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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2019-CP-46-02090
Appellate Case No. 2023-001398

Sherry Killian Duncan, ... Appellant,

v.

Gurdip S. Gill a/k/a Gary Gurdip

a/k/a Gary Gurdip Gill, ... Respondent.

RECORD ON APPEAL

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Attorneys for Respondent

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4602090

Sherry Killian Duncan
PLAINTIFF(S)

Gurdip S Gill et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

After careful consideration, Plaintiff's Motion For Reconsideration of the Court's Order Granting Defendant's Directed Verdict Motion And Motion For A New Trial Pursuant to SCRPC Rule 59 is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/07/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



York Common Pleas

Case Caption: Sherry Killian Duncan VS Gary Gill Gurdip , defendant, et al

Case Number: 2019CP4602090

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2023-08-07 15:52:43 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4602090

Sherry Killian Duncan
PLAINTIFF(S)

Gurdip S Gill et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
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- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

The court granted Directed Verdict for the Defendant on all causes of action at the close of Plaintiff's case.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/12/2023 .

Richard R. Gleissner for Sherry Killian Duncan
Daniel Dominic D'Agostino for Gurdip S Gill, Gary Gurdip, Gary Gurdip Gill

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



York Common Pleas

Case Caption: Sherry Killian Duncan VS Gary Gill Gurdip , defendant, et al

Case Number: 2019CP4602090

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2023-07-12 12:12:46 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4602090

Sherry Killian Duncan
PLAINTIFF(S)

Gurdip S Gill et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

At a hearing held on November 16, 2022, the Court found that there was a genuine issue of material fact in the case. Therefore, the Court denied Defendant Gurdip S Gill's Motion for Summary Judgment.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/16/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



York Common Pleas

Case Caption: Sherry Killian Duncan VS Gary Gill Gurdip , defendant, et al

Case Number: 2019CP4602090

Type: Order/Electronic Form 4

So Ordered

s/ Edward W. Miller

Electronically signed on 2022-11-16 12:04:10 page 3 of 3

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
Sherry Killian Duncan,	)	Civil Action No.: 2019-CP-46-02090
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER ON MOTION TO ALLOW
	)	SECOND AMENDED COMPLAINT
Gurdip S. Gill a/k/a Gary Gurdip a/k/a	)	
Gary Gurdip Gill,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the court upon the Plaintiff's Motion to Allow her Second Amended Complaint. The court hereby grants the Plaintiff's Motion and instructs the Defendant to Answer the Second Amended Complaint within fifteen days of the entry of this Order.

Procedural History

The recent procedural facts are as follows:

1. The Defendant obtained permission to file an Amended Answer on November 11, 2021.
2. The Defendant filed his Amended Answer on November 12, 2021.
3. The Plaintiff then filed her Second Amended Complaint within thirty days of the filing of the Amended Answer, specifically on December 9, 2021 and served the Second Amended Complaint that same day.
4. In discussions between the parties, the Defendant objected to the Second Amended Complaint argued that the Plaintiff does not have the right to file the Second Amended Complaint.
5. The parties then agreed that the Plaintiff would file her Motion to Amend to

obtain a determination of whether the court will allow the Second Amended Complaint or whether the Plaintiff has the right as a matter of course to file the Second Amended Complaint.

6. The hearing on this motion was heard on March 15, 2022 before the undersigned Judge Daniel D. Hall. The Form 4 Order was entered on March 18, 2022 instructing the Plaintiff to prepare and file a proposed formal order.

Conclusions of Law

Rule 15(a) provides that “A party may amend his pleadings once as a matter of course at any time before or within 30 days after a responsive pleading is served.” S.C.R.C.P. 15(a). The Defendant served his Amended Answer on November 12, 2021. This gave the Plaintiff until December 12, 2021 to file an amendment to her complaint. The Plaintiff timely filed the Second Amended Complaint.

Even if the Plaintiff was not entitled to file an amendment as a matter of right, Rule 15(a) provides that for a party to amend their pleadings “leave shall be freely given when justice so requires and does not prejudice any other party”. S.C.R.C.P. 15(a). While the Defendant argued that he was prejudiced by the Second Amendment, the Plaintiff offered to consent to anything that would eliminate any argued prejudice to the Defendant. Thus, this Court finds that leave should be given to the Plaintiff to file her Second Amended Complaint. It is therefore,

ORDERED ADJUDGED AND DECREED, the Court grants the Plaintiff’s Motion to Amend. The Plaintiff has filed the proposed second amended complaint and the Defendant shall file his responsive pleadings within 15 days of the filing and service of this order.

AND IT IS SO ORDERED.

The Honorable Daniel D. Hall
Chief Administrative Judge



York Common Pleas

Case Caption: Sherry Killian Duncan VS Gary Gill Gurdip , defendant, et al

Case Number: 2019CP4602090

Type: Order/Leave to Amend

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2022-03-25 11:10:50 page 4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
		CASE NO. 2019-CP-46-2090
SHERRY KILLIAN DUNCAN	)	
	)	
Plaintiff,	)	
	)	ORDER FROM DEFENDANT'S
vs.	)	MOTION TO AMEND
	)	
GARY GILL GURDIP,	)	
	)	
Defendant.	)	
_____	)	

The above entitled matter came before the court pursuant to Defendant's motion to amend his answer to the amended complaint. Counsel for each party appeared before the court. Defendant filed and served a motion to amend the complaint with his proposed amended answer to the amended complaint attached thereto. Defendant requested that the court allow him to file the amended pleading pursuant to Rule 15 of the South Carolina Rules of Civil Procedure.

Defendant filed, on the date of the hearing, a memorandum opposing the motion to amend arguing futility and prejudice. As it relates to the issue of futility, the Defendant's proposed amended pleading seeks to add a defense of lack of licensure. The defense is a valid, legal defense and is asserted as an affirmative defense pursuant to the rules. While the court is not ruling on the defense itself, it is at least a colorable defense.

Plaintiff also objected to the amended pleading arguing prejudice. The court can see no legal prejudice in allowing the Defendant to amend the pleadings. The case is not on a trial roster. Discovery is ongoing. The issue of whether the Plaintiff had a license or did not have a license is a basic question. The parties still have mediation. As such, the Defendant has not established any prejudice in allowing the amended pleading.

Finally, pursuant to Rule 15, “a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party...” In this case, there is no prejudice and Plaintiff has not been able to assert and/or establish any type of prejudice.

NOW, THEREFORE, IT IS

ORDERED ADJUDGED AND DECREED that Defendant may serve the proposed amended answer to the amended complaint within 15 days of the court filing this order.

(Judge's signature page to follow)



York Common Pleas

Case Caption: Sherry Killian Duncan VS Gary Gill Gurdip

Case Number: 2019CP4602090

Type: Order/Amend

So Ordered

/s William A. McKinnon, Chief Judge for
Administrative Purposes, 16th Cir., #2761

Electronically signed on 2021-11-11 11:11:54 page 3 of 3

IN THE STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
Sherry Killian Duncan,	)	Civil Action No.: 2019-CP-46-02090
	)	
Plaintiff,	)	
vs.	)	
	)	ORDER SUBSTITUTING COUNSEL
Gary Gill Gurdip,	)	FOR THE PLAINTIFF
	)	
Defendants.	)	
_____	)	

This matter is before the court upon the request of the Plaintiff to substitute counsel. The Plaintiff wishes to substitute as counsel for the Plaintiff the law firm of the Gleissner Law Firm, LLC, 1237 Gadsden Street, Suite 200A, Columbia, South Carolina 29201 (803) 787-0505, for the law firm of Halford and Niemiec, 4609 Charlotte Highway, Suite 1, Lake Wylie, South Carolina, 29710 (803) 547-6618. It is therefore,

Ordered that Gleissner Law Firm, LLC shall be substituted as the attorneys for the Plaintiff and that Halford and Niemiec, LLP shall be relieved as counsel.

And it is so ordered.

The Honorable William A. McKinnon
Chief Judge for Administrative Purposes,
16th Judicial Circuit.

We so move and consent:

\s Richard R. Gleissner, Esquire
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, South Carolina 29201
(803) 787-0505
(803) 712-4283 (facsimile)
Rick@Gleissnerlaw.com

\s J. Cameron Halford, Esquire
Halford & Niemiec, LLP
4609 Charlotte Highway, Suite 1
Lake Wylie, South Carolina 29710
(803) 547-6618
(803) 547-6638 (facsimile)
Cam@fortmilllaw.com



York Common Pleas

Case Caption: Sherry Killian Duncan VS Gary Gill Gurdip

Case Number: 2019CP4602090

Type: Order/Substitution Of Counsel

So Ordered

/s William A. McKinnon, Chief Judge for
Administrative Purposes, 16th Cir., #2761

Electronically signed on 2021-11-02 18:48:52 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Sherry Killian Duncan,	)	
	)	
Plaintiff,	)	CONSENT ORDER
	)	
v.	)	
	)	
Gary Gill Gurdip,	)	File Book No. 2019-CP-46-02090
	)	
Defendant.	)	
_____	)	

The Defendant has filed a motion pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure requesting the court to set aside the judgment nunc pro tunc on the basis that the Defendant was never served with a lawsuit and therefore the action was never commenced and the judgment is void. The Plaintiff, after further investigation, consents and agrees that the judgment should be set aside and void. The Plaintiff further agrees that the order which directed the Clerk to convey a one-half interest in the Defendant's real estate to the Plaintiff should likewise be reversed and the Plaintiff has reconveyed the property to the Defendant.

NOW, THEREFORE, the Court, by and with consent of the parties, hereby sets aside the judgment entered on February 10, 2020.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff has 15 days from entry of this order to file an amended complaint. Defendant has 30 days from the date the amended complaint is filed to file a responsive pleading.

I SO MOVE:

s/Daniel D'Agostino
S.C. Bar No.: 65088
D'AGOSTINO LAW FIRM
25 West Liberty Street
York, South Carolina 29745
dan@ddllplaw.com
Office: 803-628-6509
Fax: 803-628-7990
ATTORNEY FOR DEFENDANT

I CONSENT:

s/J.Cameron Halford
S.C. Bar No. 17184
HALFORD & NIEMIEC, LLP
238 Rockmont Dr.
Fort Mill, SC 29708
cam@fortmilllaw.com
Office: 803-547-6618
Fax: 803-547-6638
ATTORNEY FOR PLAINTIFF



York Common Pleas

Case Caption: Sherry Killian Duncan VS Gary Gill Gurdip

Case Number: 2019CP4602090

Type: Order/Consent Order

So Ordered

s/Roger E. Henderson 2754

Electronically signed on 2020-08-29 08:03:03 page 2 of 2

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4602090

Sherry Killian Duncan
PLAINTIFF(S)

Gary Gill Gurdip
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

The Court grants damages against defendant in the amount of \$65,525.00. Counsel will submit a formal order to the Court, it is so ordered.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/08/2020 .

Gary Gill Gurdip

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



York Common Pleas

Case Caption: Sherry Killian Duncan VS Gary Gill Gurdip

Case Number: 2019CP4602090

Type: Order/Electronic Form 4

So Ordered

s/Roger E. Henderson 2754

Electronically signed on 2020-02-08 11:02:08 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
		CASE NO. 2019-CP-46-2090
SHERRY KILLIAN DUNCAN	)	
	)	ORDER FOR ENTRY OF DEFAULT
Plaintiff / Claimant,	)	
	)	
vs.	)	
	)	
GARY GILL GURDIP,	)	
	)	
Defendant/Owner.	)	
_____	)	

This matter comes before the court pursuant to Rule 55 motion filed by counsel for the Plaintiff. It appearing to the court from Affidavit of Counsel and Service Affidavit that the Defendant was personally served with process on July 8, 2019; and it further appearing that the Summons and Complaint contained a clear and conspicuous statement that default would be sought as against Defendant for failure to Answer or Plead within the time set forth in the Summons; and it appearing that more than forty five (45) days has elapsed since the service of process by hand delivery upon Defendant

IT IS THEREFORE THE ORDER OF THE COURT that Entry of Default be granted under Plaintiff's motion and that Plaintiff have Entry of Default as against Defendant Gary Gill Gurdip.

AND IT IS SO ORDERED this ____ day of August, 2019.

 Presiding Judge / Court of Common Pleas
 Sixteenth Judicial Circuit



York Common Pleas

Case Caption: Sherry Killian Duncan VS Gary Gill Gurdip

Case Number: 2019CP4602090

Type: Order/Entry of Default

So Ordered

s/David Hamilton York County Clerk of Court by
BKH

Electronically signed on 2019-08-09 08:57:52 page 2 of 2

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No: 2019-CP-46-02090

Sherry Killian Duncan, ... Appellant,

v.

Gurdip S. Gill a/k/a Gary Gurdip a/k/a Gary Gurdip Gill, ... Respondent.

NOTICE OF APPEAL

Plaintiff/Appellant files this Notice of Appeal in regard to the attached Orders received on or about July 12, 2023 and August 7, 2023. The first attached Order is the Order Granting the Defendant's Motion for a Directed Verdict signed by Judge Daniel D. Hall and filed with the clerk of court on July 12, 2023. The second attached Order is the Order Denying the Plaintiff's Motion for Reconsideration under Rule 59 and Relief from Judgment under Rule 60 of the South Carolina Rules of Civil Procedure signed by Judge Daniel D. Hall and filed with the clerk of court on August 07, 2023.



Richard R. Gleissner, Esquire
Gleissner Law Firm, LLC
1316 Washington Street, Suite 101
Columbia, South Carolina 29201
(803) 787-0505
Attorneys for Appellant, Sherry Duncan

Columbia, South Carolina
September 1, 2023

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No: 2019-CP-46-02090

Sherry Duncan, ... Appellant,

v.

Gurdip S. Gill a/k/a Gary Gurdip a/k/a Gary Gurdip Gill, ... Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent via email and by depositing a copy of it in the United States Mail, postage prepaid, on September 1, 2023, addressed to its attorneys of record as follows:

Daniel D'Agostino , Esquire
SC Bar Number 65088
D'Agostino Law Firm
25 West Liberty Street
York, South Carolina 29745
dan@ddlplaw.com



Richard R. Gleissner
Gleissner Law Firm, L.L.C.
1316 Washington Street, Suite 101
Columbia, South Carolina 29201
(803) 787-0505
Attorneys for the Appellant, Sherry Duncan

Dated: September 1, 2023

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4602090

Sherry Killian Duncan
PLAINTIFF(S)

Gurdip S Gill et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

The court granted Directed Verdict for the Defendant on all causes of action at the close of Plaintiff's case.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/12/2023 .

Richard R. Gleissner for Sherry Killian Duncan
Daniel Dominic D'Agostino for Gurdip S Gill, Gary Gurdip, Gary Gurdip Gill

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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York Common Pleas

Case Caption: Sherry Killian Duncan VS Gary Gill Gurdip , defendant, et al

Case Number: 2019CP4602090

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2023-07-12 12:12:46 page 3 of 3

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4602090

Sherry Killian Duncan
PLAINTIFF(S)

Gurdip S Gill et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

After careful consideration, Plaintiff's Motion For Reconsideration of the Court's Order Granting Defendant's Directed Verdict Motion And Motion For A New Trial Pursuant to SCRPC Rule 59 is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/07/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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ELECTRONICALLY FILED - 2023 Aug 07 4:10 PM - YORK - COMMON PLEAS - CASE#2019CP4602090
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York Common Pleas

Case Caption: Sherry Killian Duncan VS Gary Gill Gurdip , defendant, et al

Case Number: 2019CP4602090

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2023-08-07 15:52:43 page 3 of 3

ELECTRONICALLY FILED - 2023 Aug 07 4:10 PM - YORK - COMMON PLEAS - CASE#2019CP4602090
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IN THE STATE OF SOUTH	)	IN THE COURT OF COMMON PLEAS
CAROLINA	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	Civil Action No.: 2019-CP-46-02090
Sherry Killian Duncan,	)	
	)	PLAINTIFF’S MOTION FOR
Plaintiff,	)	RECONSIDERATION OF THE COURT’S
vs.	)	ORDER GRANTING DEFENDANT’S
	)	DIRECTED VERDICT MOTION AND
Gurdip S. Gill a/k/a Gary Gurdip a/k/a	)	MOTION FOR A NEW TRIAL
Gary Gurdip Gill,	)	PURSUANT TO SCRCP RULE 59
	)	
Defendant.	)	
_____	)	

NOW COMES PLAINTIFF, Sherry Killian Duncan (“Plaintiff” or “Duncan”), through the undersigned counsel, respectfully moving the Court pursuant to SCRCP Rule 59 to reconsider its Order granting the Motion for a Directed Verdict by Defendant, Gary S. Gill a/k/a Gary Gurdip a/k/a Gary Gurdip Gill (“Gill” or the “Defendant”), and further moving the Court to Order a new trial in this matter.

TRIAL SUMMARY

This was an action for (1) breach of contract; (2) breach of contract accompanied by a fraudulent act; (3) the establishing of a constructive trust; and (4) recovery under the South Carolina Betterments statute, whereon:

Plaintiff presented the following evidence through testimony:

- (1) **Duncan** testified as to the terms of the agreement, its breach, the fraudulent acts of the Defendant, and her damages.
- (2) Specifically, she testified that she and the Defendant entered into a partnership agreement. The terms of the agreement were that she was to provide her time and talent to the partnership in the flipping of the Property located at 445 Rainbow Circle, Clover,

South Carolina (hereinafter referred to as "Property").

- (3) She further testified that as part of the partnership agreement, the Defendant was to (a) contribute half of the funds for the purchase of the Property and all of the funds for the purchase of the materials that the Plaintiff used in the improvements of the Property and (b) in light of Duncan foregoing other projects and employment and living off of her savings, make payments to Duncan for monthly draws of \$2,400 against the future disbursement from the sale of the Property when her personal savings ran out.
- (4) She then testified as to her contributions to the partnership including her use of her time in making improvements to the Property, her talent in making managerial decisions as it related to the aesthetics of the Property, and her talent with regards to facilitating the remaining improvements needed to the Property.
- (5) She testified that when the Property was sold, the Plaintiff was to receive half of the net profits less any draws.
- (6) She testified that the initial agreement was for the property to be purchased together.
- (7) She then testified to discovering that the Property was, instead, purchased without her knowledge by the Defendant.
- (8) She then testified that the Defendant continued to show that he intended to work with her and carry on with the partnership.
- (9) She testified that, in reliance upon these assurances, she sacrificed continued work on another project in order to begin work for this partnership immediately.
- (10) She testified that, during this time, she was provided credit cards she was authorized to use for purchases of materials to be used to improve the Property.
- (11) She testified that she had authority to make decisions with regard to aesthetic features of

- the Property for which she consulted with the Defendant on those choices.
- (12) She specifically testified that the Property was purchased for \$93,000 and later sold for \$280,000.
 - (13) She testified that, instead of receiving the agreed upon \$2,400 in monthly draws, the Defendant, in breach of the agreement only gave her a \$2,000 draw in April 2019 and a \$1,100 draw in May of 2019.
 - (14) She testified that after she demanded payments in accordance with the agreement, that the Defendant withheld her access to the Property, including changing the locks.
 - (15) She testified that the Defendant later refuted the existence of a partnership and attempted to extort the economically vulnerable position of the Plaintiff into accepting a settlement agreement.
 - (16) She testified that after drafting a proposed settlement agreement, the Defendant demanded his attorney make changes before he would agree to sign.
 - (17) **Mr. McGill** testified to his own personal knowledge of the Plaintiff's use of her time and talent to improve the Property and her management over the Property.
 - (18) As to his working with the partnership and making improvements to the Property, Mr. McGill testified that the only reason he assisted was because Duncan was involved.
 - (19) He testified that she fully participated with him in his work improving the Property and that during the time that he was there, the Defendant was only ever present at the Property for a few minutes.
 - (20) He testified that the work he performed was managed, not by the Defendant, but instead by the Plaintiff.
 - (21) **Mr. Killian** testified to his own personal knowledge of the Plaintiff's use of her time and

talent to improve the Property and of the aggressive tactics used by the Defendant after Plaintiff's unmet demands for payment.

- (22) He testified that after the Plaintiff and Defendant agreed to meet at the Property for payment and Plaintiff discovered additional people were going to attend the meeting, Plaintiff requested him to attend with her in light of her being afraid and intimidated.
- (23) He testified that he witnessed fear and distress in the Plaintiff at the meeting and that he and Plaintiff left without getting the promised payment.
- (24) **Ms. Killian** testified regarding her personal knowledge concerning the agreement between Duncan and Gill and her own personal knowledge of the Plaintiff's use of her time and talent to improve the Property.
- (25) She testified that that she was present during one of the initial discussions between the Plaintiff and Defendant regarding the Property.
- (26) She testified that there was a discussion of a partnership between the Plaintiff and Defendant for the flipping of the Property.
- (27) She testified that she observed multiple meetings between the Defendant and Plaintiff regarding the Property.

Plaintiff presented the following evidence through exhibits:

- (1) Exhibit 1 is the deed to the Property showing the purchase prices as \$93,000.
- (2) Exhibit 2 is a partial list of the work performed by the Plaintiff using her time and talent to improve the Property.
- (3) Exhibits 3 through 92 show the Property before, during and after the work performed by the Plaintiff using her time and talent in improving the Property.
- (4) Exhibit 93 is the deed to the Property showing its sale for \$280,000.

The evidence resulted in the following issues for the jury's consideration:

- (1) Was there a partnership, did the Defendant breach the partnership agreement, and what were the Plaintiff's damages.
- (2) Did the actions of the Defendant constitute dishonest or deceptive acts as required by the cause of action for breach of contract accompanied by a fraudulent act.
- (3) Should the court impose a constructive trust on the proceeds of the sale of the Property?
- (4) Did the Plaintiff act with the understanding that she had a right to be on the Property, did she make improvements to the Property, and should she be entitled to the value of the betterments?

At the end of Plaintiff's case, Defendant moved for a Directed Verdict based upon the assertion that Plaintiff failed to present adequate evidence to support either of her claims or damages resulting therefrom. After a short oral argument on the Motion, the Court granted Defendant's Motion for a Directed Verdict and entered judgment in favor of the Defendant. The Court granted this Motion based on the arguments presented by Defendant and on grounds raised *sua sponte* by the Court.

APPLICABLE LAW
STANDARD OF REVIEW

"A directed verdict should be granted where the evidence raises no issue for the jury as to the defendant's liability." *Fletcher v. Med. Univ. of S.C.*, 390 S.C. 458, 462, 702 S.E.2d 372, 374 (Ct. App. 2010) (quoting *Guffey v. Columbia/Colleton Reg'l Hosp., Inc.*, 364 S.C. 158, 163, 612 S.E.2d 695, 697 (2005)). "A jury issue exists where the evidence is susceptible of more than one reasonable inference." *Jones v. Ridgely Commc'ns, Inc.*, 304 S.C. 452, 454, 405 S.E.2d 402, 403 (1991). "When considering directed verdict and JNOV motions, neither the trial court nor the

appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence.” *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000). The trial court should be "concerned only with the existence or non-existence of evidence," not its credibility or weight. *Jones v. General Elec. Co.*, 331 S.C. 351, 356, 503 S.E.2d 173, 176 (1998) (citing *Garrett v. Locke*, 309 S.C. 94, 99, 419 S.E.2d 842, 845 (Ct. App. 1992)). Further,

it is not unusual for a case to have contradictory evidence and inconsistent testimony from a witness. In a law case tried before a jury, it is the jury that must decide what part of the witness's testimony it wants to believe and what part it wants to disbelieve. Under such circumstances, it is not the function of this Court to weigh the evidence and determine the credibility of the witnesses.

Weaver v. Lentz, 348 S.C. 672, 680-81, 561 S.E.2d 360, 365 (Ct. App. 2002). In ruling on the motion for a directed verdict, the court on several occasions stated that no reasonable jury could find for the Plaintiff. That is not the standard. It is for the jury to decide what testimony it wants to believe and what part it wants to disbelieve.

ARGUMENT

The Court erred when it (1) directed verdict for the Defendant; (2) allowed inadmissible evidence of settlement discussions; and (3) precluded evidence exempt from the rule of hearsay. The evidence presented to the Court and jury provided ample evidence raising issues of fact for the jury to decide whether the Defendant breached a contract with the Plaintiff, such breach was accompanied by fraudulent acts, a constructive trust was created with regard to the Property, and whether Plaintiff was entitled to damages under the betterment statute. Therefore, the Court should reconsider its Order granting Defendant’s Motion for Directed Verdict and grant the Plaintiff a new trial.

I. The Court erred in directing a verdict for the Defendant.

The evidence presented to the Court and jury provided ample evidence raising issues of

fact for the jury to decide whether the Defendant breached a contract with the Plaintiff, such breach was accompanied by fraudulent acts, a constructive trust was created with regard to the Property, and whether Plaintiff was entitled to damages under the betterment statute. Therefore, the Court should reconsider its Order granting Defendant's Motion for Directed Verdict and grant the Plaintiff a new trial.

A. Plaintiff adequately presented a prima facie case for a breach of contract action and the court should grant Plaintiff a new trial.

In the first cause of action brought by Plaintiff, Duncan alleged Gill had breached a contract between the two of them regarding a partnership or joint venture regarding a certain piece of real Property. "The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach." *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). The evidence presented to the Court and jury, including testimony, photographs, and records of deeds, demonstrated the terms of the agreement, the Defendant's failure to perform under that agreement, and the damages Duncan suffered as a direct result of Defendant's breach of the agreement. Such evidence foreclosed the granting of a directed verdict and substantiates the grounds for this Court granting a new trial.

i. The evidence supported a finding of an existence of a contract.

South Carolina law provides that the partnership arrangement between Duncan and Gill and Gill's subsequent failure to pay Duncan from the profits of the sale of the Property meet the requirements for an action for breach of contract. "Where the parties to a contract, by their acts, conduct, or agreement show that they intended to combine their property, labor, skill and experience, or some of these elements on one side, and some on the other, to carry on, as principals or co-owners, a common business, trade, or venture as a commercial enterprise, and to

share, either expressly or by implication, the profits and losses or expenses that may be incurred, such parties are partners.” *Stephens v. Stephens*, 213 S.C. 525, 532, 50 S.E.2d 577, 580 (1948). A partnership is an association of two or more persons to carry on as co-owners a business for profit. S.C. Code Ann. § 33-41-210 (Supp. 2003); see *Wyman v. Davis*, 223 S.C. 172, 174, 74 S.E.2d 694, 698 (1953); *Halbersberg v. Berry*, 302 S.C. 97, 101, 394 S.E.2d 7, 10 (Ct. App. 1990); *Beck v. Clarkson*, 300 S.C. 293, 301, 387 S.E.2d 681, 685 (Ct. App. 1989); *Buffkin v. Strickland*, 280 S.C. 343, 345, 312 S.E.2d 579, 580 (Ct. App. 1984). “A partnership agreement may rest in parol. It may be implied and without express intention.” *Wyman*, 223 S.C. at 174, 74 S.E.2d at 698; *Halbersberg*, 302 S.C. at 101, 394 S.E.2d at 10; accord *Beck*, 300 S.C. at 301, 387 S.E.2d at 685; *Buffkin*, 280 S.C. at 345, 312 S.E.2d at 580. Further, a partnership may be found to exist by implication from the parties' conduct. *Corley v. Ott*, 326 S.C. 89, 92, 485 S.E.2d 97, 99 (1997); *Stephens*, 213 S.C. at 532, 50 S.E.2d at 580. “One of the most important tests as to the existence of a partnership is the intention of the parties.” *Stephens*, 213 S.C. at 530-31, 50 S.E.2d at 579. The evidence presented supported a finding that the Duncan and Gil, by their acts, conduct, and agreement intended to combine their property, labor, skill, and experience to carry on, as partners in the common venture of flipping the Property, and to share the profits and losses or expenses that may be incurred. Thus, Duncan and Gill entered into a partnership.

In its decision to grant the Defendant’s Motion for Directed Verdict, the Court stressed concern over whether adequate evidence was presented concerning Plaintiff’s control over the “partnership.” Not only was adequate evidence of control presented by Plaintiff, but no such showing is required under South Carolina law. To determine whether a partnership exists, the following tests are used: (1) the sharing of profits and losses; (2) community of interest in capital or property; and (3) community of interest in control and management. *Wyman*, 223 S.C. at 181,

74 S.E.2d 699; *Stephens*, 213 S.C. at 531, 50 S.E.2d at 579; *Halbersberg*, 302 S.C. at 101, 394 S.E.2d at 10. Importantly, South Carolina’s Supreme Court has expressly held that a failure of the agreement to meet all three of these would not preclude a finding of a partnership. *Price v. Middleton*, 75 S.C. 105, 108-09, 55 S.E. 156, 157-58 (1906)(subsequently cited approvingly by *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 598, 538 S.E.2d 15, 25 (Ct. App. 2000)). In *Price*, the Supreme Court explicitly held:

Nor is the [finding of a partnership] **determined** by the fact that there is community of interest and that each party is a principal with authority to act as agent for all the others concerned, nor by the **lack** of such authority; for there may be common ownership of property and a power of attorney to each owner from the others to sell and divide the proceeds, but this would confer no right on each to bind the others as partners or to do anything beyond the express authority conferred; and, on the other hand, a valid contract of partnership may be made stipulating that one of the partners would have the management of the business to the exclusion of all the others, and the stipulation would be good between the parties.

Id. (emphasis added). Thus, partners are free to stipulate as to what types of “control” or management authority each partner may have in the partnership. While true, South Carolina courts have required evidence of control for purposes of finding a joint venture in relation to an imputation of liability to third parties to members of a common enterprise or joint venture, these cases are not only distinguishable but do not concern disputes amongst the partners or joint ventures. See *Spradley v. Houser*, 247 S.C. 208, 212, 146 S.E.2d 621, 623 (1966)(holding control of enterprise as essential for finding common purpose on the part of all employees). Respectfully, the evidence presented to the Court and the Jury provided ample evidence of a partnership between Duncan and Gill.

ii. The evidence supported a finding of the Defendant’s breach.

Duncan testified that the Defendant breached three material terms of the partnership

agreement. All three were material terms. First, a material term of the partnership agreement was the joint purchasing of the property. Duncan testified that the Defendant, in breach of the agreement, purchased the property in his own name. Second, a material term of the partnership agreement between Duncan and Gill was that they would split the profits. Duncan testified that no such payment was made. Further, Duncan testified that while she used her savings during the first four months of the partnership, Defendant promised to make \$2,400 per month as a draw against her share of the profit she was to receive when the Property sold when her savings ran out. Plaintiff testified that Defendant refused to advance the \$2,400 after Ms. Duncan's savings had been exhausted.

iii. The evidence supported a finding of Plaintiff being directly harmed.

The evidence before the Court and jury provided ample support for a finding that Defendant's breaches, specifically his failure to pay the Plaintiff her share of the profits, directly harmed her. The purpose of an award of damages for breach of contract is "to give compensation, that is, to put the plaintiff in as good a position as he would have been in had the contract been performed." *Drews Co. v. Ledwith-Wolfe Assocs., Inc.*, 296 S.C. 207, 209, 371 S.E.2d 532, 533 (1988)(citing 11 S. WILLISTON, A TREATISE ON THE LAW OF CONTRACTS, § 1338 (3d ed. 1968)). The proper measure of that compensation, then, "is the loss actually suffered by the [plaintiff] as the result of the breach." *Id.* (Citing *South Carolina Finance Corp. v. West Side Finance Co.*, 236 S.C. 109, 122, 113 S.E. (2d) 329, 335 (1960)). "In a breach of contract action, damages serve to place the nonbreaching party in the position he would have enjoyed had the contract been performed. . . . In the normal case, the damage will consist of two distinct elements: (1) out-of-pocket costs actually incurred as a result of the contract; and (2) the gain above costs that would have been realized had the contract been

performed.” *South Carolina Fed. Sav. Bank v. Thornton-Crosby Dev. Co., Inc.*, 303 S.C. 74, 77, 399 S.E.2d 8, 10-11 (Ct. App. 1990). "Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy. While neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required.” *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981). Here, the Plaintiff explicitly testified and presented documented evidence concerning the promise for a split in profits resulting from the agreement and the Defendant’s failure to pay those profits to Plaintiff. Thus, adequate evidence of damages were presented to the Court.

