 can't 100 percent remember. Because the supervisor that
24 was over the drywall crew came in between. And we
25 talked, but we talked solely on our side of the

1 property. We maybe glanced in the warehouse on their
2 side, but it was just a brief. He didn't walkthrough,
3 per se, that was just -- he wanted to see the visual to
4 make sure that everything was no obstruction for him to
5 bring his crew in. So that's kind of all he did, was
6 just kind of peek in the back row.

7 Q. So at least it was -- you know it was at least
8 one day, right?

9 A. Yes, at least one day.

10 Q. The first day, how long was Wayne on the property
11 that day?

12 A. I would say most of the day. He sat out in the
13 parking lot most of the day in his pickup truck smoking
14 cigarettes.

15 Q. He was there the whole time?

16 A. Yes. I don't know if he was there until the very
17 end of the task, but, like I said, he was there for most
18 of the day.

19 Q. Did you -- grab that binder right there. And if
20 you could flip to Defendant's Exhibit 16, towards the
21 back?

22 A. Okay.

23 Q. Just flip through those. What are we looking at
24 there?

25 A. It looks like some studs for -- in the wall,

1 interior wall.

2 Q. Is that the Two Men And A Truck side, because
3 we're looking at the 2019 job right here, right?

4 A. I would, I would say so, yes.

5 Q. Okay. Let me back up. I'm gonna jump around
6 just to -- something on the jersey barriers that's sort
7 of maybe something. When you all were shut down by the
8 jersey barriers, did you all have the -- when you
9 couldn't use the side door, did you have to use that as
10 an emergency means to load and unload from the loading
11 bays at a certain point?

12 A. A couple of times, yes.

13 Q. How are you able to do that? If, like you say,
14 it's yay high, how are you able to get that stuff?

15 A. So, one time I actually consulted with law
16 enforcement. I actually called law enforcement and had
17 them come out. And I moved the wall, the barrier walls.
18 Without a forklift, I moved it back about four feet.
19 Still on our side of the property so I could access.
20 And then another time we had to rent a, what I call a
21 lull. It's an extended arm forklift, so we could reach
22 halfway across this courtroom. Kind of reach into the
23 warehouse and grab material out.

24 Q. Reach in and reach out?

25 A. Yep.

1 Q. Because you couldn't use your normal door?

2 A. Because we couldn't use our normal door, yeah.

3 Q. Okay. Let's fast forward to April 2020 when the
4 lease was ending. Do you remember that time period?

5 A. Yes. We were moving.

6 Q. Well, do you -- and that -- if you don't
7 remember, that's fine. But do you remember like when
8 the lease term ended? Yes or no? If you don't remember
9 exactly, that's fine.

10 A. I don't remember the exact date, no. But I do
11 remember I was the last guy in the facility though.

12 Q. Was there a point when the facility was still
13 being rented by Brilin but it was basically empty?

14 A. Yes. About the last week, week-and-a-half
15 probably.

16 Q. Okay. So you all had cleared it out?

17 A. Cleared the offices, moved everything. The last
18 thing was the warehouse. We moved the warehouse last,
19 because we were still in operations everyday. So we,
20 about two days towards the end of the lease, we moved
21 our warehouse.

22 Q. Okay. But -- and while it was -- right. A
23 couple of weeks before you moved out, still stuck in
24 there, but it was marginally cleaned out for about a
25 month, right?

1 A. Largely cleaned out for a month. The flex or the
2 office area was the first thing to go.

3 Q. Because you had moved into the new space and was
4 slowly moving all the material over there.

5 A. Yep.

6 Q. So, if someone wanted to do a walkthrough, check
7 out a warehouse area in the month of April, would there
8 have been any obstructions that would have impeded their
9 ability to do that?

10 A. No.

11 Q. Are you aware of whether or not the landlord did
12 a final walkthrough before you all's lease was over?

13 A. I don't know. I physically, personally never
14 seen him do it. I know that he was invited to do it,
15 but I never seen them physically do it. Nobody came and
16 did an inspection while I was there.

17 Q. Okay. And if there would have been, you would
18 have been a part of that?

19 A. I would have been there, 100 percent been there.
20 I was there physically to the last day.

21 MR. WHITE: All right. Nothing further for this
22 witness, Your Honor. I tender the witness.

23 THE COURT: Thank you, sir.

24 Yes, sir.

25 CROSS-EXAMINATION

1 Q. Good morning, Mr. King.

2 A. Good morning.

3 Q. You and I have not met or spoken before today,
4 correct?

5 A. Not at all.

6 Q. All right. You talked a lot about a lot of
7 things on your direct examination. I want to kind of go
8 through each one. Let's start out with Wayne Schulte.

9 A. Okay.

10 Q. Okay. Now, Wayne Schulte was Carolina Real
11 Estate Holdings property manager, correct?

12 A. Okay. Sure. I know him as the maintenance guy.
13 That's kind of what his role is.

14 Q. Fair enough. Fair enough. Maintenance guy,
15 property manager. Part of his job, if you will, was to
16 patrol the grounds of the properties that Carolina Real
17 Estate Holdings owned to ensure that everything was
18 okay, correct?

19 A. Sure.

20 Q. Okay. And part of the way that Mr. Schulte did
21 that was he took photographs to pass on to his boss, Mr.
22 Decker, right?

23 A. A couple -- yeah, I guess.

24 Q. Now, one of the things that you told us on direct
25 examination was that you felt harassed constantly by

1 Wayne because he was taking care of things, right? When
2 he was taking these pictures, where was he? Was he out
3 in his truck?

4 A. Sitting in his truck in the parking lot.

5 Q. Okay. In the parking lot?

6 A. Uh-huh.

7 Q. Okay. So he wasn't inside the office taking
8 pictures, right?

9 A. Not that I'm aware of. I mean, he did have his
10 phone when he would come in the facility, but I don't
11 know if he was on his phone talking, texting, taking
12 photos. I was doing my job.

13 Q. All right. But you never saw Wayne inside the
14 office snapping pictures of employees and the office
15 spaces or anything like that?

16 A. Not that I'm aware of.

17 Q. Okay. All right.

18 A. I didn't follow him.

19 Q. All right. Did he ever come into the warehouse
20 area taking pictures?

21 A. I'm not sure.

22 Q. Okay. You never saw him, right?

23 A. I mean, I seen him in the warehouse, yes, but I
24 seen him with his phone in his hand, but I wasn't
25 standing over his shoulder to see what he was doing.

1 Q. Okay. So as far as you're aware, you didn't see
2 Mr. Schulte taking pictures inside the warehouse?

3 A. Not that I'm aware of.

4 Q. Okay. All right. So Mr. Schulte's taking of
5 photographs was, as far as you're aware, limited to him
6 sitting out in his truck in the parking lot?

7 A. Yep.

8 Q. Okay. All right. And this made you feel
9 harassed?

10 A. Well, it just made me feel uncomfortable.
11 Absolutely. I mean, because I had prior interactions
12 with asking what he was doing, you know? And it was a
13 lot of profanity involved coming from him and it just, I
14 don't know. It just wasn't good conversation from the
15 guy.

16 Q. Well, on that point, the profanity went both
17 ways, did it not? The profanity came from your side as
18 well, correct?

19 A. I mean, potentially. I don't know. I don't
20 remember every conversation that we had with the guy. I
21 know that I never walked up blatantly and cursed the
22 guy.

23 Q. Okay. So you never observed any of your
24 warehouse employees going out when Wayne was on the
25 property and telling him, using expletives to get off

1 the property?

2 A. No.

3 Q. Okay. Did you ever have conversations with Wayne
4 about any of Brilin's employees doing burnouts or donuts
5 in the parking lot?

6 A. No, sir.

7 Q. So he never brought up that issue to you?

8 A. Not to me.

9 Q. Okay. All right.

10 A. And I don't recall that ever happening while I
11 was an employee for Brilin either.

12 Q. So you don't recall any employees of Brilin ever
13 doing burnouts with their trucks or donuts in the
14 parking lot?

15 A. No, sir.

16 Q. Okay. All right. You also talked about the, the
17 jersey barriers. And the jersey barriers are big
18 concrete structures, right?

19 A. Okay.

20 Q. When did the jersey barriers show up?

21 A. Umm, I kind of feel like they were there when I
22 started in the parking lot, but I feel like they
23 progressed to the immediate -- between the two
24 buildings. Maybe a couple months in, maybe or I can't
25 remember exactly.

1 Q. Okay. And ---

2 A. I just remember them being there.

3 Q. All right. And remind us when did you -- what
4 date did you start or what month and year did you start?

5 A. It was in October of 2017, I believe.

6 Q. Okay. A few months into Brilin's lease term.

7 A. Well, did we lease the building in '17?

8 Q. The lease ---

9 A. I have no idea. They were already there when I
10 rode into the property.

11 Q. Okay.

12 A. I have no idea.

13 Q. All right. Fair enough. And you said the jersey
14 barriers went down the median.

15 A. Yes. Divided between us and Keller.

16 Q. Okay. So, Brilin's building -- and Brilin's on
17 the end, right?

18 A. Yes, sir.

19 Q. Okay. And then so it's Brilin's building and
20 then there's a driveway, if you will, and what you
21 referred to as the median, right?

22 A. Yes.

23 Q. And then there was Keller USA's property?

24 A. Yes. Yes.

25 Q. All right. So, and you said the median, the

1 jersey barriers were placed -- were they going
2 vertically or horizontally down that median? How did
3 they work?

4 A. Yes. Yes. Yes. Just divided, divided right in
5 half between the two properties.

6 Q. Okay. Was that the only place that the jersey
7 barriers were placed?

8 A. If I remember correctly, yes.

9 Q. Okay. All right. And the jersey barriers were
10 placed there to direct the flow of traffic, correct?

11 A. Yes.

12 Q. Okay. And, and the jersey barriers were placed
13 by the plaintiff, Carolina Real Estate?

14 A. Sure.

15 Q. Okay. And Carolina Real Estate was concerned
16 about 18-wheelers and other heavy duty trucks passing
17 through that area, right?

18 A. Right. Because they also received a lot of
19 18-wheelers as well, because they needed the property to
20 make sure that folks had adequate turnaround space.

21 Q. Okay. So would it be fair to say, sir, that the
22 jersey barriers were placed, as you testified, down that
23 median as a traffic control device, to direct the flow
24 of traffic?

25 A. Only in the gravel parking lot. Not between the

1 two buildings, no. They did not use between the two
2 buildings. The space between the two buildings.

3 Q. Okay.

4 A. The barriers that were placed between the two
5 buildings was to stop us from using that side door.

6 Q. So, so do you know that for a fact that that was
7 the purpose of why Carolina Real Estate put them there?

8 A. Yes. Yes. Wayne said that we were not allowed
9 to use that door.

10 Q. What door?

11 A. The side door, went out the side of the facility.

12 Q. Okay. And ---

13 A. We parked the trailer there and they tried to
14 have it towed because of the ---

15 Q. Okay. And the, and the side door that you're
16 talking about is the rollup garage door that ---

17 A. Rollup walkout door, yes.

18 Q. Okay.

19 A. I don't know the correct name, but it's the one
20 bay door that's on the side of the building.

21 Q. All right. Okay. All right. Now, you said in
22 your direct, you told us that the jersey barriers slowed
23 you down; is that correct?

24 A. When they were up against our curb, yes.

25 Q. Okay. So they didn't completely block you. You

1 could still pass in and out of that?

2 A. Once I moved them back a foot or two. Once I
3 moved them back a couple feet, yes, I could.

4 Q. All right.

5 A. But I actually called law enforcement to make
6 sure that we were okay with this. I spoke with the fire
7 department to make sure we weren't harming any fire
8 codes between the two.

9 Q. Okay. So you ---

10 A. I tried to do my, I guess, proper, you know, just
11 make sure everything I was doing was correct.

12 Q. All right. So you actually called law
13 enforcement on that occasion?

14 A. Yes.

15 Q. Okay. All right. And you just testified that
16 you moved the jersey barriers back. How far back did
17 you move?

18 A. Just a couple feet. I mean, nothing -- not even
19 the -- I didn't split the parking lot, so the road, yay
20 wide, I mean I didn't move it to the middle of it. Just
21 enough to get my forklifts out into the parking lot into
22 the gravel.

23 Q. All right. And did you ask Wayne or discuss that
24 with Wayne or anybody else from the landlord before you
25 did that?

1 A. I don't remember if I did or not, honestly. To
2 tell you the truth.

3 Q. All right.

4 A. I just knew that that was our property we were
5 renting. We were renting that property.

6 Q. So you knew that was the property that you were
7 renting. You understood that it was not your property?

8 A. Well, I don't own it, yes. We were renting it,
9 yes.

10 Q. Okay. And because you were renting it, you
11 believe that you could use it however you wanted, right?

12 A. Well, to drive on, yes. I mean, I wasn't going
13 to have a cookout out there.

14 Q. All right. So, in moving the jersey barriers,
15 you took that liberty on property that was not yours to
16 do that?

17 A. I mean, I feel like we rented the property.
18 That's why that half of the property was ours. And I
19 also talked to Keller. And Keller did own their portion
20 of the parking lot, had no problem with me setting any
21 of the barrier walls towards their side of the property.

22 Q. All right.

23 A. Before I did anything, I consulted everything
24 with Keller to make sure that I wasn't harming them or
25 their business in any way, shape, or form.

1 Q. So you talked ---

2 A. I tried to be compliant with everybody around us.

3 Q. So you talked to the adjacent property owner, but
4 you didn't talk to your landlord?

5 A. I didn't think I needed to. We were renting that
6 property.

7 Q. Okay. All right. So ---

8 A. It's just like the parking lot out front. You
9 know, I don't ask where I need to be able to park my
10 car.

11 Q. All right. So in addition to that, one moving of
12 the jersey barrier is a couple feet back from what you
13 told us. You moved them several other times in addition
14 to that, right?

15 A. Yes. Just to get the forklift out. I mean, I
16 don't know about several other times.

17 Q. Okay. Are you aware that employees of Brilin
18 Electric moved the jersey barriers several other times?

19 A. No.

20 Q. Okay. So you have no knowledge of that?

21 A. I mean, I just know the times that I moved, and I
22 would say that was just a handful of times. I don't
23 know about a bunch of times.

24 Q. All right.

25 A. Because once they got moved, I mean, I think they

1 stayed at one point. We moved. It wasn't where we were
2 barricaded until towards the end our lease. We, we had
3 access for the majority of the lease. And then I only
4 moved them back to where they were prior to when they
5 moved them up against our building.

6 Q. All right.

7 A. So I never went further than where they had them
8 initially. Let's put it that way.

9 Q. All right. What did you move the jersey barriers
10 with?

11 A. A forklift.

12 Q. Okay. All right. Turn to Plaintiff's Exhibit 4,
13 please. Plaintiff's Exhibit 4 is a picture of the
14 jersey barriers that you're talking about, is it not?

15 A. Yes.

16 Q. Okay. And inside of those jersey barriers, it
17 looks like there's a trailer parked there. Do you see
18 that?

19 A. Correct.

20 Q. Did you move the jersey barriers around that
21 trailer?

22 A. No. I moved the jersey barrier in the front so
23 we could put the trailer right there. We had rented a
24 trailer for about 24 hours and we didn't want it to get
25 stolen because we had been broken into this property

1 numerous times. So I moved the one barrier in the
2 front. So a pickup truck could back up, drop the
3 trailer, and then I just set the barrier wall back where
4 it was initially.

5 Q. All right. Did you ask the landlord to do that
6 before you did it?

7 A. No, I did not.

8 Q. Okay.

9 A. Because, again that's kind of on the side that we
10 were using. Because, I mean, it serves as a driveway.
11 I didn't know that we had to ask for permission for our
12 driveway.

13 Q. Okay. Even though it wasn't your property, you
14 didn't think you had to ask permission to ---

15 A. Again, no, because I thought that was our
16 driveway because we -- that was on our side of the
17 parking lot.

18 Q. All right. So the jersey barriers you moved with
19 a forklift. Let's talk about some of the other things
20 that happened. Now, were you employed by Brilin
21 Electric during its entire lease term?

22 A. No. They were already in the property when I --
23 once I arrived.

24 Q. All right. In 2017 ---

25 A. I think I was in the middle of their lease when I

1 came in.

2 Q. Okay. But you stayed until the end of the lease?

3 A. Correct.

4 Q. Okay. Let's talk about some other things that
5 happened at the property while you were there. Now, out
6 in the parking lot, were you all using the forklifts out
7 in the parking lot?

8 A. In the rear of the building, yes.

9 Q. Okay. If you'll turn to Plaintiff's Exhibit 5
10 for me. And Plaintiff's Exhibit 5 shows some damaged
11 asphalt, right?

12 A. Okay.

13 Q. Is that correct?

14 A. It looks like it.

15 Q. Okay. How did -- and that damaged asphalt
16 happened with a forklift, did it not?

17 A. I can't spec -- I can't say that. I mean,
18 there's a lot of water that used to sit there and
19 vehicles that would drive on that. I can't say the
20 forklift did it.

21 Q. Okay.

22 A. I don't know, I'm not an expert.

23 Q. All right. So you can't comment today, you never
24 saw a forklift causing any damage to asphalt?

25 A. No. I mean, these are -- these are pretty big

1 holes. A forklift has a narrow tire and I can't. I'm
2 not an expert, I can't speak on that.

3 Q. All right. Now, when you started working on this
4 property for Brilin Electric, was that asphalt damage
5 there?

6 A. I feel like the asphalt was always damaged,
7 because water used to sit really bad right through
8 there. So, yes, I feel like there was, but again, I
9 don't remember. It was a couple years ago.

10 Q. Are you aware that Carolina Real Estate Holdings,
11 before this asphalt got damaged, had that entire parking
12 lot resurfaced?

13 A. Not prior. I do know that they came out and did
14 some, some work on the asphalt, yes.

15 Q. All right. Were you there when the asphalt was
16 repaved or redone?

17 A. The last time, yes.

18 Q. Okay. And Carolina Real Estate Holdings gave you
19 an -- and when I say you, I mean Brilin Electric.
20 Carolina Real Estate Holdings gave Brilin Electric
21 notice that --

22 A. I disagree with that.

23 Q. -- that we're gonna be coming out and doing
24 asphalt repair.

25 A. They said that they were going to and they said

1 they were going to give us a time and date and they did
2 not. They just showed up one morning and shut us down,
3 our operations down.

4 Q. So your testimony here under oath is that
5 Carolina Real Estate Holdings gave you no notice
6 whatsoever they were repaving the asphalt?