“‘Profits’ have been defined as ‘the net pecuniary gain from a transaction, the gross pecuniary gains diminished by the cost of obtaining them.’ *Id.* (citing Restatement of Contracts § 331, Comment B (1932); see *Mali v. Odom*, 295 S.C. 78, 367 S.E. (2d) 166 (Ct. App. 1988) (defining "profits" as the net of income over expenditures during a given period)). Profits lost by a business as the result of a contractual breach have long been recognized as a species of recoverable consequential damage in this state. *Hollingsworth on Wheels, Inc., v. Arkon Corp.*, 279 S.C. 183, 305 S.E. (2d) 71 (1983); *South Carolina Finance Corp. v. West Side Finance Co.*, *supra*.

The case of *Drews Co. v. Ledwith-Wolfe Assocs.* articulates the standard of proof for proving lost profits:

The same standards that have for years governed lost profits awards in South Carolina will apply with equal force to cases where damages are sought for a new business or enterprise. First, profits must have been prevented or lost "as a natural consequence of" the breach of contract.

The second requirement is foreseeability; a breaching party is liable for those damages, including lost profits, "which may reasonably be supposed to have been within the contemplation of the parties at the time the contract was made as a probable result of the breach of it."

The crucial requirement in lost profits determinations is that they be established with reasonable certainty, for recovery cannot be had for profits that are conjectural or speculative. The proof must pass the realm of conjecture, speculation, or opinion not founded on facts, and must consist of actual facts from which a reasonably accurate conclusion regarding the cause and the amount of the loss can be logically and rationally drawn.

Drews, 296 S.C. at 213, 371 S.E.2d at 535-36 (internal citations and quotations omitted); see *Beck v. Clarkson*, 300 S.C. 293, 298, 387 S.E.2d 681, 684 (Ct. App. 1989) (citing the factors in *Drews*). The requirement to establish lost profits with "reasonable certainty" permits "an inherent flexibility facilitating the just assessment of profits lost to a new business due to contractual breach." *Drews*, 296 S.C. at 214, 371 S.E.2d at 536.

The standard for proving lost profits complies with the general rule for recovery of damages, which mandates that the fact finder determine the amount of damages with reasonable certainty from the evidence. *Minter v. GOCT, Inc.*, 322 S.C. 525, 528, 473 S.E.2d 67, 70 (Ct. App. 1996). The amount of damages cannot be left to conjecture, guess, or speculation; however, mathematical certainty is not required. *Id.*; see *Yadkin Brick Co. v. Materials Recovery Co.*, 339 S.C. 640, 646, 529 S.E.2d 764, 767 (Ct. App. 2000) ("The amount of damages need not be proved with mathematical certainty. The evidence, however, should be such that a court or jury can reasonably determine an appropriate amount."); *Minter*, 322 S.C. at 528, 473 S.E.2d at 70 ("While proof of mathematical certainty is not required, the amount of damages cannot be left to conjecture, guess, or speculation."). Case law in South Carolina has defined "reasonable certainty:"

To warrant such recovery, loss of profits must be established with reasonable

certainty, for recovery cannot be had for profits that are conjectural or speculative. But it must be borne in mind that since profits are prospective they must, to some extent, be uncertain and problematical, and so, on that account or on account of the difficulties in the way of proof, a person complaining of breach of contract cannot be deprived of all remedy, and uncertainty merely as to the amount of profits that would have been made does not prevent a recovery. The law does not require absolute certainty of data upon which lost profits are to be estimated, but all that is required is such reasonable certainty that damages may not be based wholly upon speculation and conjecture, and it is sufficient if there is a certain standard or fixed method by which profits sought to be recovered may be estimated and determined with a fair degree of accuracy.

Beck, 300 S.C. at 298-99, 387 S.E.2d at 684 (quoting *South Carolina Fin. Corp. of Anderson v. West Side Fin. Co.*, 236 S.C. 109, 122-23, 113 S.E.2d 329, 336 (1960)).

Here, Duncan not only testified regarding the original purchase price and later sales price of the Property, but the deeds evidencing these transactions were presented. Not only did the evidence prevent a jury from needing to conjecture, guess, or speculate; it provided with a mathematical certainty not required. It is inappropriate for the court to assume additional evidence might be presented concerning additional costs that might reduce the lost profit amount, especially in conjunction with a motion for directed verdict. See *Jones*, 331 S.C. 351, 356, 503 S.E.2d 173, 176. Thus, ample evidence was presented as to the direct harm suffered by Duncan as a result of Gill's breaching the agreement.

B. Plaintiff adequately presented a prima facie case for a breach of contract accompanied by a fraudulent act and the court should grant Plaintiff a new trial.

In order to maintain a claim for breach of contract accompanied by a fraudulent act, a plaintiff must prove three elements: (1) a breach of contract; (2) "[f]raudulent intent relating to the breaching of the contract and not merely to its making;" and (3) "[a] fraudulent act accompanying the breach." *Floyd v. Country Squire Mobile Homes, Inc.*, 287 S.C. 51, 53-54, 336 S.E.2d 502, 503-04 (Ct. App. 1985) (citations omitted). "The fraudulent act is any act

characterized by dishonesty in fact or unfair dealing.” *Conner v. City of Forest Acres*, 348 S.C. 454, 466, 560 S.E.2d 606, 612 (2002).

“Fraud,” in this sense, “assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence.”

Id. (quoting *Sullivan v. Calhoun*, 117 S.C. 137, 139, 108 S.E. 189, 189 (1921)). “Breach of contract accompanied by a fraudulent act . . . requires proof of fraudulent intent relating to the breaching of the contract and not merely to its making. Such proof may or may not involve false representations.” *Ball v. Canadian Am. Express Co.*, 314 S.C. 272, 276, 442 S.E.2d 620, 623 (Ct. App. 1994) (citation omitted). “Fraudulent intent is normally proved by circumstances surrounding the breach.” *Floyd*, 287 S.C. at 54, 336 S.E.2d at 503-04. “The fraudulent act may be prior to, contemporaneous with, or subsequent to the breach of contract, but it must be connected with the breach itself and cannot be too remote in either time or character.” Id. at 54, 336 S.E.2d at 504. In *Corley v. Coastal States Life Ins. Co.*, 244 S.C. 1, 135 S.E. (2d) 316 (1964), the Supreme Court held that a misrepresentation made in reckless disregard for the truth will support an action for breach of contract accompanied by a fraudulent act. Finally, good faith is implied in every contract in South Carolina. Good faith is defined as “honesty in fact.”

The record is clear that the Defendant’s conduct was intentionally dishonest in every way and was directly connected with his failure to pay the Plaintiff in accordance with the agreement. Duncan testified that the agreement was to purchase the Property together. Several days later she discovered from others that Gil purchased the Property in his name alone. Duncan testified that Gil promised to begin making certain draw payments against her portion of the profit after a certain period of time. Not only did the draws either not get paid or were underpaid, but Gill

continued to intentionally mislead Duncan with promises that he would make the payments. Further, Duncan testified as to the Defendants taking advantage of her financial distress so as to try and force Plaintiff to accept a reduced percentage of profit. Finally, Duncan testified that when she refused to continue performing work as long as Gill did not pay her the draws, Gill forcibly kept her from returning to the Property of the partnership. All of these acts evidence a dishonesty in fact or unfair dealing necessary to find a breach of contract accompanied by fraudulent acts.

C. Plaintiff adequately presented a prima facie case for the establishment of a constructive trust and the court should grant Plaintiff a new trial.

A constructive trust arises whenever the circumstances under which a property was acquired make it inequitable that it should be retained by the other party. It results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution. It is resorted to by equity to vindicate right and justice or frustrate fraud. Thus, in order to show the defendant held certain property for the benefit of the plaintiff under a constructive trust, the plaintiff must show that the defendant obtained the property through some fraudulent or bad faith act that would make it inequitable for them to hold the property without considering the rights of the plaintiff to that property. See *Lollis v. Lollis*, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987); *Whitmire v. Adams*, 273 S.C. 453, 457, 257 S.E.2d 160, 163 (1979); *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006).

Here, the Plaintiff presented clear and convincing evidence that she entered into a partnership agreement with the Defendant regarding the Property. The very purpose of the partnership agreement was to purchase, increase the value of, and later sell the Property for a

profit to be split by the partners.

The law holds each member of a partnership to the **highest degree of good faith** in his dealings with reference to any matter which concerns the business of the common engagement, and each partner, being the agent of the firm, must be held to the same accountability as other trustees, in all matters which affect the common interest. The relationship of a partnership is fiduciary in character and imposes on the members the obligation of refraining from taking any advantage of one another by the slightest misrepresentation or concealment.

Lawson v. Rogers, 312 S.C. 492, 498-499, 435 S.E.2d 853, 857 (1993). In *Corley v. Ott*, 326 S.C. 89, 485 S.E.2d 97 (1997), the Court held a partner's failure to disclose to another partner that he had purchased land later purchased by the partnership constituted a breach of fiduciary duty even though a written partnership agreement did not come into existence until after the land was purchased. The evidence before this Court clearly established, not only a partnership relationship, but a breach of the duties of highest degree of good faith and actions of bad faith by the Defendant's obtaining the Property in his name alone and without notice to his partner. Finally, the evidence clearly supported a finding that the Defendants retaining the Property or the proceeds from its sale would be inequitable. Thus, South Carolina law provides that the Plaintiff met its burden and a motion for directed verdict should have been denied.

D. Plaintiff adequately presented a prima facie case for an action under South Carolina's betterment statute and the court should grant Plaintiff a new trial.

South Carolina's Betterment Statute, provide remedies for individuals that make improvements to real property. A person who may have made improvements or betterments on such land, believing at the time he made such improvements or betterments that they had an interest in the property, may have a claim against the [other party] for so much money as the land has been increased in value as a consequence of the improvements made by that person or by any person directed by that person. See S.C. Code Ann. 27-27-10 et seq. (Law Co-op. 2021). Thus, if

a party believes that they have an interest in the land, such as an interest in any profits made from the sale of that land, and makes improvements based upon this belief, then that person is entitled to recover the value created by the improvements. *Id.* This statute, however, requires that any person claiming such an interest in the land must show that the owner of the land neglected to fulfill some part of a contract regarding that land.

Here the Plaintiff presented evidence that the Defendant failed to fulfill his obligations relating to the Partnership agreement. The Defendant allowed the Plaintiff to use her time and talent to make the improvements to the Property that increased its value from \$93,000 to \$280,000. The Defendant failed to fulfill his obligations to share in the profits of the sale of the Property. Therefore, the Plaintiff has presented sufficient evidence to allow a jury to award a judgment based upon the betterment statute.

II. The Trial Court erred in admitting into evidence Rule 408 evidence.

The Plaintiff presented evidence that the Defendant had already failed to perform obligations under the alleged agreement prior to the discussions and drafting of the agreement Defendant placed into evidence and elicited testimony from Plaintiff. The Plaintiff testified that Defendant had already hired an attorney regarding the dispute. Ignoring these facts, the Court permitted counsel for the Defendant to discuss in opening arguments the document and testimony regarding that document for the purpose of establishing terms of the offer of settlement as evidence of an accord and satisfaction.

South Carolina courts “hold fast to the longstanding principle that evidence of conduct or statements made in compromise negotiations is inadmissible because the law favors compromise.” *Edwards v. Scapa Waycross, Inc.*, 437 S.C. 396, 426-27, 878 S.E.2d 696, 712-13 (Ct. App. 2022); see *QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 209, 600 S.E.2d 105,

111 (Ct. App. 2004). Rule 408, SCRE, provides:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

The document and accompanying testimony directly related to the Plaintiff and Defendant seeking to compromise the then pending claims among them regarding services alleged to have taken place at the Property. In other words, evidence of an offer to compromise. Although these claims could amount to a party admission, this type of admission—made for the purpose of settling a claim—is precisely what Rule 408, SCRE, was designed to exclude at trial. *Edwards*, 437 S.C. at 426-27, 878 S.E.2d at 712-13. “The purpose of Rule 408 is to encourage free and unfettered negotiation while providing parties peace of mind that their negotiations—concessions, denials, admissions, and claim amounts—cannot be used against them to prove liability for the disputed claims or its amount at trial. *Id.* (citations omitted); see also *McCutcheon*, 360 S.C. 196, 209, 600 S.E.2d 105, 111 (“Because the law favors compromises, our appellate courts have long held that testimony as to negotiations and offers to compromise are inadmissible for proving liability.”); *Hunter v. Hyder*, 236 S.C. 378, 387, 114 S.E.2d 493, 497 (1960) (“This Court has held that compromises are favored and evidence of an offer or attempt to compromise or settle a matter in dispute cannot be given in evidence against the party by whom such offer or attempt was made.”); *Fesmire v. Digh*, 385 S.C. 296, 307-08, 683 S.E.2d 803, 809 (Ct. App. 2009) (“[Rule 408, SCRE] contemplates that the parties need to feel free to

make certain assumptions for the purpose of settlement negotiations and that those statements are assumed by the author to be true only for the purpose of compromise negotiations.").

Other jurisdictions have ruled that for Rule 408 to apply, there must be actual dispute, or at least apparent difference of opinion between parties, as to validity of claim. See *Dallis v. Aetna Life Ins. Co.*, 768 F.2d 1303, 18 Fed. R. Evid. Serv. (CBC) 976, 1985 U.S. App. LEXIS 21351 (11th Cir. 1985); see also *Weems v. Tyson Foods, Inc.*, 665 F.3d 958, 114 Fair Empl. Prac. Cas. (BNA) 65, 87 Fed. R. Evid. Serv. (CBC) 301, 2011 U.S. App. LEXIS 25876 (8th Cir. 2011) (Dispute need not crystallize to point of threatened litigation for Fed. R. Evid. 408 exclusion rule to apply; dispute exists for Rule 408 purposes so long as there is actual dispute or difference of opinion regarding party's liability for or amount of claim); *Bradbury v. Phillips Petrol. Co.*, 815 F.2d 1356, 1364 (10th Cir. 1987) (explaining "when the issue is doubtful, the better practice is to exclude evidence of compromises or compromise offers"). Here, there has been established by the testimony that not only had an actual dispute arisen, but that both parties were disagreeing as to how it should be resolved. The disagreement was of such an extent, that the Defendant had already hired counsel regarding the very dispute. The Defendant is unable to show another permissible cause for admission of the evidence. See, e.g., *Breuer Elec. Mfg. Co. v. Toronado Sys. of Am., Inc.*, 687 F.2d 182, 185 (7th Cir. 1982) (holding existence of settlement negotiations admissible to rebut claim that party had no knowledge of suit); *Prudential Ins. Co. of Am. v. Curt Bullock Builders, Inc.*, 626 F. Supp. 159, 165 (N.D. Ill. 1985) (holding occurrence of settlement talks admissible to establish agency relationship). Thus, the document and any testimony regarding the same must be held as inadmissible.

The document introduced and testimony elicited by counsel for the Defendant was inadmissible under Rule 408 of the South Carolina Rules of Evidence. It is not being offered for

any allowable purpose such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. Therefore, the Court should have denied the admission of such evidence.

III. The Trial Court erred in excluding witness testimony it deemed hearsay.

“The rule against hearsay prohibits the admission of evidence of an out-of-court statement to prove the truth of the matter asserted unless an exception to the rule applies.” *Fowler v. Nationwide Mut. Fire Ins. Co.*, 410 S.C. 403, 411, 764 S.E.2d 249, 253 (Ct. App. 2014); see also Rule 802, SCRE (“Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute.”). “A statement is not hearsay if . . . [t]he statement is offered against a party and is . . . the party's own statement in either an individual or representative capacity.” Rule 801(d)(2)(A), SCRE. “As a general rule, statements or declarations made by one accused of a crime are admissible against him.” *State v. Beck*, 342 S.C. 129, 134, 536 S.E.2d 679, 682 (2000) (quoting *State v. Plyler*, 275 S.C. 291, 295, 270 S.E.2d 126, 128 (1980)). “Of course, such evidence must meet the threshold test of admissibility, i.e., relevance.” *Beck* at 134, 536 S.E.2d at 682.

Generally, all relevant evidence is admissible. Rule 402, SCRE; *State v. Saltz*, 346 S.C. 114, 127, 551 S.E.2d 240, 247 (2001). Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Rule 401, SCRE. Relevant evidence may be excluded where “its probative value is substantially outweighed by the danger of unfair prejudice.” *Saltz* 346 S.C. at 127, 551 S.E.2d at 247 (quoting Rule 403, SCRE).

Here, the Court did not find that the evidence was irrelevant or even unfairly prejudicial. Rather, the Court failed to recall Rule 801(d)(2)(A), SCRE. The testimony counsel for Plaintiff

sought to enter into evidence included statements made by the Defendant in discussions with the Plaintiff and statements made by the Defendant in discussions with the Plaintiff that were overheard by another witness. This testimony is admissible under the South Carolina rules of evidence and the Court erred in ruling otherwise.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court vacate its Order of Judgment in favor of Defendant and Order that a New Trial be had in this matter.

Respectfully submitted,

/s Richard R. Gleissner, Esquire
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Date: July 21, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Sherry Killian Duncan,	)	
	)	Defendant' Pre-Trial Brief
Plaintiff,	)	
	)	
v.	)	
	)	
	)	File Book No. 2019-CP-46-2090
Gurdip S. Gill a/k/a Gary Gurdip a/k/a	)	
Gary Gurdip Gill,	)	
	)	
Defendant.	)	

The Defendant submits this Pretrial Brief pursuant to Rule 16 of the South Carolina Rules of Civil Procedure.

1: A concise non-argumentative statement of the facts of the case.

The defendant purchased property in Clover, South Carolina and December 2018. After buying the property, the family began to fix and renovate the property. The Defendant originally hired a company to renovate the property but its work was substandard. The Plaintiff was working on a home nearby which her ex-husband had purchased. The plaintiff also knew the defendant as Sheila frequented his store which was near the neighborhood. The plaintiff approached defendant about painting the residence for him. He agreed to hire her to paint the residence and infected hire her to paint the residence. The Defendant paid the plaintiff for her services as the job progressed. In addition, the Defendant paid for all the supplies, materials and labor for the entire job. In May 2019, the Plaintiff demanded more money and asserted that she should be paid a significant amount of money, asserting that she was a partner in the renovations. The Defendant denied he owed her the amounts she was requesting.

The Plaintiff asserts that the parties have a joint venture and she is entitled to a portion of the moneys from the sale of the property. Defendant denies the same. There is nothing in writing to establish any type of joint venture.

The Plaintiff in May 2019 presented the Defendant with a contract demanding \$22,000 at which time the Defendant paid Mr. Pendleton to prepare a contract addressing this matter. The Plaintiff failed to show up for the appointment and then immediately filed a mechanics lien on the property for \$70,000.00.

The Plaintiff originally served the wrong person with the pleadings and had the court convey a half interest in the property to her by way of a judgment. This was undone with a quit claim deed and the judgment was set aside.

2. An objective statement of the facts in controversy.

The parties dispute the existence of a joint venture or any type of partnership agreement.

The Plaintiff is barred from collecting money as she is not licensed as a specialty contractor in South Carolina.

The Plaintiff's claims are barred by the statute of frauds as she is claiming an interest in the land and there is nothing in writing to establish such an interest.

3. The legal issues involved.

The issues in the case will deal with contracts and joint ventures. In addition, as set forth above, the issues will also deal with the statute of frauds.

4. A listing of exhibits indicating those to which there are disagreements and a listing of witnesses who may be called and if available, their address and phone number.

The Defendant's witnesses will be the Defendant, his wife Dolly, Scott Falls, Julie Coleman, Joe Litton.

The Exhibits will be:

- A. Deed to the property
- B. Utility bills and proof of payment
- C. Summary of expenses in purchasing and maintaining the property
- D. Lowes receipts and proof of payment
- E. List of laborers and payment for the same
- F. Checks to the Plaintiff
- G. Photographs
- H.

5. Any unusual problems relating to evidence to be introduced such as business records as evidence, hearsay, use of depositions, etc.

None at this time.

6. Any unusual questions or matter which should be brought to the attention of the Court.

The Defendant will need to object and have a standing objection to testimony as to any oral contract or agreement as the Plaintiff bases her entire case on an alleged oral contract to which the Defendant denies. The Plaintiff is attempting to use the photos of the work as evidence of a contract. The work cannot be evidence of a contract when there is no contract and there are no terms of a contract set forth in any manner.

7. Statement that settlement negotiations were attempted before the date of the Pretrial hearing and the status of settlement negotiation.

The parties have discussed settlement but have not been able to resolve the case.

Respectfully submitted.

York, South Carolina

July 20, 2023

D'Agostino Law Firm

A handwritten signature in black ink, appearing to read 'D. Agostino', is written over a horizontal line.

Daniel D'Agostino
25 West Liberty Street
York, S.C. 29745
(803) 628 6509

IN THE STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT

Sherry Killian Duncan,

Plaintiff,

vs.

Gurdip S. Gill a/k/a Gary Gurdip a/k/a
Gary Gurdip Gill,

Defendant.

) Civil Action No.: 2019-CP-46-02090
)
)

) **REPLY TO MOTION FOR SUMMARY
JUDGMENT**
)
)
)

The Plaintiff, Sherry Killian Duncan (“Plaintiff” or “Duncan”), hereby replies to the Motion for Summary Judgment filed on behalf of the defendant Gary S. Gill a/k/a Gary Gurdip a/k/a Gary Gurdip Gill (“Gill” or the “Defendant”), would respectfully show that the Motion for Summary Judgment should be denied as there are genuine issues of material fact. In support of this reply, the Plaintiff provides copies of the relevant pages to her deposition in this matter.

SUMMARY JUDGMENT STANDARD

Summary judgment is proper only when there exists no genuine issue of material fact and the moving party is thus entitled to judgment as a matter of law. See Rule 56, South Carolina Rules of Civil Procedure. "In determining whether a genuine issue of fact exists, a court must consider everything in the record, pleadings, depositions, interrogatories, admissions on file, affidavits, etc." *Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 183.

Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. With respect to an issue upon which the nonmoving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the nonmoving

party's case. It is only after the moving party carries its initial burden does the other party have to respond.

In this case, the Defendant offers no evidence to carry his initial burden. Rule 56 is clear in that the initial burden must be met and it is only when the motion is “supported as provided in this rule” does the burden shift to opposing party. Simply in this case, the Defendant has not carried his initial burden and the burden has never shifted.

If this court finds, the arguments of counsel somehow meets the initial burden, the "opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but ‘must come forward with specific facts showing that there is a genuine issue for trial.’” *Hedgepath v. AT&T*, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001).

THE FACTS AS PROVIDED IN THE DEPOSITIONS

The Plaintiff has alleged the following causes of action: (1) breach of contract; (2) breach of contract by fraudulent act; (3) constructive trust; and (4) recovery of betterments. The Plaintiff provides the following relevant facts from her deposition, the Defendant’s deposition and provides copies of the relevant pages as Exhibit 1, Duncan Deposition, and Exhibit 2, Defendant’s Deposition, to this Reply:

I. As to Breach of Contract

1. The Plaintiff had been in the business of flipping houses. Duncan Deposition p. 16.
2. In flipping houses, the Plaintiff explains the process of increasing the value of a house to make a profit. Duncan Deposition p. 18.

3. Sometimes she has partners when she flips houses. Duncan Deposition, p. 19.
4. In her initial discussions with the Defendant, the Plaintiff explained that she would go in as partners with the Defendant in flipping the house located at 455 Rainbow Circle (“the Property”). Duncan Deposition, p. 58. She offered to pay half the purchase price. Id. They had a verbal agreement that they were a partnership. Duncan Deposition, p. 60. The verbal partnership was agreed to from the beginning and the Plaintiff worked for six months on that agreement. Duncan Deposition, p. 65.
5. The Defendant kept telling the Plaintiff the entire six months that she was working on the home that he and her were in a partnership. Duncan Deposition, p. 73.
6. The Defendant told her that she was going to get paid at the end because they were in a partnership. Duncan Deposition, p. 74. She was to get paid “when we sold the house.” Id.
7. The agreement was that they were “halvers”, each would get 50% of the profit. Duncan Deposition, p. 75.
8. The Plaintiff worked seven days a week for sixteen hours a day and continuously communicated with the Defendant the progress of the partnership. Duncan Deposition p. 76.
9. The Defendant then sold the house for at least \$280,000 and kept all of the proceeds of the sale. Defendant’s Deposition, p. 8.
10. The Defendant was satisfied with all of the work that the Plaintiff did.

Defendant's Deposition, p. 21. The Defendant would thank her for all the work that she was doing which he would "say to any of ... your partners whom you do something right." Defendant's Deposition, p. 24.

II. Breach of Contract by Fraudulent Act.

11. After she had completed a substantial portion of the work on the house, the Defendant attempted to change the terms of the partnership. Instead of paying her one half of the profits of the house, the Defendant asked the Plaintiff to change the agreement so that he was just paying her for her labor. Duncan Deposition, p. 76.
12. He attempted this dishonest act because the Plaintiff had used her savings while working on the Property and was desperate for funds. Duncan Deposition, p. 76-77.
13. After he breached the contract, he locked her out of the Property. Duncan Deposition, p. 86.
14. After he locked her out, he only wanted to pay her for the painting that she did. Defendant's Deposition, p. 25-26; P. 34.

III. Constructive Trust.

15. The Defendant sold the Property for \$280,000 and kept all of the proceeds. Defendant's Deposition, p. 8.
16. As indicated the Property was the Property of the partnership between the Plaintiff and Defendant and the proceeds of the Partnership should have been held by the fiduciary Defendant in Trust to be distributed pursuant to the partnership agreement that he would receive 50%.

IV. Betterment Statute.

17. As indicated in her deposition, the Plaintiff believed, in good faith, based upon the representations of the Defendant, that she had an interest in the Property.
18. The Plaintiff engaged in a great deal of work to increase the value of the Property from the \$93,000 that it was purchased for to the \$280,000 that the Property was sold. In addition to mentioning that she worked 7 days a week for 16 hours a day for six months, the Plaintiff provides a listing of some of the work she did including yard work, painting, caulking, grout work, brick work, interior design, etc. Duncan Deposition, p. 78-80.
19. Under the Betterment Statute, the Plaintiff is entitled to the full value of the increase as a result of her work efforts.

ARGUMENT

Thus the Plaintiff, unlike the Defendant, is not simply resting on mere allegations or denials contained in the pleadings. Instead, the Plaintiff is clearly establishing that there are triable issues of fact exist. The evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. If triable issues exist, those issues must be submitted to the jury.

1. Breach of Contract.

The elements for a breach of contract are the existence of the contract, its breach, and the damages caused by such breach. *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). Further, absent evidence that termination of a contract is justifiable, a party breaches the contract by terminating the contract without cause. *See Bensch v. Davidson*, 354

S.C. 173, 580 S.E.2d 128 (2003). The claim alleged by Plaintiff and evidence supporting this claim is straight forward. The Defendant entered into a partnership contract with the Plaintiff. The Defendant breached that contract. The Plaintiff was damaged by the failure of the Defendant to pay the Plaintiff her share of the profits of the partnership.

Similarly, the partnership agreement included the inherent warranty that all parties would act in good faith and with fair dealing. The covenant of good faith and fair dealing is contained in all agreements in South Carolina. *See Parker v. Byrd*, 309 S.C. 189, 193-94, 420 S.E.2d 850, 853 (1992). The Plaintiff has shown that the Defendant failed to act in good faith and failed to fairly deal with her as his partner.

2. Breach of Contract by Fraudulent Act.

In *Ball v. Canadian Am. Express Co.*, 314 S.C. 272, 276, 442 S.E.2d 620, 622-623, (S.C. App. 1994). The Court, comparing the cause of action with common law fraud, explained the elements of the cause of action for breach of contract by fraudulent act as follows:

Breach of contract accompanied by a fraudulent act is not simply a combination of a claim for breach of contract and a claim for fraud. The action for breach of contract accompanied by a fraudulent act is not based on the same elements as an action for fraud (deceit). *Harper v. Ethridge*, 290 S.C. 112, 348 S.E.2d 374 (Ct. App. 1986). A claim of fraud goes to the making of the contract. *See, e.g., Darby v. Waterboggan of Myrtle Beach, Inc.*, 288 S.C. 579, 344 S.E.2d 153 (Ct. App. 1986). It is based on the theory that the innocent party was induced to enter a contract he would not otherwise have made because he relied on a false representation by the fraudulent party. *Id.* In other words, a claim for fraud relates to the making of the contract.

Breach of contract accompanied by a fraudulent act is different. It requires proof of fraudulent intent relating to the breaching of the contract and not merely to its making. *Harper v. Ethridge*, *supra*. Such proof may or may not involve false representations. *See id.* (the fraudulent act is any act characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of another's property by design).

Ball v. Canadian Am. Express Co., 314 S.C. 272, 276, 442 S.E.2d 620, 622-623, (S.C. App. 1994). Thus, the Plaintiff needs to show a breach of contract, as established in Section 1, and that the breach was done by “any act characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of another’s property by design.” In this case, the Plaintiff has established the dishonesty of the Defendant, the Defendants unfair dealing with her and the Defendant’s unlawful appropriation of her time, talent and efforts.

3. Constructive Trust

In *Straight v. Goss*, 383 S.C. 180, 210, 678 S.E.2d 443, 459 (S.C. App. 2009) the court explains the theory of a constructive trust as follows:

A constructive trust results 'when circumstances under which property was acquired make it inequitable that it be retained by the one holding legal title. These circumstances include fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution.'" *Macaulay v. Wachovia Bank of S.C., N.A.*, 351 S.C. 287, 294, 569 S.E.2d 371, 375 (Ct. App. 2002) (quoting *Hendrix v. Hendrix*, 299 S.C. 233, 235, 383 S.E.2d 468, 469 (Ct. App. 1989)). "A constructive trust 'arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust.'" *Smith v. S.C. Ret. Sys.*, 336 S.C. 505, 529, 520 S.E.2d 339, 352 (Ct. App. 1999) (quoting *McNair v. Rainsford*, 330 S.C. 332, 356, 499 S.E.2d 488, 501 (Ct. App. 1998)).

In general, a constructive trust may be imposed when a party obtains a benefit "which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty."

Id. (quoting *SSI Medical Servs., Inc. v. Cox*, 301 S.C. 493, 500, 392 S.E.2d 789, 793-94 (1990)).

Straight v. Goss, 383 S.C. 180, 210, 678 S.E.2d 443, 459 (S.C. App. 2009). In this case, the Plaintiff has provided evidence of a partnership with the Defendant and the fact that the Property

was liquidated by the Partnership. It would be a breach of trust and a violation of the fiduciary duty between the partners to allow the Defendant to retain the proceeds rightfully belonging to the Plaintiff.

4. The Betterment Statute

The procedures under the Betterment Statute, S.C. Code Ann. 27-27-10 et seq. (Law Code, 2021) provide remedies for individuals that make improvements to lands. Section 27-27-70 specifically provides:

[T]he [party] who may have made improvements or betterments on such land, believing at the time he made such improvements or betterments that his title thereto was good in fee, may set up in his answer a claim against the [other party] for so much money as the land has been increased in value in consequence of the improvements so made and the [party] may also set up a claim against the [other party] for so much money as the land has been increased in value in consequence of improvements or betterments made by any person under or through whom he claims

S.C. Code §27-27-70. Thus, if a party believes that they have an interest in the land and make betterments based upon this believe, then the party is entitle to recover the value created by the betterments that they made.

The Betterment Statutes go further stating:

The provisions of this chapter shall not extend to any person who has entered on land by virtue of any contract made with the legal owner of such land, unless it shall appear, on the trial of the action, that such owner has neglected to fulfill such contract of his part, in which case such person in possession shall be entitled to all the privileges in this chapter provided for those who entered upon land under supposed title and the same proceedings shall be had and the land shall be held in the same manner as herein provided for such cases.

S.C. Code §27-27-100. Thus, if it is show that the legal owner of the property neglected to fulfill any contract and the person that made the improvements is entitled to all the privileges of the

betterment statute.

In this case, the evidence provided by the Plaintiff shows that the parties had a partnership agreement. As part of this partnership agreement, the Plaintiff entered the Property and made improvements to the Property. As a result of these improvements, the Property increased in value by almost \$200,000. Under the Betterment Statutes, the Plaintiff is entitled to recover the increased value of the Property.

5. Summary Judgment based upon Affirmative Defense

Lastly, the Defendant alleges that he is entitled to summary judgment based upon his affirmative defense of the statute of frauds. Without authority, the Defendant makes the bold statement that “any contract relating to land must be in writing.” The Defendant fails to cite any authority for this proposition because it is simply untrue.

In reality, the statute of frauds relating to land is found in S.C. Code Ann. § 32-3-10(4). This section is part of the general statute of frauds and states that “any contract or sale of lands, tenements or hereditaments or any interest in or concerning them” shall be in writing and signed. *Id.* In this case, we are not seeking to enforce a contract or sale of lands, tenements or hereditaments or any interest in or concerning them. Simply, this statute has no force and effect in this litigation. The Plaintiff is seeking to enforce a partnership agreement. The fact that the Property was an asset of the Partnership does not place everything within the gambit of the general statute of frauds. Neither party is seeking to enforce an oral promise to place or remove title to real property. If the Plaintiff was seeking to do so, the Plaintiff would have filed a lis pendens against the Property and prevented the Defendant from selling the Property. Thus, the statute of frauds simply does not apply.

If it did apply, when the Plaintiff's actions in partially performing the contract can be "explained only by reference to the alleged promise, undertaking, accepted offer, commitment, or agreement..." the statute of frauds does not apply. In this instance, Plaintiff's part and/or full performance in performing all of the work required of her under the partnership agreement with the Defendant can only be explained by reference to the alleged promises and commitments of the Defendant that she and he were Partners.

Relief on the basis of part performance rests essentially upon the principle of equitable estoppel, which requires that the party sought to be charged upon a parol contract for the sale of land be denied the protection of the statute where the other party has done such acts in pursuance of and upon the contract that its application against his claim would be unconscionable. Scurry v. Edwards, 232 S.C. 53, 100 S.E.2d 812 (S.C. 1957).

In this matter, Plaintiff agreed to perform services as part of a partnerships agreement. Services that were necessary to flip the Property. Throughout the entire time she was performing these services, the Defendant represented that they were partners and would go "halvers" on the profit. As indicated, the part performance by Plaintiff removes the Partnership Agreement from the application of the Lender Statute of Frauds. Furthermore, full performance by one side will take the entire contract out of the statute of frauds. Coker v. Richtex Corp., 261 S.Cc. 402, 200 S.E.2d 231 (S.C. 1973). But even if the contract, when originally made, was obnoxious to the statute, yet, after it had been fully performed by the Plaintiff, the Defendant could not then avail itself of the statute. Walker v. Wilmington, C.& A.R. Co., 26 S.C. 80, 1 S.E. 366 (1887).

CONCLUSION

Each of the Plaintiff's causes of action are support by the deposition testimony of both the

Plaintiff and Defendant. The Defendant's affirmative defense of the statute of frauds does not apply and even if it did apply, the Plaintiff's performance takes the matter out of the statute of frauds. Therefore, the Defendant's motion for summary judgment must be denied.

Respectfully submitted,

\s Richard R. Gleissner, Esquire
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November 9, 2022

SHERRY KILLIAN DUNCAN vs GARY GILL GURDIP
Sherry Killian Duncan on 09/07/2021

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF COMMON PLEAS
3
4 SHERRY KILLIAN DUNCAN,)
5 PLAINTIFF,)
6 -VS-) CASE NO: 2019-CP-46-2090
7 GARY GILL GURDIP,)
8 DEFENDANT.)
9
10
11
12 DEPOSITION OF SHERRY KILLIAN DUNCAN
13 FORT MILL, SOUTH CAROLINA
14 SEPTEMBER 7, 2021
15
16
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23
24
25

1 A I do not.

2 Q Do you have a contractor's license or a specialty
3 license?

4 A I do not.

5 Q You said you've been flipping houses for a while.
6 Tell me about that.

7 A What part?

8 Q What do you do?

9 A I can't do structural stuff like something you do
10 have to have a license for, foundation, heating and
11 air and that type stuff. Anything that's to do with
12 cosmetic or the doors, the hinges, the fixtures, the
13 flooring, the labor intense stuff I do it to make it
14 pretty. It takes a lot of time when you go into a
15 house that somebody has literally beat up and tore it
16 down, to try to bring it back to life.

17 Q How many properties have you purchase and put into
18 your name, purchased, sales contract, closing or
19 something like that, that were actually in your name?

20 A Four.

21 Q What properties have been in your name? 102 Oak
22 Street?

23 A 107 Oak Street.

24 Q Excuse me.

25 A Rainbow Circle I inherited. I sold my house to take

- 1 Q So which ones did you buy for --
- 2 A The Gastonia, Timber Line.
- 3 Q What did you buy it for? How much did you pay?
- 4 A Three-thirty.
- 5 Q What did you sell it for?
- 6 A Three-ninety.
- 7 Q And you sold it three months after you bought it?
- 8 A (Indicating)
- 9 Q Yes?
- 10 A Yes.
- 11 Q What did you do to that house in those three months
- 12 to increase its value?
- 13 A It was a custom build right out of the gate. I'm
- 14 good about finding them and researching them, knowing
- 15 the knowledge of the area, the school district.
- 16 That's the first thing you've got to know. That was
- 17 a for sale by owner. I pulled the comps on it, and
- 18 it was a good buy. The way the market was going, I
- 19 watched the market too, you know, see where we're at.
- 20 In that one I did painting, blinds, new chandeliers,
- 21 new lighting.
- 22 Q Did you hire somebody to do the electrical for those
- 23 things or did you do it?
- 24 A Not the chandeliers.
- 25 Q You physically changed the chandeliers?

1 A Yes.

2 Q What else did you do?

3 A The faucets, new faucets, new dishwasher.

4 Q Anything else?

5 A New painting. You know, just -- There wasn't a lot
6 to be done there.

7 Q So you bought that and then sold it. That was in
8 2021, right?

9 A (Indicating)

10 Q Yes?

11 A Yes, a couple of months ago.

12 Q Now you've bought this new house in Clover. Is that
13 the other one you said you bought for investment
14 purposes?

15 A Yes.

16 Q What did you buy it for?

17 A That one was -- They were asking two-eighty, and we
18 ended up getting it for two sixty-five.

19 Q When you say we, who is we?

20 A Jimmy Shelton. I have a partner.

21 Q Is he on the title, too?

22 A Yes.

23 Q Are you on the title, too?

24 A Yes.

25 Q Did you both put up money for that?

1 Q Did you want to buy this house to begin with?

2 A No. I didn't know the house was for sale. Gary
3 mentioned -- Gary was always asking me, when I would
4 go to the store, about flipping, what Jeff got this
5 house for and what I had to do with it and that type
6 thing. He was wanting to get into it.

7 One day I went into the store and he said what
8 would you think if I could get 455, which I knew
9 which house he was talking about, for \$95,000? I
10 said, Gary, if you can get that house, that's one of
11 the biggest houses on the block, for \$95,000, you
12 better get it. He said, well, I think I can. I
13 said, well, I want to go in partners with you on
14 that. He said okay, I'll let you know. I'll see if
15 I can get it.

16 So I'm waiting on him to let me know when he
17 needs some money. I went in the next day and got
18 gas, and I said did you found anything out? He said
19 I'm working on it. I said let me know when you need
20 the money. I'll borrow it from Jeff. Jeff said I'll
21 loan it to you. Pay me back two percent. It would
22 have been a good investment.

23 I guess about a week goes by. At that point,
24 Gary says can I come by and see all the work that
25 you're doing at 464 Rainbow Circle. I said, yes,

1 A A contract he was supposed to have signed.
2 Q Is there anything in writing that he ever signed?
3 A No.
4 Q Who had the contract prepared?
5 A I had the contract prepared. I went online at York
6 County Gov. He told me -- There's a lot more to
7 that.
8 Q Who prepared the contract?
9 A I did.
10 Q Did he ever sign a contract?
11 A He did not.
12 Q Did he have anything to do with preparing the
13 contract?
14 A Other than telling me to go home and prepare it, he
15 did not.
16 Q Was this after he purchased the property?
17 A This was after I finished all the work on the
18 property.
19 Q You're talking about the work on Gary's property?
20 A Correct.
21 Q So before you finished the work on Gary's property,
22 you hadn't even prepared a contract on it?
23 A We had not. We had a verbal that we were a
24 partnership, wanted to know what I was going to do
25 with my part of the money. Then he found another

1 there's nothing to reflect the specific amount of
2 money as to an agreed upon amount of money that he
3 was going to pay you?

4 A We agreed in the beginning, and I worked for six
5 months on that agreement.

6 Q As it relates to this document, this reflects what
7 you prepared and at this time that you prepared this,
8 you reflect that you've been paid \$2,000 on April
9 22nd.

10 A Yes, sir.

11 Q \$1,000 on May 20th. You said on May 24th there was
12 \$3,000 due and then \$22,000 total due upon the sale
13 of the house, right? That's what you wrote up?

14 A Yes. I didn't get the \$3,000. I originally said
15 \$40,000, and we got into arguments about that amount
16 of money so I let him talk me down to the 20-
17 something thousand, and I still didn't get that.

18 Q You've provided a calendar to us through your
19 attorney, right?

20 A I have.

21 Q And this reflects the time you said you worked on
22 Gary's house; is that right?

23 A Pretty close, yes.

24 Q Did you keep this calendar as you were doing the work
25 or afterward? Did you go back and make this calendar

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2 money as to an agreed upon amount of money that he
3 was going to pay you?

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5 months on that agreement.

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19 attorney, right?

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21 Q And this reflects the time you said you worked on
22 Gary's house; is that right?

23 A Pretty close, yes.

24 Q Did you keep this calendar as you were doing the work
25 or afterward? Did you go back and make this calendar

1 Q You said you prepared this contract, Exhibit 1,
2 and you said that this was what you said was due, I
3 think, as of May 22nd, 2019. You were saying \$22,000
4 due plus the \$3,000. That's \$25,000, right?

5 A That's what that says, but that's not what the
6 agreement was in the beginning. It changed.

7 Q Tell me exactly what this agreement, alleged
8 agreement was?

9 A When I spoke with Gary, he asked me what if I could
10 get the house at 445 Rainbow Circle for \$95,000. I
11 said if you can get that house for \$95,000 you need
12 to get on it. I want to be in partnership with you.
13 He said, okay, I'll let you know.

14 Then he comes to the house at 464 Rainbow Circle
15 as I'm working on it, and I asked him about the
16 house. He said I sorry I already got it, but I had
17 to or I would have lost the deal, but I still want
18 you to be in on it. You do the work. I want you to
19 do all the work, and I would get paid at the end. If
20 I needed money, I was to go to Gary, and I was to let
21 him know. That's not how things ended up playing
22 out.

23 Q I want to know what the agreement was. You said --

24 A We were a partnership. He kept telling me the whole
25 time we were a partnership. He asked me, what are

1 you going to do with your money?

2 Q What are the terms of the partnership?

3 A I was going to get paid when the house sold.

4 Q How much?

5 A We never talked numbers.

6 Q Okay. So there was never any agreement as to
7 numbers.

8 A We were partnerships. Everything we did. My labor
9 was my investment. His money, that allowed him to do
10 the money to do the material.

11 Q What were the terms --

12 A I mean if he wanted to pay me, he could have gone and
13 got an equity line on the house and just paid me.

14 Q So what were the terms of the partnership?

15 A I was to get paid at the end. We were a partnership.

16 Q What were you going to be paid?

17 A What was I going to get paid, Gary?

18 MR. D'AGOSTINO: Don't answer any questions.

19 Q I want to know what you understood the terms of the
20 agreement. You're suing him for breach of contract.

21 I want to know the specific terms of the agreement.

22 A That he was going to take care of me when we sold the
23 house. That's what he told me. We were partners.

24 He was trying to get another house. What are you
25 going to do with your money? You want to put it in

1 on another house? He wanted me to put it in on
2 another house. He took me to another house in Lawson
3 Lakes and showed it to me.

4 Q Ms. Duncan, in order to understand -- You sued him
5 for breach of contract --

6 A Yes, because for six months' work I got \$3,000.

7 Q Let me finish my question. You've sued him for
8 breach of contract. I want to know the specific --
9 You said partnership, we were partners. You've told
10 me -- You never talked about this, correct?

11 A Correct.

12 Q You never talked what the terms of the partnership
13 were, correct?

14 A Well we were halvers.

15 Q You didn't put up anything, did you?

16 A My labor. That's what he led me -- That's what he
17 led me this whole time when this deal was
18 transpiring.

19 Q He never said --

20 A We'll do halvers on it. We'll go halvers. Then he
21 sneaked and went and done it because he said he would
22 have lost the deal.

23 Q You said he sneaked and went and done it.

24 A Yeah. He was supposed to got with me so I could get
25 the money.

1 Q You prepared this document on May 22nd. You prepared
2 this yourself. You presented it to him. You said
3 you were owed a total of \$22,000 upon the sale plus
4 the \$3,000 he still owed you right?

5 A He asked me to go home and draw a contract up.

6 Q This is what you prepared, right?

7 A That was not the original agreement but, yes, that's
8 what I prepared. At this point, I went through all
9 my savings. He's not paying me, and I need to get
10 some money in the bank.

11 Q As of May 22nd, 2019, you had gone through all your
12 savings. You had no money?

13 A Right.

14 Q You had the house that your father owned free and
15 clear -- That you owned free and clear?

16 A Yeah, but I had to sell because I lived off my
17 savings while I helped him.

18 Q Why didn't you go get a job?

19 A That was my job was working seven days a week for
20 him, sixteen hours a day. I've got my proof to show
21 that with my pictures, they're time stamped, and all
22 the text messages where we communicated daily, and
23 the receipts where he gave me his credit card.

24 WHEREUPON: Document marked as Exhibit 2.

25 Q I'm going to hand you Exhibit 2. Who prepared that

1 document?

2 A I did.

3 Q Where did you get that form from?

4 A I had to go to the courthouse to do it.

5 Q What day did you sign that form?

6 A May 24th.

7 Q So two days after you prepared the other contract,

8 correct?

9 A Yes, because he started avoiding me and wouldn't pay

10 me. He told me to come up there and bring the

11 contract. Then I got a text message saying he's not

12 going to be there.

13 Q So between May 22nd and May 24th, two days, you went

14 from \$25,000 to \$70,525, correct?

15 A I originally said \$40,000, and then he talked me down

16 to the 20-something thousand, and I was desperate

17 because he let me burn through all my savings.

18 Q So you're telling us he talked you down to \$22,000

19 plus the \$3,000. You originally told him \$40,000 and

20 two days later your file a lien for \$70,000?

21 A Yep, for all my materials and what I was about to pay

22 for an attorney.

23 Q What materials were you out of?

24 A Well, not materials.

25 Q You said materials.

1 A I meant my labor is what I meant, and my attorney's
2 fees.

3 Q When did you hire an attorney?

4 A I called him on the day after Memorial Day of that
5 year.

6 Q Did you have a contract --

7 A I told him that --

8 Q Let me ask my question. You have a contract to pay
9 \$20,000 in attorney's fees?

10 A I did not know what my attorney's fees were going to
11 be.

12 Q Well, you filed a lien --

13 A If he had paid me, I wouldn't have had to file
14 anything. I mean I'm the one losing everything.
15 What can he prove other than the \$3,000 that he's
16 given me for all that labor.

17 Q Let's talk about the labor. You prepared the walls.
18 He paid for all the materials.

19 A I took several trees down. I did all the landscaping
20 outside. I put all the landscaping fabric down, all
21 the stones down, all the pressure washing. I cleaned
22 all the gutters out three times. Took all the gutter
23 caps off. Guttered the whole house with the Latinos
24 that he hired and ran off with a ball bat and had to
25 call the police on. Anything that had to be

1 purchased for the home, I went and got it or if I had
2 to help with the heating and air people, or if I had
3 to talk with somebody that put plastic down. If I
4 had to talk with the garage door people. Rick, the
5 neighbor, who did, you know, the landscaping, took
6 the trees up from the roots. All the painting, all
7 the skim coating, all the running for the materials,
8 the clean, the flooring. Like I said, it was a 2,400
9 square foot home that had to be skim coated and
10 painted and primed, that's a three process, and
11 sanded, in the garage, in the laundry room, the steps
12 and all the broken up pieces that had to be filled in
13 and caulked and made nice again. All the doors that
14 had holes in them that Gary didn't want to purchase
15 new doors so I fixed all those doors, all the hinges,
16 all the door knobs. I sanded the front door down,
17 sanded the back door down, grouting the floors in the
18 sunroom, painted the roof in the sunroom three times,
19 all the caulking that Gary wanted done in the
20 sunroom. All the little stuff in between. Like I
21 said, building up around the air conditioner outside.
22 Taking all the wires off the house, all these cable
23 wires. Filling in all the holes where all the screws
24 were. Painting the shed out there and putting new
25 wood on it. Blowing leaves for two weeks and burning

1 them.

2 Q Are you done? Anything else?

3 A No.

4 Q How much did you get paid per hour when you were
5 working at Easons?

6 A \$18.50 an hour.

7 Q How much did you get paid per house when you worked
8 for the woman down the road from this house?

9 A It was by project.

10 Q And the projects included painting and other things,
11 correct?

12 A Painting and wallpaper.

13 Q And you --

14 A We didn't have a number because we were a
15 partnership.

16 MR. HALFORD: Let him ask his question
17 please so she can transcribe it.

18 Q You did the same thing for your ex-husband, Jeff,
19 correct?

20 A Correct.

21 Q Did you get paid by the hour or by the job for him?

22 A By the job.

23 Q Did you have an agreement with him up front as to how
24 much you were going to get paid?

25 A I did not because it changed sometimes.

1 done before it was sold, Gary's house?

2 A Say that question again please.

3 Q After all the work was done, right before Gary sold
4 the house, did you ever go in and see the interior of
5 the house?

6 A No. He locked me out of the house.

7 Q I understand that. He locked the house up. He took
8 your key from you, right?

9 A No. He changed the locks.

10 Q He changed the locks. After he changed the locks did
11 you ever go back into the house?

12 A (Indicating)

13 Q No?

14 A No, sir.

15 Q Are you telling us that you did the final paint job
16 on every room in that house?

17 A Yes, I am.

18 Q Even the garage?

19 A Yes, even the garage. I have picture showing that
20 was complete. The lights weren't done. All the
21 painting was done. I have videos of everything
22 because I was pretty proud of my work, and he was
23 really proud of my work. He told me I should have
24 been from India because I worked like and Indian.

25 MR. D'AGOSTINO: That's all the questions

SHERRY KILLIAN DUNCAN vs GARY GILL GURDIP
Gurdip Gary Gill on 09/07/2021

1	STATE OF SOUTH CAROLINA	)	
2	COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS
3		)	
4	SHERRY KILLIAN DUNCAN,	)	
5	PLAINTIFF,	)	
6	-VS-	)	CASE NO: 2019-CP-46-2090
7	GARY GILL GURDIP,	)	
8	DEFENDANT.	)	
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11			
12	DEPOSITION OF GURDIP GARY GILL		
13	FORT MILL, SOUTH CAROLINA		
14	SEPTEMBER 7, 2021		
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1 A Customer.

2 Q Did you ever go visit her at her father's house?

3 A No, sir.

4 Q At 464 -- Did you know she had a father that lived in
5 that same community?

6 A After I talked to her via work, that's how I know.
7 She told me that's my father's house, that's where I
8 live.

9 Q So it's your testimony that you've never been to that
10 home?

11 A I've never been in her house.

12 Q The home that is the subject of this lawsuit or in
13 contention in this lawsuit is 445 Rainbow Circle?

14 A Yes, sir.

15 Q Was that ever your primary home?

16 A No.

17 Q Did you buy it strictly for investment purposes?

18 A Yes, sir.

19 Q Has that home now been sold?

20 A Yes, sir.

21 Q Do you recall who purchased the home?

22 A I forgot his name. He sold the house last year in
23 August.

24 Q How much did you sell the house for?

25 A \$280,000.

1 A There's a few mistakes she corrected after -- stuff I
2 don't like it.
3 Q If you told her you didn't like something, she would
4 fix it?
5 A She did fix it. It wasn't a very big deal. She'd go
6 over and did it.
7 Q Was it corrected to your satisfaction?
8 A What she done I was satisfied with that.
9 Q How often do you recall paying my client? Did she
10 give you invoices?
11 A No, sir.
12 Q Did she just come to the store and ask you for a
13 draw?
14 A Yes.
15 Q My client has testified earlier that you paid her a
16 draw of \$2,000 at some point?
17 A Yes.
18 Q Did you make another draw payment to her of \$1,000?
19 A Yes, I did.
20 Q Do you recall any other monies paid to my client?
21 A She ordered some fans as far as I remember, and she
22 got paid for it. She did online. She was doing her
23 ex-husband's house. I don't know if it was left over
24 or not. We used for that house. Whenever she did it
25 and whatever it was worth, we paid her by check.

1 Q I represent to you that that is after you purchased
2 the home. Do you remember what date you purchased
3 the home?
4 A I'm not sure exactly what the date was.
5 Q 2018?
6 A Yes.
7 Q Was my client still working in the house as of
8 February 2019?
9 A February 2019, yes.
10 Q I just want to show you one portion of the text. It
11 appears to be from you, and I'm not sure. Is that
12 you, GG? Does that stand for Gary Gurdip?
13 A (Indicating)
14 Q The text appears to say thanks again for your hard
15 work and that you and she will celebrate her birthday
16 at some point. What hard work are you referencing in
17 this text?
18 A Paint.
19 Q What had you done to observe this work at that time?
20 A Well, the paint she was doing -- Like I said, she did
21 a great job. I just say thank you for your hard
22 work. You can say to any of your employees, any of
23 your partners when you do something right.
24 Q In fact, she had done some work before that you were
25 impressed with, hadn't she?

1 A Yes. I was happy. Like I said before, I see her
2 work, which is the paint.

3 Q And you saw it at another house, not this one. You
4 saw her work at another home, correct?

5 A Yes. That's why I say, yes, let's go ahead.

6 Q You just testified you said, yes, let's go ahead.
7 What do you mean by that?

8 A The work. I said let's go -- I give her a chance to
9 paint the house.

10 Q Did she accept and say okay I want to do it?

11 A Yes.

12 Q And at some point she came to the home that you
13 purchased at 445 Rainbow; is that correct?

14 A Even before I called her, can we meet at the store
15 and tell me how much you're going to charge me for
16 the paint. She never come up with any money. Then I
17 decide -- I said, well, there's so many customers
18 keep coming in if it can't be done. I want to make
19 her a contract, a simple contract because it's not a
20 big job, only the paint. I still want to do the
21 contract. She come to my house. We had dinner
22 together. She never come up with any numbers. As a
23 customer, I can trust her.

24 Q Did you trust her?

25 A I trust her to paint.

1 Q Did you trust her to clean the yard?
2 A Clean what, sir?
3 Q The yard.
4 A No, sir, because she never done it.
5 Q Do you trust her to do any of the hardwoods?
6 A She never done.
7 Q It's your testimony that she never worked on the
8 hardwood flooring?
9 A No, sir.
10 Q Is it your testimony here today that all she did for
11 you was painting?
12 A Painting.
13 Q But there's no written contract that specifies that,
14 correct?
15 A No, sir.
16 Q Tell me, at the time you entered into this agreement
17 for painting, who was the owner of the property?
18 A I owned the property.
19 Q Did you ever ask my client if she had a general
20 contractor's license?
21 A I did. She told me no.
22 Q But you let her work on the house, didn't you?
23 A Yes, for paint.
24 Q And your testimony here today is all she did was
25 painting; is that correct?

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Sherry Killian Duncan,	)	
	)	
Plaintiff,	)	DEFENDANT'S MOTION FOR
	)	SUMMARY JUDGMENT
vs.	)	
	)	
	)	File Book No. 2019-CP-46-02090
Gurdip S. Gill a/k/a Gary Gurdip a/k/a	)	
Gary Gurdip Gill,	)	
	)	
Defendant.	)	
_____	)	

Defendant moves for this court to grant summary judgment against the Plaintiff and to dismiss this action.

The Plaintiff's first cause of action alleges a breach of contract. There was no contract between the parties. There is no evidence of a contract between the parties other than for the work which Plaintiff performed and for which Defendant paid the Plaintiff. There is no written document. The Plaintiff attempts to assert that a joint venture agreement exists but fails to set forth any basis for a joint venture other than her assertions. The Plaintiff was paid for her services when she submitted invoices for her services. The Plaintiff did not contribute any monies for the improvements to the property. Plaintiff does not provide any evidence and/or basis for the assertion that she's entitled to any part of the proceeds from the sale of the property. The Plaintiff asserts based upon her pleadings that the Defendant would be responsible for 100% of all monies made for the improvements to the property. To establish a joint venture, the Plaintiff must demonstrate a meeting of the minds. There was and never has been a meeting of the minds by the parties. As such, the Defendant is entitled to a judgment against the Plaintiff on the breach of contract cause of action.

Defendant further request this court to grant summary judgment as it relates to the second cause of action. The Plaintiff fails to set forth a cause of action as it relates to the claim of breach of contract by fraudulent act. There is no such cause of action. The evidence from the depositions and discovery demonstrates that the Plaintiff was paid for her services and materials. Defendant paid for all the materials.

As to the third cause of action, Plaintiff did not state a claim upon which relief can be granted. A constructive trust is a remedy, not a cause of action. The Plaintiff is attempting to again restate the joint venture exist but fails to assert and/or establish a meeting of the minds.

Defendant further moves for summary judgment as to the fourth cause of action based upon South Carolina betterment statute. Again, the Plaintiff has failed, and the evidence of record fails to establish that the Plaintiff is entitled to any relief.

The Plaintiff submitted invoices to the Defendant as the work was progressing and Defendant paid the Plaintiff. Plaintiff has no interest in the real estate. Under the statute of frauds, an interest in real estate must be in writing. There is no writing. There is no contract and any contract relating to land must be in writing.

Defendant submits that there are no questions of fact for a jury to decide. Defendant requests this court to grant him judgment against the Plaintiff and dismiss this lawsuit. Using the Plaintiff's analysis, any individual can assert a claim that he has an interest in real estate. What is most interesting is that Plaintiff began this lawsuit asserting that she was a contractor but when Defendant asserted the defense of lack of license, she has modified her claims to avoid the licensure requirements. The Defendant will rely upon the depositions and discovery evidence in support of this motion.

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ATTORNEY FOR DEFENDANT

York, SC
October 19, 2022

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Sherry Killian Duncan,)
Plaintiff,)
vs.)
Gurdip S. Gill a/k/a Gary Gurdip a/k/a)
Gary Gurdip Gill,)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

File Book No. 2019-CP-46-02090

I do hereby certify that on the 19th day of October, 2022, I served the foregoing **DEFENDANT’S MOTION FOR SUMMARY JUDGMENT** together with a copy of this Certificate of Service, on Richard R. Gleissner, Attorney for Plaintiff, by email to rick@gleissnerlaw.com and anissa@gleissnerlaw.com

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ATTORNEY FOR DEFENDANT

York, SC
October 19, 2022

IN THE STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
Sherry Killian Duncan,	)	Civil Action No.: 2019-CP-46-02090
	)	
Plaintiff,	)	
vs.	)	
	)	REPLY TO COUNTERCLAIM
Gurdip S. Gill a/k/a Gary Gurdip a/k/a	)	
Gary Gurdip Gill,	)	
	)	
Defendant.	)	

The Plaintiff, Sherry Killian Duncan (“Plaintiff” or “Duncan”), hereby replies to the counterclaim filed on behalf of the defendant Gary S. Gill a/k/a Gary Gurdip a/k/a Gary Gurdip Gill (“Gill” or the “Defendant”), would respectfully show and allege to the court the following:

GENERAL DENIAL

1. All allegations of the Answer and Counterclaim are hereby denied unless specifically admitted herein.
2. The allegations of paragraphs 1 through 20 relate to the Defendant’s response to the Plaintiff’s complaint and therefore no response is necessary. To the extent a response is necessary, the Plaintiff incorporates the allegations of the Second Amended Complaint.
3. The allegations of paragraph 21 of the Answer and Counterclaim are hereby denied.

WHEREFORE, having set forth her Reply to the Counterclaim, Plaintiff would pray the following relief issue by Order of this court.

1. The court dismiss the allegations of the Counterclaim and grant the Plaintiff the relief requested in the Plaintiff’s Second Amended Complaint.

2. For such other and further relief in favor of the Plaintiff as the court deems just and proper under the circumstances, now, or to be developed through discovery in this case.

Respectfully submitted,

\s Richard R. Gleissner, Esquire
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April 4, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Sherry Killian Duncan,	)	
	)	
Plaintiff,	)	
	)	ANSWER AND COUNTERCLAIM
v.	)	
	)	
	)	File Book No. 2019-CP-46-2090
Gurdip S. Gill a/k/a Gary Gurdip a/k/a	)	
Gary Gurdip Gill,	)	
	)	
Defendant.	)	
_____	)	

The Defendant, Gary Gill Gurdip, responding to the allegations of the Second Amended Complaint, alleges and shows as follows:

1. All allegations of the Second Amended Complaint not specifically admitted herein are denied.
2. The Defendant admits the allegations of paragraph 1.
3. Responding to the allegations of paragraph 2, the Defendant, Gary Gill Gurdip, sets forth that he is a resident of York County, South Carolina. The caption should reflect this Defendant's name and not all the other names the Plaintiff has set forth.
4. The Defendant denies the allegations of paragraph 3.
5. The Defendant denies the allegations of paragraph 4.
6. The Defendant denies the allegations of paragraph 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20.
7. Responding to the allegations of paragraph 21, the Defendant admits that he subsequently sold the home for \$280,000.
8. The Defendant denies the allegations of paragraphs 22, 23, 24, 25, 26, 27, 28 and 29.

9. The allegations of paragraph 30 do not require a response except to reference to the above.
10. The Defendant denies the allegations of paragraphs 31, 32, 33, 34, 35 and 36.
11. The allegations of paragraph 37 do not require a response except to reference to the above.
12. The defendant denies the allegations of paragraphs 38, 39, 40, 41, 42, 43, 44, 45.
13. The allegations of paragraph 46 do not require a response except to reference to the above.
14. The Defendant denies the allegations of paragraphs 47, 48, 49, 50 and 51.

FOR A SECOND DEFENSE

15. The Plaintiff fails to state a claim upon which relief can be granted and the complaint should be dismissed pursuant to rule 12(b)(6)

FOR A THIRD DEFENSE

16. The Defendant pleads accord and satisfaction. The Plaintiff submitted and requested payment for services performed and the Defendant paid the Plaintiff pursuant to her request to which the Defendant had agreed. In addition, Defendant paid for all materials which were used for the improvement of the property.

FOR A FOURTH DEFENSE

17. The Plaintiff's claims are barred in that she did not have a license as a specialty contractor's licensee to perform any of the work and therefore, her claims are barred. In addition, Plaintiff originally filed a mechanics' lien asserting she was owed monies for labor and not a joint venture. Plaintiff further filed claims previously asserting she was owed money for labor. As such, Plaintiff is judicially estopped from asserting different

theories wholly inconsistent based upon facts not a different argument, and as such, this action should be dismissed.