7 A. No, that's not what I said. I said that they
8 notified us that they would be coming, but there was no
9 we'll be here said date and time. They just said we're
10 gonna be in the near future, be doing the parking lot.

11 Q. Okay. All right. So you knew at some point they
12 were gonna be coming out and doing that?

13 A. At some point with notice, yes.

14 Q. Okay. All right. And how long did that asphalt
15 work take?

16 A. I can't remember, but I feel like it was a few
17 days, maybe a week. I don't remember. It was
18 definitely a few days.

19 Q. And during that time you were still able to
20 conduct business, were you not?

21 A. It slowed things down. We had to rent a piece of
22 equipment because we didn't have access to our
23 warehouse. So, yes, but with restrictions.

24 Q. Okay. All right. Now, in addition to the
25 asphalt, there was also two garage doors that were

1 damaged while you were with Brilin, right?

2 A. Okay.

3 Q. Is that correct?

4 A. There was two damaged doors, yes.

5 Q. Okay. And those doors were also damaged by a
6 forklift, right?

7 A. Yes.

8 Q. And they were damaged by the forklift run into
9 the garage doors?

10 A. I physically did not witness the damage, so I
11 don't know. I can't say. I can't speak on that because
12 I don't know.

13 Q. But you know that the damage was caused by
14 employees of Brilin running forklifts inside that
15 warehouse?

16 A. Yes, but I don't know -- I can't speak on how it
17 was damaged. I don't know how it was damaged.

18 Q. Okay. All right. So... And above one of the
19 garage doors that was replaced were some bricks. Do you
20 remember some damage being caused to some of the bricks
21 up there?

22 A. No. I seen a brick in a photo but, no, I don't
23 remember that, no, sir.

24 Q. Okay. All right. Well, let's take a look at
25 that. Let's take a look at Plaintiff's 8. And you can

1 see the broken bricks, can you not?

2 A. Sure.

3 Q. Okay. And you don't know -- did a forklift hit
4 those as well?

5 A. I can't imagine how a forklift would hit that.

6 Q. Okay. How ---,

7 A. With it being off centered like that, I just
8 don't see, I don't see how that would happen.

9 Q. Now, how many forklifts does Brilīn Electric
10 have?

11 A. One.

12 Q. Okay. And how far do the teeth of that forklift
13 go up off the ground?

14 A. I would say probably ten, ten feet.

15 Q. Okay. Now, this rollup door right here, from
16 the, from the ground to the top of the rollup door, how
17 many feet would you estimate that that is?

18 A. I have no idea. Twelve feet? I have, I have no
19 idea.

20 Q. All right.

21 A. I never measured it. I just don't see how a
22 forklift can move over to the side and, and hit that. I
23 would think more of like an 18-wheeler or something
24 backed into the building would do that, is what I would
25 -- I mean, I don't -- more so than a forklift.

1 Q. Okay. So you're sitting here saying that ---

2 A. I'm not an expert, so I don't want to ---

3 Q. You're not an expert on forklifts.

4 MR. WHITE: Your Honor, I object. We're calling
5 for a lot of speculation.

6 THE COURT: I'll agree. You're asking him to be
7 speculative with his answers.

8 MR. DLUZNESKI: Okay.

9 BY MR. DLUZNESKI:

10 Q. All right. Let's move on to -- have you read the
11 lease agreement between Brilin Electric and Carolina
12 Real Estate?

13 A. No, I was just an employee. I would not be privy
14 to that information.

15 Q. Okay.

16 A. Nor would I need to read it.

17 Q. Okay. Part of what you told us about, about
18 Wayne and how you felt harassed was that Wayne would
19 come into Brilin's lease space.

20 A. Unannounced.

21 Q. Unannounced?

22 A. Yeah.

23 Q. So he never gave you notice? Carolina Real
24 Estate never gave you notice?

25 A. If they did, it didn't reach me, no.

1 Q. Okay. All right. So the times that Wayne showed
2 up, you were not expecting him?

3 A. Not expecting him, which I had no problem with
4 him coming to the property. I would just like for it to
5 be scheduled, so... Just like every other person that
6 comes to our place and schedules it so we can facilitate
7 their visit.

8 Q. Okay. And what would he show up to do?

9 A. Just to walkthrough the property or to service
10 the unit. I mean, with purpose sometimes. Sometimes it
11 was just to walkthrough, but... I guess to just
12 inspect, make sure that the facility was a facility.

13 Q. Okay.

14 A. And the other times like it would be to service
15 the air conditioning, which is fine as well. I just
16 would like it to be scheduled, because we'd have to stop
17 what we were doing, move a bunch of items out of the
18 way. Move a bunch of pallets. We could be receiving a
19 truck. These guys are on a schedule too. We scheduled
20 with all of our vendors that are making deliveries,
21 everybody is on a time schedule, so it's more just ---

22 Q. So, if I understand your testimony correctly,
23 Wayne would come into Brilin's warehouse space, really
24 it sounds like for two purposes, to make repairs and to
25 walkthrough and inspect the premises, right?

1 A. Sure.

2 Q. And as far as those two purposes, you understand
3 that the landlord has the right to do those things?

4 A. I do understand that, but I don't see anything
5 changes -- many changes happen within a few days. I
6 mean, he would come, you know, on a Tuesday and would be
7 back on a Friday. And then come on a Thursday the
8 following week. I mean, there's just not that many -- I
9 mean, I understand like when I've operated apartments, I
10 never had my landlord come once a week and walk off the
11 property to see what my apartment looks like.

12 Q. How often would Wayne come to inspect versus make
13 repairs?

14 A. The repairs, he never made any repairs that I'm
15 aware of, other than servicing the air conditioner. And
16 that would just be, I guess, I don't know how often you
17 have to do that. Every 60 days or something. How often
18 they would come to fill the thing, but then he would
19 come in between that.

20 Q. Okay. And how long do those -- would his visits
21 take?

22 A. 15, 20 minutes. Sometimes five minutes.
23 Sometimes it would just depend.

24 Q. All right. So anywhere from 5 minutes to 20
25 minutes?

1 A. Yeah.

2 Q. Okay. All right. And your claim is that those
3 visits of five minutes to 20 minutes harassed you?

4 A. The, the comments would be -- and I can't
5 remember because this was a couple years now. I've
6 moved on with this part of my life. I didn't dwell on
7 this. But I do remember that I felt uncomfortable
8 during those situations or just the -- I'm a very level,
9 calm person, and I remember that he used to get me
10 worked up. I remember he would come and make my blood
11 pressure rise a little bit there.

12 Q. All right.

13 A. I don't remember specific conversations.

14 Q. All right. Did Wayne ever come in? You
15 mentioned that he would service the air conditioning
16 unit. Did he ever do anything with the ductwork up at
17 the top of the warehouse space?

18 A. No.

19 Q. Okay. While you were there, that ductwork got
20 hit with a forklift, right?

21 A. So, when I started the -- we had already lifted
22 the ductwork out of the way, so that was prior to me
23 coming. But we did repair it while I was there, yes.
24 It was replaced while I was there.

25 Q. All right.

1 A. So the lease was up.

2 Q. All right. So, before you got there, the
3 ductwork was lifted. You -- and you may not. You can
4 just say I don't know if you don't, but do you know if
5 Brilin ever sought the landlord's approval to do that.

6 A. I do not know.

7 Q. Okay.

8 A. I was told by the prior warehouse guy that we
9 were told to do that, but I -- but he could just be -- I
10 can't specify.

11 Q. All right.

12 A. No, I do not know.

13 Q. All right. So, in the repair, what repairs are
14 you aware of that Brilin made to the ductwork?

15 A. They replaced the piping. I don't know the
16 correct -- air duct, I guess may be the correct term.
17 But we just re-plumbed it and replaced it. Rehung it,
18 and strapped it from the ceiling. Sorry, I'm not an
19 HVAC guy. I don't know the correct ---

20 Q. Okay. Was the landlord involved at all in that
21 process, to your knowledge?

22 A. I do believe that they were aware of it, yes. I
23 feel like there was a list of things, items that needed
24 to be fixed, and I believe that was on the list. But I
25 personally did not see the list, nor had the

1 conversation with the landlord, but...

2 Q. All right. Was the landlord on site for any of
3 those ductwork repairs?

4 A. I'm not sure. I don't think so. I know that
5 Wayne had been in and about, but if this is the landlord
6 behind you, I've never seen the gentleman behind you
7 before.

8 Q. Okay. All right. Now, let's talk about probably
9 the biggest thing that we're all here about this week,
10 and that's the partition wall, right?

11 A. Okay.

12 Q. The partition wall. You testified about the
13 partition wall on direct. The temporary repairs that
14 happened in 2019, were those repairs made to Brilin's
15 side of the wall or Two Men And A Truck's side of the
16 wall?

17 A. I don't remember the dates per se, but I will say
18 that the Two Men And A Truck side happened first, and
19 then we fixed our side. We did a repair on our side, as
20 well, prior to moving out, but I didn't know the dates
21 of the ---

22 Q. Okay.

23 A. But there was repairs made on both sides.
24 Sheetrock was replaced on both sides.

25 Q. All right. And on the Two Men And A Truck's

1 side, were those made in 2019? Were those made first?

2 A. The Two Men And A Truck was done first, yes.

3 Q. Okay. And who did the work on the Two Men And A
4 Truck side?

5 A. It's my buddy Louis. I can't remember the name
6 of his company.

7 Q. W&L Services?

8 A. That, would probably -- yes. They're the ones
9 that did all the repairs.

10 Q. Okay. So, was W&L Services on site twice?

11 A. Yes. On the Two Men And A Truck side and then
12 our side.

13 Q. All right. And how much of a gap of time was it
14 between the two jobs? In other words, how, how much --

15 A. A couple months maybe.

16 Q. -- time was needed to do their side and your
17 side?

18 A. I think two or three months maybe.

19 Q. Two or three months, all right. And during those
20 repairs, were you on site actually there supervising or
21 watching the crew for those repairs?

22 A. Not their crew, no. I was running the warehouse,
23 receiving material, doing my job.

24 Q. Okay. All right. Are you aware if anybody in
25 their crew during either of these two visits were

1 hitting -- was hitting the wall or the metal studs
2 inside the wall with a sledgehammer?

3 A. No.

4 Q. No. You never saw any of that?

5 A. Not when I was there.

6 Q. Okay. Well, I mean, you testified about Wayne's
7 involvement in that. And I believe that you testified
8 that Wayne was not actually inside the warehouse for
9 those repairs.

10 A. He would come in and out of the warehouse, but
11 the majority of the job sat in the truck.

12 Q. How long would you estimate Wayne's actually
13 inside there?

14 A. I have no idea, because, like I said, I was on my
15 side of the building. I was working on my side. I have
16 a lot of ten-hour day work on my side. I don't know
17 physically. I would see him get out of the truck, walk
18 back and forth.

19 Q. Okay.

20 A. But I don't ---

21 Q. And I think that you testified that W&L Services
22 was the company that you had used in the past, you had
23 prior dealings with?

24 A. Yes.

25 Q. Okay. So, you set up W&L's -- or you scheduled

1 W&L's work, right?

2 A. Yes. When we needed a drywall company, I knew a
3 reputable company.

4 Q. Okay. All right. So you scheduled the work,
5 right?

6 A. I mean, I made the phone call. I didn't pay the
7 people or anything like that, no.

8 Q. You call them.

9 A. Yeah. I mean, I called them and said, hey,
10 there's a job that I want you to come look at.

11 Q. Okay. So they came out. The work took the
12 amount of time that it did. And then after the work was
13 completed, did you inspect the work that they had done?

14 A. I mean, a quick visual I guess you would say yes,
15 but I mean I didn't, you know, take a flashlight to it
16 and inspect it or anything.

17 Q. Sure. Okay. And how did the repair work look?

18 A. It looked fine. I did -- I do know that the Two
19 Men And A Truck guy had to approve his side. Made sure
20 that he, that he visually was okay with what happened on
21 his side, okay on his side and then he was good with it.
22 I remember having that conversation.

23 Q. Okay. Did you have -- did Wayne come back into
24 the warehouse and inspect the work?

25 A. I have no idea.

1 Q. Okay. You didn't witness Wayne give any
2 approvals or comment about the quality of the work?

3 A. No.

4 Q. Okay.

5 A. I know that the Two Men And A Truck guy and them
6 talked. But, I mean, nothing was ever come back to me,
7 hey, you need two guys back out here to blah, blah,
8 blah.

9 Q. Okay.

10 A. Because I did tell him that if we needed them to
11 come back and do whatever else that needed to get done.
12 And it was never needed to come back.

13 Q. All right. Now, did you ever -- when Wayne was
14 on Brilin's Leased premises, did you or did you witness
15 anybody else that worked for Brilin Electric tell him to
16 get off the property?

17 A. I, I at one time asked him to leave the property,
18 yes, when he had made me feel uncomfortable, but I don't
19 remember what the context of the conversation was
20 anymore. But I do feel like that I was instructed that
21 I could tell him that, to leave the property, but I
22 don't -- like, again, I don't remember. I wouldn't have
23 just kicked him off the property without somebody
24 telling me that I could ask him to leave the property.

25 Q. All right. So you were instructed -- who were

1 you instructed by that you could do that.

2 A. I don't remember this conversation now. I feel
3 like it may have been from my boss, but I feel like that
4 it come from the tenant, the landlord. But I don't -- I
5 can't remember. I don't want to speak for sure, because
6 I can't remember the exact --

7 Q. All right. So you were told ---

8 A. -- term a couple years ago.

9 Q. So you were told that you could tell the property
10 manager or the landlord, somebody that actually owned
11 the property to leave when he was there?

12 A. From my remembrance, yes.

13 Q. And you don't remember the context, but you
14 testified a few moments ago that Wayne would show up to
15 perform inspections.

16 A. Yep.

17 Q. Right? Which is a landlord's responsibility and
18 duty under the lease, correct?

19 A. Okay. But also to make me feel uncomfortable as
20 well. I don't feel like that's part of the agreement.

21 Q. I understand. He would also be there to service
22 the AC system.

23 A. Okay.

24 Q. And you testified, even though you can't remember
25 the context that he, according to you, made you feel

1 uncomfortable as the landlord's boots on the ground, so
2 you asked him to leave the property?

3 A. I don't remember the exact reason or what we were
4 doing. I don't remember the process of what was going
5 -- like, I don't remember. I just remember at one
6 point, yes, because I do remember that he called law
7 enforcement on me. And that's how I remember the
8 conversation.

9 Q. All right.

10 A. But it has to do all around the same time as that
11 trailer that was sitting outside the building. I feel
12 like that was all within a 24-hour window. I feel like
13 that was all at the same time.

14 Q. All right. So let's recap a little bit what you
15 testified to so far. You testified that the rollup
16 doors, the garage doors got hit with a forklift, right?

17 A. They were damaged.

18 Q. Right. The asphalt outside that we just looked
19 at got damaged?

20 A. Visually, yes.

21 Q. Okay. The, the jersey barriers that you didn't
22 like the placement of them, you moved with a forklift.

23 A. Well, sure, so we could be operational.

24 Q. Okay.

25 A. But I also had the, the property next door's okay

1 on it as well.

2 Q. But you understand that Keller USA did not own
3 your property that you were in?

4 A. I mean, I thought that we were leasing. I
5 thought it was part of our driveway that we were
6 leasing.

7 Q. Okay. The ductwork up top at the warehouse, you
8 testified that damaged by a forklift.

9 A. I have no clue, no clue how it was damaged, I
10 just know that it was damaged once I got there. It had
11 actually been lifted up and was replaced prior, so I
12 don't know how. I can't speak to the damage, how it was
13 damaged.

14 Q. All right. And this demising wall or partition
15 wall that you told us about, that was also damaged by a
16 forklift, wasn't it?

17 A. Sure. It was damaged by a pallet, I would say
18 more so.

19 Q. All right. So, a pallet on a forklift being
20 driven into the wall?

21 A. Sure.

22 Q. Okay.

23 A. Or a pallet jack or something. I don't know.

24 Q. All right. So, finishing up here, you testified
25 that Brilin moved out when you all moved out in April of

1 2020, right?

2 A. Sure.

3 Q. Okay.

4 A. I don't know the date, but yes.

5 Q. All right. And Mr. White asked you on direct
6 examination if, you know, somebody could come in at that
7 point and do a final walkthrough for a lease term, do
8 you remember that?

9 A. Yes.

10 Q. Okay. Now, April 2020, going back, and I
11 understand that it has been a while, but going back to
12 April 2020, that was the height COVID, was it not, or
13 the beginning of the COVID pandemic?

14 A. Sure.

15 Q. Okay.

16 A. I don't remember exactly. But, yeah, I remember
17 COVID was somewhere in 2020, yes.

18 Q. Okay. And, in fact, since in April 2020 we're
19 dealing with not only a national pandemic, but a
20 worldwide pandemic. People were scared. Do you believe
21 -- I mean, would it have been reasonable for people to
22 say I don't want to come out right now and do a
23 walkthrough because of this virus that's killing people?

24 A. I mean, that person could have been by themselves
25 in a room this big with two people. So, I mean, I guess

1 they could have felt uncomfortable to do it, but it's
2 not like they would have been subjected to a room full
3 of people or any tight space by any means. I don't see
4 what would make somebody feel uncomfortable. Let's put
5 it that way. There was no tight quarters.

6 Q. Your opinion. That's your opinion?

7 A. And, again, I'm not a doctor. I'm not a
8 professional in any way, shape, or form, but yes.

9 Q. Sure.

10 Your Honor, may I have just one brief moment?

11 THE COURT: (No verbal response.)

12 All right. I just have two follow-up questions,
13 three additional questions for you, Mr. King.

14 A. Sure.

15 Q. Before you all moved out, there's carpets
16 covering the floors in the office space, correct? A
17 flex space, as you referred it.

18 A. Okay.

19 Q. Right?

20 A. Uh-huh.

21 Q. Okay. Did you all have a dog in there?

22 A. Yes.

23 Q. Okay. Whose dog was it?

24 A. The landlord or Bryon Russell's.

25 Q. All right. When did the dog show up?

1 A. I don't remember.

2 Q. Okay.

3 A. I don't remember the date.

4 Q. All right. And when you all moved out, there was
5 a dog pee smell on the carpets in the office space, were
6 there not?

7 A. I don't recall that. I mean, to be technical,
8 I've also had my dog in that property as well. I have a
9 Yorkie but he never -- I mean, he's potty trained. He
10 doesn't -- but I do know that we shampooed the carpet on
11 numerous of times while we were in the property.