FOR A FIFTH DEFENSE

18. The Plaintiff's claims are barred by the statute of frauds.

FOR A SIXTH DEFENSE

19. The Plaintiff has set forth a claim of a joint venture. The claim, and Plaintiff's assertions, cannot be sustained as there is a lack of consideration. Plaintiff was paid draws as the work on the home progressed and the Defendant paid for all of the materials.

FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM

20. All allegations set forth above not inconsistent herein are as though copied verbatim.
21. The Plaintiff has asserted an entirely different theory based upon the fact that the Defendant amended his pleadings and asserted lack of license as a defense. The Plaintiff claims one or all of them are frivolous and as such, Defendant is entitled to attorney's fees and costs against the Plaintiff pursuant to the South Carolina frivolous claims statute, as well as Rule 11, South Carolina Rules of Civil Procedure.

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ATTORNEY FOR PLAINTIFF

York, SC
 April 4, 2022

IN THE STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT

Sherry Killian Duncan,

) Civil Action No.: 2019-CP-46-02090
)

Plaintiff,

vs.

) **MOTION TO ALLOW SECOND**
) **AMENDED COMPLAINT**
)

Gurdip S. Gill a/k/a Gary Gurdip a/k/a
Gary Gurdip Gill,

Defendant.

TO DANIEL D. D'AGOSTINO, ESQUIRE ATTORNEY FOR THE DEFENDANT:

Pursuant to Rule 15(a) and Rule 15(b) of the South Carolina Rules of Civil Procedure (the "Rules"), the Plaintiff hereby moves for an order allowing her to file her Second Amended Complaint.

PROCEDURAL POSTER OF AMENDMENT

The procedural facts are as follows:

1. The Defendant obtained permission to file an Amended Answer on November 11, 2021.
2. The Defendant filed his Amended Answer on November 12, 2021.
3. The Plaintiff then filed her Second Amended Complaint within thirty days of the filing of the Amended Answer, specifically on December 9, 2021 and served the Second Amended Complaint that same day.
4. The Defendant has objected to the Second Amended Complaint and has stated that the Plaintiff does not have the right to file the Second Amended Complaint.
5. Out of an abundance of caution, the parties have agreed that the Plaintiff will file

this Motion to Amend to obtain a determination of whether the court will allow the Second Amended Complaint or whether the Plaintiff has the right as a matter of course to file the Second Amended Complaint.

THE SUBSTANTIVE PURPOSE OF THE AMENDMENTS

The purpose of the Second Amended Complaint is conform the pleading with the evidence as presented in Mr. Gill's deposition.

First, the Defendant is not properly named in the original Complaint or in the Amended Complaint. In these pleadings, the Defendant is identified as Gary Gill Gurdip. During his deposition, taken by prior counsel on September 7, 2021, the Defendant was identified as "Gurdip, middle initial S, last name Gill." Deposition of Gill at page 4, line 11. Thus, the plaintiff needs to amend the pleading to correct the identification of the Defendant.

Second, in the Defendants Amended Answer, the Defendant raises for the first time that "Pursuant to SC Code Section 40-59-20, the Plaintiff was required to have a specialty contractor's license in order to pursue any claim at law or in equity for work." See Amended Answer, ¶19, at p. 2. In the Second Amended Complaint, the Plaintiff seeks to clarify that the work being done was not as a contractor, but as a joint venturer and as an equitable owner of the real property. The original complaint also states that the contract between the parties was joint venture. See paragraphs 5, 19, 24, and 28 of the Original complaint. The Second Amended Complaint merely seeks to clarify this.

The next substantive clarification relates to the Original Complaint having a cause of action for "Quantum Meruit". Within this cause of action, the Plaintiff states "the labor and service provided by the Plaintiff have improved the real property under joining venture". Rather

than a cause of action for Quantum Meruit, the proper cause of action with this allegation is one for the recovery of betterments pursuant to Section 27-27-10 of the South Carolina Code of Laws (the “Betterment Statute”). Thus, the Second Amended Complaint seeks to clarify the Quantum Meruit cause of action as more properly pursuant to the Betterment Statute.

The last substantive clarification relates to the fact that in the Deposition of Mr. Gill, he testified that he had sold the property of the joint venture. Thus, the Plaintiff seeks to assert a constructive trust over the proceeds of the sale of the property that she believes she was a one half owner of, pursuant to the joint venture. See Deposition of Sherry Duncan, p. 16, 19, and 20.

LEGAL ARGUMENT

Rule 15(a) says that a party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served. The Plaintiff filed her Second Amended Complaint in response to the Amended Answer and within 30 days as required by the Rule. Therefore, the Second Amended Complaint should be allowed.

Rule 15(b) says “amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment.” In this case, the Second Amended Complaint if well before any judgment has been entered and seeks to amend the pleadings to conform to the evidence as presented in the depositions of the parties. Therefore, the Second Amended Complaint should be allowed.

CONCLUSION

WHEREFORE, the Plaintiff prays that the court enter an order allowing the Second Amended Complaint either as an amendment “as a matter of course” or as an amendment to

conform the pleadings to the evidence. The Plaintiff prays for such other and further relief as the Court deems just.

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January 11, 2022

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
Sherry Killian Duncan,	)	Civil Action No.: 2019-CP-46-02090
	)	
Plaintiff,	)	
vs.	)	
	)	SECOND AMENDED COMPLAINT
Gurdip S. Gill a/k/a Gary Gurdip a/k/a	)	
Gary Gurdip Gill,	)	
	)	
Defendant.	)	

The Plaintiff, Sherry Killian Duncan (“Plaintiff” or “Duncan”), complaining of defendant Gary S. Gill a/k/a Gary Gurdip a/k/a Gary Gurdip Gill (“Gill” or the “Defendant”), would respectfully show and allege to the court the following:

GENERAL JURISDICTIONAL ALLEGATIONS

1. Plaintiff is a resident of York County.
2. Defendant is a resident of York County and transacts business in York County. The Amendment is to correct the name of the Defendant pursuant to his testimony at his deposition and to clarify the causes of action. Also, the property that was the subject of the original Complaint has been sold and this amendment takes into consideration the sale of the property.
3. All matters described herein arise out of agreements between Plaintiff and Defendant pertaining to a joint venture to purchase, renovate, and sell real property and a house known as 445 Rainbow Circle, Clover, South Carolina 29710 in York County (the “Property”). The Property is further known by York County Tax Map No. 465-00-00-038.
4. Jurisdiction is proper in this court as it involves a joint venture involving the Property in

York County and the actions of the parties were all in York County.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

5. Plaintiff and Defendant entered into a joint venture for the improvement, rehabilitation, renovation, and planned sale for profit of the Property.
6. That pursuant to the parties' joint venture agreements the parties were to jointly purchase, rehabilitate and renovate the Property for re-sale. The practice is commonly referred to as flipping the house. The parties were to share equally in the profits resulting from the flipping of the house.
7. When the Defendant first brought the Property to the attention of the Plaintiff, the Parties agreed that each would contribute equally to the purchase price of the Property and that \$90,000 was a good price to purchase the Property.
8. After a couple of weeks, the Defendant informed the Plaintiff that he had to move quickly in the purchasing of the Property and had purchased it for \$93,000.
9. Upon learning of the purchase, the Plaintiff offered to contribute her one half of the purchase price but was informed that they would settle the matter upon the sale of the Property.
10. Pursuant to the Joint Venture Agreement, the Plaintiff was to provide sweat equity services and labor associated with renovating the Property.
11. Before entering into the Joint Venture Agreement, the Defendant had seen the work performed by the Plaintiff in flipping homes and wanted to use this experience and effort to make the flipping of the Property successful.

12. Pursuant to the Joint Venture Agreement, the Defendant agreed to provide funds for the materials. To facilitate this portion of the Joint Venture Agreement, the Defendant provided the Plaintiff with a credit card and introduce her to suppliers to authorize her to use the credit card.
13. The Defendant rendered no personal physical labor for improvement of the Property.
14. Pursuant to the Joint Venture Agreement, the Plaintiff made the decisions on how to renovate the Property, what color schemes to use on the Property, what light fixtures and bath room fixtures to use on the Property, what landscaping should be done on the Property, and other decisions to improve the value of the Property.
15. From time to time, the Plaintiff would consult with the Defendant but in most situations, the Plaintiff would simply inform the Defendant as to what she had decided and would provide pictures of the before and after results of her decisions and labor.
16. The Defendant never objected to any of the decisions made by the Plaintiff and often expressed his approval of the improvements being made by the Plaintiff.
17. After the Plaintiff had nearly completed the process of improving the Property, the Defendant sought to renegotiate the Joint Venture Agreement. Instead of allowing the Plaintiff to share equally in the value of the improvements made to the Property, the Defendants wanted to compensate the Plaintiff for the labor she had performed.
18. The parties never agreed to the value of the work performed by the Plaintiff.
19. As a result of the dispute, the Defendant excluded and locked out Plaintiff from the Property.
20. At the time, the only items remaining to be done before the Property could be sold was some minor painting in the garage and one bedroom.

21. After locking the Plaintiff out of the Property, the Defendant then sold the home for \$280,000.
22. As a result of the Plaintiff's efforts, decisions, and work, the value of the Property increased from \$93,000 to \$280,000.
23. Pursuant to the Joint Venture Agreement, the Plaintiff was entitled to share in the \$187,000 of profit.
24. A valid and binding agreement existed between Plaintiff and Defendant for rehabilitation, renovation, ultimate sale and profit from sale of the Property.
25. The Joint Venture Agreement was supported by consideration.
26. The Plaintiff fully performed by rendering labor, materials, improvements and renovations to the Property and these efforts in furtherance of the Joint Venture Agreement were accepted by the Defendant.
27. That Defendant breached the parties' Joint Venture Agreement and has refused to share the profits with the Plaintiff.
28. As a direct and proximate result of the Defendant's conduct, Plaintiff was damaged financially and remains unpaid for her participation in the Joint Venture Agreement to flip the Property.
29. Plaintiff is informed and believes that Plaintiff is entitled to judgment and award of all actual and consequential damages as against the Defendant for all amounts to be proven at trial of this matter before the court.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract by Fraudulent Act)

30. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.
31. The Defendant acted to induce, accept, use, and incorporate into the Property, the Plaintiff's services, labor, materials, and contributions of the Plaintiff without full and proper payment.
32. After Plaintiff provided services, labor and materials defendant locked out and excluded Plaintiff from the property, retaining the value of Plaintiff's services which were actually used to improve the property value and make it ready for sale.
33. Without notice to Plaintiff, Defendant excluded Plaintiff from the property without fulfilling the terms of the Joint Venture Agreement.
34. The Defendant's conduct in acquiring but failing to pay Plaintiff after locking Plaintiff out of the property constitutes breach of contract by fraudulent act. That said conduct was dishonesty in fact, designed to deprive Plaintiff proper payment for her participation in the Joint Venture which improved the Property for re-sale to third parties.
35. The Defendant was and is unjustly enriched by Plaintiffs' services and labor to the Joint Venture, and it would be inequitable for Defendant to retain the value of Plaintiffs' labor and services.
36. Plaintiff is informed and believes that Plaintiff is entitled to an award of all actual and punitive damages to be proven before the court at trial.

FOR A THIRD CAUSE OF ACTION
(Constructive Trust)

37. The above listed paragraphs are re-stated here and incorporated by reference as if set

forth verbatim.

38. Plaintiff acted to contribute services and labor to the Property to prepare the Property for sale.
39. Because of the Plaintiff's efforts, the Court should impose a constructive trust on the Property and the Proceeds of the Property.
40. As a result of the constructive trust, the Court should determine that the Plaintiff was an owner of the Property and the services she was rendering was the result of her efforts as an owner of the Property.
41. Because of the Plaintiff's labor and services, the value of the Property was greatly increased.
42. The court should impose a constructive trust on the proceeds of the sale of the Property pursuant to the Joint Venture Agreement and award the Plaintiff one half of the proceeds from the sale of the Property.
43. The labor and services provided by Plaintiff in furtherance of the Joint Venture Agreement improved the real property including, without limitation, painting, landscaping, walls, and flooring.
44. It would be inequitable and unjust for the Defendant to retain the services and labor of the Plaintiff without allowing her to participate in the Profits made by the Joint Venture in flipping the Property.
45. Plaintiff is informed and believes that Plaintiff is entitled to recovery judgment and award of damages as against Defendant and the property as a constructive trust.

FOR A FOURTH CAUSE OF ACTION

(Recovery of Betterments)

46. The above listed paragraphs are re-stated here and incorporated by reference as if set forth verbatim.
47. When the Plaintiff entered into the Joint Venture Agreement, she, in good faith, believed that she had an interest in the Property.
48. Such interest in the Property is protected by South Carolina's Betterments Statute found in Section 27-27-10 of the South Carolina Code of Laws (the "Betterment Statute").
49. Pursuant to the Betterment Statute, the Plaintiff is entitled to recover the full value of all improvements made upon the Property by the Plaintiff.
50. Pursuant to the Betterment Statute, the value of the improvements is the amount that the property is worth after the making of the improvements than it would have been had no improvements or betterments been made.
51. In this case, the Property was worth \$93,000. If the Plaintiff did not make the improvements to the Property, it would have continued to be worth \$93,000. Because of the Plaintiff's efforts, improvements and betterments, the value of the property became \$280,000. Therefore, the Plaintiff is entitled to recover the value of these improvements.

WHEREFORE, having set forth its causes of action as against Defendant and the property of the Defendant, Plaintiff would pray the following relief issue by Order of this court.

1. The court ascertain and determine the rights, obligations, duties, and amounts owing to the Plaintiff by the Defendant.
2. The court issue its judgment and award of damage to the Plaintiff for all actual

and punitive damages.

3. The court award judgment to Plaintiff under Plaintiff's First, Second, Third and Fourth Causes of Action.
4. For such other and further relief in favor of the Plaintiff as the court deems just and proper under the circumstances, now, or to be developed through discovery in this case.

Respectfully submitted,

\s Richard R. Gleissner, Esquire
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December 9, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	
	)	
Sherry Killian Duncan,	)	
	)	
Plaintiff,	)	DEFENDANT'S AMENDED
	)	ANSWER TO AMENDED COMPLAINT
vs.	)	
	)	
Gary Gill Gurdip,	)	Case No: 2019-CP-46-2090
	)	
Defendant.	)	

The Defendant Gary Gill Gurdip, responding to the allegations of the Complaint filed September 14, 2020, would allege and show unto the court as follows:

1. All allegations of the Complaint not specifically admitted herein are denied.
2. The Defendant admits the allegations of Paragraphs 1 and 2 of the complaint.
3. Responding to the allegations of Paragraph 3, The Defendant admits that he hired and paid the Plaintiff for services associated with work on a piece of property located at 445 Rainbow Circle, Clover, South Carolina with the tax map number as alleged.
4. The Defendant admits the allegations of Paragraph 4.
5. The Defendant denies the allegations of Paragraph 5, 6, 7, 8, 9, and 10 of the complaint.
6. Responding to the allegations of Paragraph 11, Defendant admits that Plaintiff performed work and provided labor for the property and Defendant submits that he paid the Plaintiff in full.
7. Defendant denies the allegations of Paragraph 12.
8. Defendant, responding to the allegations of Paragraph 13, would allege that he is free to do with his property what he wishes to do. Defendant does plan on selling the property.

9. Defendant denies the allegations of Paragraphs 14 and 15.

10. The allegations of Paragraph 16 do not require a response except by reference to the above.

11. The Defendant denies the allegations of Paragraph 17.

12. Responding to the allegations of Paragraph 18, Defendant admits that Plaintiff provided services, labor and materials for the property but Defendant paid Plaintiff in full. Defendant denies the remaining allegations of Paragraph 18.

13. Defendant denies the allegations of Paragraphs 19, 20, 21 and 22.

14. The allegations of Paragraph 23 do not require a response except for reference to the above.

15. The Defendant denies the allegations of Paragraphs 24, 25, 26, 27 of the Complaint.

FOR A SECOND DEFENSE

16. All allegations set forth above not inconsistent herein are incorporated as though copied verbatim.

17. The Defendant pleads the defenses of payment, accord and satisfaction, estoppel, and statute of frauds as affirmative defenses to the Plaintiff's claims.

FOR A THIRD DEFENSE

18. All allegations set forth above not inconsistent herein are incorporated as though copied verbatim.

19. Pursuant to S.C. Code Section 40-59-20, the Plaintiff was required to have a specialty contractor's license in order to pursue any claim at law or in equity for work.

20. The Plaintiff has no contractor's license or specialty license and as such, her claims are barred by the statute. The Plaintiff clearly testified that her work encompassed various

subparagraphs requiring specialty contractor's licenses including painters/wallpaperers, carpenters, floor covering installers, and electricians.

WHEREFORE, having fully pled, Defendant requests the court to dismiss the complaint with costs to the Plaintiff.

Respectfully submitted.

York, SC

November 12, 2021

s/Daniel D'Agostino
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ATTORNEY FOR DEFENDANT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Sherry Killian Duncan,	)	
	)	
Plaintiff,	)	MOTION TO AMEND
	)	
v.	)	
	)	
Gary Gill Gurdip,	)	File Book No. 2019-CP-46-02090
	)	
Defendant.	)	
_____	)	

The undersigned, as attorney for the Defendant, moves to amend his answer and counterclaim. Through discovery, it has become apparent that there are additional defenses and claims which Defendant can assert. The proposed amended pleading is attached hereto. Pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, amendments to the pleading shall be freely given. This case has not been scheduled for trial. As such, the undersigned requests this court to grant his motion to amend.

Respectfully submitted.

September 10, 2021
York, SC

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ATTORNEY FOR DEFENDANT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	
	)	
Sherry Killian Duncan,	)	
	)	
Plaintiff,	)	DEFENDANT'S AMENDED
	)	ANSWER TO AMENDED COMPLAINT
vs.	)	(Draft)
	)	
Gary Gill Gurdip,	)	Case No: 2019-CP-46-2090
	)	
Defendant.	)	

The Defendant Gary Gill Gurdip, responding to the allegations of the Complaint filed September 14, 2020, would allege and show unto the court as follows:

1. All allegations of the Complaint not specifically admitted herein are denied.
2. The Defendant admits the allegations of Paragraphs 1 and 2 of the complaint.
3. Responding to the allegations of Paragraph 3, The Defendant admits that he hired and paid the Plaintiff for services associated with work on a piece of property located at 445 Rainbow Circle, Clover, South Carolina with the tax map number as alleged.
4. The Defendant admits the allegations of Paragraph 4.
5. The Defendant denies the allegations of Paragraph 5, 6, 7, 8, 9, and 10 of the complaint.
6. Responding to the allegations of Paragraph 11, Defendant admits that Plaintiff performed work and provided labor for the property and Defendant submits that he paid the Plaintiff in full.
7. Defendant denies the allegations of Paragraph 12.
8. Defendant, responding to the allegations of Paragraph 13, would allege that he is free to do with his property what he wishes to do. Defendant does plan on selling the property.

9. Defendant denies the allegations of Paragraphs 14 and 15.

10. The allegations of Paragraph 16 do not require a response except by reference to the above.

11. The Defendant denies the allegations of Paragraph 17.

12. Responding to the allegations of Paragraph 18, Defendant admits that Plaintiff provided services, labor and materials for the property but Defendant paid Plaintiff in full. Defendant denies the remaining allegations of Paragraph 18.

13. Defendant denies the allegations of Paragraphs 19, 20, 21 and 22.

14. The allegations of Paragraph 23 do not require a response except for reference to the above.

15. The Defendant denies the allegations of Paragraphs 24, 25, 26, 27 of the Complaint.

FOR A SECOND DEFENSE

16. All allegations set forth above not inconsistent herein are incorporated as though copied verbatim.

17. The Defendant pleads the defenses of payment, accord and satisfaction, estoppel, and statute of frauds as affirmative defenses to the Plaintiff's claims.

FOR A THIRD DEFENSE

18. All allegations set forth above not inconsistent herein are incorporated as though copied verbatim.

19. Pursuant to S.C. Code Section 40-59-20, the Plaintiff was required to have a specialty contractor's license in order to pursue any claim at law or in equity for work.

20. The Plaintiff has no contractor's license or specialty license and as such, her claims are barred by the statute. The Plaintiff clearly testified that her work encompassed various

subparagraphs requiring specialty contractor's licenses including painters/wallpaperers, carpenters, floor covering installers, and electricians.

WHEREFORE, having fully pled, Defendant requests the court to dismiss the complaint with costs to the Plaintiff.

Respectfully submitted.

York, SC

September 10, 2021

s/Daniel D'Agostino
S.C. Bar No.: 65088
D'AGOSTINO LAW FIRM
25 West Liberty Street
York, South Carolina 29745
dan@ddllplaw.com
Office: 803-628-6509
Fax: 803-628-7990
ATTORNEY FOR DEFENDANT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	
	)	
Sherry Killian Duncan,	)	
	)	
Plaintiff,	)	DEFENDANT'S
	)	ANSWER TO AMENDED COMPLAINT
vs.	)	
	)	
Gary Gill Gurdip,	)	Case No: 2019-CP-46-2090
	)	
Defendant.	)	

The Defendant Gary Gill Gurdip, responding to the allegations of the Complaint filed September 14, 2020, would allege and show unto the court as follows:

1. All allegations of the Complaint not specifically admitted herein are denied.
2. The Defendant admits the allegations of Paragraphs 1 and 2 of the complaint.
3. Responding to the allegations of Paragraph 3, The Defendant admits that he hired and paid the Plaintiff for services associated with work on a piece of property located at 445 Rainbow Circle, Clover, South Carolina with the tax map number as alleged.
4. The Defendant admits the allegations of Paragraph 4.
5. The Defendant denies the allegations of Paragraph 5, 6, 7, 8, 9, and 10 of the complaint.
6. Responding to the allegations of Paragraph 11, Defendant admits that Plaintiff performed work and provided labor for the property and Defendant submits that he paid the Plaintiff in full.
7. Defendant denies the allegations of Paragraph 12.
8. Defendant, responding to the allegations of Paragraph 13, would allege that he is free to do with his property what he wishes to do. Defendant does plan on selling the property.

9. Defendant denies the allegations of Paragraphs 14 and 15.

10. The allegations of Paragraph 16 do not require a response except by reference to the above.

11. The Defendant denies the allegations of Paragraph 17.

12. Responding to the allegations of Paragraph 18, Defendant admits that Plaintiff provided services, labor and materials for the property but Defendant paid Plaintiff in full. Defendant denies the remaining allegations of Paragraph 18.

13. Defendant denies the allegations of Paragraphs 19, 20, 21 and 22.

14. The allegations of Paragraph 23 do not require a response except for reference to the above.

15. The Defendant denies the allegations of Paragraphs 24, 25, 26, 27 of the Complaint.

FOR A SECOND DEFENSE

16. All allegations set forth above not inconsistent herein are incorporated as though copied verbatim.

17. The Defendant pleads the defenses of payment, accord and satisfaction, estoppel, and statute of frauds as affirmative defenses to the Plaintiff's claims.

WHEREFORE, having fully pled, Defendant requests the court to dismiss the complaint with costs to the Plaintiff.

Respectfully submitted.

York, SC

October 2, 2020

s/Daniel D'Agostino
S.C. Bar No.: 65088
D'AGOSTINO LAW FIRM
25 West Liberty Street
York, South Carolina 29745
dan@ddllplaw.com
Office: 803-628-6509
Fax: 803-628-7990
ATTORNEY FOR DEFENDANT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
		CASE NO. 2019-CP-46- 2090
SHERRY KILLIAN DUNCAN	)	
	)	
Plaintiff / Claimant,	)	
	)	COMPLAINT
	)	
vs.	)	
	)	
GARY GILL GURDIP,	)	
	)	
	)	
Defendant/Owner.	)	
_____	)	

The Plaintiff, complaining of defendant Gary Gill Gurdip, would respectfully show and allege to the court the following:

GENERAL JURISDICTIONAL ALLEGATIONS

1. Plaintiff is a resident of York County.
2. Defendant is a resident of York County and transacts business in York County.
3. All matters described herein arise out of agreements between Plaintiff and Defendant pertaining to renovation services for real property and a house known as 445 Rainbow Circle, Clover, South Carolina 29710 in York County. The property is further known by York County Tax Map No. 465-00-00-038.
4. Jurisdiction is proper in this court as involving contractual agreements entered into in York County.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

5. Plaintiff and Defendant entered into a joint venture for the improvement, rehab, renovation, and planned sale for profit of 445 Rainbow Circle, Clover, South Carolina.
6. That pursuant to the parties' agreements the parties were to jointly rehabilitate and renovate the property for re-sale; Plaintiff was to provide sweat equity services and labor and Defendant was to provide funds for acquisition, materials, and pay Plaintiff for labor and services being rendered by Plaintiff.

7. That Defendant rendered no personal physical labor or improvements for improvement of the property. Plaintiff did render physical labor, services and materials to the real property which improved the value of the property.
8. Defendant deliberately failed to pay Plaintiff for months of labor wherein Plaintiff improved said property for re-sale to third parties pursuant to the joint venture described in paragraph (5) above.
9. That payment disputes arose and Defendant Gary Gill Gurdip excluded and locked out Plaintiff from the residence after not paying Plaintiff, and after Plaintiff provided months of labor and services to improve the residence and lot in question. That Plaintiff's labor and services improved the value of the property.
10. That a valid and binding agreement existed between Plaintiff and Defendant for rehab, renovation, ultimate sale and profit from sale of the above property, said agreement supported by consideration.
11. That Plaintiff fully performed by rendering labor, materials, improvements and renovations to the property accepted by the Defendant and incorporated into the property.
12. That defendant breached the parties' agreement by terminating Plaintiff and locking out Plaintiff, thereafter failing to properly pay Plaintiff for labor, services and materials rendered by Plaintiff which improved the property.
13. That Defendant has now entered, or is seeking to enter, or has consummated by sale, contract and closed on the property without paying Plaintiff for labor, materials and services Plaintiff rendered for landscaping, cleaning, painting, sheetrock repair, and other structural and cosmetic improvements made by Plaintiff.
14. That as a direct and proximate result of the Defendant's conduct, Plaintiff was damaged financially and remains unpaid for her time, labor, services and materials rendered to Defendant's property.
15. Plaintiff is informed and believes that Plaintiff is entitled to judgment and award of all actual and consequential damages as against the Plaintiff for all amounts to be proven at trial of this matter before the court.

FOR A SECOND CAUSE OF ACTION

(Breach of Contract by Fraudulent Act)

16. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.
17. That Defendant acted to induce, accept, use, and incorporate into the property 445 Rainbow Circle, Clover, S.C. 29710 the Plaintiff's services, labor, materials, and contributions of the Plaintiff without full and proper payment.

18. That after Plaintiff provided services, labor and materials defendant locked out and excluded Plaintiff from the property, retaining the value of Plaintiff's services which were actually used to improve the property value and make it ready for sale.
19. That without notice to Plaintiff, Defendant excluded Plaintiff from the property without paying the reasonable value of her services and labor after accepting, but not paying for, the Plaintiffs services and labor.
20. That defendant's conduct in acquiring but failing to pay plaintiff after locking Plaintiff out of the property constitutes breach of contract by fraudulent act. That said conduct was dishonesty in fact, designed to deprive Plaintiff proper payment for her labor and services rendered to the property, which improved the property for re-sale to third parties.
21. That Defendant was and is being unjustly enriched by Plaintiffs' services and labor, and it would be inequitable for Defendant to retain the value of Plaintiffs' labor and services.
22. Plaintiff is informed and believes that Plaintiff is entitled to an award of all actual and punitive damages to be proven before the court at trial.

FOR A THIRD CAUSE OF ACTION

(Quantum Meruit Recovery)

23. The above listed paragraphs are re-stated here and incorporated by reference as if set forth verbatim.
24. Plaintiff acted to contribute services and labor to the property to prepare the property for sale, for which defendant has failed to pay the Plaintiff for. On information and belief Defendant has now sold the property for profit or is actively seeking to sell the property.
25. That the labor and services provided by Plaintiff have improved the real property under agreement for renovation services including, without limitation, painting, landscaping, walls, and flooring.
26. That it would be inequitable and unjust for the Defendant to retain the services and labor of the Plaintiff without payment pursuant to the Plaintiff for the value thereof.
27. Plaintiff is informed and believes that Plaintiff is entitled to Quantum Meruit Recovery under judgment and award of damages as against Defendant and the property for labor, services and materials rendered to 445 Rainbow Circle, Clover, S.C. 29710.

WHEREFORE, having set forth its causes of action as against Defendant and the property of the Defendant, Plaintiff would pray the following relief issue by Order of this court.

1. That the court ascertain and determine the rights, obligations, duties, and amounts owing to the Plaintiff by the Defendant.
2. That the court issue its judgment and award of damage to the Plaintiff for all actual and punitive damages.
3. That the court award judgment to Plaintiff under Plaintiff's First, Second and Third Causes of Action.
4. For such other and further relief in favor of the Plaintiff as the court deems just and proper under the circumstances, now, or to be developed through discovery in this case.

Respectfully submitted,

HALFORD, NIEMIEC & FREEMAN, L.L.P.

/s/ J. Cameron Halford

J. CAMERON HALFORD

4609 Charlotte Highway, Suite 1
Lake Wylie, South Carolina 29710
803-547-6618

803-547-6638 fax

E-mail:cam@fortmilllaw. com

September 14, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Sherry Killian Duncan,	)	
	)	
Plaintiff,	)	MOTION
	)	(Rule 60(b), SCRPC)
v.	)	
	)	
Gary Gill Gurdip,	)	File Book No. 2019-CP-46-02090
	)	
Defendant.	)	
_____	)	

The Defendant moves for this court pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure. The judgment in this case was wrongfully obtained against the Defendant.

The action was commenced with the filing of a summons and complaint. The lawsuit was never served on the Defendant. The Plaintiff filed an affidavit of default asserting that the Defendant was properly served. The Plaintiff's counsel asserted as follows:

“That on July 8, 2019 a copy of the Summons, Complaint, Request for Admission of Facts and Discovery Interrogatories and Request for Production were served upon the Defendant by virtue of the attached Exhibit-A, Affidavit of Service. I have permitted forty five (45) days for Response by Defendant prior to bringing this motion before the court.”

Plaintiff's counsel asserted to this court that the pleadings have properly been served. The Defendant was never served. In fact, the Affidavit of Service from the process server asserts the date of service of June 24, 2019, but again it is an unknown person at some other business. South Carolina Rule of Civil Procedure 4(d)(1) sets forth the procedure for serving an individual. The rule requires service to be made upon an individual by delivering a copy of the summons and complaint to the individual personally or by leaving copies at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy to an agent authorized by appointment or by law to receive service of process. The Plaintiff did not serve the defendant individually. The Plaintiff did not serve the pleadings at

the Defendant's place of abode. The affidavit of service sets forth that the process server delivered the papers to the manager of a convenience store. The rules do not allow or provide for substitute service of an individual at his place of employment. In addition, although the Defendant owns a convenience store in Clover, he does not own the convenient store where the plaintiff served these papers.

Subsequent to serving the lawsuit, any process which was attempted was returned as is demonstrated by looking at the Clerk's office records.

Since the Defendant was never served, this court had no jurisdiction over the Defendant. The court could not enter any order as it relates to the Defendant. The action has not begun because the Defendant was never served. The judgment should be set aside. The property which Plaintiff has obtained through misrepresentation to this court should be re-conveyed to the Defendant. The Plaintiff now has a half interest in Defendant's real estate as a result of this court's order transferring a one-half interest.

Plaintiff, through counsel, had a duty to provide accurate information. Plaintiff certified that the rules have been followed and service of process was complete. We now know this is utterly and factually false.

The Plaintiff's conduct has substantially damaged the Defendant, causing him to not be able to sell his property, refinance property, and has appeared as a judgment against the Defendant. Defendant requests this court to grant immediate relief and as part of the relief, grant some type of sanctions against the Plaintiff to the Defendant such as his attorney's fees and costs for having to undo this action. Defense counsel has communicated with Plaintiff's counsel but has been unable to resolve these issues.