12 Q. Okay.

13 A. Because the front door would leak. And I do feel
14 like we did talk to Wayne about that as one of the
15 repairs that never got handled, but it would probably
16 fill, from me to this lady right here, with water down
17 the aisle when you walk into the front door. And one of
18 the bay doors would leak water pretty bad as well.

19 Q. All right. One final thing about the jersey
20 barriers. You testified you moved with a forklift. Do
21 you have any idea how much those jersey barriers weigh?

22 A. No clue.

23 Q. Okay. But a person cannot lift them by themselves,
24 correct?

25 A. Huh-uh.

1 Q. Two people couldn't lift them by themselves.

2 A. I don't think so. They're concrete.

3 MR. DLUZNESKI: All right. Thank you, Your
4 Honor. That's all I have.

5 THE COURT: Any redirect, limited to what he went
6 into?

7 MR. WHITE: Yes, Your Honor. Super brief.

8 THE COURT: Yes.

9 REDIRECT EXAMINATION

10 BY MR. WHITE:

11 Q. You mentioned water intrusion in the front. Tell
12 us a little bit about that.

13 A. So every time we would get a good rain, at our
14 front door it would just flood. I mean, it would be,
15 you know, a quarter inch of water, and we would have to
16 shampoo the carpet after every -- pretty much every bad
17 rain storm so it wouldn't mold or anything like that.

18 Q. Or have an odor?

19 A. Or any odors or anything, absolutely.

20 Q. The landlord never really fully addressed that
21 water?

22 A. No. And I know personally that I brought it up
23 to Wayne numerous of times about letting in our -- in
24 our warehouse, too, the one rollup walkout door,
25 probably water from me to you would come through. And I

1 think in that original quote there was something
2 mentioned about weather stripping, and that was probably
3 what that was about was to help with that, but...

4 Q. In a space in a light industrial commercial space
5 like that warehouse, do you think, in your opinion, was
6 it a reasonable thing to operate a forklift inside that
7 warehouse?

8 A. 100 percent.

9 MR. WHITE: Nothing further, Your Honor.

10 THE COURT: All right. Thank you, sir. You may
11 step down.

12 Lawyers approach a moment.

13 (Witness leaves witness stand.)

14 MR. WHITE: Your Honor, may he be excused?

15 THE COURT: Any reason why the witness can't be
16 excused?

17 MR. DLUZNESKI: No objection.

18 THE COURT: Ence held off the record.)

19 All right, ladies and gentlemen, we're gonna take
20 a short recess. I need to remind you not to have any
21 discussion among yourselves about anything involving the
22 case and don't do any type of independent research. You
23 may go with the bailiff. We'll get you back just
24 shortly.

25 (Jury leaves courtroom at 11:01 a.m.)

1 (Recess was had from 11:01 - 11:21 a.m.)

2 THE COURT: Is the defense ready to call their
3 next witness?

4 MR. WHITE: Yes, Your Honor. We call Mr. Bryon
5 Russell.

6 THE COURT: Mr. Russell, come right up here in
7 front of the clerk of court and she'll swear you in.

8 THE CLERK: Place your left hand on the Bible and
9 raise your right-hand, please. Do you solemnly swear or
10 affirm the testimony you give today should be the truth,
11 the whole truth, and nothing but the truth so help you
12 God?

13 THE WITNESS: Yes, ma'am.

14 THE CLERK: Thank you. Please be seated.

15 THE COURT: Sir, have a seat in the chair, and
16 please speak into the microphone, if you would. Be
17 careful stepping up.

18 BRYON CASEY RUSSELL,
19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. WHITE:

22 Q. Good morning, Mr. Russell, how are you?

23 A. Good morning.

24 Q. If you could, please, introduce yourself to the
25 jury. Tell them who you are and who you work for.

1 A. I am Bryon Casey Russell. I am owner and
2 operator of Brilin Electric.

3 Q. What does Bryon Electric do?

4 A. We basically specialize in single family
5 residential for electrical, electrical contracting.
6 Mainly for tract home builders, such as Ryan Homes and
7 David Weekley. Just national home builders.

8 Q. So you all are the guys that go in and wire up
9 the houses?

10 A. Yes, sir.

11 Q. How, how long -- well, when did you -- did you
12 found Brilin?

13 A. February of 2009.

14 Q. What did you do before you started Brilin?

15 A. I was an electrician. I worked for somebody
16 else.

17 Q. How long have you been an electrician?

18 A. Since I was 18.

19 Q. How old are you now?

20 A. Forty-two.

21 Q. So you were doing it for somebody else, doing it
22 for yourself now?

23 A. Yes.

24 Q. Okay. You moved out of this space in April of
25 2020. Why did you do that?

1 A. We had outgrown it.

2 Q. Business was good?

3 A. Yes.

4 Q. Have you got a new space?

5 A. Yes, sir. We bought a 13,000 square foot
6 building right along Carowinds Boulevard.

7 Q. How would you compare your current landlord to
8 your previous landlord?

9 A. Much easier to deal with.

10 Q. Who's your current landlord again?

11 A. Myself.

12 Q. Do you still have the same landlord problems with
13 walls getting banged up and things like that?

14 A. Unfortunately, yes.

15 Q. Because that just happens in a warehouse space,
16 doesn't it?

17 A. Yes. You set your warehouse up and where your
18 pallets go are set up on racks. And you're set up based
19 upon standard pallet size. And then you give yourself a
20 buffer, a way from the wall. But you receive deliveries
21 from, say, 40 different companies. Not everybody uses
22 the same pallet size.

23 So your forklift driver has, you know, forklift
24 certified. He's got a 10-hour OSEA course, 30-hour OSEA
25 course, but... So, you know, he's -- like Craig said,

1 you know, moving packages for 20 different crews. What
2 kind of Craig left out is that these packages are
3 anywhere from two-foot tall to four-foot tall. And so
4 you're not exactly seeing everything around you. And if
5 somebody talks to you, distracts you in any way, and
6 you're not paying attention to that one pallet that you
7 just moved to put away is longer than the last one you
8 just picked up and put away, that's when they run into
9 the wall.

10 We constantly do it in our building now. And I
11 have tenants in my building that we are in now when we
12 have renters. And their space backs up to our warehouse
13 space. And sometimes we run into their space and they
14 kind of tell us, hey, you know, there's a noise we heard
15 and we go look at it and we have to evaluate it. So I'm
16 sure the same thing is happening to my wall that
17 unfortunately happened to their wall.

18 Q. Right.

19 A. You know, we're kind of trying to look and look
20 for a permanent solution to fix that. Maybe like
21 putting plywood up or something in that situation. That
22 might help the situation, but we haven't crossed that
23 bridge yet.

24 Q. All right. We're gonna bounce around just
25 because I do not want to get impatient. I just want to

1 fill in some gaps. They don't need to hear everything
2 again for me to start/stop. Let's start with the
3 October 2019 on site meeting. That was with you. That
4 was with the two gentlemen over at plaintiff's counsel
5 table and Mr. Brian Hoffman from my law firm. I just
6 want to ask you two things about that. What was your --
7 how would you describe the meeting? Was it productive
8 or unproductive?

9 A. I felt the meeting was really productive. We
10 came up with a, basically a punch out list of what we
11 were to complete by the time we moved out and what we
12 were going to do going forward.

13 Q. And what was -- this is my second question. What
14 was your takeaway as to what Mr. Decker's expectations
15 of you were coming out of that meeting?

16 A. Was to complete all the items on the punch out
17 list before we moved out, and everything was gonna be
18 fine and good.

19 Q. And so, we heard from Mr. Decker about a promise.
20 That you promise not to do anything without telling,
21 right?

22 A. Right.

23 Q. Was there anything that you intended to do in
24 fixing up this space before you turned it over that
25 wasn't on that list from October of 2019?

1 A. Not intended to, no.

2 Q. So, he knew what you were gonna fix as of October
3 2019, right?

4 A. Right.

5 Q. So there wasn't really a need to have additional
6 conversations about what you were already -- you had
7 already agreed to fix and what you knew you were gonna
8 fix, right?

9 A. Right. Except for things kind of stalemated on
10 the other side. We started communicating about, through
11 the lawyers, trying to pin down, like, going down the
12 list of the major items, like garage doors. When we
13 sent them the garage doors, like, hey, okay. Okay. You
14 want us to replace the garage doors?

15 The garage doors were not hit with a forklift.
16 The night before, when we get ready for the next day,
17 they would do a one line in front of the garage doors of
18 what was going out the night before. They would line it
19 up in front of the door. Well, the person in the back,
20 if they weren't paying attention of, you know, when
21 they're 10 pallets back, they drop one down and push it
22 forward, that would hit the bottom of the door. That's
23 what caused the bottom of the damage to the door, was
24 the pallets pushing forward, and that's why they damaged
25 the bottom of the doors. And that's why the doors had

1 to be replaced. They didn't run into them with a
2 forklift. They didn't hit them. It was when the doors
3 were closed at night and they were pushing the stuff
4 forward, staging for the next morning. And they were,
5 you know, they had told us, Decker or Carolina Real
6 Estate owner, told us the doors needed to be replaced.

7 So when we sent them our doors, they're like, no,
8 we want this one door instead. So we replied back. It
9 was like, okay, your one door is twice as much as ours.
10 It doesn't match the building. We're gonna replace
11 those doors that match the building, so why would we do
12 that? And then we never got no response.

13 So then we got down to coming time to, it takes
14 time to order doors. It takes time to get them in. It
15 takes some time to get installed. Even though we
16 ordered doors, I think Jim said, like around December or
17 whatever, the doors barely got installed. Right in
18 April, right before we moved out. That's how long it
19 took to order and come in. But if I would have waited
20 any longer, the doors would have been on the list saying
21 the door -- it would be -- we'd be sitting here saying
22 the doors not (inaudible). Because our goal was to fix
23 everything and turn the space over in the condition that
24 we received it in.

25 Q. So, I just want to back up to those two

1 takeaways. Your takeaways were to direct a meeting and
2 that you had a list of items that you were gonna do, you
3 knew you were gonna do them, but yet -- then it kind of
4 goes off the rails because then all of a sudden he
5 started saying, no, I want you to use this vendor for
6 that, right?

7 A. Yeah.

8 Q. And that was not something that was discussed in
9 October of 2019.

10 A. Correct.

11 Q. The obligation, per the lease, is the tenant
12 needs to repair it.

13 A. Right. And have the obligation. Only thing that
14 he requested was they had his certificate.

15 Q. And the reason I'm asking you is cause you kind
16 of heard from Mr. Decker that you basically breached
17 this promise and that's why, that's why you got sued.
18 What's your response to that?

19 A. I mean, I feel like they had from that moment,
20 they had already had the intentions of going through
21 with all this.

22 Q. And you got the -- you've seen the cease and
23 desist letter that's entered as Plaintiff's Exhibit 3.
24 Is that what caused you to hire our law firm to respond
25 to that?

1 A. Well, when we got the first letter, kind of like
2 the first eviction letter ---

3 Q. Yeah. The September 24th, 2019 one. It's right
4 -- it's in Plaintiff's 3, if you want to refresh your
5 memory. Is that -- that's what -- that was the catalyst
6 for you hiring a lawyer, right?

7 A. Yeah. Yeah. Because it talked about missing
8 rent and whatnot, and we had never missed rent or
9 nothing like that, so none of it made sense.

10 Q. Okay. Now, I want you to go to the last page of
11 the actual letter itself. So it's gonna be one, two,
12 three signature blocks of (inaudible). I want you to --
13 you see that last paragraph right before it says with
14 kind regards I am? You see that?

15 A. Sincerely Steve?

16 Q. Yeah, right above there.

17 A. Uh-huh.

18 Q. It says: Since our office now represents
19 Carolina Real Estate Holdings, in connection with this
20 matter, please direct all communication and
21 correspondence related to this matter to our office and
22 not to Carolina Real Estate Holdings. Do you see that?

23 A. Uh-huh.

24 Q. And even before that it says, if you have any
25 questions about the content of this correspondence or

1 wish to engage counsel, please let me know or have your
2 lawyer contact me, right?

3 A. Right.

4 Q. How would you describe to this jury, didn't
5 working through these -- now, obviously you had that
6 October meeting, but you know you've got stuff you need
7 to do. You know you're leaving the space. You want to
8 turn it over to the way you found it. Describe for the
9 jury how complicated or easy that was when you got
10 lawyers involved in that process.

11 A. I mean, they're just, it went nowhere.

12 Q. And why did it go nowhere?

13 A. I mean, we sent -- we'd send an e-mail over to
14 them and then not get a response. So, I mean, the goal
15 is to resolve the issue and get everything done in a
16 timely manner because we only have until we move out.

17 So if this is -- what, in September we got this?
18 Yeah, in September. So for -- okay, so let's call this
19 October. Basically September's over. This is 9/24. So
20 that's -- and then we have until the middle of April is
21 when our lease is up.

22 So then we have three months -- a total of five
23 months to conduct our business, get out of the space.
24 Get everything cleaned up and get it corrected and get
25 it done. So, I mean, that's really not a lot of time.

1 So think about if you're moving out of your house,
2 moving out of your house, I mean, you try to give
3 yourself like 90 days just to move out of your home, you
4 know? So...

5 Q. And that's why the -- and that's ultimately why
6 the meeting was called. You're trying to resolve this,
7 but we gotta direct all communications through the
8 lawyers, so that's why you end up having an on-site
9 meeting, right?

10 A. Yes.

11 Q. And you thought it was productive and you thought
12 you knew that the landlord knew what you were supposed
13 to do, okay? And you went about trying to do it?

14 A. Correct.

15 Q. But yet the landlord interfered every step of the
16 way?

17 A. Yes.

18 Q. Including filing a lawsuit against you a month
19 before you moved out?

20 A. (No verbal response.)

21 Q. Yes or no? You've got to give a verbal response.

22 A. Yes. Yes, sorry. Yes.

23 Q. So, the lease ended April 30th. We've heard that
24 already. We see it in the lease. When was the space
25 available for doing a final walkthrough with the

1 landlord?

2 A. I e-mailed you. I guess we were out before April
3 1st. We were out a full 30 days before. I made sure
4 when we bought our building that we were completely
5 vacated. That we could be in our new space 60 days
6 prior to when we moved.

7 So we have 30 days to move our facility and move
8 the office first, move the warehouse, and then be out,
9 touch up anything and then have it prepared for a
10 walkthrough. Because I knew that we needed time to make
11 repairs because I knew it wasn't gonna be an easy
12 process.

13 Q. Why did you want -- I'm sorry, go ahead. Keep
14 going.

15 A. No, that's fine. I mean, that's ---

16 Q. Why did you want to do a walkthrough?

17 A. I just knew it wasn't gonna be an easy process.
18 I mean...

19 Q. Why did you know it wasn't gonna be an easy
20 process?

21 A. I mean, not, not to -- I mean just, every dealing
22 with him is not -- has not been easy.

23 Q. Now, if you all had done a walkthrough and the
24 landlord came up with additional punch list items to do,
25 what would you have done with those punch list items?

1 A. I mean, we would have completed them like we
2 completed all the other items.

3 Q. What if they said, hey, we want to get our
4 general contractor and engineer here to take a look at
5 this wall and maybe even opened it up. What would you
6 have done?

7 A. I would have had the drywall taken down.

8 Q. Do you think it would have been a good idea for
9 you, unilaterally, to take a big old section of drywall
10 down on a space that you don't own?

11 A. I don't -- I feel that would have made him mad,
12 like why are you tearing apart my wall?

13 Q. So you didn't want to do that?

14 A. Well, I mean, I advised my counsel. I'm like
15 what do I do? You know, these -- we've got everything
16 taken care of except for the pavement and the wall.
17 Those were our last two big items we have left. And
18 then you e-mailed them. Said, hey, the space is empty,
19 space is clear. These are the last two big items we
20 have to resolve. We have 30 days to do it. Let's meet
21 and let's get them resolved and let's come to a
22 compromise. Let's get it done.

23 Q. Now, we heard the -- we heard the testimony of
24 Mr. Robinson and how we had the site visit in May of
25 2020 when we came. Do you recall talking about that?

1 A. Uh-huh.

2 Q. Prior to that date in May of 2020, did you have
3 any knowledge that any of the studs in the demising wall
4 had been hit or compromised in any way?

5 A. No. Because when they opened up the wall on the
6 other side, once they took the drywall off, they brought
7 me over, they showed me. They said, hey, okay. You
8 know how to get the drywall off. We've got, you know,
9 we're getting ready to put it back. Does it look good?
10 I'm like, yeah, I don't know what I'm looking at, but
11 okay. And then Wayne was there and I'm like, does it
12 look good to you? And he was like, yeah. I'm like,
13 okay. I'm like, well then go ahead. And then they
14 brought me back in when they finished. Me and Wayne
15 looked at it again. I said, look good to you? He said,
16 yes. And that was it.

17 Q. To orient the jury to what you just talked about,
18 that's the Two Men And A Truck ---

19 A. Sorry, on 2019. Sorry.

20 Q. November of 2019, right?

21 A. Yeah.

22 Q. And so Wayne supervised that whole job?

23 A. Wayne is the one who called me. He said, hey,
24 your forklifts have hit the Two Men And A Truck side or
25 went through the wall. I'm like, okay. I said, what do

1 you need? He goes, I need a drywall guy. I said, okay,
2 how soon do you need him? He said, within three to five
3 days. I said, no problem, I'll get you one. I said,
4 can I get in next door to go look at it? He said, yes.
5 So I just went in next door, looked at it, told Craig.
6 I said, did you used to work for a drywall guy? He
7 said, yes. So...

8 And it's the same drywall guy that does all their
9 drywall for Ryan Homes for all north and south, which is
10 like 1200 homes a year. I'm like, okay, well that's
11 gotta be a reputable company. I mean, that's good,
12 right? I mean, they're one of Charlotte's top home
13 builders. So that was fine with me.

14 So I asked him to call. They got there within
15 three days. I called Wayne back, told him when they
16 could be there. He met us there. I introduced the
17 drywall guys to Wayne. I said, hey, this is Wayne.
18 He's gonna tell you exactly what to do. All you need to
19 do is make sure that he's happy.

20 And they completed the task that he wanted and
21 they left. In fact, I think it took two days because
22 they did the first -- took it down, put up the drywall,
23 put a coat of mud on. And since it's a drywall space it
24 wasn't like a finished coat. It was just put one coat
25 of mud on, let it dry one day and then put another coat

1 on.

2 Q. And so, it's your testimony that Wayne Schulte,
3 an agent of CREH, was the one who signed off on that job
4 on the Two Men And A Truck side?

5 A. Called me, scheduled it, supervised it, signed
6 off on it, everything.

7 Q. You didn't sign off on it?

8 A. No.

9 Q. Okay. And you had -- did you have every
10 intention of something similar to that happening on the
11 other side once you guys moved all your stuff, cleared
12 it out, could do a walkthrough?

13 A. Well, yeah, because they asked me at that time.
14 They're like, hey, we need to do the other side. And
15 I'm -- I had the argument with Wayne at the time. Like,
16 it doesn't make any sense. You know, we still have
17 another year-and-a-half here, ten months, whatever it
18 is.

19 It doesn't make any sense to take down 150 feet
20 of racking, all these packages. I don't have nowhere to
21 put it. You don't have anywhere to put it. We wouldn't
22 be able to operate for however long it takes. And then
23 if we put it back up and if it happens again, we just
24 wait until the end and then we'll do it then. And then
25 that makes more sense. It's logic.

1 Q. How critical was using that ramp on the side
2 garage door for, for your business operations?

3 A. I mean 100 percent. Our main, two main
4 suppliers, they don't have in their budgets for a dock
5 high door truck, so they deliver with those big box
6 vans. So we have to go out and pick up from their
7 vehicles and then bring it back around inside to ours.
8 And then, when we go unload to the crews, we have to
9 take it back out to them.

10 Q. And that's why early, like within months of you
11 taking over that space, you had the ramp converted from
12 asphalt to concrete, right?

13 A. Well, I -- it started to deteriorate right away
14 on the first rain, so I contacted Wayne, because he was
15 the maintenance guy at that time and it was what he was
16 known as. Told them. And then, I guess, he contacted
17 his office.

18 Q. Okay.

19 A. And then we agreed to the best course of action
20 would be to concrete it. So, we found a local concrete
21 guy that had a Certificate of Insurance. Gave them the
22 estimate. They approved it, and then they paid for it
23 and the work was done.

24 Q. And then they later repaved it and you guys
25 didn't know the date that they were gonna do that,

1 right?

2 A. It was actually delayed for like a whole year.
3 And they just kept saying it was coming, coming, coming.
4 We showed up one Monday morning and all their trucks
5 were there. And we're like what's going on? And
6 they're like, we're repaving this morning.

7 And we're like, okay, so what does that mean?
8 They're like, everybody's gotta be out of the parking
9 lot in the front and on the sides. So we had to
10 scramble from there knowing we're not gonna be able to
11 use our side ramp.

12 So, we called the guy we rent equipment from. He
13 was able to get us a lull, which is -- I mean, we
14 probably could have done a smaller one, but that's all
15 that was available on that morning of the notice. They
16 wasn't able to get it out until noon. So that day we
17 had to unload all the packages by hand off the back of
18 the dock and unload the trucks by hand, the deliveries.
19 Then with our rent -- when we send out a rent, we
20 deducted that expense off our rent, because we felt like
21 that was their, you know, responsibility because that
22 was their fault.

23 Q. That was for 1144 and change, right?

24 A. Yeah.

25 Q. And that's when you got your eviction text from

1 Mr. Decker?

2 A. Yeah, after that. Yeah.

3 Q. And that's when you reached out to Frank Jackson
4 and said, what's going on here?

5 A. Yeah.

6 Q. So, you know, just to clear something up for the
7 jury. Why did you reach out to Frank Jackson? Who was
8 -- who at that time, who was Brad Decker to you? What
9 was your understanding of who he was? This is August of
10 '19.

11 A. Well, at first it was Wayne the maintenance guy
12 and then when we couldn't get something resolved with
13 him, went to the CFO or controller or whatever he was.
14 And then like when this situation came on, like then
15 they referred me to Brad. Because, you know, he said he
16 couldn't do nothing about us getting reimbursed for it,
17 but he could. He could approve it, him being Brad.

18 So literally had an argument with him on the
19 phone about 45 minutes about what was fair, about fair
20 notice. You know, about having a fair right to our
21 space. You know, us being able to work and operate.

22 And then comes towards the end of the
23 conversation I was like, you know, I want to talk to the
24 owner because this is ridiculous. You know, an owner is
25 supposed to deescalate the situation, resolve the

1 situation. By now the owner would have split this in
2 half, we would have moved on. We would have gone on.

3 That's when I found out he was the owner. And
4 then that's whey I'm like, okay, well, I'm just gonna
5 end this conversation here because this is not going
6 anywhere. And then that's when we just paid the other
7 1200 and moved on.

8 Q. So you just gave up on it?

9 A. Because I knew it wasn't ---

10 Q. It was a 45-minute unproductive conversation?

11 A. Yeah. Because I knew it wasn't -- I mean, it's
12 not really like a true owner. An owner, operator,
13 manager, anybody that's ever been a manager before or an
14 owner of anything knows that you're the last line.
15 Like, you're the one that's supposed to deescalate the
16 situation, resolve the situation. You're the one that's
17 supposed to compromise half and half, quarter,
18 something. You have to come to a resolve. Or anybody
19 that's ever been a parent before knows that like you
20 have to resolve the situation. You can't just let it go
21 undone.

22 Q. And so, deescalation, you get a default letter
23 and now we've got to get the lawyers involved?

24 A. And now we sit here.

25 Q. So, the -- we talked about how critical that ramp

1 was. Did you -- and the jury heard some testimony about
2 you all have an issue with Two Men And A Truck or
3 Keller. Do you feel like Brilin ever had any issues,
4 like good neighbor issues, Keller, or Two Men And A
5 Truck?

6 A. At first. When we first moved in we did have a
7 couple of hiccups. So, if we had a white board I could
8 draw you a picture. But if you have two big buildings
9 that are both shaped here and there's parking all the
10 way across the front of them, our guys would come in at
11 6 a.m., drop off their cars, go get in their vans and
12 leave.

13 So, the older gentleman that owned Keller, if one
14 of our guys would -- there's an imagining line in the
15 middle, right, that he owns. That's his property line.
16 If one of our guys would leave his car on across that
17 line, that would technically be one of his parking
18 spaces, even though he had extra parking spaces here and
19 a whole bunch more down the front of his building, he
20 didn't like that.

21 So, in the beginning he would come over, but he
22 was coming from another county. He didn't come over
23 like politely. Just came over like yelling, you want to
24 park in my parking ---

25 MR. DLUZNESKI: Objection, hearsay.

1 THE COURT: I'll sustain the objection.

2 BY MR. WHITE:

3 Q. So other than these hiccups, did you work it out
4 pretty quickly with Keller?

5 A. Yes. We ended up having a working relationship
6 and we were able to work it all out, and it became a
7 good working relationship.

8 Q. How about Two Men And A Truck?

9 A. We still do work for them today. I mean, we
10 still do stuff for them in their space now.

11 Q. Trip Moore, he's the owner of that particular
12 franchise?

13 A. Yeah.

14 Q. And he actually took over the space?

15 A. Yeah, the day we moved out.

16 Q. So he moved from that interior suite over to your
17 interior suite right after y'all?

18 A. Yeah.

19 Q. Did you ever -- did he ever contact you about any
20 issues with the space after he, after he took it over?

21 MR. DLUZNESKI: Objection, hearsay.

22 THE COURT: Do you want to rephrase the question?

23 MR. WHITE: Well, the yes/no part I don't believe
24 is hearsay, Your Honor.

25 THE COURT: All right, go ahead.

1 BY MR. WHITE:

2 Q. And I'm not following up, so...

3 But if you want to -- was that a yes or a no?

4 A. It was no.

5 Q. Okay. Again, this is me bouncing around a little
6 bit, because I'm just trying to fill the gaps. We're
7 gonna go now to the May 2020 meeting where you, myself,
8 and our engineer went to go look at the wall when it was
9 exposed. Do you remember that?

10 A. Yes.

11 Q. Okay. Now, you heard Mr. Robinson in that same
12 chair describe the interactions. That you were less
13 than pleasant, however you want to describe it. Tell
14 the jury, like, what was your take? Like, how did you
15 -- what did you think of that testimony?

16 A. I was blown away. We, we were there first or Guy
17 was there first. Someone was there first. But before
18 we walked in, he pulled me inside. He said, whatever
19 you see or whatever's going on, don't say anything to
20 them. Save all your comments and responses for me when
21 we get back outside. He said, don't say anything.

22 Q. Hold on. I just want to make sure the jury --
23 when you say you, you meant me, right?

24 A. Yes.

25 Q. Okay. Fair enough.

1 A. Nathan said, don't say anything to anybody about
2 anything. Just wait until we get back outside and then
3 say everything to me. So while we were in there, I
4 didn't say anything. I just stood back, kept my mouth
5 shut. And then Nathan said everything. And then the
6 engineer talked. And then I didn't say anything until
7 we got back outside in the truck to them and that was
8 it.

9 Q. The whole purpose of that was just to let our
10 engineer look --

11 A. To evaluate the situation.

12 Q. -- inside the wall once they closed it back up,
13 right?

14 A. Yeah.

15 Q. So that whole, like, you being hostile and me
16 having to pull you aside and talk to you, did any of
17 that actually happen?

18 A. No. You actually pulled me back and asked me,
19 like, a couple of questions like, you know, of what I
20 thought of what was going on. Was it needed? But you
21 pulled me back and asked me ---

22 Q. And why did I ask you that?

23 A. Because you thought it seemed excessive.

24 Q. Yeah.

25 A. Because a lot of the area wasn't damaged where

1 the drywall was missing.

2 Q. Because you've done repairs like that, right?
3 You know like what you do with studs and things like
4 that?

5 A. Yeah.

6 Q. So it wasn't hostile at all in any way?

7 A. No. I mean, the guy was polite to us all the way
8 outside and he walked with us the whole time and...

9 Q. And as soon as we were done, he was gonna start
10 fixing it. He had all his materials ready to go.

11 A. He was actually just waiting for us to leave.

12 Q. And then Mr. Robinson was gonna start doing his
13 work, replace the studs, put the drywall back up.

14 A. Yes. So when he said there was a -- never --
15 like, we never mentioned for us to jump in. I mean,
16 there wasn't a chance for us to jump in unless we were
17 gonna grab a tool belt then and join his crew.

18 Q. Okay. Now, I'm gonna bounce back to December
19 2019 very briefly. You heard Mr. Schulte's testimony
20 that he was on site for just 20 minutes and he didn't
21 approve it. He didn't supervise it. He didn't know it
22 was coming. What is your response to this jury as to
23 that testimony?

24 A. I mean, as you heard like Craig say, he was there
25 all the time. He never missed anything. And that was

1 the thing about him. Like he was supposed to have an
2 appointment to come by, and I mean, we actually just --
3 for the longest time I never knew the guy's name. We
4 always called him Lurch, because he just lurched around
5 the building.

6 We've called the law on him because the women in
7 the front office felt uncomfortable because he's taking
8 pictures as they're walking in. If he was taking a
9 legitimate picture of the front of the building, I don't
10 know and we didn't know, but why are you taking pictures
11 when there's women walking in the front of the building?
12 It doesn't make sense.

13 I mean, you can take the pictures of the front of
14 the building when we're not there or just, you know,
15 schedule them like you're supposed to. And like Craig
16 said, why are you Tuesday, Wednesday, Thursday, next
17 Tuesday. It doesn't make sense. The air conditioning
18 gets service once a year. And then we're technically in
19 our lease, we're supposed to be responsible for the air
20 conditioning. So, I mean...

21 Q. So you had female personnel working in the front
22 office?

23 A. Yeah, four of them.

24 Q. And they were not comfortable with the property
25 manager or maintenance guy, Mr. Schulte?

1 A. No.

2 Q. And why was that again?

3 A. Just because he would just sit out in his truck
4 and stare into the building. So it made them feel
5 uncomfortable when they walk in and out.

6 Q. And were you sensitive to that as the owner?

7 A. Well, because if I was gone and they would call
8 me and they're like, hey, I don't feel comfortable to go
9 to lunch. And this was back when, you know, Door Dash
10 was a big thing. So, yeah.

11 Q. So that caused problems in the front office?

12 A. Yeah.

13 MR. WHITE: One second, Your Honor.

14 BY MR. WHITE:

15 Q. All right. I've just got a few more areas to
16 close the gap on, Mr. Russell, and then I'm gonna turn
17 you over to plaintiff's counsel. We've heard a lot of
18 this, this ductwork. Tell the jury what really happened
19 with the ductwork in the warehouse.

20 A. Okay. So the ductwork was not hit. There was
21 three units in the warehouse base. There was one on the
22 closest to the outside wall that ran inside the office
23 units.

24 Q. I'll tell you what, let me interrupt you, Mr.
25 Russell, just to paint a picture for the jury. Let's

1 look at it while you're talking. So, we're gonna look
2 at Defendant's Exhibit 19, second to the last page. Go
3 ahead, Mr. Russell. Are you there?

4 A. Yeah. You're talking about this picture, right?

5 Q. Yeah. Everybody, this is the picture we're
6 talking about.

7 A. Okay. And so that unit --

8 Q. Go ahead.

9 A. That unit ran all the way back on the warehouse
10 side there. That's not a unit that we used. So
11 technically, you know, with the lease I could just
12 remove it, not use it. Take it, put it in a storage
13 unit, and then put it back when we moved in. It's not
14 necessary.

15 So, clinically I told my guy, I said, disconnect
16 it. Pull it up, lift it up, strap it to the ceiling
17 because it was in the way of the racks, of using the
18 whole upper level. Well, he was lazy. He just took the
19 end of it, lifted it up like this and strapped it to the
20 ceiling.

21 So, once I saw it I was like, okay, what's done
22 is done. Like, all right, we're just gonna have to,
23 when we're done, we're gonna have to lower it back down.
24 I'm gonna have to have an AC guy come back in here and
25 reseal it back down and everything else. But since

1 we're not using it, you know, it's gonna be fine. Just
2 where you took the seam apart there, just close that
3 back up with some tape so dust and stuff doesn't get in
4 it and make sure you close the vents.

5 And then at one point they kept after me about
6 fixing the ductwork. I'm like, why? I'm like, it's
7 still, it doesn't need to be fixed yet. You know, we
8 can just fix it at the end. We'll lower it back down
9 and back to the way exactly the way it was, and it will
10 be, you know, that way. But Brad insisted on -- Brad,
11 himself, even though he says he doesn't know why I did
12 it, by himself, insisted on me fixing it.

13 And so I said, okay. Got his approval. You can
14 put an S in it here, go straight up, and then S it over.
15 And then it'll be above the racks and it'll be fixed and
16 it'll be fine. It'll meet your approval? He goes, yes.
17 He said, just make sure I get a Certificate of Insurance
18 on your guy. And then once the work was done, he came
19 back out again and he approved the work that was done.

20 And at that time the only problem was my guy
21 hasn't sent him the Certificate of Insurance because he
22 was slow on sending it, because he thought he sent it
23 one time but the attachment didn't go through. And we
24 didn't look at it before we sent it, and so it came
25 through with no attachment and that was the only delay

1 in it.

2 But he directly knew, approved me doing it
3 beforehand, approved it after hand. Then now wants to
4 sit here and say knew nothing about it, when we could
5 have just waited and it would have been a straight piece
6 of pipe like it was originally.

7 Q. I'm gonna bounce around again. We're almost
8 done. The, what I prefer to call the concrete apron at
9 the end of the ramp. You made that repair, right?

10 A. Yes.

11 Q. And why did you make that repair?

12 A. Because the ---

13 Q. And that is Plaintiff's 7, if anybody wants to
14 look at it.

15 A. So, they had mentioned how the water runs down
16 that ramp. Well, not only does it run down the ramp,
17 but it runs that side of the street, is also at an angle
18 like this. So everything from the front of the parking
19 lot runs back away too. So the water would run down
20 that seam there in front of the concrete, where they
21 poured the concrete. And when the forklift would go
22 there, it was digging in.

23 So we reported that to them, that, hey, this is
24 getting worn out and we can't go down it. Well, to them
25 they don't care because they didn't want us using the

1 forklift anymore. Their idea was just, you know, don't
2 drive the forklift outside. Just don't operate your
3 business anymore. You know, just stop doing our
4 property, you know? Don't do anything anymore.

5 So, one of our guys had done concrete for 20
6 years. So, we got him to make the repair. And Brad had
7 saw it when he came out there to do his walkthrough that
8 day. That day, with all the attorneys, is what I'm
9 referring to. The two attorneys. And I explained to
10 him how he did it that day.

11 Do I remember all the specifications now to this
12 day, three years later? No. But I do remember that
13 there was like a lot of rebar used. It was used like
14 every six inches. Like one-foot dowels drilled into the
15 asphalt and drilled into the concrete. I think it was
16 like two-foot deep. That thing ain't going nowhere.

17 Was it a big improvement? Yes. It would have
18 been simply rectified by them? Yes, if they wanted to
19 let us use the space. But, you know, everything was a
20 battle.

21 Q. Well, it could have been rectified if they used
22 the right materials in the first place when they repaved
23 that asphalt, right?

24 A. Yes. If they wouldn't have made our side thinner
25 on purpose.

1 Q. All right. Let's end with the bricks, these
2 three matched bricks. Do you have any reason to suspect
3 that Brilin was ever responsible for damaging those
4 bricks on the side garage door?

5 A. No. I honestly do not know how that ever
6 happened.

7 Q. Okay.

8 A. It was just pointed out to me one day that they
9 needed to be fixed. And so I said okay.

10 Q. Did you just say I'll get it done. Whatever we
11 can do to just make this go away and get out of here,
12 right?

13 A. Yes.

14 MR. WHITE: Okay. Nothing further, Your Honor.
15 Tender the witness.

16 THE COURT: Yes, sir.

17 MR. DLUZNESKI: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. DLUZNESKI:

20 Q. I was going to say good morning, but it looks
21 like almost afternoon, Mr. Russell. You and I have met
22 before. I was out at the meeting with Mr. Decker and
23 you all on October 29th, right?

24 A. Yep. And mediation and whatnot, yep.

25 Q. Right. All right. So your attorney started with

1 talking about that October 2019 meeting, so I'd like to
2 start my cross-examination with it as well. You
3 mentioned that during that meeting you identified
4 several issues with Mr. Decker that the landlord needed
5 to take care of, to fix, right?

6 A. No, I didn't say nothing like that.

7 Q. You didn't, you didn't provide Mr. Decker with a
8 list of punch list items during that meeting that you
9 wanted him to take care of?

10 A. No. You just said that I said that, and I didn't
11 say that.

12 Q. Okay. But that happened, did it not?

13 A. Yes. We did go over a couple of things.

14 Q. Okay. And that punch list item, there was a
15 couple of things that you asked Mr. Decker to take care
16 of, he completed within a week after the meeting, did he
17 not?