Respectfully submitted.

August 19, 2020
York, SC

s/Daniel D'Agostino
S.C. Bar No.: 65088
D'AGOSTINO LAW FIRM
25 West Liberty Street
York, South Carolina 29745
dan@ddllplaw.com
Office: 803-628-6509
Fax: 803-628-7990
ATTORNEY FOR DEFENDANT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
		CASE NO. 2019-CP-46-2090
SHERRY KILLIAN DUNCAN	)	
	)	
Plaintiff / Claimant,	)	
	)	
vs.	)	
	)	PLAINTIFF NOTICE OF MOTION AND
GARY GILL GURDIP,	)	MOTION FOR ENTRY OF DEFAULT
	)	
	)	
Defendant/Owner.	)	TMS # 465-00-00-038
	)	

TO: DEFENDANT GARY GILL GURDIP:

YOU WILL TAKE NOTICE that the Plaintiff will move for Entry of Default as against the Plaintiff within ten (10) days of this motion, or as soon as the court may schedule, or an Order Entering Default as against Defendant pursuant to Rule 55 of the South Carolina Rules of Civil Procedure. This motion is supported by Proof of Service Affidavits and Affidavit of Plaintiff's legal counsel.

Respectfully submitted,

HALFORD & NIEMIEC, L.L.P.
/s/ J. Cameron Halford

J. Cameron Halford
S.C. Bar Id. # 17184
238 Rockmont Drive,
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638 fax
Email: cam@fortmilllaw.com
ATTORNEYS FOR PLAINTIFF

AFFIDAVIT OF SERVICE

Case: 2019-CP-46-2090	Court:	County:	Job: 3488110
Plaintiff / Petitioner: Sherry Killian Duncan		Defendant / Respondent: Gary Gill Gurdip	
Received by: Skidmore & Stewart Inc.		For: Halford, Niemiec, & Freeman LLP	
To be served upon: Gary Gill Gurdip			

I, Michael Scoggins, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

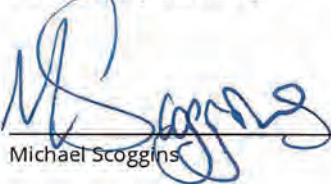
Recipient Name / Address: Sharon Star, Manager, on behalf of Gary Gill Gurdip, Shell: 1510 State Highway 55, Clover, SC 29710

Manner of Service: Personal/Individual, Jun 24, 2019, 11:40 am EDT

Documents: Summons, Complaint, ADR Exemption Certification, Lis Pendens, Interrogatories, Request for Production of Documents, Request for Admission of Facts (Received Jun 20, 2019 at 1:00pm EDT)

Additional Comments:

1) Successful Attempt: Jun 24, 2019, 11:40 am EDT at Shell: 1510 State Highway 55, Clover, SC 29710 received by Sharon Star, Manager, on behalf of Gary Gill Gurdip.

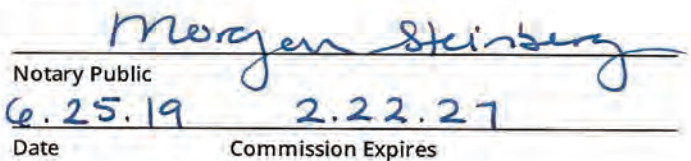

Michael Scoggins

6.25.19

Date

Skidmore & Stewart Inc.

Subscribed and sworn to before me by the affiant who is personally known to me.


Morgan Steinberg
Notary Public
6.25.19 2.22.27
Date Commission Expires

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	Case No. 2019-CP-46- _____
Sherry Killian Duncan,	)	
	)	
Plaintiff,	)	SUMMONS
	)	
vs.	)	
	)	
Gary Gill Gurdip,	)	
	)	
Defendant.	)	
_____	)	

TO: DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and REQUIRED to Answer the Complaint of the Plaintiff in this action, a copy of which is here served upon you with the Summons, within thirty (30) days of service of the Complaint.

YOU WILL TAKE NOTICE that should you fail to Answer or respond in the time aforesaid that the Plaintiff will by and through the offices of the undersigned Petition the court to render judgment against you in your absence and by default for all relief being demanded in the Complaint .

Respectfully submitted,

HALFORD, NIEMIEC & FREEMAN, LLP
s/J. Cameron Halford

J. Cameron Halford
 238 Rockmont Drive
 Fort Mill, South Carolina 29708
 (803) 547-6618
 (803) 547-6638 fax
 E-mail: cam@fortmilllaw.com

June 18, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	CASE NO. 2019-CP-46- _____
SHERRY KILLIAN DUNCAN	)	CASE / LP NO. 2019-LP-46- _____
	)	
Plaintiff / Claimant,	)	
	)	COMPLAINT
	)	(Jury Trial Demanded)
vs.	)	
	)	
GARY GILL GURDIP,	)	
	)	
	)	
Defendant/Owner.	)	
_____	)	

The Plaintiff, complaining of defendant Gary Gill Gurdip, would respectfully show and allege to the court the following:

GENERAL JURISDICTIONAL ALLEGATIONS

1. Plaintiff is a resident of York County.
2. Defendant is a resident of York County and does business in York County.
3. All matters described herein arise out of agreements pertaining to real property known as 445 Rainbow Circle, Clover, South Carolina 29710 in York County. The property is further known by Tax Map No. 465-00-00-038.
4. Jurisdiction is proper in this court as involving contract agreements entered into in York County and matters involving real property lying and situate in York County at the above address in York County.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

5. Plaintiff and Defendant entered into a joint venture for the acquisition, improvement, rehab, renovation, and planned sale of 445 Rainbow Circle, Clover, South Carolina for profit.
6. That pursuant to the parties' agreements the parties were to jointly acquire title to the property for re-sale; Plaintiff was to provide sweat equity services and labor and Defendant was to provide funds for acquisition, materials, and pay Plaintiff for services being rendered by Plaintiff.

7. That Defendant rendered no personal physical labor or improvements for improvement of the property. Plaintiff did render physical labor, services and materials to the real property.
8. Defendant deliberately failed to pay Plaintiff for months of labor services wherein Plaintiff improved said property for re-sale to third parties pursuant to the joint venture described in paragraph (5) above.
9. That Defendant Gary Gill Gurdip acted to secretly acquire title to the property unilaterally, excluding the Plaintiff from deed and title unbeknownst to the Plaintiff. That defendant excluded and locked out Plaintiff from the residence after payment disputes with Plaintiff occurred, and after Plaintiff provided months of labor and services to improve the residence and lot in question.
10. That a valid and binding contract existed between Plaintiff and Defendant for rehab, renovation, ultimate sale and profit from sale of the above property, said agreement supported by valid consideration.
11. That Plaintiff fully performed by rendering labor, materials, improvements and renovations to the property accepted by the Defendant.
12. That defendant breached the parties' agreement by failing to properly pay Plaintiff for labor, services and materials rendering, and by lock-out and excluding Plaintiff from title and the premises.
13. That Defendant has now entered, or is seeking to enter, contracts to sell the property without paying Plaintiff for labor, materials and services Plaintiff rendered to the property for landscaping, cleaning, painting, sheetrock repair, and other structural and cosmetic improvements made by Plaintiff.
14. That as a direct and proximate result of the Defendant's conduct, Plaintiff has and is sustaining damage to be proven at trial of this case.
15. Plaintiff is informed and believes that Plaintiff is entitled to judgment and award of all actual and consequential damages as against the Plaintiff for all amounts to be proven at trial of this matter before the court.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract by Fraudulent Act)

16. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.
17. That Defendant acted to induce, accept, use, and incorporate into the property 445 Rainbow Circle, Clover, S.C. 29710 the Plaintiff's services, labor, materials, and contributions of the Plaintiff without full and proper payment as part of the parties' joint venture.

18. That after Plaintiff provided services, labor and materials defendant locked out and excluded Plaintiff from the property, retaining the value of Plaintiff's services which were actually used to improve the property and make it ready for sale.
19. That without notice to Plaintiff, during the joint venture, Defendant acted to unilaterally acquire title excluding Plaintiff. Defendant has acted to seek contracts upon the property to sell the same after accepting, but not paying for, the Plaintiffs services.
20. That defendant's conduct in acquiring but failing to pay plaintiff constitutes breach of contract by fraudulent act. That said conduct was dishonesty in fact, designed to deprive Plaintiff proper payment for her labor and services rendered to the property and the joint venture.
21. Plaintiff is informed and believes that Plaintiff is entitled to an award of all actual and punitive damages to be proven before the court at trial.

FOR A THIRD CAUSE OF ACTION
(Quantum Meruit Recovery)

22. The above listed paragraphs are re-stated here and incorporated by reference as if set forth verbatim.
23. Plaintiff acted to contribute services and labor to the property to prepare the property for sale, for which defendant has failed to pay the Plaintiff for.
24. That the labor and services provided by Plaintiff have improved the real property under joint venture for ultimate re-sale, and defendant has now acted to contract upon and attempt to contract upon and sell the renovated house.
25. That it would be inequitable and unjust for the Defendant to retain the services of the Plaintiff without payment pursuant to the joint venture agreements between the parties.
26. Plaintiff is informed and believes that Plaintiff is entitled to Quantum Meruit Recovery under judgment and award of damages as against Defendant and the property for labor, services and materials rendered to 445 Rainbow Circle, Clover, S.C. 29710.

FOR A FOURTH CAUSE OF ACTION
(Action to Reform Title – Fraud and Fraudulent Inducement)

27. The above allegations are repeated, set forth and incorporated by reference as if repeated verbatim. That defendant Gill Gurdip acquired title to the property on November 29, 2018 and is currently sole title owner of record.

28. That defendant Gill Gurdip represented to Plaintiff that Plaintiff would have an undivided interest in the property to sweat equity, labor, services and materials that Plaintiff would contribute toward the joint venture.
29. That defendant has engaged in fraud and fraudulently induced the Plaintiff to render services and labor to the property 445 Rainbow Circle, Clover, S.C. 29710 where defendant took deed and title excluding the Plaintiff.
30. That specifically, the Defendant falsely represented the following to Plaintiff:
 - a. That the parties were entering a joint venture to jointly acquire, renovate, and sell the property 445 Rainbow Circle, Clover, S.C. 29710, said representations being materially false.
 - b. That Plaintiff would be paid for services being rendered to the property to prepare it for sale under joint venture with the Defendant, said representations being materially false.
 - c. That Gill Gurdip knew said representations were materially false, and that he had acted without Plaintiff to unilaterally acquire legal title to the property on November 29, 2018 and induce Plaintiff to render work, labor and services to the property.
 - d. That Gill Gurdip falsely assured Plaintiff that she would be paid during the renovation work and would be also paid as part of the sale of the real property, and acted with intent that Plaintiff provide services, labor and materials to the real property in anticipation of sale.
 - e. That Plaintiff was ignorant that defendant had unilaterally taken title to the property and that defendant would not pay Plaintiff for months of labor, materials and services rendered to the property in anticipation of sale.
 - f. That Plaintiff relied upon Defendant's false representations, and had the right to rely on defendant's representations as part of agreement to provide services, labor and materials to improve the property for ultimate sale.
 - g. That Defendant has acted to repeatedly increase the scope of plaintiff's work to include marketing, upkeep, and soliciting buyers for the property in violation of the parties' agreement, ceasing payment to the Plaintiff for renovations and work performed to renovate the house.
31. That as a direct and proximate result of Defendant's false representations, plaintiff contributed months of labor, services and materials to the house and property at 445 Rainbow Circle, Clover, South Carolina without payment and Plaintiff has been financially injured and damaged by defendant's willful and knowing fraud and dishonestly in fact in failing to pay Plaintiff and excluding Plaintiff from the property after she rendered services.

32. Plaintiff is informed and believes that Plaintiff is entitled to all actual and punitive damages as against defendant Gary Gill Gurdip.
33. Plaintiff is informed and believes Plaintiff is entitled to an Order of the court reforming title to the property to identify the Plaintiff as an owner and joint tenant with Defendant Gary Gill Gurdip.
34. That Plaintiff can demonstrate likelihood of success on the merits, no adequate remedy at law, and the threat of imminent contract and sale by Defendant which would exclude plaintiff from payment under the joint venture. Plaintiff seeks temporary and permanent injunctive relief in the form of restraining order and permanent order to restrain and enjoin defendant from sale without paying the value of plaintiff's services rendered to renovate the residence, house and lot.

FOR A FIFTH CAUSE OF ACTION

(Foreclosure of Mechanic's Lien – Book 472 at Page 94)

35. That prior to this filing, Plaintiff filed its mechanic's lien for labor, materials and services rendered to the property 445 Rainbow Circle, Clover, S.C. 29710.
36. That defendant has with knowledge accepted the labor, materials and services of the Plaintiff without payment, which were actually used to erect improvements to the house and lot at the above address.
37. That defendant last supplied labor and materials to the property within the last ninety (90) days under agreement, and with consent of, the defendant Gary Gill Gurdip.
38. That due to nonpayment, Plaintiff is entitled to foreclosure of its Mechanic's Lien filed with this court on May 24, 2019 in Book 472 at Page 94.
39. That Plaintiff seek and Order of the Court to permit foreclosure of the above lien and sale of the property to satisfy all amounts due and owing to the Plaintiff from defendant, and that defendant be compelled to disgorge and pay over the value of plaintiff's services and labor to the property.

FOR A SIXTH CAUSE OF ACTION

(Action for Temporary and Permanent Injunctive Relief)
Motion for Inspection Rights – SCRCP 34

40. The above paragraphs are re-stated here and incorporated by reference.

41. Plaintiff seeks Temporary Injunctive Relief in the form of Court Order to permit inspection and documentation of the property, and permanent injunctive relief barring Defendant from sale to third parties without these matters being resolved by the court.
42. Plaintiff can demonstrate likelihood of success on the merits, threat of imminent irreparable financial harm and injury should the property be sold, and no adequate remedy at law to protect Plaintiff.
43. Plaintiffs seeks all temporary pendente lite and permanent relief from the court pending resolution of these claims before the court.

WHEREFORE, having set forth its causes of action as against Defendant and the property of the Defendant, Plaintiff would pray the following relief issue by Order of this court.

1. That the court ascertain and determine the rights, obligations, duties, and amounts owing to the Plaintiff by the Defendant.
2. That the court issue its judgment and award of damage to the Plaintiff for all actual and punitive damages.
3. That the court award judgment to Plaintiff under Plaintiff's First, Second, Third, Fourth, Fifth and Sixth Causes of Action, including temporary and permanent injunctive relief and discovery.
4. That defendant be required to pay the attorney's fees and costs of this action.
5. For such other and further relief in favor of the Plaintiff as the court deems just and proper under the circumstances, now, or to be developed through discovery in this case.

Respectfully submitted,

HALFORD, NIEMIEC & FREEMAN, L.L.P.

/s/ J. Cameron Halford

J. CAMERON HALFORD

238 Rockmont Drive

Fort Mill, South Carolina 29708

803-547-6618

803-547-6638 fax

E-mail: cam@fortmilllaw.com

June 18, 2019

NOTICE TO DEFENDANT AND/OR DEFENDANT LEGAL COUNSEL

This Summons and Complaint is filed and served with Interrogatories, Request for Production, and Request for Admission of Facts served with the Summons and Complaint in this action. If you do not receive a copy of these documents with the lawsuit please contact attorney J. Cameron Halford at 803-547-6618 or e-mail to cam@fortmilllaw.com.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
CASE NO. 2019-CP-46-02090

SHERRY KILLIAN DUNCAN,
Plaintiff,
-vs-
GURDIP S. GILL a/k/a GARY
GILL, a/k/a GARY GURDIP GILL,
Defendant.

)
)
)
)
) TRANSCRIPT OF RECORD
)
)
)
)
)
)

August 7, 2023
York, South Carolina

B E F O R E:

Honorable Daniel D. Hall, Judge.

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

Mr. Richard R. Gleissner
Attorney at Law
Attorney for the Plaintiff
Columbia, South Carolina

Mr. Daniel D. D'Agostino
Attorney at Law
Attorney for the Defendant
York, South Carolina

Shannon E. McGilberry, CVR-M
Court Reporter

1 THE COURT: All right. We're on the record in 2019-CP-
2 46-2090. This is *Sherry Killian Duncan, plaintiff*,
3 represented by Mr. Gleissner, attorney from Columbia, versus
4 *Gurdip Gill*, or *Gary Gill*, represented by Dan D'Agostino.
5 This case went to trial several weeks ago. After resting of
6 the plaintiff's case, the Court directed a verdict for the
7 defense and that ended the trial and any issues at trial.

8 It appears we're here today on Plaintiff's motion for
9 reconsideration of the Court's order granting the
10 defendant's directed verdict motion and also a motion for a
11 new trial.

12 So, Mr. Gleissner, I'll be glad to hear from you.

13 MR. GLEISSNER: All right. Your Honor, we filed an
14 extensive motion where we cited numerous cases, Your Honor.
15 With the Court's permission, I'll hand up to the Court a
16 copy of that motion.

17 THE COURT: I have your motion that was filed.

18 MR. GLEISSNER: That's the one we'll be talking about.

19 THE COURT: I have that in front of me.

20 MR. GLEISSNER: All right. Thank you, Your Honor.

21 Your Honor, we filed a Complaint for Breach of
22 Contract, breach of contract accompanied by a fraudulent
23 act, the establishment of a constructive trust and the
24 recovery under the South Carolina Betterment Statute.

25 Ms. Duncan was the first to testify. She testified

1 to the terms of the agreement, its breach, the fraudulent
2 acts of the defendant and her damages. Specifically, Your
3 Honor, Ms. Duncan testified that she entered into a
4 partnership agreement. The terms of the agreement was that
5 she was to provide her time and talent to the partnership in
6 flipping a house located at 445 Rainbow Circle in Clover,
7 South Carolina. She testified as to her contributions to
8 the partnership, including her use of her time in making
9 improvements to the property, her talent in making the
10 managerial decisions as it relates to the aesthetics of the
11 property and her talent with regard to facilitating the
12 remaining improvements needed for the property.

13 She testified when the property was sold she was to
14 receive half of the net profits less an draws. She
15 testified the defendant continued to show an intent to work
16 with her and carry on with the partnership. In reliance
17 upon his assurances, she sacrificed continued work on
18 another project in order to work on this partnership
19 immediately.

20 She testified that during this time she was provided
21 with credit cards which she was authorized to use for the
22 purchase of materials to use to improve the property.

23 She testified that she had authority to make decisions
24 with regard to the aesthetic features of the property for
25 which she consulted with the defendants on those choices.

1 She testified that instead of receiving the agreed upon
2 \$2,400 -- well, she specifically testified that the property
3 was purchased for \$93,000 and sold for \$280,000. She
4 testified that instead of receiving the agreed upon \$2,400
5 in monthly draws, the defendant in breach of the agreement
6 only gave her a \$2,000 draw in April and a \$1,100 draw in
7 May of 2019; after she demanded payments in accordance with
8 the agreement, that the defendant withheld here -- the
9 defendant, then, withheld her access to the property,
10 including changing the locks.

11 She testified that the defendant later refuted the
12 existence of a partnership in attempt to extort an economic
13 -- extort from an economically vulnerable position of the
14 plaintiff into accepting a settlement agreement.

15 Mr. McGill then testified Mr. Gill, to his own
16 personal knowledge, that the plaintiff used her time and
17 talent to improve the property and in management of the
18 property as his working with the partnership and making
19 improvements to the partnership, Mr. McGill testified that
20 the only reason he assisted was because Duncan was involved.
21 He testified she fully participated with him in working for
22 the improvement of the property and during the time that he
23 was there, the defendant was only there for a few minutes.
24 He testified that the work he performed was managed not
25 by the defendant, but instead by the plaintiff.

1 Mr. Killian testified to his own personal knowledge of
2 the plaintiff's use of time and talent to improvements of
3 the property and of the aggressive tactics used by the
4 defendants after the plaintiff unmet the demands for
5 payment.

6 The plaintiff discovered additional people were going
7 to attend the meeting, the plaintiff requested that Mr.
8 Killian attend the meeting with her in light of being afraid
9 and intimidated. He testified that he witnessed fear and
10 distress in the plaintiff in the meeting and that the
11 plaintiff left without getting compensated.

12 Ms. Gil -- Mrs. Killian testified regarding her
13 personal knowledge concerning the agreement between Duncan
14 and Gill and her own personal knowledge of the plaintiff's
15 use of her time and talent to improve the property. She
16 testified she was present during one of the initial
17 discussions between the plaintiff and the defendant
18 regarding the property. She testified that there was
19 discussions of the partnership between the plaintiff and
20 defendant for flipping of the house. She testified that she
21 observed multiple meetings between the defendant and the
22 plaintiff regarding the property.

23 Your Honor, the standard, as this Court is well aware
24 and knows probably better than me, that at the motion for
25 a directed verdict stage it is only the existence of

1 evidence or non-existence of evidence, it is not the
2 credibility or weight of the evidence and in a law case
3 tried before a jury, it is the jury that must decide what
4 part of the witness's testimony it wants to believe and what
5 part it wants to disbelieve. It is not the function of the
6 Court to weigh the evidence or determine the credibility of
7 the witnesses.

8 Your Honor, on several occasions during your granting
9 of the motion for summary judgment, you stated that no
10 reasonable jury could find for the plaintiff -- motion for
11 directed verdict. We do not believe that that is the
12 standard. We believe that the standard is simply whether or
13 not it was existence or non-existence of the evidence.

14 Your Honor, as it relates to the breach of contract,
15 where the parties to a contract by their acts, conduct,
16 agreement show that they intend to combine their property,
17 labor, skill and experience or some of these elements on one
18 side and some on the other to carry upon as principals or
19 co-owners, a business trade, venture or commercial
20 enterprise and to share, either expressly or implicitly the
21 profits and losses and expenses that have been incurred,
22 such parties are partners. A partnership is an association
23 of two or more people to carry on as co-owners of a business
24 for profit. The partnership may be -- may rest in parol,
25 doesn't need to have a writing. It may be implied and

1 without express intentions. The parties don't even have to
2 say we are partners. In this case, the parties did say --
3 well, Ms. Duncan testified that the parties said on numerous
4 occasions that they're partners.

5 The evidence presented supported a finding that
6 Duncan and Gill, by their acts, conduct and agreement,
7 intended to combine their property, labor, skill, experience
8 to carry on as partners in a common venture of flipping the
9 property and to share the profits and losses or expenses
10 that may be incurred, thus, Duncan and Gill entered into a
11 partnership.

12 Not only was there adequate evidence, the Court found
13 that there wasn't evidence of control, we believe there was
14 adequate evidence of control in the use of the credit and
15 the management of Mr. Gill and the decisions that Ms. Duncan
16 made, but the Court -- so we believe there was adequate
17 evidence, but even if there wasn't adequate evidence of
18 control by the plaintiff, no such showing is required under
19 South Carolina law.

20 To determine whether a partnership exists the following
21 test is used: one, the sharing of profits and losses. We
22 believe that there was adequate testimony that the parties
23 intended to share profits -- share profits and losses. The
24 communing of interest in the capital of the property and the
25 communing of interest in control or management.

1 I think, most importantly, South Carolina Supreme Court
2 has expressly held that a failure of agreement to meet all
3 three of these would not preclude the finding of a
4 partnership. So even if you don't find control, if you look
5 and see the other elements exist, then you still find for a
6 partnership.

7 In South Carolina Courts, the finding of a partnership
8 is not determined by that there is a -- you don't have to
9 find each one of these or the lack of any one of these in
10 order for the Court to find or for the jury to find the
11 existence of a partnership.

12 As it relates to the finding of a breach, the material
13 term of the partnership agreement between Duncan and Gil was
14 that they would split the profits. Duncan testified no such
15 payment was made. Further, Duncan testified that while she
16 was using her savings during the first four months of the
17 partnership, defendant promised to make \$2,400 per-month
18 payments as draw against her share of the profits she was to
19 receive when the property was sold. This was breached when
20 he only paid her \$2,200 and \$1,100 in April and May of 2019.

21 As it relates to damages, Your Honor, damages are to
22 put the plaintiff in as good a position as she would have
23 been had the contract been performed. In this case, we have
24 proof that there was a -- the property was sold for \$280,000
25 and that it cost \$93,000. So, Your Honor, we believe that

1 we have had -- we have not only proof that the jury can find
2 as it relates to the net profits that were to be shared at
3 the point of the motion for a directed verdict, but we
4 believe that we have reached proof of a mathematical
5 certainty of the amount of loss or damage here, even though
6 such mathematical certainty is not required.

7 Duncan not only testified regarding the original
8 purchase price and the later sales price of the property,
9 but the deeds evidence in these transactions were presented.
10 Not only did the evidence prevent the jury from needing to
11 conjecture, guess or speculate, it provided a mathematical
12 certainty that isn't required under South Carolina law.

13 As it relates to fraudulent acts accompanied by the
14 breach of contract, a fraudulent act is any act
15 characterized by dishonesty in fact or unfair dealing.
16 It's not required -- no proof of false representations is
17 required for breach of contract accompanied by a fraudulent
18 act. Fraudulent act may be prior to or contemporaneous with
19 or subsequent to the breach of contract. Good faith is
20 defined as an honesty in fact. Breach of the covenant of
21 good faith and fair dealing can the fraudulent act required
22 underneath the breach of contract accompanied by a
23 fraudulent act. Intentional dishonesty and this --
24 plaintiffs testified that there was intentional dishonesty
25 in every way and it was directly connected to the failure of

1 the plaintiff to connect to -- to pay -- I mean, the
2 defendant to pay in accordance with the agreement between
3 the parties.

4 As it relates to the establishment of a constructive
5 trust, Your Honor, the law holds that each member of a
6 partnership is held to the highest degree of good faith in
7 his dealings with reference to any matter which concerns the
8 business of the common engagement.

9 Your Honor, not only in the partnership relation, but a
10 breach of his duties to the highest degree of good faith and
11 fair dealing, but by bad faith the defendant obtaining the
12 property in his name alone and without notice to his
13 partner.

14 Your Honor, we believe this Court's finding of the
15 defendant's retaining of the property or the proceeds from
16 the sale of the property would be inequitable and South
17 Carolina provides that plaintiffs met its burden and motion
18 for directed verdict should have been denied.

19 As it relates to the Betterment Statute, Your Honor, if
20 a party believes that they have an interest in land, such as
21 an interest in any profits made from the sale of the land
22 and makes improvements based upon his belief, then the
23 persons are entitled to recover the value created by such
24 improvements. The plaintiff must show that the owner of the
25 land neglected to fill some part of a contract regarding the

1 land.

2 In this case, the plaintiff, Duncan, clearly showed
3 that the owner of the land, Mr. Gill, neglected to fill his
4 part of the partnership agreement regarding this -- the
5 splitting of the proceeds associated with the land and,
6 therefore, we believe the Betterment Statute applies and Ms.
7 Duncan is entitled to half of -- entitled to the betterments
8 associated with the property.

9 In presenting the trial before the Court, we had an
10 issue regarding whether or not the settlement discussions
11 that occurred after Mr. Mc- -- after Mr. Gill had breached
12 the contract and refused to make payments, whether or not
13 those settlement discussions should be admitted into
14 evidence. We believe those -- that that evidence should not
15 have been admitted. We believe it was an error for the
16 Court to allow the discussions concerning the settlement
17 here. It was established by testimony, not only had a
18 actual dispute arisen, but that both parties were
19 disagreeing as how it should be resolved. The disagreement
20 was to such an extent that the defendant had already hired
21 counsel regarding the disagreement.

22 And lastly, Your Honor, believe that the trial Court
23 erred in excluding testimony concerning statements that the
24 witnesses were going to testify were made by Mr. Gill. A
25 statement is not hearsay if the statement is offered against

1 a party and is the party's own statement in either an
2 individual or representative capacity. As a general rule,
3 statements are declarations made by one accused of a crime,
4 are admissible against him. The same is true in civil
5 cases. If you're -- if you are the defendant and you make
6 statements, that -- those statements are admissible. Here,
7 the Court did not find that the evidence was irrelevant or
8 unfairly prejudicial. Rather, the Court failed to meet --
9 to recall Rule 801(D) (2) (A) of the South Carolina Rules of
10 Evidence. The testimony counsel for the plaintiff sought to
11 enter into evidence includes statements by the defendant,
12 discussions with the plaintiff and the statements made by
13 the defendant in discussions with the plaintiff that were
14 overheard by another witness. We believe it was error to
15 exclude that testimony.

16 So, therefore, Your Honor, because of these -- because
17 of these things, we believe that the Court its granting of
18 the motion for a directed verdict and grant a new trial
19 pursuant to Rule 59.

20 THE COURT: All right. Thank you, Mr. Gleissner.

21 MR. GLEISSNER: Thank you.

22 Mr. D'Agostino, do you wish to be heard?

23 MR. D'AGOSTINO: Just briefly, Your Honor. I did not
24 file a response 'cause I did not want to go through and try
25 to restate the testimony. The Court heard the testimony. I

1 don't agree with the -- what the plaintiff's counsel says
2 the testimony showed. I think there are some -- I don't
3 agree with his recitation of the testimony, but regardless,
4 Your Honor, if the Court looks -- when the Court looks at
5 the pleadings and looks at the evidence that was presented,
6 the plaintiff, what he's trying to do is he's trying to get
7 around the issue of not being licensed by South -- in South
8 Carolina and as it relates to contractual matters and he's
9 -- as I understand his theory, which is since this case
10 began has kind of shifted and edged, it's just changed, but
11 he's trying to say there's a contract to perform -- to enter
12 into a joint venture for the purposes of buying a piece of
13 property.

14 Well, you got the issues of parol evidence, you got the
15 issues with Statute of Frauds and then you also have the
16 issue of joint venture.

17 In order for the joint venture to exist, the law's
18 clear, I handed up the case, there has to be equal control
19 and the plaintiff herself testified that she had to ask my
20 client before she spent any money, she had to ask him what
21 to spend money on. He was in control of the project. She
22 might have been out there doing some work, but he was in
23 control of everything. So there was no evidence to
24 establish a joint venture. There's no evidence to import
25 a joint venture. The Court made the proper decision as it

1 relates to the directed verdict.

2 As it relates to the Betterment Statute briefly, Your
3 Honor, the Betterment Statute's entirely inapplicable under
4 27-27-10. I won't read the whole statute, but it says,
5 After final judgment in favor of the plaintiff in an action
6 to recover lands and tenements, if the defendant has
7 purchased or acquired lands and tenements recovered in such
8 action or taken a lease thereof or under those -- under whom
9 he holds and purchased required titled to such lands. So
10 this deals with -- this doesn't deal with the case or the
11 situation that exists here. It -- you might think it does
12 because it's the word betterment, but the statute itself, by
13 the wording of the statute itself, it doesn't apply to the
14 plaintiff in this action, so it has no application.

15 As it relates to a constructive trust, Your Honor, the
16 property was always titled in my client's name. There was
17 never any question about that. It was titled before she --
18 before she even started painting, which is what my client
19 hired her to do. It was titled in his name.

20 She -- as it relates to the evidence the Court admitted
21 and/or denied, opening statements weren't evidence and he
22 made his motion in limine. I took the chance of arguing it
23 to the jury. It wasn't preserved for any arguments. There
24 was no objection made to any testimony about that contract
25 at the time the contract was questioned about on the stand.

1 So the Court didn't error as it relates -- plus, that wasn't
2 settlement negotiations. That wasn't settlement
3 negotiations at all. The plaintiff attempted to or wanted
4 a contract drawn up and, you know, that's where we were with
5 it.