18 A. He did fix the pass through lock that was broken,
19 yes.

20 Q. Okay. And you did some weather stripping as
21 well?

22 A. They tried to do some weather stripping to get
23 the door to stop leaking, but it didn't work.

24 Q. All right.

25 A. And the roof still leaked in the back office,

1 but...

2 Q. Okay. Did you bring any of those issues to Mr.
3 Decker's attention after that?

4 A. Yes.

5 Q. Okay. And did he fix those after that point?

6 A. No. The roof still leaked.

7 Q. Okay.

8 A. Until the day we moved out.

9 Q. All right.

10 A. From the day we moved in until the day we moved
11 out.

12 Q. Okay. All right. We talked about the ductwork.
13 Okay. Now, during that October 2019 -- I actually think
14 it happened on Halloween in 2019. You pointed out or
15 Mr. Decker saw the ductwork reconfiguration, correct?

16 A. Okay.

17 Q. Did he? Is that correct?

18 A. You said the date. I don't know the date for
19 sure?

20 Q. Okay. But regardless, during that meeting in
21 October 2019, you discussed the ductwork, did you not,
22 inside the building?

23 A. Yeah. That's the time they had saw that it was
24 completed.

25 Q. Yes. Yes. And he wasn't aware of it prior to

1 that, was he?

2 A. Yes, he was.

3 Q. Okay. You brought it to his attention?

4 A. I did that at their request.

5 Q. Okay. You did what at whose request?

6 A. Repaired the AC at his request.

7 Q. All right. You testified about what your, what
8 your guy did. He raised it up, but didn't do it
9 properly, and you told him, you know, just leave it and
10 we'll fix it later; is that correct?

11 A. Correct.

12 Q. Okay. Why did you not fix it at that point if
13 you knew that it wasn't correct?

14 A. Well, because we were just completely gonna
15 detach it and raise the whole thing up. And the way he
16 had raised it was enough for us to get the work with it.

17 Q. All right. And your testimony today is that the
18 landlord was involved in that process. The landlord
19 knew it was going on and was involved in it?

20 A. The landlord wanted it fixed, so we came up with
21 a way between the two of us of how it could be fixed.
22 Got it fixed, and then saw that it was fixed.

23 Q. Okay. So you informed the landlord after the
24 fact that the ductwork had been done, the
25 reconfiguration?

1 A. That it was completed. Not that it had been
2 done. But, I mean, like anything, when it's completed
3 you tell somebody something's completed.

4 Q. Okay. All right. So, we also saw the demising
5 wall during that meeting, right?

6 A. Maybe.

7 Q. The partition wall.

8 A. Okay.

9 Q. We walked the warehouse space.

10 A. Okay.

11 Q. Did we not?

12 A. I think we walked the whole premises.

13 Q. The whole premises. And we saw the, the demising
14 wall between your space and Two Men And A Truck space,
15 right?

16 A. Yeah. Yep. That's one of the items on the list,
17 yes.

18 Q. Okay. All right. So, and Brad told you during
19 that meeting that he wanted to inspect the wall because
20 you indicated that there had been some damage done to
21 the wall, did you not?

22 A. Correct. That's why he was invited to inspect
23 the wall.

24 Q. Okay. And during the October 2019 meeting, you
25 told him, well, I've got my equipment in here, so I'm

1 not going to allow you to inspect the wall right now,
2 right?

3 A. I mean, there was nothing stopping him from
4 looking at it right now, but you said I've got to remove
5 all the racking and shelving and all the packages that
6 it would take to properly inspect it.

7 Q. Okay. So, and you testified that you ---

8 A. And he didn't come up with a solution like, hey,
9 you know, hey, I can -- we can put it down here in this
10 other unit that's empty. Like, he didn't offer an
11 alternate solution. Like, he knew the problem, like we
12 had all this stuff sitting here and it was here. He
13 didn't offer an alternate solution like, hey, I have an
14 empty unit down the street, we can put this stuff down
15 here. Like, we can make this work like this.

16 Q. Okay.

17 A. He realized the problems like, okay, we'll just
18 wait until the end.

19 Q. Okay. And the wall had been hit with a forklift,
20 hadn't it?

21 A. Pallet more likely.

22 Q. All right. A pallet that was being --

23 A. On a forklift.

24 Q. -- on a forklift.

25 A. Yeah.

1 Q. All right. And you told Mr. Decker that, right?

2 A. I don't know what I said that day, but I mean
3 that's what I'm saying today that, you know, that's what
4 the damage is probably from. I don't know how much of
5 it is from us or previous tenants or whatnot, because
6 it's the most common damage to our rental unit.

7 Q. Okay. But nonetheless, the damage to the wall,
8 at least part of it, occurred while your company was in
9 that space?

10 A. Correct.

11 Q. Okay. And Mr. Decker, at the conclusion of that
12 meeting said, that's fine, take care of the ductwork
13 before you move out. Don't do anything else without
14 letting us know what you're doing in our space, didn't
15 he?

16 A. Well, technically, the ductwork was already done.

17 Q. Okay.

18 A. And then we already had a list of what to proceed
19 on, so...

20 Q. Well, Mr. Decker told you, he said, don't do
21 anything else unless you let us know what you're doing.

22 A. Right.

23 Q. Right? And at the conclusion of that meeting,
24 you shook Mr. Decker's hand and promised him that you
25 would abide by his request as your landlord, right?

1 A. Right.

2 Q. Okay. But that didn't exactly happen. Let's
3 talk about what happened after the October 2019 meeting.
4 We have the rollup doors.

5 A. That was on the list though.

6 Q. Okay. But the rollup doors, I believe your
7 testimony was that it was -- it wasn't hit by a
8 forklift, it was hit by pallets that your guys drove
9 into the doors with that.

10 A. I mean, if I, if I would have known we'd be in
11 here today, I could have saved so many pictures and so
12 many e-mails and correspondence that would have all this
13 backed up. And so much information on Lurch that I
14 would make all this so much easier, but I mean, I'm just
15 not a mind reader or a future predictor and I didn't,
16 didn't know. I mean, right now my e-mail is all filled
17 up with nothing but his invoices unfortunately.

18 Q. All right. So how did the damage occur to those
19 rollup doors, Mr. Russell?

20 A. As I said, it's from them staging the day before.
21 And they would get to the back, they would push the
22 pallets a little too far forward.

23 Q. All right. So, so the damage to the rollup doors
24 was caused by Brilin's employees?

25 A. Yes.

1 Q. Okay.

2 A. And that's why we replaced the doors, the equal
3 quality.

4 Q. All right. So, you're obviously familiar with
5 the terms of your lease agreement with Carolina Real
6 Estate, right?

7 A. Yes.

8 Q. Okay. And you signed that agreement, right?

9 A. Yes.

10 Q. When you signed that agreement, you agreed to all
11 of the terms and conditions in that agreement?

12 A. Yes.

13 Q. Okay. All right. One of those terms, if you
14 will, in the lease agreement, is any repairs that
15 exceeded \$3,000 had to be approved in writing by the
16 landlord. Do you remember that?

17 A. Correct.

18 Q. Okay. If you'll turn to Defense Exhibit 1 for
19 me. Now, Defense Exhibit 1 is the invoice from
20 Southern, the company that you hired to replace the
21 garage doors, right?

22 A. I'm sorry. Okay, yep.

23 Q. Is that correct?

24 A. Yep.

25 Q. Okay. And I understand that one of your concerns

1 in this case is the, the invoice or contract for the
2 doors that we submitted from Overhead Doors; is that
3 correct?

4 A. Uh-huh.

5 Q. Okay. Now, even if we look at the expense for
6 the two doors that you were going to have installed,
7 \$4943.00, that exceeds the \$3,000 limit in the lease
8 agreement, right?

9 A. Okay.

10 Q. Okay. And pursuant to that, you had to obtain
11 written consent to put these doors in from CREH, did you
12 not?

13 A. Correct.

14 Q. Okay.

15 A. We tried to.

16 Q. Okay. Why did you want to install these doors
17 from Southern, as opposed to the ones that CREH
18 proposed?

19 A. Because I was required to by my lease to put it
20 back to like condition.

21 Q. Okay. All right. And you believe that these
22 doors in the Southern invoice were apples to apples,
23 compared wit the rollup doors that were already there?

24 A. Same manufacturer, same thickness of steel, same
25 insulation, same color, same operation, they look the

1 same.

2 Q. All right. So, and when you provided us with
3 this invoice, you wanted a response quickly as to
4 whether or not we approved the invoice, correct?

5 A. I mean, I would have expected a response right
6 away, but I do believe we waited a long time.

7 Q. Okay. All right. And would it surprise you that
8 the reason that we wanted to take some time to look into
9 this was we wanted to research the doors that you wanted
10 to put onto our building?

11 A. I'd say a week would be a reasonable time. But
12 like anything over like a month would not be.

13 Q. All right. So at the time that the doors were
14 installed that Southern did the doors, you had not
15 obtained CREH's approval to have them done, did you?

16 A. Correct.

17 Q. Okay. And nonetheless, you proceeded with the
18 work. The new doors were installed, the old ones were
19 taken off, correct?

20 A. Correct.

21 Q. All right. What did you do with the old doors
22 that were removed?

23 A. They were probably taken to a recycling center.
24 I don't know.

25 Q. Okay. Did you offer them to your landlord CREH?

1 A. Why would I?

2 Q. Okay. CREH, after the doors were removed, made
3 multiple requests to you for the return of the damaged
4 doors that were moved, didn't we?

5 A. After they were gone, yes.

6 Q. Okay. All right. And isn't it true that until
7 your deposition in this case, you didn't tell us what
8 happened with the doors?

9 A. I'm not sure. As soon as we asked for them, they
10 told them they were already gone and they were in the
11 dump.

12 Q. All right. So the doors that were removed were
13 CREH's personal property, right?

14 A. Correct.

15 Q. All right. They came off of CREH's building.
16 What made you think that we might not want those doors
17 for whatever purpose? To recycle them ourselves or to
18 do whatever we deemed appropriate with them?

19 A. I mean, typically it's not up to you what happens
20 to the building, because I'm the one replacing it, I'm
21 the one responsible for it.

22 Q. Okay. It's not up to us, but it's our property.

23 A. But it's up to me to replace it.

24 Q. All right.

25 A. It's my responsibility.

1 Q. All right.

2 A. If there was only one door we wouldn't be talking
3 about it. We're only talking about it because it's two
4 doors and it's over the \$3,000. If I could have -- I
5 could have -- I could have been sneaky and just had them
6 send two separate invoices, you know? And then that's
7 under your \$3,000 rule. But, you know, that would be a
8 way around it. You know, that would have been two
9 separate repairs, but I mean, that's not the way I am.
10 So, I mean, it's the lesser of two evils. Do I break
11 the rule to not get your approval or do I break the rule
12 of not putting the place to like repair? You know, it's
13 more damaging not to put the place back to like it's
14 supposed to be.

15 Q. Okay. All right. So, you just testified that
16 you were faced with a choice. And one of those choices
17 was to break the rule and not get CREH's approval before
18 putting these doors in?

19 A. Yeah. After non-compliance, you know,
20 cooperation from you guys. You guys did not want to
21 resolve the issue.

22 Q. All right.

23 A. And, you know, I mean, Brad sat here and said
24 today about, well, just give us that money and I'll put
25 it towards my newer doors. You guys, you know, in a

1 month's time never responded back and said, hey, what
2 about if we do this? Not until after it was done did
3 you guys mention that.

4 Q. All right. Lets talk about -- let's move off the
5 rollup doors for a moment. Let's talk about the
6 temporary repairs to the demising wall. And I'm gonna
7 jump around a little bit as well. Now, obviously
8 there's two sides to the wall. Which side of the wall
9 was repaired first?

10 A. The Two Men And A Truck side.

11 Q. Okay. Let's turn to ---

12 A. That's the only side that was repaired by us.

13 Q. Okay. Let's turn to Defense Exhibit 15.

14 A. Okay.

15 Q. All right. Are you there?

16 A. Yep.

17 Q. All right. Defense Exhibit 15 is the invoice
18 from W&L Services, right?

19 A. Yes.

20 Q. And this invoice is for the repairs on the Two
21 Men And A Truck side of the demising wall, is it not?

22 A. Correct.

23 Q. Okay. And you testified about Wayne Schulte's
24 involvement in that process. Who called W&L Services
25 and lined up the work?

1 A. Craig.

2 Q. Craig did, okay. And Craig instructed W&L
3 Services of when to be there to start the work, didn't
4 he?

5 A. When to meet Wayne there, correct.

6 Q. Okay. And so, at least in that, the scheduling
7 part of this, we're in agreement that your warehouse
8 manager, Craig King, is the one who orchestrated that?

9 A. Coordinated it with Wayne, yes.

10 Q. All right.

11 A. And with Two Men And A Truck side, it took all
12 three of us to coordinate it.

13 Q. Okay. How long -- how many days did this repair
14 work take?

15 A. Not more than two.

16 Q. Okay. So, and you testified what Wayne was --
17 was he inside the warehouse when this work took place?

18 A. In and out all day.

19 Q. Okay. Did you hear Craig King's testimony prior
20 to yours that he was out in his -- sitting in his truck?

21 A. Uh-huh.

22 Q. But it's your testimony that he was in and out of
23 the warehouse all day?

24 A. And it was also Craig's testimony that he really
25 didn't pay attention to what was going on because he was

1 really busy on his side of the warehouse and what's
2 going on with all his work.

3 Q. So were you paying attention to see how often
4 Wayne was in and out?

5 A. Yes.

6 Q. Okay. And ---

7 A. Because I have cameras that are set up. If you
8 look to one of the pages of how I turned over the space,
9 that TV is left there with all the remote controls.
10 That's because of all my cameras that are there that I
11 put on the building. I left them there for Two Men And
12 A Truck because they asked me to.

13 Q. Okay. All right. So, so were you there the
14 entire day watching on these cameras?

15 A. Well, technically, my desk sits in front of that
16 TV, so it watches the whole property throughout the day.

17 Q. Okay. So how long -- and I understand that he
18 was coming in and out according to you, but how long
19 would you say he was actually in there?

20 A. I mean, I wouldn't know. I didn't keep a time
21 log on it.

22 Q. Okay. All right.

23 A. Just during the valuable part to get him set up,
24 saying take these pieces off and then they check it, you
25 know? And then put these pieces back on and then mud

1 it. Okay, these are sufficient and we're done.

2 Q. So you actually witnessed Wayne Schulte talking
3 to W&L Services crew, telling them exactly what to do?

4 A. No. At the end, me and him walked it together.
5 And I specifically asked him. I said, okay, is this
6 good? This is done? This is what you need? Yes, but
7 now I need to get on the other side. I'm like, I know,
8 but there's too much stuff in your way. Like, we're
9 gonna have to wait.

10 Q. Okay. So your testimony is that Wayne Schulte
11 said the work looks good, we're good to go?

12 A. Yes. He was the maintenance guy. He was the one
13 responsible for checking it.

14 Q. All right. You were here during his testimony
15 yesterday, correct?

16 A. Yes. I was amazed by it.

17 Q. All right. And he testified that he didn't
18 supervise anything. He was there for maybe 20 minutes.

19 A. Yes.

20 Q. Okay. You heard him say that, as you've
21 admitted, that he did not schedule it, he did not tell
22 them what to do. He was not involved at all in that
23 process.

24 A. Right.

25 Q. You also heard him testify that he did not

1 approve anything. And, in fact, when he looked at it
2 the work was subpar.

3 A. Correct. If it was subpar, then why didn't we
4 come back and fix anything when it was -- I mean, we
5 still had access to the space. We still had plenty of
6 time to touch it up, to do it.

7 Q. Okay.

8 A. Why would nobody go -- why is there no record of
9 anybody ever making a complaint about it? You know, I
10 mean, they could have went back and touched it up, done
11 whatever needed to be done.

12 Q. All right. All right. After these temporary
13 repairs were made, did W&L Services return?

14 A. Just right before we moved out.

15 Q. And what did they do right before you moved out?

16 A. They went through my space and just touched up
17 the drywall.

18 Q. Okay. Did they do any drywall repairs at that
19 point?

20 A. I mean, that's what it is. Like when you move
21 out, you know, you take down all your pictures, all your
22 stuff, your shelves. All this stuff. They just went
23 through and touched up the drywall.

24 Q. But they didn't cut any drywall out during the
25 second visit?

1 A. I don't know exactly what they did, but there was
2 -- their job was just to make the place look whole.
3 Like when you, you know, you move out of your apartment,
4 you know, whatever happens, you know, a kid runs his
5 little remote controlled car into the wall, whatever,
6 like make it whole, make it look like one piece. Get it
7 ready for the walkthrough. Make it look presentable for
8 the landlord, owner, to come through and do a
9 walkthrough.

10 Q. All right. Did W&L Services invoice you for that
11 trip?

12 A. I do not remember.

13 Q. All right. The only invoice that we have is the
14 one from June 2019.

15 A. Yeah.

16 Q. Okay. All right. Let's talk about the flex
17 space of your leased commercial unit. Did you have a
18 dog in there?

19 A. Yes, I had two. Craig every now and then had
20 one.

21 Q. All right. So, in total we're talking about,
22 what, three dogs in the warehouse space; is that
23 correct?

24 A. Yes.

25 Q. All right. Did you talk to the landlord about

1 that and get the landlord's approval to have dogs in
2 that space?

3 A. It's not in the lease term to get approval for
4 it.

5 Q. Okay. Is there anything in the lease saying that
6 you can't have dogs in there?

7 A. There's not anything saying you can't.

8 Q. Okay. But even though there's nothing saying you
9 can't, you didn't get landlord's approval for that?

10 A. No. Do I need his approval to have a plant?

11 Q. No, sir, Mr. Russell. This is cross-examination.
12 I'm asking you questions.

13 A. You were asking me questions about the lease, so
14 I didn't -- I was just seeing how the two went together.

15 Q. Okay. All right. So you didn't talk to the
16 landlord about having dogs in there, right?

17 A. No.

18 Q. And the land -- and the dogs caused damage to the
19 carpet, did they not?

20 A. No. I mean, as construction. As a construction
21 company, we cause more damage to the carpet. Well, not
22 really damage because the carpet's still there today.
23 But, you know, with the red Carolina mud that we have,
24 every time it rained, it would track in and out. And
25 especially when the front would rain and the front would

1 flood in. Then their shoes would come in with the red
2 mud and they would track that right down the hallway, so
3 it would be like a straight trail of mud, you know, red
4 mud down the hallway. So, like every six months to
5 three months we had to have the carpets cleaned, just to
6 keep them nice.

7 Q. All right. Now, you've submitted several
8 photographs of how that interior space looked when you
9 moved out. And this is Defense Exhibit 19.

10 A. Uh-huh.

11 Q. And we heard something during the course of this
12 trial that you painted the walls or had the walls
13 painted, right?

14 A. Yes.

15 Q. All right. Who did that work?

16 A. We did, Brilin Electric.

17 Q. Okay. All right. You didn't hire anyone to do
18 that work?

19 A. No. I mean --

20 Q. Okay.

21 A. -- it's a really small office.

22 Q. Okay.

23 A. Little office and a little bathroom and a little
24 break room.

25 Q. Okay. Now, let's move outside the warehouse

1 space and the flex space for a minute into the parking
2 lot outside, all right?

3 A. Okay.

4 Q. And I want to start with, there's been evidence
5 put on about some damage to the asphalt outside. Are
6 you aware of that?

7 A. Yes.

8 Q. All right. Did you ever have a conversation with
9 Brad Decker or Wayne Schulte or anybody running CREH
10 about employees of yours doing donuts or burnouts in
11 their trucks outside in the parking lot?

12 A. Well, we got reports. It wasn't necessarily in
13 our, like in Brad's building. But, like, the guys from
14 Keller called in because somebody had done donuts in
15 their back parking lot over the weekend. And you could
16 see the donut parking lots. So they called, wanting to
17 know if it was one of our guys because, you know,
18 construction we had one of their guys from 18 to 80.
19 Then they know that we have some guys that are younger
20 and they drive kind of fast cars sometimes. They were
21 saying it was our guys. And it was not, well, that we
22 know of. And at night, we went back and looked and
23 looked at the camera and we could see it didn't match
24 any of their cars. So, we let them see the footage and
25 the issue was resolved.

1 Q. But you haven't told Mr. Decker or comment on
2 this ---

3 MR. WHITE: Objection. I don't know why we're
4 talking about (inaudible).

5 THE COURT: All right. I wasn't going to limit.
6 I've already heard it, so go ahead.

7 MR. DLUZNESKI: And this is my last question
8 about that.

9 THE COURT: All right.
10 BY MR. DLUZNESKI:

11 Q. So you never had a conversation about that
12 behavior with Mr. Decker and --

13 A. And but ---

14 Q. Let me finish the question. So you never
15 commenting to Mr. Decker that I can't really do much
16 about them, they're just kids?

17 A. That was more commenting towards them going fast
18 about the back parking lot, because at that point he was
19 just being such a smart ass. I mean, of course, you
20 know, when we get -- I mean, our numbers are plastered
21 all over our vans. You know, and every van's got a
22 number and then a tag. So every time -- and every van's
23 got a GPS in them. Now we've got over 30 vans. So
24 anybody -- any time anybody calls and complains about
25 them, you know, an employee gets written up. It's very

1 serious, you know? I mean, I pay a ton of money for
2 insurance, so... but there were a couple of complaints
3 where they, in the back of the parking lot where they
4 had drove too fast leaving. So, you know, it's like, of
5 course, you know, we said something and we were still
6 like being like a smart ass about it. I'm like, okay,
7 well, what are you gonna do? They're kids, you know?
8 Like, okay, the conversation's not going anywhere.

9 Q. All right. So talking about the asphalt damage
10 now. And you saw a picture and the jury seen a picture
11 of this is Plaintiff's Exhibit 5 of some asphalt damage
12 in the parking lot outside of the warehouse. Do you
13 remember that?

14 A. Yeah.

15 Q. Okay. This asphalt damage was caused by a
16 forklift operating outside, wasn't it?

17 A. And the big trucks that would come and deliver
18 and turn around. I mean, that's what I contribute it to
19 because all the water would come down that way and
20 trickle there. And that's where the weakest part of the
21 asphalt was.

22 Q. Okay.

23 A. I would contribute it to those two things.

24 Q. Okay.

25 A. And, I mean, it's a good pictures to show, like,

1 how when our -- like when some of the barricades were up
2 there in one row and it blocked off the alley, like that
3 was sufficient to limit the flow of traffic. It wasn't
4 needed to put all the other barriers there in the
5 configuration, you know, like S configuration to make us
6 go around and around, like it shows in the other
7 pictures.

8 Q. All right. So since you mentioned the barrier,
9 the jersey barriers, let's flip back one exhibit to
10 Plaintiff's Exhibit 4. And you talked about -- and it
11 got into this with Mr. King a little bit as well so that
12 there's Brilin's space and Brilin had, had an end unit,
13 right?

14 A. Uh-huh.

15 Q. And then there's an alleyway or a meeting, as Mr.
16 King referred to it as, and then you have Keller USA
17 space, right? Correct?

18 A. Yep.

19 Q. Okay. And down the center of that is property
20 line, the imaginary property line dividing CREH's space
21 from Keller USA space, correct?

22 A. Uh-huh.

23 Q. All right. And down that property line, CREH put
24 these concrete jersey barriers, did it not?

25 A. Yep. They're moved around. They're conformed a

1 couple different ways over the course of the time.
2 Like, if you look back at the last picture we were just
3 looking at, it only shows them up towards the front,
4 which does the same thing as what they're doing now,
5 except for now they're more in a hindrance forum of
6 blocking access to our space.

7 Q. Well, and how they're configured in Plaintiff's
8 Exhibit 4 is due to you, correct? I mean, Brilin was
9 ---

10 A. No. That's just due to the owner, basically like
11 being a bully.

12 Q. All right. But Brilin did move -- after CREH put
13 these jersey barriers up, you all moved them around in
14 the forklift, didn't you?

15 A. Well, the biggest problem was, they would drop
16 the barriers off over the weekend or on Sunday night
17 when we weren't there. So we'd come in Monday to
18 operate business and we'd find these things.

19 So, it wasn't like a coordinated effort of hey,
20 like, this is what we're gonna do, you know? Like in
21 the very, it started off in the very back between the
22 two buildings. They put it down the back between the
23 two buildings, so semis couldn't make that big horseshoe
24 that he was talking about making. Right?

25 So, okay, yeah, that's fine, that's no big deal.

1 And then when they put them across the very front,
2 blocked the trucks from them making a loop around ours.
3 Hey, that's fine. It's no big deal.

4 All right. But then you start putting all these
5 zigzags and everything else in there, that's just,
6 that's a hindrance to our business. You're literally
7 blocking access to our business. And then you're
8 actually narrowing the path that we're going on, on the
9 asphalt and, you know, making the path being the same,
10 instead of giving them a diverse path to go on. You're
11 making the path worse.

12 Q. All right. So when you would come in and the
13 jersey barriers were not exactly where you would have
14 preferred them, did you ever bring that up to CREH?

15 A. In the beginning, you know, we -- still in the
16 beginning, like we still had somewhat of a relationship
17 where we could kind of move them around and coordinate
18 them around, but then it was at the end. It's just
19 like, don't touch them. Da, da, da, da. Like, why is
20 this trailer here in a picture in a courtroom for these
21 people?

22 Q. Okay.

23 A. I mean, explain that to me. Why? Why is this
24 picture here in the trailer?

25 Q. Well, at some point -- well, let me ask you this.

1 A. Uh-huh.

2 Q. Brilin Electric was moving these jersey barriers
3 around with a forklift, right?

4 A. Correct. What did you guys put it there with?

5 Q. Okay. All right. So, this, this trailer that
6 we're looking at in Plaintiff's 4, you all put that
7 there, didn't you?

8 A. Correct.

9 Q. And you put the trailer there and you moved the
10 jersey barriers around, enclosing the trailer, right?

11 A. Correct.

12 Q. That wasn't something that CREH did.

13 A. Nope.

14 Q. Okay. And you didn't ask CREH before you did
15 this, did you?

16 A. Yes, we did.

17 Q. You asked them if you could put the trailer ---

18 A. Yes. We were worried about the trailer being
19 overnight. We needed to make sure it would be secured
20 because it wouldn't be stolen, because we've had them
21 stolen overnight, like we've tried to block them in
22 behind vans and whatnot. We really had them literally
23 have a \$7,000 brand new trailer.

24 They grabbed it with a chain, smashed it, drug it
25 over to the side and stole it. We had it all on camera,

1 never got it recovered. So I asked for permission to
2 move the barrier, back it in with a regular truck for
3 one night, and then the next day go return it when
4 they're open, and here we are now. That was
5 unacceptable.

6 Q. Okay.

7 A. In my eyes it was completely acceptable, you
8 know.

9 Q. All right. Now, these bricks. The bricks on the
10 side rollup door leading to the ramp, all right? We'll
11 get to the concrete pad in a moment, but the bricks
12 above that door, we heard some testimony yesterday from
13 Mr. Broadway regarding the repairs that you asked him to
14 make to that -- those bricks, correct?

15 A. Yes.

16 Q. And all you asked Mr. Broadway to do was to
17 replace the chipped or broken brick, right?

18 A. What I did is I was told that there was broken
19 bricks. So I found the largest and best brick company
20 in the Charlotte area and consulted them and told them I
21 had some broken bricks I needed replaced. And I trusted
22 them to make the repair that was necessary.

23 Q. All right. You didn't tell them how that damage
24 happened, did you?

25 A. Do I know? No.

1 Q. Okay. All right. Let's look at Defense Exhibit
2 4. Defense Exhibit 4 is a repair invoice from the McGee
3 right?

4 A. Correct.

5 Q. And the work description is repair broken brick
6 was at garage door, right?

7 A. Correct.

8 Q. And the price for that, that you paid was \$280,
9 right?

10 A. Correct.

11 Q. You did not ask or request that McGee Brothers do
12 any kind of inspection outside of repairing the broken
13 bricks, right?

14 A. I gave them no budget, no limit, no nothing. I
15 just said, I'll need you to come out here and take a
16 look at this and I need you to get it resolved and I
17 need it to be perfect.

18 Q. All right. You never told them anything about a
19 lentil or any other structural components behind the
20 bricks, did you?

21 A. He actually looked at it. His report back to me,
22 that everything was completely fine. And there was
23 basically like that it was not big deal. I don't
24 remember his words exactly, but I remember being like,
25 okay good, like that's a relief.

1 Q. All right. Let's look at Plaintiff's 7.

2 Plaintiff's 7. Is the concrete pad at the end of the
3 ramp, leading down from the garage door we were just
4 talking about, right?

5 A. Yep.

6 Q. Okay. And you took it upon yourself to do this
7 patch, didn't you?

8 A. Yes.

9 Q. All right. And you testified on direct that as
10 you sit here today, you can't remember any
11 specifications. You can't remember if there was any
12 rebar used or ---

13 A. No, there was rebar used.

14 Q. Okay. How much?

15 A. I mean, it was drilled in like every foot. Like
16 one-foot die rods or something like that. I remember
17 when we met, the four of us. I remember giving you guys
18 a description of how we did it, but I don't remember
19 now, three years later. But it was to prevent further
20 harm to the asphalt.

21 Q. Okay. Why did you not incorporate some amount of
22 asphalt into this patch?

23 A. Because then it would have been a bad patch.

24 Q. Why would it have been a bad patch?

25 A. Because that's when -- I mean, you can't really

1 tell from this picture, but I mean that's where the --
2 if the slope is meeting like this, and then when the
3 water runs down like this, when water is on asphalt and
4 is heavy soaked with water, the asphalt is, it makes the
5 asphalt weak. So when the weight of the forklift comes
6 down, the wheels come down like this, and the other
7 wheels come down, then that makes an indentation on the
8 asphalt:

9 Q. Okay. Now, while we're on Plaintiff's Exhibit 7,
10 you testified on direct that when the jersey barriers
11 went up, it restricted you. You couldn't access this
12 concrete ramp with the jersey barriers in place, right?

13 A. This is one of the pictures where it was like, it
14 was like in good working order. Like we had been moved
15 to a good working order.

16 Q. All right. And this is where CREH placed those
17 jersey barriers.

18 A. Well, this is us.

19 Q. What was you?

20 A. This is us redoing a configuration to make it in
21 working order.

22 Q. Okay. So, this does not show where CREH placed
23 these jersey barriers down that property line?

24 A. No. I -- um, I'm 100 percent gonna say I don't
25 remember at that point.

1 Q. Okay.

2 A. They were moved so many times in so many
3 different ways, it's ridiculous.

4 Q. All right. And we're talking ---

5 A. It should have been put up one time and that was
6 it.

7 Q. When we're talking about moving them, people them
8 moving them were you and your employees, right?

9 A. Correct. Warehouse guy. Either Robert or Craig,
10 yeah.

11 Q. All right. So if we look at Plaintiff's 7,
12 before the jersey barriers went up, how were you
13 accessing the side door? Were you using a forklift?
14 Were you using a truck? What were you using to access
15 it?

16 A. We always used a forklift from day one.

17 Q. Okay. All right. Now we're looking at
18 Plaintiff's 7, it appears, and correct me if I'm wrong,
19 that that's plenty of space for a forklift to get down?

20 A. Correct.

21 Q. Okay. So, in fact, the jersey barriers that you
22 claimed that Craig King claimed were impeding your
23 ability to conduct your business, that's not true, is
24 it?

25 A. We don't know what timeframe this was taken or

1 what timeframe like he was referring to. Like, if you
2 look back at the other picture where they're all
3 zigzagged around, like back where the trailer was, then
4 that's what he was talking about. And I can show you a
5 picture like back in the day where they were never
6 there. Why don't you go look on Google Orbits, they
7 were probably never there, so...

8 Q. All right. All right. So let's talk about --
9 let's jump ahead to April of 2020 when you vacated the
10 space. You testified on direct that you moved out about
11 a month prior to when you were obligated to, right?

12 A. Yes.

13 Q. All right. And that your lease ended, just to
14 refresh the jurors minds, the lease ended on April 30th,
15 2020, correct?

16 A. Something like that, yeah.

17 Q. Yeah. And April 2020 was the height of the COVID
18 pandemic, right?

19 A. The beginning of it.

20 Q. The beginning of the COVID pandemic?

21 A. Yeah. Right at the beginning of it, yeah.

22 Q. Right. And during that time period, there were
23 lock downs throughout the country that were in place by
24 a government entity, right?

25 A. I don't think any of them had started yet.

1 Q. Okay. All right. But nonetheless, people were
2 dying at that time of this, of this virus, right?

3 A. Okay.

4 Q. All right. So, when we're talking about the
5 final walkthrough inspection, one of the things that we
6 said, CREH said is, we don't feel comfortable doing that
7 because of COVID.

8 A. Which kind of blew us away, because so that means
9 that you're uncomfortable in going and walking in your
10 own warehouse empty by yourself. So you weren't capable
11 of going and walking the space and giving us a list of
12 what to do, is what you were saying.

13 Q. We would have been in there with you, correct?

14 A. You didn't have to be. If you were scared of
15 COVID, we could have waited outside. You could have
16 went in, then we could have switched and we would have
17 went in and looked. I mean, we could have stood
18 ten-foot away from each other. I mean, the place is
19 3,000 square feet. I mean, COVID is still going on. If
20 you're that scared of COVID, then why are we here now?

21 Q. Let's talk about Wayne Schulte a little bit more.
22 Wayne Schulte was, you referred to him as the
23 maintenance guy. I think that's how Craig King referred
24 to him. We refer to him as CREH's property manager. He
25 was the guy coming in and out, making sure that

1 everything was okay, correct? That was his job.

2 A. He was introduced to us as the maintenance guy.

3 Q. Okay. And what types of things would he be on
4 your property to do?

5 A. He was supposed to be there just to service the
6 air conditioning.

7 Q. Okay. You understand he was the boots on the
8 ground from CREH?

9 A. Well, I mean, maybe that's one problem, like a
10 mis-introduction in the beginning. But then still, the
11 contract, our lease says that he's supposed to have a
12 scheduled appointment to come in.

13 Q. Okay.

14 A. And he shouldn't be there more than, maybe once a
15 month would even be an overkill. I think maybe once
16 every six months we should see him, maybe.

17 Q. But you understand that as the maintenance person
18 or the property manager for CREH, one of Wayne's job
19 responsibilities was to inspect the property and make
20 sure everything was okay, correct?

21 A. Correct. But not like -- so, his demeanor was
22 when he came, like, I just don't understand. Like he
23 gets heated very easily, right?

24 So, when he would come across about a request to
25 do something or we couldn't do something or don't do

1 that, it wasn't like, hey, guys, we need to do this
2 instead of this. It's like a screaming, like, you can't
3 do that. La la la. Well, of course, like the younger
4 guy I had running the warehouse before Craig, he would
5 automatically scream back at him, you know.

6 I'm like, so that's why it didn't work out with
7 him, is he didn't have the temper to deal with these
8 people, but -- because you can't have that in a working
9 relationship. But, I mean, you can't approach a
10 business and like demand that you're gonna do something
11 when we're using the space freely, like we're supposed
12 to be able to do.

13 Q. Okay. And you testified one of the things that
14 caused you concern when Wayne was in his truck taking
15 pictures of the, of the area, correct?

16 A. Yes.

17 Q. All right. Was he ever in the office space
18 taking pictures?

19 A. I mean, obviously yes, because you have a picture
20 up here of one of my dog beds in my office. And my dogs
21 were in my office. When I was there, they were with me
22 at all times and they had a gate. I had a gate on my
23 door, so they stayed in my office.

24 Q. All right.

25 A. So they didn't just like roam freely around the

1 place.

2 Q. And the picture of the dog bed that you refer to,
3 you have no idea when that was taken, do you?

4 A. No. So, I mean, obviously he was walking around
5 taking pictures sneakily every time he was in there.

6 Q. But did you ever see him taking pictures in the
7 office?

8 A. No.

9 Q. Did any of the office staff tell you, hey, he's
10 in here taking pictures?

11 A. No.

12 Q. Okay. Did he ever go into the warehouse and take
13 pictures?

14 A. Not that I know of.

15 Q. All right. So, it sounds like Wayne's picture
16 taking was limited to outside in the parking lot from
17 his truck, is that correct?

18 A. Well, I mean, your book shows differently.

19 Q. Is that correct?

20 A. No.

21 Q. Based on your knowledge, your personal knowledge?

22 A. Not from what I've seen in your book, no.

23 Q. Okay. Did you ever see Wayne take any pictures
24 in any locations other than from his truck out in the
25 parking lot?

1 A. No. I never saw him take any pictures at all.

2 Q. Okay. All right. And then he would come in and
3 do inspections from time to time, would he not?

4 A. Well, here's the thing. He didn't really say he
5 was there to do an inspection, he was just there, like,
6 walking through. Like, he didn't really announce that
7 he was there. Like, I'm here to do an inspection and
8 I'm here to do this. Like, he would just linger around.