6 As it relates to hearsay, Your Honor, I'm not sure
7 because his motion does not identify specifically what
8 testimony he's saying was kept out, but if it's the
9 testimony of Ms. Killian, if the Court recalls, she was put
10 on the stand, plaintiffs counsel got to proffer her
11 testimony, I got to cross-examine. We argued and had a
12 legal arguments before the Court and then the plaintiff
13 wanted to after -- ask, after the witness heard all those
14 arguments, and made its ruling, wanted to question the
15 witness, consistent with the Court -- what I believe to be
16 the ruling of the Court and that's the only evidence that I
17 can think of that he's referring to that was not admitted
18 because of hearsay and the Court limited it because did not
19 want a witness, basically, testifying differently because of
20 the testimony -- the legal arguments that were presented to
21 the Court and after the Court's ruling.

22 So I don't know of any evidence that was either
23 admitted or denied which the Court made an error. There was
24 plenty of evidence that I wanted in or I wanted out, the
25 Court overruled my objections or limited my questioning. So

1 I'm not sure exactly, but if that's what they're talking
2 about that's what it would be.

3 Your Honor, as it relates to damages, the other thing
4 about damages is Ms. Killian testified not that the damages
5 would be the difference between the purchase price and the
6 sales price. She testified it was the net of that property,
7 net proceeds. She clearly testified to that, but they
8 didn't put any evidence up. While I don't believe we ever
9 needed to get to damages because there was no contract, he
10 never presented any evidence as to what the net really was
11 'cause she's testified clearly that my client paid for
12 everything and that she had to get the money from my client,
13 she had the credit card, that my client paid for all the
14 expenses she ran up. So she didn't present any testimony as
15 it relates to what her damages would be upon which a jury
16 could make its decision. All she testified to was the
17 purchase price and the sales price and the two checks she
18 got. So the jury would have been left to pure speculation
19 and conjecture between the sales price and the purchase
20 price as to what damages would have been and that was
21 incumbent upon her.

22 So, Your Honor, there are many reasons why we had these
23 arguments at the end of the case and incorporate all those
24 by reference and I don't believe there was any error with
25 the Court making a decision to direct a verdict at the end

1 of the trial. Thank you.

2 THE COURT: All right. Thank you.

3 Certainly, Mr. Gleissner.

4 MR. GLEISSNER: Your Honor, just very briefly. I do
5 not believe the Court ruled on the licence requirement issue
6 and I don't believe the Court ruled on the parol evidence
7 issue. I believe the Court just ruled on whether or not
8 certain evidence existed. We believe that the evidence did
9 exist and we believe that we're entitled to a new trial.
10 Thank you, Your Honor.

11 THE COURT: All right. Thank you. Well, certainly the
12 Court heard all the evidence that was presented during the
13 trial. I have read the brief filed by the defendant -- I'm
14 sorry -- the plaintiff in the case. I've heard the oral
15 arguments this morning. I'm going to -- I'm going to deny
16 the motions. I'll do that on a Form 4.

17 The record speaks for itself as far as what was -- what
18 the evidence was at trial and certainly there's ample
19 evidence within the record by which the Court can make its
20 ruling and if it gets appealed, there's a record -- there's
21 ample evidence by which the Court of Appeals can review what
22 this Court did. I deny both motions. Thank you.

23 MR. D'AGOSTINO: Thank you, Your Honor.

24 MR. GLEISSNER: Thank you, Your Honor.

25 (END OF REQUESTED TRANSCRIPT)

STATE OF SOUTH CAROLINA)

) C E R T I F I C A T E

COUNTY OF YORK)

I, the undersigned Shannon E. McGilberry, official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Family Court for York County, South Carolina, on the 7th day of August, 2023.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

In witness whereof, I have hereunto subscribed my name, this 18th day of October, 2023.

Shannon E. McGilberry, CVR-M

My Commission Expires:

April 26, 2027

STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
COUNTY OF YORK * TRANSCRIPT OF RECORD

-----X
SHERRY KILLIAN DUNCAN, *
Plaintiff, *
vs. * Case No. 2019-CP-46-02090
GARY GILL GURDIP, *
Defendant. *
-----X

July 10 to July 12, 2023

TRIAL

B E F O R E:

The Honorable Daniel Hall, Presiding Judge

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

Richard Gleissner, Esq.
Attorney for the Plaintiff

Daniel D'Agostino, Esq.
Attorney for the Defendant

Recorded by: Court Monitor/DCRP

Transcribed by: Bobbi Fisher, RPR
SC Official Court Reporter III

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E X H I B I T S

(Exhibits on file in Clerk of Court's Office.)

Plaintiff's Exhibit

No.	Description	ID.	REC'D
1	Deed to 445 Rainbow Circle	76	76
2	Detailed List of Work Performed	84	86
3	Photo of Front of House/Yard	90	91
4	Photo of Front of House and Yard	92	93
5	Photograph of the House	93	94
6	Photograph of the House	93	94
7	Photograph of the House	93	94
8	Photograph of the House	93	94
9	Photograph of the House	93	94
10	Photograph of the House	93	94
11	Photograph of the House	93	94
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16	Photograph of the House	93	94
17	Photograph of Flower Bed	104	104
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19	Photograph of Spruce Tree	108	109
20	Photograph of Flower Bed	110	
21	Photograph of Back Yard	111	112
22	Photograph of Back Yard and Walkway	117	117
23	Photograph	119	119
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1	22	Photograph	119	119
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20	92	Check from Gill to Duncan	171	172
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1 Defendant's Exhibit

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11 COURT REPORTER LEGEND

12	Dash (--)	Indicates an interruption in speech
13	Ellipses (...)	Indicates trailing off in speech
14	(ph)	Indicates phonetic word
15	[Verbatim]	Indicates the word is said as written
16	(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

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P R O C E E D I N G S

(The following proceedings started at 10:38 a.m.):

THE COURT: We're on the record in 2019-CP-46-2090. This is Sherry Killian Duncan, Plaintiff, represented by Mr. Gleissner of Columbia, versus Gurdip Gary Gill, 2019-CP-46-2090. Mr. Gill is represented by Daniel D'Agostino.

Is the plaintiff ready to proceed?

MOTIONS/MATTERS OF LAW

MR. GLEISSNER: Yes, Your Honor. The plaintiff is ready to proceed. I think we have an initial matter as it relates to settlement discussions. Your Honor, I believe that the defendant intends to offer evidence as it relates to discussions after the breach of the -- what we have alleged is a partnership agreement. We have prepared a memorandum of law supporting our objection to the admission of this kind of evidence (indiscernible). And I'll hand it up to you.

Your Honor, we believe that the evidence is going to show that, after the breach of the partnership agreement, that the parties engaged in settlement discussions, at which time the defendant asked the plaintiff to compromise the amount of money that she was willing to accept as a partner in this engagement. She offered to compromise to a certain extent, and the defendant then asked her to

1 prepare a contract along those lines. She did prepare a
2 contract. The contract was never executed. The defendant
3 asked for additional discounts off that settlement amount,
4 and the agreement was never agreed to, and we believe that
5 they're going to offer this evidence in an attempt to
6 unfairly prejudice the defendant.

7 I believe that South Carolina courts hold fast to
8 the long-standing principle that evidence and conduct made
9 in compromise negotiations is inadmissible because the law
10 favors compromise. Rule 408 specifically provides that
11 the furnishing or offering of promises to furnish or
12 accepting to offer or promise to accept a valuable
13 consideration in compromise or attempting to compromise a
14 claim, which is in dispute as to either validity or
15 amount, is not admissible to prove liability for the
16 invalid or invalidity of the claim or its amount.

17 And, Your Honor, the document and accompanying
18 testimony relating to the plaintiff and defendant seeking
19 to compromise after the breach of the partnership
20 agreement should not be allowed into evidence.

21 THE COURT: Mr. D'Agostino?

22 MR. D'AGOSTINO: First of all, there is no
23 partnership agreement. All right? There's no document --
24 there's no written document. Everything goes back to what
25 the plaintiff says they had some kind of oral agreement.

1 The document that I planned on introducing was
2 towards the end -- while she was still working, she
3 presents my client with a contract and says this
4 construction contract agreement is made this 22nd day of
5 May by and between Gary, an individual located at
6 whatever, and Sherry, an individual located wherever,
7 owner and contractor may each refer to in this agreement
8 individually as "party" and collectively as "the parties."

9 Then it goes through and talks about the work she
10 has done and is to continue to do and how she's going to
11 get paid.

12 And so she presents this to him to sign as -- not as
13 an offer of settlement or anything of that nature. She
14 wanted him to sign this. And what he did was he said,
15 We'll go in Mr. Pendleton's -- what the evidence is going
16 to show is he said -- she gave this to him. She testified
17 she gave it to him. And he says that he wanted an
18 attorney to look at it.

19 He paid Mr. Pendleton to meet her at his office,
20 paid Mr. Pendleton for his time. The two of them were
21 supposed to go to the office and meet, and she didn't show
22 up.

23 So it wasn't the settlement negotiation. The whole
24 document itself talks about how there's work to be done,
25 how they're going to get paid, and things of that nature.

1 So it's not a settlement offer at all.

2 THE COURT: All right. And when do you intend to
3 offer that document?

4 MR. D'AGOSTINO: I'll probably cross-examine her
5 about it, or I'll do it through my client. I'm just not
6 sure. Those are the only two people who can testify about
7 it. It would be tomorrow or the next day.

8 THE COURT: All right. Well, here's what we do
9 then. Whenever you get close to the point
10 (indiscernible), send the jury out. We'll proffer the
11 testimony on the document (indiscernible).

12 MR. D'AGOSTINO: Thank you, Your Honor.

13 THE COURT: I will state my initial -- well, my
14 initial inclination is it does not -- what it intends to
15 present to the Court is that it appears to contest the --
16 at that point to enter into a binding written contract,
17 which is what it's intended.

18 MR. GLEISSNER: That's right.

19 THE COURT: Before we do that (indiscernible) offer
20 of settlement. But we'll go through it in detail and give
21 you an opportunity to cross-examine (indiscernible).
22 (Indiscernible) the trial, we'll proffer it and determine
23 what the context is during the trial (indiscernible).

24 Anything else, Mr. Gleissner?

25 MR. GLEISSNER: No, Your Honor. Other than that,

1 we're ready to go.

2 THE COURT: All right. Mr. D'Agostino?

3 MR. D'AGOSTINO: I have nothing else as it relates
4 to voir dire, Your Honor. The only thing I will bring to
5 the Court's attention is the action was originally
6 commenced with a claim for a mechanic's lien and a claim
7 for services, and then I asserted, when I did get to
8 after -- when we set aside the defaults and everything
9 else. Some of that may come into evidence, Your Honor.
10 I'm not sure -- because what her conduct in serving
11 somebody who is not even my client and getting a judgment
12 against somebody and my client taking a half interest, but
13 we'll cross that bridge.

14 But the action was originally commenced that way and
15 seeking a mechanic's lien. And then, after the
16 deposition, I asserted the defense of lack of licensure.

17 And so the whole -- this whole thing -- the whole
18 case has been changed by this issue by rephrasing, by
19 re-presenting the case differently and pursuing it
20 differently.

21 So, Your Honor, I will be moving in limine because
22 the plaintiff is not entitled to bring an action at law or
23 in equity for any work she's done as it relates to
24 improvements of property if she's not licensed.

25 And so, I understand they have rebranded this

1 lawsuit as a breach of contract or a breach of a joint
2 venture agreement, but I submit to Your Honor, this is
3 just a way to get around the licensing requirement by the
4 State of South Carolina that prohibits bringing lawsuits
5 in law or equity if you're not properly licensed. And
6 that's what I submit is going on.

7 So I'll have to -- I'm just making the Court aware,
8 I do object to any testimony as to improvements to
9 property, value for improvement of property, the right to
10 acquire -- to get any money for betterments, the right to
11 compensation for services, because she's not licensed.

12 THE COURT: Mr. Gleissner?

13 MR. GLEISSNER: May it please the Court? I was not
14 the original attorney in this case. The original attorney
15 in this case was a different attorney here in Rock Hill.

16 When Ms. Duncan approached me, the first thing I did
17 was read her deposition. And in her deposition, she
18 clearly testifies that this began as a partnership, a
19 joint venture for the improvement and flipping of a house.

20 Now, that gives her an interest in the house, and
21 because she has an interest in the house, Your Honor, the
22 licensure agreement doesn't apply. You can always improve
23 something that you have got an interest in. And if you're
24 a member of a partnership, you can -- your interest is
25 that partnership and the proceeds from that partnership.

1 Now, Judge, I believe the evidence is going to show
2 that, at the beginning of this -- at the beginning of this
3 relationship, the parties had agreed -- orally agreed that
4 she was going to be a partner, she was going to share in
5 the profits of the partnership, 50 percent of the profits.
6 He was going -- she was going to contribute her labor, her
7 effort, her time, her talent. He was going to contribute
8 the money for the materials. That's the contributions to
9 the partnership, and the partnership was going to
10 distribute the proceeds.

11 So, Your Honor, we believe there's clearly going to
12 be evidence of a partnership. Her deposition clearly
13 shows there's evidence of a partnership. And, Your Honor,
14 I believe that the licensing agreement does not apply to a
15 partner rendering services pursuant to a partnership
16 agreement and seeking recompense from the partnership upon
17 its -- upon the sale of the property.

18 THE COURT: All right. Thank you.

19 Mr. D'Agostino?

20 MR. D'AGOSTINO: Thank you, Your Honor. Very
21 important. The first thing he started out by saying is,
22 based on their discussions, she has an interest in the
23 land. That's been -- that's the reason why my fifth
24 defense, statute of frauds, is applicable. There's no
25 writing establishing any interest in the property.

1 There's nothing. She has no interest in the real estate.

2 All this testimony about interest in the property, a
3 right to a partnership in the property -- he said it just
4 now. She has an interest in the real estate. That's his
5 argument. The statute of frauds prohibits this kind of
6 testimony. Any interest in the land has to be documented
7 in writing, and there's nothing.

8 And she says unequivocally, between the 1200 text
9 messages and pictures she said in her deposition that were
10 exchanged between -- everything. There's nothing in
11 writing establishing any partnership or any interest in
12 land. So, therefore, Your Honor, that's why this case is
13 so difficult from a legal standpoint and defending it from
14 an evidentiary standpoint is because you have the statute
15 of frauds which prohibits bringing a lawsuit to a certain
16 interest in land when there's nothing in writing, not even
17 part performance. There's nothing.

18 And so, you are barred by the licensure statute from
19 collecting -- should be barred from testifying about any
20 interest in the land because the statute of frauds.

21 So, Your Honor, I move in limine as to any of that
22 testimony because she can't have an interest in the land.
23 There is no -- and there's no partnership -- there's no
24 document demonstrating. And so you also have the statute
25 of frauds as it relates to any interest -- any interest --

1 any contract for an amount -- I think it's over \$500 also
2 needs to be in writing. There's nothing.

3 So, Your Honor, I'm moving in limine -- and I guess
4 I'll have to do it again, depending on what the evidence
5 shows, as to directed verdict. But that's the problem I'm
6 having with this case.

7 I understand she might have had Mr. Holford
8 representing her, but he phrased the case as the facts
9 were presented to him. And after the deposition, when I
10 told him what I was doing, this whole different theory --
11 whole different way to come after my client arose.

12 THE COURT: Mr. Gleissner, I'll give you the last
13 word.

14 MR. GLEISSNER: Thank you, Your Honor. I appreciate
15 that because Mr. D'Agostino sort of did a little bit of a
16 shuffle there. He changed to the statute of frauds, and,
17 Your Honor, I don't believe the statute of frauds applies.
18 If I suggested she had an interest in the real property, I
19 apologize. She had an interest in the partnership. The
20 partnership had an interest in the real property.

21 Her interest was 50 percent of the partnership, and
22 as it relates to the statute of frauds, Your Honor, we
23 know that there are lots of different ways that the
24 statute of frauds doesn't apply, part performance,
25 complete performance, and all of that will be shown by the

1 evidence that Ms. Duncan, in fact, did perform pursuant to
2 the oral partnership.

3 THE COURT: All right. Well, I'll take that under
4 consideration (indiscernible). I'll think on that over
5 the night and I'll rule on that in the morning.

6 Now, when you're talking about property, you're
7 saying the partnership -- that the partnership never owned
8 a piece of real estate. Right?

9 MR. D'AGOSTINO: That's correct, Your Honor. My
10 client owned it in his name, yes, Your Honor.

11 THE COURT: It appears to the Court that it may be
12 the same issue (indiscernible). That was not in writing,
13 but the property that's in question that she claims an
14 interest in was not owned by an entity or LLC to which we
15 don't have anything in writing. The LLC is not in
16 writing. It's all oral, but any interest in the property
17 is clearly in the plaintiff's -- I'm sorry, in the
18 defendant's name; is that right?

19 MR. D'AGOSTINO: That is correct, Your Honor.

20 THE COURT: All right. We'll -- I'll consider your
21 argument, and we'll talk about that (indiscernible).

22 All right. Anything else?

23 MR. D'AGOSTINO: Nothing before we swear the jury --
24 pick the jury, Your Honor. Thank you.

25 THE COURT: All right.

1 MR. GLEISSNER: Nothing from the plaintiff, Your
2 Honor.

3 THE COURT: Y'all need a quick break before we bring
4 the jury in?

5 MR. D'AGOSTINO: Can I go to the restroom? I'm
6 sorry. I should have done that.

7 THE COURT: We'll take a quick break.

8 MR. D'AGOSTINO: Just give me a minute.

9 THE COURT: Five-minute break.

10 (A brief recess was taken from 10:53 a.m. to 11:01
11 a.m.)

12 THE COURT: The clerk is going to talk to you in
13 just a minute. You can go ahead.

14 THE CLERK: You can come in. And Juror No. 53, if
15 you'll just bring y'all's belongings with you.

16 THE COURT: Y'all are not in any trouble. You're
17 just excused. Both of y'all are excused.

18 Thank you, ladies and gentlemen. I appreciate your
19 patience. When we go through this trial, there are going
20 to be times when, if you're selected for a jury, that you
21 may be sitting in your jury room waiting (indiscernible)
22 on issues simply -- that's simply because we have things
23 that we have to take up outside of your presence. I don't
24 want you to think, if you're not here in the courtroom,
25 that we're not working. We may be working very hard but

1 on particular issues that the Court has to deal with and
2 need to be done outside of your presence. And so we have
3 been working since you have been downstairs.

4 JURY VOIR DIRE

5 THE COURT: But we're now at the point in this
6 particular case where we're ready for the third part of
7 jury qualifications, and that's called voir dire. We're
8 going to talk -- I'm going to ask you some specific
9 questions about the case and about -- and your answer to
10 those to determine your qualifications. Then, once we
11 complete that process, we'll be able to select a jury.

12 The case before the Court this morning is
13 2019-CP-46-2090. Sherry Killian Duncan is the plaintiff
14 versus Gurdip and [sic] Gary Gill. Representing Sherry
15 Duncan is Mr. Richard Gleissner.

16 Mr. Gleissner, if you would stand up, introduce
17 yourself and your client.

18 MR. GLEISSNER: May it please the Court?

19 Ladies and gentlemen, I am Richard Gleissner. I'm
20 an attorney in Columbia, South Carolina. This is Sherry
21 Killian Duncan. She is my client. And we're here as the
22 plaintiff. Thank you.

23 THE COURT: Is there any member of the jury panel
24 related by blood or marriage or have a close personal,
25 professional, or a social relationship with either

1 use your electronic devices between now and tomorrow or at
2 any time during the course of this trial to Google people
3 or places or try to look things up that might be related
4 to the case. You're not permitted to do any of that.

5 You're not to discuss the case even among yourselves
6 in the jury room throughout the trial until all the
7 evidence is in and the law has been given to you. So, in
8 the meantime, don't discuss the case with anyone, even
9 among yourselves when you're coming in and out or in the
10 jury room. Don't be using any electronic devices to be
11 looking up things that are related to the case.

12 Other than that, enjoy your time off between now and
13 tomorrow morning. Be back tomorrow morning ready to go --
14 I think the bailiffs generally will tell you to be here
15 about 15 minutes before I do so that we're ready to start
16 at 9:30.

17 With that, you are excused for today.

18 Everyone remain seated while this jury is excused.

19 (The jury exited the courtroom at 11:53 a.m.)

20 THE COURT: All right. Anything further at this
21 point from the plaintiff?

22 MR. GLEISSNER: Nothing from the plaintiff, Your
23 Honor.

24 THE COURT: And the defense?

25 MR. D'AGOSTINO: The only thing I was going to say,

1 Your Honor -- Your Honor, you asked me about this document
2 they made a motion in limine about, the contract as it
3 relates to whether it was settlement negotiations.

4 I was going to mention in hindsight in my opening
5 statement. I guess the best thing is I just --

6 THE COURT: Let's just remind me. We'll deal with
7 that first thing in the morning --

8 MR. GLEISSNER: Thank you.

9 THE COURT: -- before the jury comes in.

10 MR. GLEISSNER: Yes, sir.

11 THE COURT: Before they're sworn, we'll revisit the
12 issue on the document.

13 MR. GLEISSNER: Thank you, Your Honor.

14 THE COURT: And we'll be down until 9:30 tomorrow
15 morning.

16 (Pause in the proceedings.)

17 MR. GLEISSNER: -- that -- I mean, without actual
18 testimony concerning the document, I don't know how we can
19 determine whether or not it was settlement negotiations or
20 not settlement negotiations.

21 THE COURT: Well, Mr. D'Agostino has indicated he
22 wanted to make, I guess, some oral argument -- or
23 potential -- about whether he can use it in -- refer to it
24 in his opening statement, and I had indicated earlier that
25 I was going to take that part under consideration and rule

1 tomorrow morning. So we'll be clear tomorrow morning.
2 The Court will rule and be clear on that, whether he can
3 use it in opening or not before they come in.

4 MR. GLEISSNER: Great. Thank you, Your Honor. I
5 appreciate it.

6 (The trial adjourned at 11:55 a.m.)

7 TUESDAY, JULY 11, 2023

8 (The trial resumed at 9:37 a.m.)

9 MOTIONS/MATTERS OF LAW

10 THE COURT: On the record in 2019-46-2090. This is
11 Sherry Killian Duncan versus Gurdip and Gary Gill. The
12 jury has been selected. They have not been sworn.

13 I believe where we left yesterday is there was a
14 motion in limine by the plaintiff to prohibit the
15 defendant from using a document that was purported to be a
16 contract, and I think the plaintiff had couched it as a
17 violation of Rule 408, that that was an offer of
18 settlement or compromise.

19 I note your objection. I deny that motion. I'll
20 allow it in. It appears what was presented to the Court
21 was during the course of the relationship, that what was
22 presented to the Court, that that particular contract was
23 an attempt to create a contract, which is certainly one of
24 the issues in the case. Whether there's a contract
25 (indiscernible) or not, certainly 408 generally

1 anticipating that litigation has begun and certainly 408
2 prohibits offers of compromise and settlement after
3 litigation has started. That's not the facts of this
4 particular case in that particular document, so I'll allow
5 the defense to refer to it in their opening. And there
6 again, it's a motion in limine. If there's some issue
7 that would come up during the course of trial that could
8 potentially be the basis for not letting it in, we'll deal
9 with that at the time, but I think that's the Court's
10 ruling on that particular issue.

11 Was there not -- any other issue that we needed to
12 deal with? Mr. D'Agostino?

13 MR. D'AGOSTINO: Thank you, Your Honor. May it
14 please the Court? I just want to be sure because it's
15 going to be a little bit difficult as it deals with the
16 record as the way this case was originally framed or
17 packaged as to where it is now.

18 You have South Carolina -- and if I may take a few
19 moments so the Court will follow me as to why I have to be
20 making some objections. South Carolina Code Section
21 40-59-1020, 20 defines what a residential builder is and
22 what a specialty contractor is. And then 40-59-30
23 requires individuals engaged in that type of work to have
24 licenses. And then 40-59-30 also prohibits anyone who
25 does not have a license as a contractor -- as a

1 residential contractor or a speciality contractor from
2 bringing any action at law or in equity for damages
3 relating to -- to collecting monies that they say are due.

4 And just so the Court understands, the action began
5 when Ms. Duncan filed -- she filed a mechanic's lien on my
6 client's property for \$70,000. First, she tried to have
7 them sign a contract for the \$22,000 we talked about.
8 Then she filed a mechanic's lien for the \$70,000.

9 After that, litigation ensued. She filed a lawsuit
10 alleging several causes of action at which time we took
11 her deposition and ascertained she had no license. So
12 she's not entitled to bring any action at law or in equity
13 as it relates to collecting on monies associated with work
14 she's doing on property.

15 And so as opposed to -- she has filed -- one of her
16 lawsuits is for betterments. One of her causes of actions
17 is for betterments. Well, she has no license. She's
18 trying to collect more than \$5,000, which is what a
19 residential contractor -- the threshold dollar amount for
20 a contractor.

21 And as it relates to a specialty contractor, she
22 doesn't -- she was hired to be a painter. My client paid
23 her as a painter, but she doesn't have any licenses at
24 all.

25 So as it relates to these claims for breach of

1 contract, for betterments and things of that nature, I'm
2 going to have to object, and I would ask the Court,
3 basically, to renew my summary judgment motion, but I
4 understand we're at trial.

5 But my objection is that this lawsuit should not be
6 proceeding because she does not have a license, she's not
7 licensed. There is no agreement in writing. There was
8 never any agreement in writing. And as it relates to a
9 joint venture, she's tried to create -- say, the joint
10 venture exists, but she has no -- there's -- any agreement
11 as it relates to an interest in land has to be in writing.

12 So Plaintiff's counsel first -- when he first stood
13 up, he said his client clearly has an interest in the
14 land. And that's been my whole problem all along. She
15 has no interest in the land. The deed's always been in my
16 client's name. My client always -- my client put up all
17 the money for everything associated with this, even paid
18 her.

19 So there's no document in writing. The statute of
20 frauds would prohibit any testimony about an interest in
21 land. So then Plaintiff's counsel says, well, she had an
22 interest in a joint venture, which has an interest in the
23 land.

24 Well, again, there's no writing that substantiates
25 any interest in the land, and there's no writing which

1 establishes a joint venture agreement, and there's no
2 evidence to substantiate a joint venture under the law as
3 it relates to what a joint venture is.

4 So I'm -- I'm moving basically in limine for all
5 this testimony about oral contracts, oral agreements, as
6 the plaintiff is basically barred from bringing any type
7 of action to establish or assert any type of interest in
8 the land or on my client's land because the statute does
9 not allow it.

10 And everything -- I believe it is unquestionable
11 that the basis of her claim is that she worked on the
12 property. That's everything. What she says she does
13 compared to what we say she did is two entirely different
14 things, but it's all based upon her assertion that she was
15 working on the property. And there's no -- she has no
16 license. She's not entitled to it, and there's nothing to
17 substantiate it. So that's where I am, Your Honor.

18 THE COURT: All right. Mr. Gleissner?

19 MR. GLEISSNER: Well, Your Honor, I have absolutely
20 no idea what Mr. D'Agostino's motion just was. I mean, is
21 he making a motion for summary judgment? He can't do that
22 because he hasn't given me ten days' notice for a motion
23 for summary judgment.

24 Is he making a motion for in limine? I don't know
25 what evidence he's trying to exclude. I just have

1 absolutely no idea what he's doing.

2 THE COURT: I'll be glad --

3 MR. GLEISSNER: He's bringing up --

4 THE COURT: Okay. Hold on a minute.

5 MR. GLEISSNER: He's bringing up two issues. The
6 first issue is -- well, I'm going to take the second issue
7 first, and that's the statute of frauds. Your Honor, the
8 law is clear as it relates to statute of frauds. And,
9 Your Honor, I'm going to hand up to the Court the case of
10 Graham v. Prince. It's a Court of Appeals case from 1987,
11 and it talks about the statute of frauds and it talks
12 about how the statute of frauds -- how certain things --
13 oral agreements relating to real property can be taken out
14 of the statute of frauds by part performance. And
15 specifically, Your Honor, on page 3 of 4 of the document I
16 handed up to the Court, it says, "An oral contract within
17 the statute of frauds may be taken out by performance
18 where one party does some act essential to performance of
19 the agreement resulting in loss to himself and benefit to
20 the other." And it cites Scurry v. Edwards.

21 And, in this case, the -- in this case, Prince's
22 performance of the oral contract did result in a loss to
23 him and a benefit to Graham. In this case, Mrs. Duncan's
24 performance of the oral contract -- performance of the
25 oral partnership agreement clearly caused a loss to her.

1 She lost five months -- six months of her time, effort,
2 talent, and clearly resulted in a benefit to Mr. Gill,
3 specifically, she made a \$90,000 house into a \$300,000
4 house. That's a huge benefit to Mr. Gill and a huge loss
5 to Ms. Graham [sic]. Therefore, Your Honor, as it relates
6 to the statute of frauds argument, it's just a red
7 herring. The Court doesn't need to deal with it. The
8 Court doesn't need to address it.

9 As it relates to the licensing agreements, Your
10 Honor, it's a complicated set of statutes, and I agree,
11 it's a very complicated set of statutes.

12 One set of statutes talks about residential
13 specialty contractors, and as it relates to residential
14 specialty contractors, the statutes refer to certain
15 contractors that may get a license. Painters may get a
16 license. Landscapers may get a license. And then it also
17 talks about who must get a license. Painters don't have
18 to get a license. Landscapers don't have to get a
19 license. Plumbers, Your Honor, have to get a license.
20 Electricians have to get a license. These are the people,
21 the musts that are required to obtain a license in order
22 to prosecute an action for collection on a debt, not the
23 may's because they don't have to have a license. Your
24 Honor, they could but they don't have to have a license.

25 And as Mr. D'Agostino says, as it relates to

1 plumbing, my client didn't do any plumbing. As it relates
2 to electrical work, my client did do any electrical work.

3 So, Your Honor, as it relates to that stuff, Your
4 Honor, my client didn't have to have a license.

5 THE COURT: All right. Well, here's where you are.
6 Those are all questions of fact about her relationship and
7 what she did that -- we're past the summary judgment
8 stage. I'm going to deny Mr. D'Agostino's motion. You
9 know, whether there's an issue at the point of directed
10 verdict stage, we'll deal with that based on what evidence
11 is in or is not in.

12 So I'm going to deny Mr. D'Agostino's motion. As
13 far as being couched as a summary judgment or some type of
14 dismissal at this point, that that's not proper because
15 there's no evidence before the Court. The Court will hear
16 that as it's presented and, again, we will likely revisit
17 this issue sometime during the course of the trial.

18 MR. GLEISSNER: Thank you, Your Honor.

19 THE COURT: Anything else?

20 MR. GLEISSNER: Your Honor, just one question on
21 your ruling as it relates to the agreement. Okay. I have
22 moved in limine to prevent the use of the agreement. You
23 have overruled my motion. That kind of puts me in a box.
24 I have got to talk about that agreement now, and I want to
25 make sure that I'm not waiving my objection to the

1 agreement or any part of that agreement just because I
2 have to address --

3 THE COURT: I'm not going to tell you how to try
4 your case; however, this is a motion in limine before the
5 jury has been sworn. How you protect your -- you'll
6 need -- if you're going to protect the record, you're
7 going to need to raise it sometime during the course of
8 the trial.

9 MR. GLEISSNER: Very well, Your Honor. Thank you so
10 much. Do I object when he brings it up during opening
11 arguments? I don't like to object to people's opening
12 arguments.

13 THE COURT: No. The Court is going to -- it's going
14 to be -- the Court is going to abide by its ruling in its
15 motion in limine, and I have instructed that his using it
16 during opening argument is proper. I overrule your
17 objection to him using it in his opening.

18 During the course of the trial, if he determines
19 that he's going to try to introduce that at trial, then
20 I'll entertain any objections at that point, but it
21 appears, unless there's something dramatically changed
22 between now and that point, that I will abide by my prior
23 ruling and allow it in.

24 MR. GLEISSNER: Very well.

25 THE COURT: But that's how you protect your record.

1 Your objection -- you'll need to object to it at the point
2 he intends to introduce it.

3 All right. Is that clear?

4 MR. D'AGOSTINO: Yes, sir.

5 THE COURT: I don't want to tell you how to -- it's
6 not my job to tell you how to -- to lawyer, but that's the
7 way it's procedurally done, accomplished.