9 Q. So, so what ---

10 A. And then when he saw something he didn't like, he
11 would demand, like, you can't do that or da da da.

12 Q. So what? So your testimony is he would just show
13 up unannounced and just walk into the building?

14 A. That's what I've been saying the whole time.

15 Q. Okay.

16 A. And that's what Craig said.

17 Q. Okay. All right. Was he ever there to -- how
18 long would he stay?

19 A. I mean, it just depended. I mean, a lot of times
20 it was until I got there. And I told him, hey, you have
21 to leave. You know, you need an appointment to show up
22 here. Oh, I don't need no appointment. I can come and
23 go as I please. I can do whatever I want.

24 Q. You understand that he worked for the landlord,
25 right?

1 A. It doesn't matter. He's supposed to have an
2 appointment.

3 Q. All right.

4 A. You're supposed to be able to use the space
5 freely without, you know, harassment.

6 Q. All right. So, would he ever come in to do
7 repairs?

8 A. He'd come in once a year to service the air
9 conditioner.

10 Q. Did he do any repairs other than that?

11 A. Himself no.

12 Q. Okay. Did you ever witness any of your employees
13 yell at him to get off the property?

14 A. No. I always found out about everything
15 afterwards. He said, she said arguments. And it was,
16 he yelled at me first, he yelled at me first.
17 Kindergarten junk.

18 Q. Did you ever tell Wayne to get off the property?

19 A. Yes.

20 Q. How many times?

21 A. I cannot remember how many times. I told him
22 you're causing problems, you need to leave. I don't
23 need to go anywhere, this is our property. I'm like, I
24 know, but you, you need to just go to the other end of
25 the property, do whatever you've gotta do. You don't

1 need to be here in front of us harassing our employees.
2 Let them do their job so they can go on about their
3 business, you're distracting them.

4 Q. Did you ever call law enforcement on him? You
5 personally?

6 A. Yes.

7 Q. How many times?

8 A. Me, once, personally. And I think the office
9 probably twice. I think Craig once and then the girls
10 in the office once.

11 Q. What precipitated your contact to law
12 enforcement?

13 A. I mean, it always ended up being the same thing.
14 It was like a civil matter, they can't do nothing.
15 Like, they own the building, they lease the space. He
16 just needs to keep his distance and we need to keep our
17 distance, as long as nobody's, you know, fighting with
18 each other or whatever. You know, it's okay.

19 Q. All right. So, the lease agreement that you had
20 with CREH obligated you to return the property to CREH
21 in as good a condition as you found it basically,
22 correct?

23 A. Correct.

24 Q. And do you believe that you did that?

25 A. I believe that within 150 percent we tried to.

1 Q. Okay.

2 A. We had two items left that we e-mailed you guys
3 30 days prior to moving out, and those could have been
4 resolved before we moved out.

5 Q. All right. Let's look at Plaintiff's 14.
6 Plaintiff's 14 is a side view of the demising wall,
7 correct?

8 A. Correct.

9 Q. And do you see the yellow line down there, the
10 yellow vertical line. It's a straight line in front of
11 the wall?

12 A. Correct.

13 Q. Does that wall look to be plumb to you?

14 A. I'm not a fan, but no.

15 Q. Okay. And this is the condition that you left
16 that wall, correct?

17 A. No. This is the condition I left the wall for
18 inspection so we could figure out how to fix it, with
19 direction from you guys.

20 Q. So when you had all of your equipment, inventory,
21 everything else moved out in the beginning of April
22 2020 ---

23 MR. WHITE: Your Honor, I have an objection. Can
24 we approach?

25 THE COURT: All right.

1 (Bench conference was held off the record.)

2 BY MR. DLUZNESKI:

3 Q. All right. Mr. Russell, exhibit, Plaintiff's
4 Exhibit 14 is -- we've gotten witness testimony that
5 this is on the Two Men And A Truck side, okay?
6 Accurate?

7 A. Correct.

8 Q. Okay. All right.

9 A. Some of that was taken after we left.

10 Q. What was taken after you left?

11 A. That picture.

12 Q. Okay. Do you have any photographs of how the
13 wall looked at the time that you left?

14 A. Only on my side.

15 Q. Okay. All right.

16 A. Which are in the back of the book.

17 Q. Okay. When the temporary repairs to the wall
18 were being made, did you have any occasion or any work
19 on the wall that were being made on your side? Did you
20 have any occasion to look at the condition of the metal
21 studs inside the wall?

22 A. In the -- on the Two Men And A Truck side?

23 Q. On either side.

24 A. No.

25 Q. Okay. When was the first time that you had a

1 chance to observe those metal studs?

2 A. When we visited with the engineer and Nathan.

3 Q. Very briefly, Mr. Russell. The site meeting that
4 you had at the wall with our expert, Mr. Robinson and
5 your counsel present, you testified about that on
6 direct, right?

7 A. Yeah.

8 Q. And you had your expert witness there to look at
9 the condition of the wall as well, right?

10 A. Yes.

11 Q. Okay. After that point -- and I understand that
12 you testified that Mark Robinson was ready to go with
13 the materials to start the repairs. Did you ever ask
14 him if you could participate or assist in those repairs?

15 A. As to who?

16 Q. As to Brilin. Assist in any other repairs to the
17 wall or shouldering the expense related to the wall
18 repairs?

19 A. To Mark or to who?

20 Q. Either to Mark or us or anybody else?

21 A. I mean, all communications went through
22 attorneys. And that really didn't seem like a viable
23 option.

24 Q. All right.

25 A. I mean, the option would have been that when you

1 all went and looked at the wall and you saw that it
2 needed to be opened up, that's when you would have
3 called us and said, hey, this wall needs to be opened
4 up, do you want the chance to come open it up before we
5 do?

6 Q. Okay. But just for the jury and for the record,
7 did you ever offer to us to participate --

8 A. The job was --

9 Q. -- in either ---

10 A. The job was ---

11 Q. Mr. Russell, if you could let me finish my
12 question.

13 A. Uh-huh.

14 Q. Did you ever offer to assist or participate in
15 any of the wall repairs at any point?

16 A. Your contractor was already hired and the job was
17 already started, no.

18 Q. You did not. All right.

19 Thank you, Your Honor.

20 THE COURT: Any redirect, limited to what he went
21 into?

22 MR. WHITE: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. WHITE:

25 Q. When you rented that space, it was critical, a

1 critical thing for why you rented that premises was that
2 side garage door because it has the ramp, right?

3 A. Correct.

4 Q. All right, last question. What kind of dog did
5 you have?

6 A. I had an English bulldog, which was like at the
7 time like 38 pounds. And a French bulldog, which is,
8 she was only like 12 pounds.

9 Q. All right. I know the jury was dying to know
10 that answer for a long time. I have no further
11 questions.

12 THE COURT: All right. Thank you, sir.

13 Ladies and gentlemen, given the time that it is
14 and how much that you've worked today, we're gonna take
15 a lunch break. I need to remind you not to have any
16 discussions among yourselves about anything involving
17 the case, and do not do any discussions or do any type
18 of independent research.

19 I'm gonna ask, if you would, be back in the jury
20 deliberation room at 2:30 and we will resume. Just keep
21 the books there in the chair or on the floor and we'll
22 get you back just after lunch.

23 MR. WHITE: Your Honor, I don't know if you want
24 to put on the record, we don't have anything else.

25 THE COURT: Okay. You want to rest, then the

1 defense has rested. Thank you, ladies and gentlemen.

2 (Jury leaves courtroom at 12:55 p.m.)

3 All right, gentlemen. All right, so you've now
4 rested. Mr. White, I appreciate your willingness and
5 enthusiasm to want to help the Court, but I have reasons
6 why I do things that I don't share with people.

7 MR. WHITE: All right.

8 THE COURT: So, try not to speak after I have
9 asked the jury to retire. You know, if you want to have
10 -- and I appreciate your willingness, but there are
11 reasons why I do the things that I do that probably you
12 all don't know about, okay?

13 MR. WHITE: Good to know, Your Honor.

14 THE COURT: Okay. All right. Now, he's rested.
15 Are you going to call anybody in reply?

16 MR. DLUZNESKI: We are not.

17 THE COURT: Okay. All right. Then what I need
18 from you all, is we've been working on jury charges.
19 We've got to have a charge conference. All right. How
20 far are we with those?

21 LAW CLERK: (Inaudible.)

22 THE COURT: Okay. We've got to find a printer,
23 because I'd like to give you all of these to take a look
24 at during your lunch break. Hang on one second. Let me
25 see where we stand.

1 Okay. Go ahead and let her send them to the
2 clerks. I'm gonna need two copies. One for each of the
3 lawyers. These are drafts. They're based on what you
4 all have -- well, wait a minute. Does anybody have any
5 motions?

6 MR. DLUZNESKI: We have a motion for directed
7 verdict.

8 THE COURT: Okay. Let's do the motion. All
9 right. Yes, sir.

10 MR. DLUZNESKI: Thank you, Your Honor. At this
11 time, the plaintiff would move for a directed verdict as
12 to the defendants cause of action for violation of the
13 Unfair Trade Practices Act.

14 As the Court's aware, one of the elements of --
15 to establish a violation of the South Carolina Unfair
16 Trade Practices Act is that the plaintiff, in this case,
17 defendant Brilin Electric must show that the unfair or
18 deceptive act affected the public interest. And that's
19 Wright v. Craft, 372 S.C. 1. It's a Court of Appeals
20 case from 2006.

21 In this case the plaintiff is entitled to a
22 directed verdict in its favor because the defendant is
23 unable to establish that the alleged unfair and
24 deceptive acts by the plaintiff, CREH, affected
25 negatively impacted upon the public interest.

1 Now, with regard to this element, our state
2 Supreme Court has offered some guidance as to when a
3 defendant's actions are deemed to, quote, affect public
4 interest. Specifically in Daisy Outdoor Advertising
5 Company, Inc., versus Abbott. And that's 322 S.C. 489.
6 It's a Supreme Court case from 1996.

7 The Court observed that, quote, since 1986, South
8 Carolina courts have required that a plaintiff bringing
9 a private cause of action under an Unfair Trade
10 Practices Act violation allege and prove that the
11 defendant's actions adversely affected the public
12 interest.

13 And the Supreme Court went on to say, borrowing
14 from a standard fashion by the Washington Supreme Court,
15 the Court found that proof of the potential for
16 repetition of a defendant's action satisfies the public
17 interest requirement of the Unfair Trade Practices Act.

18 In other words -- and these are the words of our
19 state Supreme Court. In other words, after alleging and
20 proving facts demonstrating the potential for repetition
21 of the defendant's actions, the plaintiff has proven an
22 adverse effect on the public interest.

23 The Court observed that, quote, plaintiffs in
24 prior cases generally have shown a potential for
25 repetition in one of two ways. First, by showing the

1 same kind of actions occurred in the past. That's
2 making it likely that they will continue absent
3 deterrence; or, two, by showing the companies procedures
4 create a potential for repetition of the unfair and
5 deceptive acts.

6 This case, Your Honor, involves a single,
7 private, leased dispute between the plaintiff, CREH, and
8 the defendant, Brilin Electric. The defendant has put
9 on no evidence to show or establish that the same kinds
10 of actions that occurred in this case, that the
11 defendant is complaining of, have occurred in the past.

12 Additionally, there's been no evidence presented
13 that suggests that any of the plaintiff's company
14 procedures create a potential for repetition of the
15 allegedly unfair and deceptive acts that the defendant,
16 Brilin Electric, complains of.

17 As a result, the defendant has not established
18 all the essential elements of a violation of the South
19 Carolina Unfair Trade Practices Act against the
20 plaintiff, and so the plaintiff is entitled to a
21 directed verdict in its favor under that cause -- that
22 counterclaim. Thank you.

23 THE COURT: So you've got two points, if I heard
24 you correctly. The public interest requirement, and
25 then the repetition requirement, or both of those

1 combined together?

2 MR. DLUZNESKI: Those are both combined, Your
3 Honor. The Court in Wright v. Craft had as an element
4 for establishing a violation of the Unfair Trade
5 Practices Act that it has to adversely effect the public
6 interest.

7 Our state Supreme Court clarified that in a
8 subsequent case to say that plaintiffs in prior cases
9 generally have shown that. Well, let me backup.

10 One of the ways that you can show that conduct
11 adversely effects the public interest is by showing that
12 it's capable of repetition. And two of the ways that
13 the South Carolina Supreme Court has determined that you
14 can show that conduct is capable of repetition is by
15 showing either the same kind of actions that have
16 occurred in the past, or that the defendant's company
17 policies create a possibility for those similar acts to
18 occur in the future.

19 So the public interest component is an element of
20 unfair trade practices. The potential for repetition is
21 what our state Supreme Court has said has to be
22 demonstrated in order to satisfy that element.

23 THE COURT: All right.

24 MR. DLUZNESKI: Thank you.

25 THE COURT: Thank you.

1 MR. WHITE: Your Honor, I will turn you to
2 paragraph 119 of our amended counterclaim. If CREH or
3 other lessors of real property or chattel goods are
4 permitted to compel lessees into upgrading leased
5 premises or improving the chattel goods under the guise
6 of required repairs at the conclusion of every tenancy
7 or lease period, such unlawful practices would have an
8 adverse impact on the public interest.

9 We've presented evidence that this plaintiff
10 submitted fraudulent, fake invoices and tried to bill
11 them to our client. We have shown a pattern that is
12 most certainly capable of repetition in the fact that
13 multiple times when there were repairs that needed to be
14 made, this plaintiff wanted their preferred vendor to do
15 a repair, above and beyond like kind.

16 You heard Mr. Hemphill talk about that. When he
17 talked to the plaintiff, he wanted slat doors. He
18 wanted slat doors, but that's not what was on there.
19 We've literally sourced a lifetime door to replace it.
20 We had a pattern of the garage door quotes were higher
21 from the plaintiff than ours. The brick quote was hire.
22 The asphalt quote was higher, also because the asphalt
23 material that they were gonna put in in the patch was 50
24 percent greater with both the gravel and the asphalt
25 than what was previously there.

1 So there is a pattern of up-charging this
2 defendant, this tenant, this commercial tenant, that he
3 could most certainly do with all his other commercial
4 tenants. And there are no policies to show that are in
5 writing for this plaintiff because this is 100 percent
6 solely unaccompanied by Mr. Brad Decker. And we've
7 heard testimony about he takes a lot of care and
8 control. He wants to be in charge. He wants -- that's
9 why he's got his property manager going over there
10 harassing people every other day and why he wants to be
11 involved and he wants to have his say in how
12 everything's done regardless of what the leases say.

13 And that's why we brought this claim from the
14 outset, Your Honor, because this is a -- this does
15 adverse the public -- adversely effect the public
16 interest. We just can't have commercial landlords going
17 around trying to screw over commercial tenants like this
18 in this state. That's bad for business. Thanks for
19 hearing us out. Thank you, Your Honor.

20 THE COURT: Looking at the evidence in the light
21 most favorably to your client, you've articulated, the
22 way I heard it, you've articulated the elements or the
23 allegations that you feel like that you've established
24 as part of this lawsuit to support your suit, your side
25 of the suit. Now, how does that get, though, to being

1 potential of repetition to others, other than, other
2 than what? What is it that you would argue as part of
3 this case that meets that public interest requirement or
4 the possibility of repetition other than it could
5 happen? Because if it could happen, I don't think is
6 gonna get you across that line.

7 MR. WHITE: I would say it has happened because
8 we have repetition in this case, Your Honor. We have
9 multiple instances of where he was trying to get better
10 than what he got. I mean, we have a pattern in this
11 case that he can do any other time.

12 I think that I would have a much weaker argument
13 if we had one situation here. Hey, you wanted the
14 garage doors that you wanted that are better than ours.
15 But no, we've got multiple instances. We've got the
16 garage doors. We've got the bricks. We've got the
17 asphalt. And then they wouldn't do the walkthrough
18 because they wanted to do their preferred vendor on the
19 demising wall and all that.

20 And it typically is kind of a res ipsa loquitur
21 type thing in that it just speaks for itself. And it's
22 as simple as that, in addition to making up fake,
23 fraudulent invoices. If he can make a fake, fraudulent
24 invoice for his company Decker Inspections, so he can
25 bill for the company CREH when all you need is a word

1 processor, then he can certainly do it with any of his
2 other commercial tenants.

3 THE COURT: Any reply?

4 MR. DLUZNESKI: Yes, Your Honor. Your Honor,
5 let's just go down the issues that Mr. White brought up.
6 As far as these alleged fake invoices go, Mr. White
7 questioned at least Mr. Brad Decker about those alleged
8 fake invoices and Mr. Brad Decker denied that they are
9 fake, that they were fraudulent invoices.

10 So, as far as that goes ---

11 THE COURT: Well, I got to -- at this juncture,
12 I've got to view the evidence in the light most
13 favorably to him.

14 MR. DLUZNESKI: Right.

15 THE COURT: So, the fact that there's a dispute
16 at this juncture, I've got to resolve the factual
17 dispute to the other side.

18 MR. DLUZNESKI: Well, and I think that the
19 biggest point as far as that goes, is that the
20 defendant's allegations related to unfair trade practice
21 and the potential for repetitions are just for this
22 case. Mr. White cited instances in this case where he
23 believes that it may be capable of repetition, but it's
24 repetition in this case.

25 The defendant, Brilin Electric, has not brought

1 in any other commercial tenants to say that this kind of
2 conduct has happened in their leases. Nobody else has
3 testified about this kind of -- of these kind of alleged
4 behaviors occurring in any other case. Mr. Brad Decker
5 just brought to my attention as well that he has never
6 been in court before over a commercial landlord/tenant
7 dispute. So that speaks to the fact that contrary to
8 what the defense argued, that the allegations in this
9 case are not capable of repetition because we have
10 absolutely no other commercial tenants who have made any
11 type of allegation in court against CREH. Thank you.

12 MR. WHITE: Very briefly, Your Honor?

13 THE COURT: Briefly.

14 MR. WHITE: I'm gonna ask you not to consider any
15 of that. It's not evidence before you. And I've also
16 had the one ___ invoice, where they billed and created
17 an invoice for us in May of 2018 that was for \$2,625,
18 and then seven months later, got the preferred vendor to
19 magically -- to create an invoice to them that just
20 happened to be for the same exact amount. And we don't
21 have to show repetition. We have to show the potential
22 for repetition. And here we have a 2018 invoice, 2019
23 invoice, 2020. We have years of this pattern happening
24 against us and it's as easy as just saying write up your
25 invoice in your invoice system. You'll get your

1 preferred vendor. Hey 2625, plug that into your invoice
2 and send it my way. It was easy as that. So it is
3 absolutely capable of repetition for other commercial
4 tenants. And that's why it impacts the public interest.
5 We cannot have commercial landlords taking advantage of
6 commercial tenants in the state of South Carolina.

7 THE COURT: Do you want to close? You have the
8 burden of proof.

9 MR. DLUZNESKI: Yes, Your Honor. And I would
10 just say that the defense is speculating. They're
11 speculating about what could happen in other cases in
12 the context of other lease agreements. The Court's
13 heard no, no evidence today that any of that has
14 happened, so it's just speculating by the defendant.

15 THE COURT: All right. Thank you all very much.
16 I'll let you know. All right. All right. We -- all
17 the evidence has been presented and we are working on
18 the jury charges. Don't have them to give to you yet.
19 We also don't have the verdict form to give to you all
20 yet.

21 The jury's coming back at 2:30. Could you all be
22 back about 2:15 and we'll see where we stand.

23 MR. DLUZNESKI: That's fine, Your Honor.

24 THE COURT: See the lawyers for a moment.

25 MR. DLUZNESKI: Yes.

1 (Bench conference was held off the record.)

2 (Recess was held from 1:08 - 2:39 p.m.)

3 (Jury enters the courtroom at 2:39 p.m.)

4 THE COURT: Madam Forelady, ladies and gentlemen,
5 thank you very much for coming back in for the
6 afternoon. I've warned you that there would be times
7 when I have to do things with the lawyers that have to
8 be done outside of your presence, and we have reached
9 one of those times.

10 All of the evidence that is going to be presented
11 as a part of this case has been presented to you. What
12 is left to do for your role is to receive the closing
13 arguments of the case. For me to instruct you on the
14 law that you will apply to the evidence that you've
15 received, and then for you to engage in your
16 deliberations.

17 There are rules that I have to follow that sort
18 of puts guardrails on how I can conduct a trial, and one
19 of those guardrails is that there is a point in time
20 during the day where I'm not supposed to charge or let
21 arguments take place in front of a jury. I'm not
22 supposed to charge them on the law and then let a jury
23 start deliberating late in the day.

24 That is -- the reason for that requirement is
25 that then time becomes an element in your deliberations.

1 And we don't need to have -- it's too important. A
2 trial is too important to allow the element of time to
3 dictate how a trial comes to play.

4 With that being said, we've got a lot more work
5 to do in here, and I don't want to keep you all in the
6 back just waiting for us to try to get to that point to
7 where we can argue and charge to you.

8 So I'm gonna ask, if you would, take a break for
9 the day. And take the rest of the day. Do not have any
10 discussions among yourselves about anything involving
11 the case. Do not do any type of independent research or
12 investigation. And ask, if you would, to please come
13 back at 10 o'clock tomorrow morning and we will receive
14 the closing arguments in the case. I will instruct you
15 on the law of the case, and then you will begin your
16 deliberations.

17 But thank you for your patience while we got to
18 this point and we will see you in the morning.

19 (Jury leaves the courtroom at 2:42 p.m.)

20 Gentlemen, if you all will give me just a moment.
21 If you all will give me just a moment, I'll be right
22 back with you all. Thank you. We'll step down.

23 (Court concluded at 2:42 p.m.)

24

25 --- THIS CONCLUDES DAY THREE OF TRIAL ---

CAROLINA REAL ESTATE HOLDINGS VS. BRILIN ELECTRIC

START OF DAY FOUR OF TRIAL

THE COURT: The discussion we were having about the charges we did, back in chambers yesterday, on the charges that I've given you all, we had a discussion about the topic of proximate cause. So if you take a look at the -- what we discussed, what I've done is on the page of the topic of damages, the sentence starts with the word finally. Once that sentence ends, the sentence ends with the defendant's breach of contract, I will insert the following:

Proximate cause requires proof of both causation and fact. And legal causation and fact is proved by establishing that the claimed property damage would not have occurred or the alleged contracts breach Legal cause is proved by establishing foreseeability.

For an act to be a proximate cause of the alleged property damage, the property must be foreseeable, be a foreseeable consequence of the alleged contracts breach.

MR. DLUZNESKI: We're good with that, Your Honor.

MR. WHITE: So are we, Your Honor.

THE COURT: Okay. All right. Then I received an e-mail that defense counsel wants to add something on

1 the good faith and fair dealing. I already had that as
2 part of my charges. Did y'all not receive that?

3 MR. WHITE: We did, Your Honor. We would ask for
4 this language on 19-36 from the South Carolina Request
5 to Charge, 2016 edition. I thought I sent this to
6 y'all, I gave it to you Monday. But this was the
7 language I was looking for, for that, if that's okay?

8 THE COURT: Which part? Because I've got that
9 included.

10 MR. WHITE: The whole, the whole paragraph that's
11 in 19-36. And, Your Honor, I put hard copies for both
12 you and ---

13 THE COURT: Thank you, but what I gave you
14 yesterday has this language in it, it's just not phrased
15 in the same wording.

16 MR. WHITE: Right. And we're just asking for
17 that language verbatim, Your Honor. That's our request.

18 THE COURT: Well, I think my charges are
19 sufficient the way they are. I think it covers what is
20 requested in, in what you've given me, okay? Thank you.
21 And the other one?

22 MR. WHITE: Waiver, Your Honor. We would
23 respectfully request that you instruct on waiver. The
24 fact that he attempted to make any repairs, they refused
25 to work with us while we still had possession of the

1 space, and by not working with us and being
2 unreasonable, they've denied us the opportunity to make
3 those repairs. And by not acting in a commercial
4 reasonable manner and denying us the opportunity to make
5 those repairs, which is expressly what they allege in
6 their second cause of action in their amended complaint,
7 that we failed to give them the space back at the end of
8 the tenancy as, as we got it, per the lease, they waived
9 the right to then make any repairs that we were most
10 certainly ready, willing, and able to make, and then try
11 and assert that as a damage claims. Thank you, Your
12 Honor.

13 MR. DLUZNESKI: Your Honor, the defendant did
14 assert waiver as an affirmative defense. I would leave
15 it up to the Court's decision as to whether the Court's
16 gonna include this charge on waiver as an additional
17 jury charge. It is rather lengthy, and I don't know if
18 the Court wants to cut it down or, or rephrase any
19 portion of it.

20 THE COURT: I found his waiver assertion in his
21 pleadings, as contained in a two, two-lined defense.
22 And did I hear the word waiver during the course of this
23 trial? The reason I ask that question is, I'm not
24 trying to be short, by introducing issues to a jury
25 through a request for charge that a jury has not been

1 introduced to during the course of a trial, my opinion
2 leaves them scratching their heads going, where did this
3 come from? Why was -- you know, what am I to do with
4 this?

5 And so that's why I'm asking the question is it,
6 did we hear this concept presented through a witness? I
7 understand that it's a legal theory that can be asserted
8 as an affirmative defense, but where did this come from
9 in this trial so that the jury would have been able to
10 digest what I'm gonna tell them during this, if I charge
11 this?

12 MR. WHITE: Yes, Your Honor. It came out through
13 both Mr. Decker, it came out through Mr. Robinson, it
14 came out through Mr. Abernathy, and it came out through
15 Mr. Russell.

16 THE COURT: They said the word waiver?

17 MR. WHITE: Nobody said the word waiver, Your
18 Honor. I mean, because that's the legal aspect of it.

19 THE COURT: Uh-huh.

20 MR. WHITE: What we did is we established clear
21 evidence that the tenant was ready, willing, and able to
22 make all necessary repairs to comply with the lease
23 provision, that they return the premises to the landlord
24 at the end of the tenancy in as good a condition as they
25 received it. We established that through Mr. Decker,

1 that he refused to do a walk-through. That it's
2 commercially reasonable to do walkthroughs.

3 We established through Mr. Robinson that he
4 literally came to that space the day after the landlord
5 came back into possession of the premises the day after
6 the lease expired on its natural terms and that he could
7 have come sooner, but he was only asked to come then.
8 And the same with, with the engineer. And we heard
9 similar testimony corroborating all that with Mr.
10 Russell, that he had cleared out the space for a month
11 in advance in order to allow for an inspection of the
12 premises and to allow the landlord to direct any other
13 repairs that needed to be made to the space.

14 But what we've established is the facts that show
15 that the legal theory of waiver, that affirmative
16 advance is at play because -- I mean, I think, I think
17 if I would have said, well, Mr. Decker you waive the
18 right to bring this claim, I think that would have drawn
19 an objection because it's asking for him to state, you
20 know, a legal principle. And I just kept it to the
21 facts with all the witnesses, Your Honor.

22 And in respect to what we would actually ask is
23 that we would simply ask in 19-22, the first paragraph
24 and the second to -- the second to last and last
25 paragraphs. And that's all we'd ask for on this

1 particular instruction, because we do believe that, like
2 I said, tenant was ready, willing, and able to do what
3 it needed to do. But as we all know, with tenancy, such
4 as this nature, because you have a lease as an
5 intersection of both contractual and property law,
6 you've got an estate that you're handing back to the
7 landlord. So, per the terms of the lease, you need to
8 make sure you give them the estate the way they want it.
9 And there is necessary -- and we've talked about it,
10 it's commercially reasonable to do walkthroughs.

11 You have to have that interaction between the
12 parties at the conclusion of the lease to make sure you
13 fully comply. The land -- like, the tenant, can't
14 unilaterally just start doing whatever it wants. Like,
15 for example, we -- Mr. Russell said, hey, didn't think
16 it would be a good idea to tear open that demising wall
17 and take a look in there and see what's going on, one,
18 because it's not my property. And, two, that would
19 probably get me in more trouble. Look at all the other
20 stuff I'm dealing with, with this landlord.

21 And so, in order to really figure out what all we
22 need to do to comply with our end of the contractual
23 agreement, we needed that interaction with the landlord.
24 And by them refusing to do that, they denied us the
25 opportunity to fulfill our contractual obligations.

1 And, therefore, we believe waived because their
2 actions, or their lack thereof, were so unreasonable in
3 these circumstances that they waive the right to then go
4 after us and assert damages for repairs that they made
5 that we were more than ready, willing, and able to make,
6 had they directed us to do them, if we had known they
7 needed to be done, per the landlord doing a walkthrough
8 and a final inspection. Thank you, Your Honor.

9 THE COURT: My point in saying that this is
10 coming as an introduction at this stage of the case is
11 that you had more than just the opportunity to present
12 this theory to the jury. You can present it as theory
13 to the jury if it's so material to the defense of your
14 case or to your counterclaims through some type of
15 statement to the jury through your opening statement.

16 Whether or not counsel is going to object to it,
17 I can take care of that. My point is that this issue of
18 waiver, similar to the issue of damages, what are you
19 gonna do with the jury when they have not been told what
20 you want them to award as far as damages? When you've
21 not had a witness to actually sit up here and say, well,
22 I need \$10,302 or that I need \$25,417, and then to
23 explain to them what that is.

24 And then for them to now be introduced to a legal
25 theory and listen to that argument that you just gave to

1 me as to what factual basis supports this theory of this
2 facts, they're gonna sit there like I just did and
3 listen and go, what?

4 My point is, is that this is an opportunity to
5 use through closing arguments, as well as my
6 instructions to the jury, to assist them in reaching
7 what's a fair and just verdict in this case. I
8 understand that you pled this in one sentence as a
9 defense. I did not hear this stated to the jury. I
10 never got it from a witness.

11 Me, to have to sit up here and figure out, what
12 does he mean by waiver, when he's got so many other
13 things he needs to be focused on. Yeah, you have the
14 right to have me put this in a charge, but my point of
15 asking the question is that I'm trying to see, do we
16 really need to give something else to the jury than what
17 we're already giving them in this case?

18 As I've told both of you in private conference
19 and maybe out here, this is a case about this lease.
20 And for either side to misdirect this jury and to take
21 it somewhere else I think is not wise. But you're the
22 lawyers. You're the advocates in the case.

23 I'll instruct waiver as far as the first, and
24 next to the last, and the last paragraph. I will
25 include that after the -- all right. I've got, I've

1 got, according to what I've got up here, is I'm gonna do
2 the damages part of the breach of contract issue, then
3 I'm going to do the duty to mitigate damages issue.
4 Then I'm going to present the good faith and fair
5 dealing charge. Then I'm going to include the waiver
6 charge. Then I will include the counterclaim charge.
7 And then I'll do the Unfair Trade Practice Act charge,
8 and then do the jury verdict form. Anything else?

9 MR. DLUZNESKI: Not from the Plaintiff, Your
10 Honor.

11 MR. WHITE: No, Your Honor. Would it be possible
12 for the damages, to just get an updated hard copy with
13 that additional language?

14 THE COURT: As I told y'all yesterday, I'm not in
15 my home circuit, and so I don't have access to a
16 printer. I have to depend on other people within the
17 court system. We can give you a photo copy of what I
18 read to you.

19 MR. WHITE: That's perfect, Your Honor, thank
20 you.

21 THE COURT: All right. Do we have a photocopier
22 somewhere?

23 THE CLERK: Yes, sir.

24 THE COURT: Get two copies of this and share it
25 with counsel.

1 All right. We also had the stipulation that
2 y'all had agreed to. Tell me again -- I'll announce the
3 stipulations. Tell me again how you want me to say
4 this? This is about the security deposit.

5 MR. DLUZNESKI: Security deposit, Your Honor. I
6 think what we discussed, with respect to the
7 stipulations, that the Court's gonna charge the jury
8 or ---

9 THE COURT: Announce.

10 MR. DLUZNESKI: -- instruct the jury that the
11 parties stipulate that the defendant did not receive its
12 security deposit back from the plaintiff. And, I
13 believe, that we also agree that the defendant would not
14 be able to ask the jury to draw any negative inference
15 from that.

16 THE COURT: Well, I'm not -- yeah.

17 MR. DLUZNESKI: But I certainly don't intend to
18 argue that either.

19 THE COURT: Okay. Y'all don't want me to say how
20 much?

21 MR. WHITE: I would say \$3,000, Your Honor. I
22 mean, that's before the Court. I mean, it's in section
23 five of the lease.

24 MR. DLUZNESKI: That's fine.

25 THE COURT: All right. So I'll announce to the

1 jury before y'all start your opening -- I mean, closing
2 statements that, ladies and gentlemen, the parties have
3 stipulated that the defendant did not receive its \$3,000
4 security deposit back from the defendant.

5 MR. DLUZNESKI: From the plaintiff, Your Honor.

6 THE COURT: Oh, from the plaintiff.

7 MR. DLUZNESKI: Yeah.

8 THE COURT: All right. Back from the plaintiff,
9 okay. Okay, anything else?

10 MR. WHITE: No, Your Honor.

11 MR. DLUZNESKI: No, Your Honor.

12 THE COURT: All right. And y'all are going to
13 argue how long?

14 MR. DLUZNESKI: The plaintiff anticipates
15 approximately 30 minutes, Your Honor.

16 MR. WHITE: Same, Your Honor.

17 THE COURT: Then you're gonna reply to matters
18 that he brought up?

19 MR. DLUZNESKI: I may, depending what those
20 matters are. If I do, it's gonna be brief, Your Honor.

21 THE COURT: Okay.

22 MR. WHITE: I did have one other thing, Your
23 Honor, I apologize. We did -- you did make reference to
24 us being able to publish the verdict form, or at
25 least ---

1 THE COURT: Uh-huh.

2 MR. WHITE: I don't ---

3 THE COURT: Show it to them, yeah.

4 MR. WHITE: This looks final to me, so I just
5 wanted to confirm that what you gave us yesterday is the
6 final version.

7 THE COURT: I mean, y'all didn't express any
8 problems with the verdict form that I did, so I was
9 considering just E-filing.

10 MR. DLUZNESKI: The plaintiff has no concerns
11 about the verdict form, Your Honor.

12 THE COURT: Yeah. I mean, I, I think, as I've
13 told y'all yesterday, I think that's a good idea, that
14 if you work the actual verdict form with the jury,
15 because I don't think any of them has ever seen a
16 verdict form before. So I think it's a good idea to
17 introduce to them so at least they see, oh, that's what
18 it is. That's what we're talking about. Okay, now I
19 understand. I think that helps them, you know, but you
20 don't have to. That's just an idea.

21 Okay. Are they all here?

22 THE BAILIFF: Yes, sir.

23 Okay. Before you bring them in, juror number 66
24 is not with us, so I anticipate that we use alternate
25 number one.

1 MR. DLUZNESKI: No objection, Your Honor.

2 MR. WHITE: No objection.

3 THE COURT: Okay. Then alternate number one will
4 become our twelfth juror. Okay. Juror number 23 will
5 be Margaret Boone. She will be juror number 12.

6 MR. DLUZNESKI: No objection.

7 MR. WHITE: No objection.

8 THE COURT: All right. Let's bring them in.

9 (Jury enters courtroom at 10:04 a.m.)

10 THE COURT: All right. Madam Forelady, ladies
11 and gentlemen, good morning. A couple preliminary
12 things before we proceed with the closing statements.
13 Juror number 23, Ms. Boone, you will now serve as the
14 twelfth juror with the jury panel.

15 Ladies and gentlemen, prior to receiving -- we
16 worked very hard on getting this case ready to give to
17 y'all today, so in just a moment you're gonna receive
18 the closing statements from counsel. But before we do
19 that, I need to announce a stipulation that the parties
20 have agreed to.

21 The parties have stipulated that the Defendant
22 did not receive its \$3,000 security deposit back from
23 the plaintiff. With the announcing of that stipulation,
24 I also need to inform you, ladies and gentlemen, that
25 the parties, that they have now presented to you, all of

1 the evidence that will be presented to you in this case
2 for you to consider as part of your deliberations.

3 It is now time for the attorneys to make what is
4 known as their closing arguments to you. The arguments
5 of the attorneys are not evidence in this case. Their
6 statements and arguments are meant to help you
7 understand the evidence and apply the law to the
8 evidence.

9 You should disregard any remark, statement, or
10 argument, which is not supported by the evidence
11 presented during the trial, or the law that I will
12 explain to you after the arguments are presented to you.
13 But at this time, ladies and gentlemen, we will receive
14 the closing argument from the attorney.

15 Yes, sir?

16 MR. DLUZNESKI: Thank you, Your Honor.

17 CLOSING ARGUMENT

18 BY MR. DLUZNESKI:

19 Well, ladies and gentlemen, we are at the end of
20 the trial. We are at the end of this journey that
21 started on Monday and will come to a conclusion today
22 once you deliberate and render a verdict in this case.

23 Now, I want to start out by thanking you all for
24 being here this week. And my client and I have both
25 noticed the diligence and the attention that you have