8 MR. GLEISSNER: Fair enough, Your Honor. Thank you
9 so much. I appreciate that. And I apologize for being so
10 slow.

11 THE COURT: You're all right.

12 MR. GLEISSNER: I'm a slow guy and I just got to get
13 it clear in my little pumpkin head. Thank you, Your
14 Honor.

15 THE COURT: I'm pretty slow until I die.

16 MR. D'AGOSTINO: The last thing, I talked to
17 Mr. Gleissner to sequester witnesses. I would like to
18 sequester witnesses, Your Honor.

19 THE COURT: All right. Any objection to that,
20 Mr. Gleissner?

21 MR. GLEISSNER: I don't see the need, but...

22 THE COURT: Well, the plaintiff is allowed to be in
23 the courtroom but any other witnesses will be -- I'll
24 grant the motion to sequester.

25 MR. D'AGOSTINO: And my client's wife will wait --

1 she's not a party.

2 THE COURT: Well, she's a party.

3 MR. D'AGOSTINO: She's not a party. She hasn't been
4 named. Just my client.

5 THE COURT: Who is --

6 MR. D'AGOSTINO: Gary Gill. They just named him
7 different ways.

8 THE COURT: Okay. I'm sorry. So when I have been
9 stating -- putting the case, there's two names on the --
10 okay. He is one individual -- one plaintiff [sic].

11 MR. D'AGOSTINO: Gary, yeah.

12 THE COURT: All right.

13 MR. D'AGOSTINO: We just refer to him as Gary Gill
14 going forward.

15 THE COURT: Gary. Okay. That's good. That will
16 help me.

17 MR. D'AGOSTINO: Thank you.

18 THE COURT: All right. And what's the wife's name?

19 MR. D'AGOSTINO: Dolly.

20 THE COURT: Dolly. All right. Yeah, if she'll just
21 have a seat out in the hall.

22 MR. D'AGOSTINO: And my law partner will be joining
23 us in a little while.

24 THE COURT: All right. That's fine.

25 All right. Are we --

1 MR. GLEISSNER: Your Honor, all my witnesses are out
2 in the hall so we're good.

3 THE COURT: All right. Are we ready to proceed?

4 MR. D'AGOSTINO: Yes, sir, Your Honor.

5 MR. GLEISSNER: Ready, Your Honor.

6 THE COURT: Let's bring the jury in.

7 (The jury entered the courtroom at 9:53 a.m.)

8 THE COURT: Thank you, ladies and gentlemen. I
9 appreciate your promptness. We have been working. We are
10 now ready to proceed with the trial.

11 I want to talk to you a little bit and give you some
12 general instructions. First thing we're going to do is
13 the clerk of court is going to swear you in.

14 Madam Clerk?

15 (The jury was duly sworn.)

16 THE COURT: Thank you. And Mr. Baker, I believe
17 you're the alternate. If you'll just maintain that seat
18 throughout the trial. Everybody else can sit wherever you
19 want to when you come in and out of the courtroom. Feel
20 free to sit anywhere else other than Mr. Baker's
21 alternate. He keeps this end seat.

22 Sometime this afternoon, I'm going to give you an
23 instruction to elect a foreperson from among yourselves.
24 When I give you that instruction, when you go back to your
25 jury room, the foreperson has no further or greater say in

1 deliberation of the case or carries no greater influence
2 than any other juror; however, the Court needs an
3 individual in which they can communicate with the jury,
4 and that's why we have a foreperson.

5 When you elect a foreperson, I'm going to ask that,
6 at that time, whenever we do that, the foreperson, when
7 you come back in, will take this end seat on the front row
8 and keep that seat throughout the trial.

9 When you're coming in and out of the courtroom, feel
10 free to bring water with you. We ask that you not bring
11 coffee or soft drinks into the courtroom. We got a nice
12 new -- well, I still call it new -- not terribly new
13 courthouse that our clerk of court has done a good job of
14 keeping clean and looking new. One of those things is
15 that we don't have soft drinks or coffee in our
16 courtrooms. We all have water. Feel free to bring water
17 in and out with you.

18 Ladies and gentlemen of the jury, I'm going to give
19 you some preliminary instructions. We're about to begin
20 this case of the trial of Sherry Killian Duncan versus
21 Gary Gill. And I need to instruct you and tell you that
22 you have been selected to be fair and impartial jurors and
23 your purpose is to find and determine what you believe the
24 facts are in the case. You're the sole judge of the
25 facts. If, at any time, I make any comment regarding the

1 facts, you must disregard it.

2 You're to determine the facts in this case from the
3 testimony and the evidence that's presented here in this
4 courtroom. That's why you're going to hear me throughout
5 the trial say don't be looking at any electronic devices,
6 Googling any people, places, or what you think the law may
7 or may not be. You're not allowed to do that or even
8 discuss the case among yourselves or with anyone else
9 until all the evidence and the law is in because, to be
10 fair and impartial to both parties and determine what the
11 facts are in the case, it's got to be based on what you
12 see and hear in this courtroom.

13 You have taken an oath to be impartial and to
14 determine the facts in this case. The law that makes you
15 the judge of the facts makes me the judge of the law. The
16 law that I give to you is the law that you may consider.
17 It's the only law you may consider. You must accept the
18 law as it is. If you disagree with it -- even though you
19 may disagree with it, you are to follow it and to accept
20 it. I cannot tell you what the facts are in the case, and
21 on the same token, you can't -- your job is to determine
22 the facts and you cannot determine what the law is. You
23 must take the law as I give it to you.

24 During the course of the trial, you may hear the
25 lawyers object. I ask that, when they do that, I may deal

1 with an objection immediately. On the other hand, I may
2 ask them to come up here to the bench, and we may discuss
3 it outside of your presence, or we may ask that you go to
4 your jury room and we may have to deal with issues of law.

5 Don't hold that against the lawyers. When they do
6 that, they're doing their job in representing their
7 clients and making sure that the proper law is being
8 applied in the case. So if you hear objections, don't
9 hold that against them. Again, they're doing their job
10 and the Court, following the law.

11 In determining what the facts are in the case, you
12 must decide whether or not the testimony of witnesses is
13 believable. It's my responsibility to rule as a matter of
14 law as to whether certain testimony is admissible at all
15 or not, but once testimony is admitted or whether or not
16 you believe it is solely for you to determine.

17 In deciding whether to believe a witness, you have
18 the right to consider whether the witness has an interest
19 in the result of the trial, whether the witness is
20 prejudiced toward either the plaintiff or the defendant,
21 and the opportunity for the witness to have seen the
22 matters and things about the witness -- which the witness
23 may testify and the way the witness acts on the witness
24 stand.

25 You have the right to consider anything that is in

1 the record that will help you to evaluate the testimony of
2 the witness. Again, I think this is probably going to
3 be -- hopefully this case will likely end by sometime
4 tomorrow, which means it's not an extremely long case. I
5 expect you to listen very attentively. This is an
6 important case to both the plaintiff and the defendant,
7 and we ask that you give them the proper attention.

8 Anything further as far as preliminary instructions
9 from the plaintiff?

10 MR. GLEISSNER: Nothing from the plaintiff, Your
11 Honor.

12 THE COURT: From the defense?

13 MR. D'AGOSTINO: No thank you, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, we're
15 about to begin the trial. What we will do next is the
16 lawyers will be given an opportunity to give their opening
17 statements to you. Once they have done that, then we'll
18 begin the testimony -- evidence and testimony.

19 Mr. Gleissner?

20 OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

21 MR. GLEISSNER: Thank you, Your Honor. May it
22 please the Court?

23 Ladies and gentlemen of the jury, hopefully we'll
24 have a kind of interesting case for you-all over the next
25 couple of days. My name is Rick Gleissner. I represent

1 the plaintiff, Sherry Duncan. Mr. D'Agostino represents
2 Mr. Gill.

3 You're going to hear two very different stories as
4 it relates to the flipping of a house. And the house is
5 located at 445 Rainbow Circle, and sometimes I'll just
6 refer to it as "the house."

7 Ms. Duncan is going to testify as it relates to her
8 experience in flipping houses. She's had a bit of
9 experience flipping houses. She knows how to do it. She
10 knows what she does. She takes basically a run-down
11 house, renovates, remodels, upgrades the home, and then
12 sells it for a profit. That's what flipping a house is.

13 Ms. Duncan is going to testify that she was in a
14 partnership with her ex-husband as it relates to a house
15 on Rainbow Circle. We'll identify which house that is.
16 And that Mr. Gill, who operates a convenience store in the
17 neighborhood, was familiar with the fact that she was
18 working on and flipping a house and asked questions about
19 it and got interested in flipping a house. And then they
20 started talking about Rainbow Circle. And Ms. Gill [sic]
21 is going to say, "I'll go into a partnership with you.
22 We'll flip Rainbow Circle. That's a great idea."

23 And they talked about what a good purchase price was
24 going to be. Mr. Gill went ahead and bought the house
25 even though Ms. Gill [sic] -- even though Ms. Duncan

1 offered to pay half, he went ahead and said he had to do
2 it in a hurry before the buyer changed his mind.

3 So he bought the house and then he hired a group
4 called Havana Construction and -- well, Ms. Duncan is
5 going to testify -- and I think Mr. Gill is even going to
6 testify -- that Havana Construction was a disaster. They
7 did more damage than they did good. And basically, it was
8 a rookie mistake. They hired a -- he hired a group that
9 he should never have hired.

10 And then he asked Ms. Gill [sic] -- he asked
11 Ms. Duncan to come in, be part of the partnership, take
12 over the renovations, take over the supervision of the
13 house because Mr. Gill was running a convenience store.
14 And it was just him and one other worker at the
15 convenience store, and he didn't have time to supervise.
16 He didn't have time to work on flipping the house. So
17 Ms. Duncan took it upon herself, as part of the
18 partnership, to work toward flipping the house.

19 And you're going to hear testimony from Ms. Duncan
20 that she used her time and talent to change this \$90,000
21 house into a thing of beauty, and you will see pictures of
22 the \$90,000 house, and you will see pictures of the thing
23 of beauty that later sold for \$280,000 without
24 Ms. Duncan's input because Ms. Duncan -- well, she's going
25 to testify she thought they could get a whole lot more

1 than \$280,000 for it.

2 And what did Ms. Duncan do? All right. Ms. Duncan,
3 as it relates -- we have broken it down into the various
4 areas of the house. As it relates to what Ms. Duncan did
5 in the front yard of the house alone, okay, Ms. Duncan is
6 going to testify that she had to clean the roof; she had
7 to pressure wash the gutters; she had to remove the vines
8 and bushes. I don't know if you're familiar with poison
9 oak; she had to remove those. She pressure washed the
10 brick and patio, removed and cleaned the yard waste,
11 repaired and cleaned the roof and the gutters. She
12 repaired masonry and bricks on the patio. She painted
13 shutters, framing, and eaves. She replaced light
14 fixtures, replaced several grates for the crawl space,
15 laid garden pavers, and planted new shrubs.

16 Now, that's the front yard. Now, she didn't do some
17 of those things alone. Some of those things she got help
18 with. She got help with -- one guy helped her cut some of
19 the bushes. He didn't cut all the bushes, but he cut some
20 of the bushes, so she got some help.

21 She got help with the roof. The gentleman came and
22 patched the roof. So she got help but she was the one in
23 charge.

24 As it relates to the backyard, she had to remove
25 several trees, installed French drain, levelled the yard,

1 installed sandbags and plastic to protect the
2 air-conditioning unit, she had to seed the lawn, she built
3 up -- around for the fan and AC unit and created a pad.
4 She installed edging for the driveway so that when the
5 water came, it didn't flood the driveway and flow into the
6 garage.

7 She moved 300 to 400 pounds of old brick and pavers.
8 She cleaned screens, windows, the patio. Cleaned old
9 pavers, relocated to the side of the house, cleaned and
10 landscaped around both sheds, replaced some rotten lumber
11 on the smaller shed, and scraped and painted the larger
12 shed.

13 Now, that's what she did on the outside. And the
14 landscaper would do that stuff. Ms. Duncan did it. All
15 right? And like I said, she had some help. She was the
16 one who did most of the work.

17 Now, inside the house, she had to remove two full
18 dumpsters of debris and furniture and stuff from inside
19 the house. Now, that doesn't include all the debris from
20 outside the house. That went into a different dumpster.
21 Two full-size dumpsters of garbage, rubbish, and debris
22 from the house.

23 She then polished the floors, bomb-bug sanitized the
24 house. The house was bought from a young man that
25 inherited it from his parents when they died, and he

1 hadn't taken care of it. So she had to sanitize and
2 bleach to remove dog urine. She repaired, sanded, and
3 painted doors, and cleaned chemicals, paints and debris
4 left on the doors by Havana Construction. All right? And
5 that's what she did generally to the inside of the house.

6 Specifically as it relates to the dining room and
7 hallway, she had to repair edges and ceilings, sheet rock,
8 drywall caused by the first crew, Havana Construction.
9 Did more damage than they did good. So she had to do all
10 that stuff. She had to fix all that stuff. And then she
11 had to make it look pristine because somebody is not going
12 to pay a lot of money -- and they were asking for a lot of
13 money -- for a house that doesn't look pristine. And
14 she's going to go into great detail as it relates to how
15 you make a house look pristine, because that's what she
16 does when she up-fits a house.

17 As it relates to the -- well, I can go on and on,
18 but I'm going to let Ms. Duncan go on and on because,
19 well, what I say is argument. What an attorney says is
20 argument, but what the witness says on that witness stand,
21 that's evidence. That's what you need to pay attention
22 to. So when Ms. Duncan is testifying, that's what the
23 evidence is.

24 Now, after she started work in December of 2018, she
25 received no money. Partnership agreement, she's going to

1 testify to, is that she was going to live off her savings
2 until her savings ran out. And then after she -- her
3 savings ran out, she was supposed to start getting some
4 draws from the partnership, \$2400 a month to cover her
5 expenses, her food, etc., etc., and so she didn't get
6 anything in December, because that was part of the
7 partnership agreement. She didn't get anything in January
8 or February or March. At the end of April, she ran out of
9 savings. Okay? And then she went to Mr. Gill and said,
10 "All right. I need to start getting some draws. I spend
11 about \$2400 a month. I need about \$2400 a month." He
12 didn't give her \$2400 a month. Instead, he gave her
13 \$2,000. Okay. She worked there April, worked through
14 May, went back to him and said, "I need another draw," and
15 he said, "Well, you can't have one. We're not in a
16 partnership anymore."

17 And she was like, "Well, what do you mean?"

18 And he gave her \$1,000. He says, "We're not in a
19 partnership. I'm sorry. We were never in a partnership.
20 All I asked you to do was paint the house."

21 And she did a whole lot more than just paint this
22 house. And that evidence is going to be shown clear.

23 And so she got a total of \$31,500 [sic], six months'
24 worth of work. And she was working seven days a week,
25 late into the evening. And the evidence is going to show

1 that she had to have special flood lights so that she
2 could work late into the evening, and she's going to
3 testify and other witnesses are going to testify that she
4 really put the time and effort into flipping this house.

5 Now, the evidence is going to show the house was
6 bought for 93,000 and was sold for \$280,000. And even
7 though this house sold for \$187,000 difference, all she
8 got was 3100. And that's not fair.

9 So the story Mr. Gill is going to testify to is very
10 different. And I want you to pay attention to what
11 Mr. Gill says and see whether or not you believe
12 Ms. Duncan or whether or not you believe Mr. Gill.

13 Thank you so much and I appreciate all your
14 attention and all your assistance in handling this matter.
15 Thank you.

16 THE COURT: Thank you.

17 Mr. D'Agostino?

18 MR. D'AGOSTINO: Thank you, Your Honor.

19 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

20 MR. D'AGOSTINO: Ladies and gentlemen of the jury,
21 my name is Dan D'Agostino. I'm an attorney and I practice
22 here in York County. I have a law partner, Jackie Davis,
23 and she will be with us during this trial as well, taking
24 care of another matter for our firm right now. We have
25 offices here in York and one at Fort Mill.

1 Before I get started talking about the case, I just
2 want to thank each and every one of you for being here.
3 Jury service is very important. It's how we resolve
4 disputes, and there is a dispute.

5 The purpose of the opening statement is trying to
6 give you a roadmap so you understand what's going to come
7 down. I'm not going to be tied to my podium; I walk
8 around a little bit. But the purpose of the opening
9 statement is to give you a roadmap so you know what's
10 going to come. It's not like one person can just sit up
11 there and tell you what was (indiscernible). That's not
12 how we have evidence and that's not how evidence comes in.

13 There are rules of evidence, and evidence has to be
14 (indiscernible) and understand it. And the evidence
15 you're going to receive is going to be from the witness
16 and/or witnesses who will testify later. They'll be in
17 the form of documents you'll receive, as the judge will
18 let into evidence. It might be some photographs and
19 things of that nature.

20 And at the end of the case, when you hear from
21 everybody, then the Court is going to -- you're going to
22 hear closing arguments, and that's where each attorney
23 gets up and then the Court is going to -- you're going to
24 hearing closing arguments, and that's where each attorney
25 gets up and gets an opportunity to make an argument.

1 Right now, this is a roadmap. This is not an
2 argument. It's just kind of telling you, foreshadowing
3 what's going to come. But at the end, it's an argument
4 where we get to put together what we have presented to you
5 and why we have presented it and why we think you should
6 rule our way.

7 And after that, the judge, who controls the
8 courtroom throughout the entirety of the trial, he'll
9 instruct you on the law. And he'll ask all of you to then
10 retire to the jury room, consider all the evidence, and
11 render a verdict.

12 That's kind of the layout of what the trial is. So
13 now I want to give you my part of the opening. The
14 plaintiff gave their opening, and now, I get to give mine.

15 What I want to tell you is that, in 2018, Gary -- he
16 does operate a store. Gary's store is over there in
17 Clover off 557, and there was a house that came up for
18 sale on 445 Rainbow. And it came up for sale, and
19 Ms. Duncan (indiscernible). (Indiscernible) has been
20 (indiscernible) about it. Well, she thought of it, but
21 she was doing some work on another house. She and her
22 ex-husband were renovating another house over there, and
23 she actually lived in her father's old house with her
24 father, who has since passed away, and then sold it to
25 (indiscernible) money on that as well.

1 So she and her ex-husband were renovating a house,
2 and Gary mentioned that he was going to buy it. And he
3 ends up buying the house. He purchased it himself, and he
4 paid the full purchase price for the house. And he paid
5 \$93,000 for the house, and then he had his closing costs.
6 He paid every bit of it. And he hired a company. He
7 didn't hire Ms. Duncan to do the work. He hired Havana, a
8 group of people. He paid them a deposit and then paid
9 them some more money.

10 And so it wasn't like we're going into partnership.
11 So he buys the house and hires another company to start
12 doing the work. And he starts having trouble with that
13 company, and Ms. Duncan says she can paint. So what --
14 what she's doing to the other house.

15 And so he has an idea of what the painting is going
16 to cost, because he had the other company that gave him a
17 quote and he made them part of the bid. So he agreed for
18 her to paint. And that's what he agreed for her to do.

19 Now, she knew people in the area, and he knows
20 people as well. He proceeds to buy everything associated
21 with renovating this house. It's not just the \$93,000.
22 He has the closing costs. But in addition to the closing
23 costs, he paid for everything else associated with the
24 house. He paid Ms. Duncan \$3100. He paid her some more
25 money for some (indiscernible) that she had that he bought

1 from her. He reimbursed her any expenses she had in the
2 house. She got gasoline from his gas station and didn't
3 pay for it. That was fine, because she'd run to Lowe's
4 and pick up something for him. It wasn't a problem.
5 There wasn't an issue.

6 The initial -- some of the costs, he paid for the
7 property tax, he paid for the dumpsters. That group
8 Havana he hired is actually who loaded up those dumpsters
9 to haul off all that stuff. He paid for the dumpsters. I
10 mean, he paid on his credit card for Home Depot and Lowe's
11 for the supplies. He paid over 107,000 for that, and then
12 he has credit cards for his Lowe's -- on his other credit
13 card, over \$18,000. So he invested 18,000, 107,000. He
14 paid for the power bill every single month until he sold
15 it. He paid for the insurance on it.

16 And then he paid for all these other subcontractors
17 who worked on it as well. He paid Ricky McGill. He
18 talked about the lawn work. He paid Ricky McGill to come
19 in to do the lawn work, take down trees, things of that
20 nature.

21 He paid every single penny associated with the house
22 and paid Ms. Duncan. And paid her. And what she was
23 doing was the painting. And she might run to the store
24 and pick out some things. He might ask for her opinion
25 about things. But there was never a partnership. He

1 never entered any partnership. There wasn't a partnership
2 because he hired Havana to begin with to start the
3 renovations himself.

4 Now, then she comes to him, and she -- in May, she
5 comes to him and presents him with a contract, on May
6 22nd. This will come into evidence. Presents him with a
7 contract that says I want to memorialize -- she wants
8 \$22,000 from him in full.

9 "Well, I'm not going to sign" and he takes the
10 contract. He pays her attorney, Mr. Pendleton, \$100 to
11 set aside some time to go over a contract with him and her
12 to memorialize what it was that she did, and she doesn't
13 show up for that appointment.

14 Then, on May 24th, a couple of days later, she goes
15 from 22,000, she files a lien on his property for \$70,000
16 and tries to interrupt his -- trying to finish this
17 project and puts a lien on this property for \$70,000.

18 Now, what you'll hear is that Ms. Duncan
19 (indiscernible) contract or subcontract. And, in South
20 Carolina, you can't bring a lawsuit to collect on any
21 monies unless you're licensed as a contractor or a
22 subcontractor. And she's not licensed.

23 So what she's done is now she says, "Oh, I wasn't
24 the contractor, and I didn't have a contract. I don't
25 have a lien for my labor. I have a partnership." And now

1 she's saying she wants one-half of whatever it sold for.
2 Now, it's one-half of \$280,000, despite the fact that Gary
3 put in about 160 out of his pocket.

4 Ms. Duncan, you will hear, has no money invested in
5 this property -- not one penny -- because he paid her
6 everything she asked for until she started asking for
7 ridiculous amounts of money.

8 And that's what the evidence is going to show. And
9 I came over here and looked at some documents, and the
10 reason why I did, these are the documents you'll see.
11 You'll receive summaries. You'll receive the attachments.
12 You'll receive the receipts associated with all this.
13 You'll receive that, and you'll be able to consider it.
14 You'll hear from some of those subcontractors who came out
15 there and worked on the property, who my client hired and
16 paid.

17 So where are we? Well, my client hired Ms. Duncan
18 to paint the house. She painted the house, and she was
19 paid to paint the house. Now she's trying to say she
20 wants one-half to make money on it. There's nothing wrong
21 with making money. He made money on it. But what the
22 other thing you will note is sometimes the lack of a
23 document -- the lack of something is very important.
24 Here, you have a person saying they had an agreement at
25 the time he purchased the house -- even before he

1 purchased the house; yet, there's not one piece of writing
2 to document her new claim between when she testified
3 during a -- testified during a deposition. 1200 emails,
4 text messages, photographs and things like that, not one
5 document to memorialize this partnership.

6 So what I ask you to do is to consider all the
7 evidence. Consider the testimony of everybody when they
8 come in and listen to it, because, at the end, you have
9 got to put it all together. My client did buy a house and
10 he did make a profit on that house, which he's entitled to
11 do. Everybody is entitled to do that. You make an
12 investment, you can make a profit. And that's what he
13 did. And there's nothing wrong with that. And at the end
14 of the trial, we're going to ask you to make a
15 determination that he doesn't owe the money, because he
16 doesn't. He's paid her for her work, and that was it.
17 She had another deal with her ex-husband. She does other
18 things. She worked for another company at one time.

19 All I ask you to do during this trial is to listen
20 to all the evidence. Consider all the evidence. And also
21 make -- see what makes sense. And at the end, after you
22 receive all the evidence and listen to the instructions
23 from the Court, to return a verdict, and that's all we can
24 do, is return a verdict that speaks the truth in this
25 case.

1 I want to thank you for your time and we'll get
2 started with the trial.

3 THE COURT: All right. Thank you, Mr. D'Agostino.
4 Mr. Gleissner, call your first witness.

5 MR. GLEISSNER: May it please the Court? I'd call
6 Sherry Duncan.

7 THE COURT: Ladies and gentlemen, while she's coming
8 up, I want to instruct you that any time if you feel like
9 you need to take a break, just simply raise your hand so
10 either me or the bailiff can see that, and we'll allow you
11 to be excused. At any time you feel like you need to take
12 a break, just raise your hand and let us know that.

13 THE CLERK: Please place your left hand on the Bible
14 and raise your right hand.

15 SHERRY KILLIAN DUNCAN,
16 after having been duly sworn, was examined and
17 testified to as follows:

18 THE CLERK: Thank you. Please be seated.

19 MR. GLEISSNER: May it please the Court? I'm going
20 to hand the court reporter our list of exhibits.

21 THE COURT: All right.

22 MR. GLEISSNER: We premarked them but we weren't
23 able to give the court reporter (indiscernible).

24 THE COURT: All right. Thank you.

25 MR. GLEISSNER: And I have a set for you, if you'd

1 like them.

2 Madam Clerk, would you like one as well?

3 DIRECT EXAMINATION

4 BY MR. GLEISSNER:

5 Q Ms. Duncan, how are you today?

6 A I'm good. Thank you.

7 Q All right. Could you go ahead and tell the jury a
8 little bit about your life in Clover, South Carolina.

9 A Yes. I was born and raised in the area. I'm a
10 Killian from York County. You have probably run across
11 one of us at some point. Been there a long time.

12 I moved to Rainbow Circle when I was seven so it was
13 back in the '70s. I have two children, four
14 grandchildren. And I'm a bookkeeper by trade.

15 When I was in high school, my best friend, Jerry and
16 Eleanor Petit, their daughter and I were best friends.
17 They owned a video manufacturing company. Ms. Petit took
18 me under her wing, and we would work in the warehouse in
19 the summertime, and then, when I graduated from high
20 school, she would teach me bookkeeping as a trade.

21 And I started out in the HR department and grew from
22 there. I worked for UAV Corporation probably for 20-plus
23 years while I had my children and while I was married.
24 And then, later on, the skill that she taught me, I was
25 able to go to work for another company, Eason Roofing in

1 York. I don't know if you know that company, but I worked
2 there for 12 years as a bookkeeper.

3 During the years of my husband and I being married,
4 his family owned Hillbilly's Barbecue and Steaks, and when
5 they opened that restaurant, it allowed us -- the
6 restaurant started doing really good. We all worked in
7 it, you know. I'd do it on the side, on my other jobs,
8 and it became successful. So that allowed us to be able
9 to venture out into other stuff and buy rental property.
10 And we had to fix that up, so we all had different trades
11 we would do.

12 And so we would do that, and then, later on, you
13 know, years go by, you're able, you know, to do good at
14 it. My ex-husband and I were able to get some of our own
15 property. And I would love going into a home and just --
16 it being my canvas. You know, it was like a playhouse.
17 What do I want to do with it? You know, you had this
18 budget you could put into it, bring it up to par, get it
19 retail ready structurally and, you know, great curb
20 appeal. So that was always so much fun, so I fell in love
21 with it.

22 Any time I could find one on the side, even with my
23 ex-husband, we had such a great relationship and I was so
24 good at it, we would do it together, you know, to make
25 money. Sometimes you make a good bit of money. Sometimes

1 you barely break even. But if you love doing it -- and
2 it's hard work -- it was still worth it, you know.

3 But that's kind of my story. You know, I just -- I
4 work a full-time job and do that on the side. I bought my
5 grandmother's house out of the estate many years ago --

6 MR. D'AGOSTINO: Your Honor -- Your Honor, may it
7 please the Court? At some point, I would request that
8 there be some direct questions.

9 THE COURT: Yeah, this is direct examination. She
10 needs to be responsive to your questions. Ask a question,
11 Mr. Gleissner.

12 BY MR. GLEISSNER:

13 Q Okay. Ms. Duncan, can you tell me about your
14 experience with your grandmother's house?

15 A I bought it out of the estate and remodeled it and
16 rented it out for a while. And then, when my husband and
17 I divorced, I moved back into that home and stayed in it
18 for about nine years.

19 Q Okay. Can you tell me -- okay. Tell me how you got
20 involved in real property and flipping houses again.

21 A Through the partnership with my husband and his
22 family.

23 Q All right. And do you remember how many houses you
24 flipped before you started working on your grandmother's
25 house?

1 A Ten -- probably around ten homes at that time,
2 between rental and flippers.

3 Q Okay. And what's your favorite part of flipping a
4 house?

5 A I love the design of it. It's my canvas. I get to
6 recreate it, leave it better than the way I found it.

7 Q Okay. And how did you get back to Rainbow Circle?

8 A When my father was sick, my mother had passed away
9 at 54, my brother at 42, and so I would have to take care
10 of him at Rainbow Circle. And I cut the grass for years
11 and kept it pristine and take him to his doctor's
12 appointments and all this type of stuff. But it just got
13 to be too much, and he was falling and he wanted to stay
14 in his home. He didn't want to go to a nursing home.

15 So I sold my home and took the proceeds of that to
16 bring his back up to par, the heat and air and the roof
17 and that type of stuff in it.

18 Q Let's talk about Rainbow Circle for a second. I
19 have got a map here. It's demonstrative evidence. Is
20 this a map of Rainbow Circle and the surrounding area?

21 A Yes.

22 Q Okay. And can you tell the jury -- can you point to
23 the jury where on that map is your father's house?

24 A On the corner.

25 Q Okay. And can you tell the jury where on that map

1 is Mr. Gill's convenience store?

2 A Here.

3 Q Now, you mentioned you flipping houses with your
4 husband. Did you flip a house with your ex-husband in
5 this neighborhood?

6 A I did.

7 Q All right. Can you show the jury where the house
8 was that you were flipping with your ex-husband in this
9 neighborhood?

10 A Here.

11 Q All right. And then I think we're going to hear
12 from Jessica Killian later in the trial. Can you show
13 where Jessica was living at the time you were working on
14 445 Rainbow Circle?

15 A Here.

16 Q Okay. And then I think we're also going to hear
17 from Mr. McGill -- Rick McGill. Can you show the jury
18 where Rick McGill's house is?

19 A Here.

20 Q All right. So all these people are living in the
21 same neighborhood?

22 A Correct.

23 Q All right. And can you tell the jury -- we
24 mentioned the house, this 445 Rainbow Circle. Can you
25 point to the jury where the house was that you worked on

1 with Mr. Gill?

2 A Here.

3 Q All right. That's 445 Rainbow Circle?

4 A Yes, sir.

5 Q And that's the neighborhood?

6 A Yes, sir.

7 Q All right. And how did you come to know Mr. Gill?

8 A Well, like I say, my father lived on the corner
9 there, and so when I would have to go to Lowe's or needed
10 gas, I always stopped in there. He was the local gas
11 station. You know, you always take care of your own. So
12 I would stop in there and get my drinks and my gas and
13 that type stuff. And he always asked who kept my father's
14 yard up. It's meticulous. It's very clean, very clean.
15 And I always said I did it because I couldn't stand to see
16 it grow.

17 Q Okay. And did Mr. Gill -- did he know you were
18 flipping houses in the area?

19 A He did. I would have stuff all over me when I had
20 to stop and run and get something and --

21 MR. D'AGOSTINO: Your Honor, I'm going to have to
22 object to his state of mind. I have to object.

23 THE COURT: I sustain the objection. It's stricken.

24 BY MR. GLEISSNER:

25 Q Let me rephrase. Did you ever tell Mr. Gill that

1 you were flipping houses in the neighborhood?

2 A I did.

3 Q And did he ever see the house that you were
4 flipping?

5 A He did.

6 Q How did him coming to see the house, how did that
7 come about?

8 A Well, he would also ask me different things about
9 real estate and property and property values and how you
10 would go about this and how you would go about that. That
11 would be our -- you know, your little chitchats as I'd
12 stop in. And he asked if he could come. I was almost
13 finished with 462. I might have even showed him a picture
14 or two, but he asked if he could come by and see it.

15 Q And when did you and Mr. Gill first talk about the
16 house at 445 Rainbow Circle?

17 A That would have been in December. No, wait.
18 November. It was in November. It was in November.

19 Q All right. And what did the two of you talk about?

20 A He said that the boy that was living in the home was
21 a customer at the store as well, and that he would
22 consider selling it. So Gary asked me if 93,000 or 90,000
23 at that time was a good deal for the house. I said
24 absolutely it's a good deal for the house.

25 Q And what did you tell him about purchasing the house

1 at \$90,000?

2 A We talked more about it and I said -- he asked me if
3 I'd consider being partners in the house, and I said yes.
4 And I said, "I'll get the money. You let me know. I'll
5 get an equity on my" -- my father had passed at that time,
6 and I inherited my home. That had always been the plan.
7 But I could get an equity on my home. I would get with
8 Jeff. We would make it work. You know, so he said he
9 would get back with me.

10 Q All right. Did you end up paying half the purchase
11 price for 445 Rainbow Circle?

12 A I did not.

13 Q What happened? How did -- why didn't you pay for
14 half the house?

15 A Well, the boy that was living in the house, he also
16 had his girlfriend and the mother-in-law living there.
17 And she said congratulations. They knew --

18 MR. D'AGOSTINO: Your Honor, I'm going to object to
19 hearsay.

20 THE COURT: I sustain the objection.

21 BY MR. GLEISSNER:

22 Q Did Mr. Gill tell you that he had purchased the
23 house?

24 MR. D'AGOSTINO: Objection to leading, Your Honor.

25 THE COURT: I'll overrule that objection. Go ahead.

1 A I approached Mr. Gill because I had found out that
2 there was a closing on the house, and he told me, yes, he
3 had purchased it. And I asked why you didn't come to see
4 me so I could get you part of the money. He said he had
5 to do it quick because he was worried the little boy was
6 going to back out of the deal. It was like a three-day
7 thing.

8 (Plaintiff's Exhibit No. 1, Deed to 445 Rainbow
9 Circle, was marked for identification.)

10 BY MR. GLEISSNER:

11 Q All right. Let me hand you what is marked as
12 Plaintiff's Exhibit 1, and ask you if you can identify
13 this document.

14 A Yes.

15 Q What is that document?

16 A It's a deed to 445 Rainbow Circle.

17 MR. GLEISSNER: Your Honor, I'd like to move into
18 evidence Exhibit No. 1, which is the deed to the house,
19 dated November 30, 2018.

20 THE COURT: Mr. D'Agostino?

21 MR. D'AGOSTINO: Without objection on that deed,
22 Your Honor.

23 THE COURT: Plaintiff's Exhibit 1 is into evidence.

24 (Plaintiff's Exhibit No. 1 was received into
25 evidence.)

1 BY MR. GLEISSNER:

2 Q Is this the deed where Mr. Gill purchased the house?

3 A It is.

4 Q And what were the terms of your agreement as it
5 relates to 445 Rainbow Circle with Mr. Gill?

6 A Our partnership and --

7 MR. D'AGOSTINO: Your Honor, I'm going to object
8 to -- I'm going to object, Your Honor. Statute of frauds.
9 It's not appropriate.

10 THE COURT: Lawyers approach.

11 BENCH CONFERENCE

12 (A bench conference was held off the record and
13 outside the hearing of the jury and others.)

14 THE COURT: Mr. D'Agostino, I note your objection
15 for the record, however I'll overrule the objection
16 (indiscernible).

17 MR. GLEISSNER: Thank you, Your Honor.

18 BY MR. GLEISSNER:

19 Q Ms. Duncan, can you tell the jury what your
20 agreement was as it relates to -- with Mr. Gill -- as it
21 relates to 445 Rainbow Circle?

22 A He was going to use his credit cards to purchase
23 materials, and I was going to use my time and my labor to
24 do the remodel and the flip of the home.

25 Q How were you going to live while you were working on

1 this house?

2 A I had a savings, and Gary was cash-poor but he had
3 his credit card. Because, remember, he just paid \$93,000
4 for a house because he sold another little house that he
5 had.

6 MR. D'AGOSTINO: Your Honor, I'm going to object as
7 relevancy as to my client's other --

8 THE COURT: I sustain the objection.

9 Ask your next question.

10 BY MR. GLEISSNER:

11 Q So this is -- this is after he had purchased the
12 house; is that right?

13 A Correct.

14 Q All right. And that's when you talked about the
15 terms of the partnership?

16 A Correct.

17 Q All right. And your contribution to the partnership
18 was what?

19 A To live off of my savings and to give my time and my
20 talent to the partnership -- to the home. To give it life
21 and get it ready to be retail ready again.

22 Q And what was Mr. Gill's contribution to the
23 partnership?

24 A He was going to provide the material.

25 Q And what was the agreement as it relates to how you

1 were going to get paid from the partnership?

2 A We were a 50 percent split, but I only had 12,000 in
3 my account at the time. And my bills would run -- just my
4 bills, anywhere from 22- to \$2400 a month. But of course
5 I was working all the time, so it's not like I needed a
6 lot more of anything or was doing anything else, but we
7 would split -- if I ran out of money for my bills, that I
8 could do a draw that would come back off the net profit at
9 the end when we did the sale, to live.

10 Q Is that part of the agreement?

11 A Correct.

12 Q As it relates to paying for the materials, how was
13 that handled?

14 A Well, some things, I would find -- you know, I was
15 always trying to find deals because either you're ready to
16 do -- you have to do the work yourself on a flipper or
17 find as many deals as you can, or you're not going to make
18 any money. I mean, you can't go out and -- it's not a
19 home you're going to live in and go overboard on it. I
20 would find stuff on eBay, the ceiling fans, really nice
21 ones and bid on them and auction on them and stuff like --
22 anything I could find on clearance but would still fit the
23 decor of the home.

24 Q And how did you pay for the materials?

25 A Some, I would pay for and Gary would reimburse, if

1 it was something I had to pick up on the fly. And -- but
2 the bulk of the time, I had Gary's credit card. I always
3 had his credit card, and take a picture of the receipt.

4 Q So Mr. Gill gave you his credit card?

5 A Correct.

6 Q Okay. And you mentioned -- what about if you needed
7 to hire someone?

8 A I was to oversee them and make sure they were doing
9 it correctly.

10 Q Okay. Did some of the people get hired by Mr. Gill?

11 A Havana Construction did.

12 Q But who was supposed to oversee Havana Construction?

13 A Me.

14 Q How did the hiring of Havana Construction, how did
15 that work out?

16 A It was awful. They damaged the house. They made it
17 worse than it was before they came in. It had to be
18 cleaned out.

19 Q And when Havana was first hired, what were you
20 doing?

21 A I was working on 462 Rainbow Circle, the one beside
22 my father's home at that time. I had about two more weeks
23 left on it when Gary approached me about coming over with
24 Havana because they were going to start in about two
25 weeks. But that ended up changing; Havana wanted to start

1 the very next day.

2 And so I put my other house off and would work on it
3 in the late evenings or on the weekends for a couple of
4 weeks and stayed there with Havana and did all the
5 running, got all the materials that they needed, and that
6 type of stuff.

7 And while they were working, I would be there
8 blowing all those leaves, picking all that trash up in the
9 yard, anything I could do to stay busy.

10 Q Were there any red flags associated with Havana
11 Construction before they got hired?

12 A Yeah. They didn't even have their own tools.

13 Q They didn't have their own tools?

14 A Uh-uh.

15 Q Do you know if they were licensed?

16 A I don't.

17 Q You don't know?

18 A I don't know.

19 Q Okay.

20 A Gary hired them.

21 Q How about access to the house? How did you get
22 access to the house?

23 A I had keys. Gary gave me a set of keys.

24 Q Okay. Did Havana Construction have a set of keys?

25 A They did not.

1 Q Did Havana Construction have Mr. Gill's credit card?

2 A They did not.

3 Q Tell the jury about the termination of Havana
4 Construction.

5 A Gary and Havana Construction had worked out, you
6 know, what they were going to do, and me and Havana
7 Construction were constantly bumping heads because of
8 their work ethics. They were tearing -- their original
9 (indiscernible) would come in. They sprayed acid on the
10 popcorn ceiling and started scraping it. It ran down the
11 walls, ate into the paint. It got all the over the
12 cabinets that were in the kitchen, which were in great
13 shape and we were going to save the hardwood floors.

14 They chunked out the beautiful wide crown moulding
15 that was in there and just created a mess. They messed up
16 two sets of wall tiles in the bathroom, which was like
17 wallpaper but it had a pattern. One day, one guy would
18 work a little bit on a section of it, and the next day,
19 another guy. It was just a nightmare.

20 Q All right. And when you and Mr. Gill decided -- or,
21 I'm sorry, did Mr. Gill decide to terminate Havana or did
22 you and Mr. Gill decide to terminate?

23 A Because I would take pictures and show Gary or go up
24 to the store and say, "Look, this is what's happening.
25 These guys, they're tearing up the whole house." And Gary

1 would get -- because me and Jesus, the owner of Havana,
2 couldn't see eye to eye on the work ethics, Gary would
3 call them and say, "Look, stay in one room. Quit going
4 and tearing up all other ends of the house. Listen to
5 what she says."

6 But, meanwhile, they were wanting more money from
7 Gary for what they considered work --

8 MR. D'AGOSTINO: Your Honor, I'm going to have to
9 object to what they were wanting unless she --

10 THE COURT: All right. I sustain the objection.

11 A So to answer the question, they wanted money and --

12 BY MR. GLEISSNER:

13 Q Were they asking you for money?

14 THE COURT: Hold on a minute. When I sustain the
15 objection, you need to ask the next question --

16 MR. GLEISSNER: Yes, Your Honor.

17 THE COURT: -- so that she doesn't answer the
18 question to which the objection was made.

19 BY MR. GLEISSNER:

20 Q Was Havana Construction asking you for money?

21 A They were not.

22 Q Okay. When Havana Construction was terminated, what
23 happened? Did they just walk off the job? What did they
24 do?

25 A Yes. It was on a Friday, and they were working.

1 And I noticed they started packing up their stuff. And I
2 called Gary and I said, "Gary, I think Havana Construction
3 is getting ready to walk off the job." And he said, "Come
4 to the store," which is just around the corner.

5 So I got in my car, and I ran up to the store real
6 quick. Well, when I pulled into the store parking lot,
7 Havana Construction's white van was sitting in front of
8 the gas station -- at the gas station, the pumps.

9 Q Okay. Tell the jury what happened.

10 A So I get out of the car and I go inside, and Gary
11 has got a ball bat, and he's coming outside. And he's
12 confronting Havana Construction. Havana Construction is
13 wanting a promised draw that Gary had been promising them,
14 and Gary, meanwhile, had called -- when I called him --
15 the sheriff's department.

16 So, meanwhile, the sheriff's department is pulling
17 in and they break up the argument, and I'm trying to get
18 Gary back inside. So they keep Havana Construction
19 outside, and they take me and Gary back inside, you know,
20 and take the ball bat from him.

21 Q Who was supposed to clean up all the problems that
22 Havana Construction caused?

23 A Well, I was the partner. It fell on me.

24 (Plaintiff's Exhibit No. 2, Detailed List of Work
25 Performed, was marked for identification.)

1 BY MR. GLEISSNER:

2 Q Let me hand you what's been marked as Plaintiff's
3 Exhibit No. 2 and ask you if you can identify this
4 document.

5 A I can.

6 Q What is this document?

7 A It's just a punch list of some of the stuff I did.
8 Not all but a lot.

9 Q Okay. Did you prepare this list?

10 A I did.

11 MR. GLEISSNER: May it please the Court? I would
12 like to offer into evidence Plaintiff's Exhibit No. 2.

13 MR. D'AGOSTINO: Well, first of all, I think he's
14 publishing it to the jury, and I have an objection to it,
15 so...

16 THE COURT: All right. Lawyers approach.
17 Cut the screen off.

18 MR. GLEISSNER: What?

19 THE COURT: The screen was on...

20 MR. GLEISSNER: I apologize, Your Honor, I didn't
21 know. I apologize.

22 THE WITNESS: I think it's just --

23 THE COURT: Hold on a minute. We'll deal with that.

24 BENCH CONFERENCE

25 (A bench conference was held off the record and

1 outside the hearing of the jury and others.)

2 THE COURT: I overrule the objection. Ask your next
3 question.

4 MR. GLEISSNER: Your Honor, I move to admit
5 Plaintiff's Exhibit No. 2.

6 MR. D'AGOSTINO: Subject to my objection, Your
7 Honor.

8 THE COURT: All right. I'll overrule the objection.
9 Plaintiff's 2 is into evidence.

10 (Plaintiff's Exhibit No. 2 was received into
11 evidence.)

12 UNIDENTIFIED SPEAKER: (Indiscernible).

13 THE COURT: Yeah, you can display it. Well, he
14 hasn't asked...

15 MR. GLEISSNER: I have Plaintiff's Exhibit 2 on
16 these boards, Your Honor.

17 THE COURT: Well, are you asking to show Plaintiff's
18 exhibit to the jury?

19 MR. GLEISSNER: I'm asking to show it to the jury.

20 THE COURT: Then, if he wants it up, he makes the
21 call how he wants to --

22 MR. GLEISSNER: Would you please put it up on the
23 screen.

24 BY MR. GLEISSNER:

25 Q Is this the list that we're talking about?

- 1 A Yes.
- 2 Q It is also (indiscernible)?
- 3 A Yes.
- 4 Q Okay. And this is just basically a list of the
- 5 things that you did on the outside of the house; is that
- 6 right?
- 7 A Correct.
- 8 Q This is all stuff you have done in the front yard;
- 9 is that correct?
- 10 A (No audible response.)
- 11 Q You have to answer out loud.
- 12 A I'm sorry?
- 13 Q Is that all the stuff you have done on the front
- 14 yard?
- 15 A It's most of it. I did some more. I mean, you
- 16 know, everything like that, you can't list every little
- 17 single thing but this is the bulk of it.
- 18 Q Is this the list of the stuff you did in the
- 19 backyard?
- 20 A Yes.
- 21 Q All right. And we'll move to the inside of the
- 22 house on the next page. Is that right?
- 23 A Yes.
- 24 Q This is the next page; is that right?
- 25 A Yes.

1 Q The right side is generally what you did on the
2 inside of the house; is that right?

3 A Mm-hmm, yes.

4 Q And then you go through the other rooms of the
5 house?

6 A Yes.

7 Q And what other rooms were there?

8 A It had a sitting room. It had a living room. It
9 had a formal dining room. It had a large foyer. It had a
10 hall. It had a turnabout in the hall. Three bedrooms.
11 An extra bath. A master bath. And a double-car garage.
12 And a sun room.

13 Q And this page here just deals with three rooms; is
14 that right?

15 A Yes.

16 Q And three rooms -- this page deals with what?

17 A We have your dining room and the foyer there, your
18 sun room and your living room.

19 Q And these are things that you had to do with those
20 rooms; is that right?

21 A Yes.

22 Q All right. And then you mentioned bedrooms.

23 A Yes.

24 Q How many bedrooms?

25 A Three bedrooms.

1 Q Okay. And three bedrooms are identified as what?

2 A You have a master bedroom, guest room 1, and guest
3 room 2.

4 Q Okay. And as it relates to -- is this a list of
5 what you did in these three rooms?

6 A Most but not all.

7 Q Most but not all. All right.

8 And then there were also bathrooms that you
9 (indiscernible).

10 A Yes.

11 Q Okay. And this is what you did in the bathrooms; is
12 that right?

13 A Yes.

14 Q And what about the kitchen?

15 A Yes.

16 Q I see, under guest bathroom, it says,
17 "(Indiscernible) bathroom shower with kit." Whose Joe?

18 A That would have been the master bath. I'm sorry,
19 you're right. The guest bath in the hall. Joe is a
20 contractor -- another customer of Gary's that would come
21 to the store, and he did remodel stuff. And so we had Joe
22 come in, because he was a jack-of-all-trades.

23 Q And so did he do the plumbing?

24 A He did some plumbing.

25 Q All right. He installed the toilets?

1 A Yes.

2 Q He installed the vanities?

3 A He installed one vanity.

4 (Plaintiff's Exhibit No. 3, Photo of Front of
5 House/Yard, was marked for identification.)

6 BY MR. GLEISSNER:

7 Q Okay. Let me hand you what has been marked as
8 Plaintiff's Exhibit No. 3. It's a picture.

9 MR. GLEISSNER: Do not display it. Do not display
10 it.

11 BY MR. GLEISSNER:

12 Q Can you identify what this is?

13 A Yes.

14 Q Okay. What is it?

15 A 445 Rainbow Circle, the front.

16 Q Okay. And when was this picture taken?

17 A That would have been in December of 2018.

18 Q Is that before you started work?

19 A Yes.

20 Q Okay. And did you take this picture?

21 A I did.

22 Q Does it truly and accurately represent the exterior
23 of the house at 445 Rainbow Circle prior to any work
24 performed?

25 A Yes.

1 MR. GLEISSNER: Your Honor, I would move to admit
2 Plaintiff's Exhibit No. 3.

3 MR. D'AGOSTINO: Without objection.

4 THE COURT: Plaintiff's 3 is in evidence.

5 (Plaintiff's Exhibit No. 3 was received into
6 evidence.)

7 MR. GLEISSNER: Okay. Can we go ahead and display
8 Plaintiff's Exhibit No. 3.

9 BY MR. GLEISSNER:

10 Q Is Plaintiff's Exhibit No. 3 showing up on your
11 screen?

12 A Yes.

13 Q When you saw the house in this state, tell the jury
14 what you decided needed to be done to improve the house
15 for resale.

16 A Well, the first thing was to get the bushes off the
17 house so we can see what foundation structural issues we
18 might be dealing with. Get the vines off. Get all the
19 stuff that's on the shingles backed up off the roof, get
20 it dried out, the gutters cleaned out. So that's the
21 outside. You have got to get the things off and out that
22 are causing damage.

23 Q Did Mr. Gill and you talk about what needed to be
24 done on the outside of the house?

25 A Yes. Yeah.

1 Q All right. Why?

2 A Well, it was an exciting -- it was exciting for it
3 and what needed to be done with it and where I wanted to
4 go with it and what I wanted to do with it. It had great
5 bones, the house did.

6 Q And you were keeping Mr. Gill informed why?

7 A Because he was at the gas station, running the gas
8 station. He wasn't able to work at the house.

9 (Plaintiff's Exhibit No. 4, Photo of Front of House
10 and Yard, was marked for identification.)

11 BY MR. GLEISSNER:

12 Q Let me ask you to look at Plaintiff's Exhibit No. 4.
13 Can you identify what's Exhibit No. 4?

14 A Yes.

15 Q What is it?

16 A It's 445 Rainbow Circle with a more longer view.

17 Q What section of the house is it?

18 A It's still the front, but it's a longer view so you
19 can see how bad the landscaping is, the shrubbery down the
20 side of the home.

21 Q Is this before -- when was this picture taken?

22 A Before anything was done? In December of 2018.

23 Q Does this picture truly and accurately represent the
24 exterior of 445 Rainbow Circle prior to any work being
25 done?

1 A It is.

2 Q And did you take this picture?

3 A I did.

4 MR. GLEISSNER: All right. Your Honor, I'd like to
5 move into evidence Exhibit No. 4.

6 MR. D'AGOSTINO: No objection.

7 THE COURT: Plaintiff's 4 is in evidence.

8 (Plaintiff's Exhibit No. 4 was received into
9 evidence.)

10 MR. GLEISSNER: Thank you for showing that to the
11 jury.

12 BY MR. GLEISSNER:

13 Q All right. This is -- you told us what it is. When
14 you saw this, what did you think needed to get done?

15 A Well, we were going to have to get some chain saws
16 and get all the shrubbery off the brick, the vines. Get
17 the yard cleaned up. We're going to have to do some
18 pressure washing. Get everything off the house so I can
19 pressure wash it, get it cleaned up. A little more formal
20 inspection.

21 Q Let me ask you to go back to Exhibit No. 3.

22 A Okay.

23 Q I thought it showed something that it doesn't show.
24 Never mind. Let's move on to Exhibit No. 5.

25 (Plaintiff's Exhibit No. 5 through 12, Photographs

1 of the House, was marked for identification.)

2 BY MR. GLEISSNER:

3 Q Let me ask you if you can identify Exhibit No. 5.

4 MR. D'AGOSTINO: I won't object to 5 either, Your
5 Honor. Or 6 or 7 or 8 or 9 or 10, 11, 12. It takes us
6 through 12.

7 THE COURT: All right. Exhibits 5 through 12 are
8 into evidence without objection and by stipulation of the
9 parties.

10 MR. GLEISSNER: Thank you, Your Honor.

11 (Plaintiff's Exhibit Nos. 5 through 12 were received
12 into evidence.)

13 BY MR. GLEISSNER:

14 Q All right. As it relates to Exhibit No. 4 --

15 A 5.

16 Q I'm sorry. 5. What is this a picture of?

17 A The backside, sun room area.

18 Q And when you saw this, what did you think needed to
19 get done?

20 A All those leaves had to get off the house. The
21 gutter caps had to get removed so I could get the water
22 moving and flowing. Inspection had to be done. The wires
23 had to get removed. The chimney needed to be pressure
24 washed. But most of all, the leaves needed to be gotten
25 up. Get all this off the house and cleaned up because

1 there was stuff laying everywhere. Rakes, shovels.

2 Hazardous stuff under all these leaves.

3 Q All right. And there's a lot of leaves on the
4 ceiling in this picture; is that right?

5 A Yes.

6 Q What did you do as it relates to those leaves on the
7 ceiling?

8 A Well, I immediately got up there and started blowing
9 them off so the roof could dry out.

10 Q So you went up on the roof?

11 A Oh, yes.

12 Q Okay. And you blew the leaves off?

13 A Blew the leaves off, cleaned the gutters out, took
14 the gutter caps -- they had to be removed -- off so the
15 water could flow. Cleaned the gutter spouts out so the
16 water could flow away from the house.

17 Q What about the leaves in the yard?

18 A They had to be gotten up too. I blew all those to
19 the back of the lot. This lot was a little over an acre,
20 and the land ran down like this towards the house. But
21 the leaves -- there was six or seven years' worth of
22 leaves there that had to be moved back just so you could
23 make sure he wasn't stepping on anything hazardous.

24 Q Okay. And you said you found something hazardous?

25 A Oh, yeah. I mean, there were rakes under there.

1 You never knew what you were going to step on, honestly.
2 I mean, it was three or four foot deep of leaves.

3 Q Did you tell Mr. Gill that this had to be done?

4 A I did.

5 Q And why?

6 A We were going to get this place ready to sell. I
7 mean, you have got to get it cleaned up.

8 Q Did he hire you to clean up the yard?

9 A No. I mean, I'm there to do whatever I need to do
10 to get this home market ready -- retail ready, and that's
11 part of it.

12 Q That's part of what you were supposed to do --

13 A As a partner.

14 Q What? As a partner. Okay.

15 MR. D'AGOSTINO: Your Honor, I'm going to object to
16 the leading.

17 THE COURT: Yeah, I sustain the objection.

18 BY MR. GLEISSNER:

19 Q Let me ask you to look at Plaintiff's Exhibit No. 6.
20 Is that a different view of the back of the house?

21 A It's the right end of the back of the house.

22 Q Okay.

23 A Showing the windows busted out. You know, glass was
24 under there -- under the leaves.

25 Q Okay. So this is the state of the house, front and

1 back, when you first got there?

2 A Yes, sir.

3 Q All right. Let's move to Plaintiff's Exhibit No. 7.
4 Which side of the house is that?

5 A It's -- it skipped it. There you go. That's the
6 garage side, the left side. And that's the ladder I used
7 to go up on the roof.

8 Q That's the left backside?

9 A Mm-hmm, yes, sir.

10 Q All right. And what happened to that grill?

11 A I think one of the guys from Havana Construction
12 took it. Anything that was salvageable they took, but the
13 bulk of everything else went into the dumpsters.

14 Q Okay. Let me ask you to look at Plaintiff's Exhibit
15 No. 8.

16 MR. GLEISSNER: Sorry, Your Honor. We're trying to
17 get the right Plaintiff's Exhibit No. 8.

18 BY MR. GLEISSNER:

19 Q (Indiscernible) Exhibit No. 8. (Indiscernible).

20 MR. GLEISSNER: Computer technical difficulty. I
21 apologize.

22 BY MR. GLEISSNER:

23 Q What's this a picture of?

24 A This is the back right side, right to the sun room
25 near the air-condition area. This is right up against the

1 house.

2 Q Okay. Tell the jury about what happened here.

3 A We had a shower -- a rain that day, and because the
4 land was downhill and now the leaves are removed, you
5 know, the -- you're going to -- now you're going to start
6 seeing what you're dealing with. You know? That's why
7 you get everything off the house so you can see what
8 you're dealing with.

9 So now we have got a swimming pool, you know, that's
10 going to float into the -- underneath the house and cause
11 damage, as you can see. And it looks like it had probably
12 been doing it by the mold, you know, that's on it already,
13 and the algae. So this had to be repaired. This has to
14 be corrected.

15 Q And when this happened, what did you do?

16 A I was out -- this was in, like, February. I was out
17 there sandbagging it, because it's rushing down off the
18 hill, in a rain suit, trying to get it off the house and
19 moved to the side so it will go down the hill.

20 Q Did you talk to Mr. Gill about this?

21 A I did.

22 Q What did the two of you talk about?

23 A I videoed it as it was happening and sent Gary a
24 video showing him how bad it was. It had to be addressed
25 immediately.

1 Q And why did you let Gary know about this?

2 A Gary wasn't there.

3 Q Okay. Let's go to Plaintiff's Exhibit No. 9. Okay.
4 What's this a picture of?

5 A That's a picture where I'm up on the roof getting it
6 cleaned off, dried out, blowing it off.

7 Q And you took this picture?

8 A Getting ready for the inspection.

9 Q So you were up there blowing it off?

10 A Correct.

11 Q Did anybody see you while you were up there?

12 A Oh, yes.

13 Q Who saw you while you were up there?

14 A Well, you know, we're in a fish bowl there on the
15 corner, so all my witnesses seen me there.

16 MR. D'AGOSTINO: Your Honor, I'm going to object to
17 all her witnesses seeing her there. I mean --

18 THE WITNESS: My neighbors.

19 BY MR. GLEISSNER:

20 Q Can you identify them by name?

21 THE COURT: All right. I sustain the objection.

22 BY MR. GLEISSNER:

23 Q Can you identify the people that saw you up on the
24 roof by name?

25 THE COURT: I sustained the objection to what -- the

1 objection is to what other people saw. She can't -- I
2 sustained the objection. She cannot testify to what other
3 people saw.

4 MR. GLEISSNER: I'm just trying to rephrase the
5 question. Okay. I'll just move on.

6 BY MR. GLEISSNER:

7 Q As it relates to Picture No. 9, this is you cleaning
8 (indiscernible); is that right?

9 A Yes. I'm getting the leaves off so it will dry out.

10 Q While you were up there, did you inspect the roof?

11 A I did.

12 Q And what did you find?

13 A There was missing flashing in the eaves where they
14 part and where the house joins to the next section of home
15 around the porch. There was a satellite dish hole, which
16 I knew because it was leaking into the garage. Lots of
17 wiring that I needed to get off the roof because it was
18 trapping the leaves, that just went to an old satellite
19 dish. I needed to do a little more caulking, clean up
20 that chimney area, and was glad to see that we had a
21 chimney cap.

22 Q All right. Let me ask you to look at Exhibit No.
23 10. You mentioned -- what is this?

24 A This is where a satellite company came out and put a
25 dish on a roof and made a hole in it.

1 Q Did that cause a problem?

2 A And it just leaks, and it started leaking and
3 (indiscernible).

4 Q And what did you do as a result of this leak?

5 A I tarped it until I could get someone out there to
6 fix it. I tarped it.

7 Q You did not fix this hole?

8 A I did not.

9 Q Who fixed the hole?

10 A Joe.

11 Q Joe?

12 A Joe Leitten, our handy guy.

13 Q Did you have to tell him where the hole was?

14 A Well, it's pretty obvious. You know, it dripped
15 down into the garage, and I had it tarped so he could see
16 it. He knew it was right up above us. I did tell him we
17 had a hole in the roof.

18 Q Let me ask you to look at Exhibit No. 11. And
19 what's this a picture of?

20 A Okay. So now the shrubs are gone -- they have been
21 chain-sawed off and cut back from the house and we can see
22 what we're dealing with. And so this is where I have
23 started getting ready to pressure wash in front of the
24 home. I have got the bulk of the vines, the poison oak
25 cut off that was growing up into the gutters and the

1 windows and...

2 Q Did someone help you cut those shrubs?

3 A Yes. Robert Adams helped take those shrubs out.

4 Q Okay. And --

5 A And actually did the bulk of the shrubs, Robert did.

6 Q Okay. Who supervised him?

7 A I did.

8 Q Did you show this picture to Mr. Gill?

9 A I'm sure at one point. I might have not showed him
10 the before, but I showed him the after because I was so
11 proud of how it came clean.

12 Q And I see a pressure washer in the middle.

13 A Yes.

14 Q Whose pressure washer?

15 A Yes.

16 Q Whose pressure washer?

17 A That's mine.

18 Q So is this before you're pressure washing?

19 A Yes.

20 Q But after --

21 A -- the shrubs are removed.

22 Q Okay. Let me ask you to look at Exhibit No. 12.

23 And what portion of the house is this?

24 A It's the right -- from the front, the right side
25 going towards the garage.

1 Q Okay. What were you dealing with on this section of
2 the house?

3 A The poison oak, poison ivy. The roots were about 6
4 to 8 inches thick, growing over from the tree up to the
5 house. They had to be -- the land had to be unearthed and
6 cut, the roots.

7 Q Okay. And who did that?

8 A I did that.

9 Q How did you do that?

10 A Very (indiscernible). With gloves, duct tape,
11 toboggan (ph), a mask -- because I'm allergic to it, and
12 it was in February because I know, if I didn't get it
13 under control now and it started blooming and throwing the
14 dust, I wouldn't be able to get it under control. It was
15 so bad, the earth right there was actually oily.

16 Q Oily from what?

17 A Poison oak.

18 Q What did you do?

19 A I wrapped up really good.

20 Q Did you tell Mr. Gill about the poison oak?

21 A I mean, I could obviously see it now, you know, but
22 I didn't report every little thing to him because it was
23 my job to get it straightened out. I mean, that was, you
24 know, what we were in there together to do, and that was
25 my job.

1 (Plaintiff's Exhibit No. 13, Photograph of Flower
2 Bed, was marked for identification.)

3 BY MR. GLEISSNER:

4 Q Let me ask you to look at Plaintiff's Exhibit No.
5 13.

6 A Yes.

7 Q Identify what that picture is.

8 A Yes, this is --

9 Q Wait. Can you -- did you take that picture?

10 A I did.

11 Q Does it truly and accurately represent the portion
12 of the house that's taken in the picture?

13 A It is.

14 Q Is this after you have begun work on the house?

15 A Yes.

16 MR. GLEISSNER: Your Honor, I would move to admit
17 Exhibit No. 13.

18 MR. D'AGOSTINO: I'd just like to know when it was
19 taken in relation to work on the house, Your Honor.

20 THE COURT: Well, she's indicated that it fairly and
21 accurately represents what he saw at the time. That
22 question can be addressed later.

23 I'm going to admit Plaintiff's Exhibit 13 into
24 evidence.

25 (Plaintiff's Exhibit No. 13 was received into

1 evidence.)

2 MR. GLEISSNER: Thank you, Your Honor.

3 And thank you, Madam Clerk.

4 BY MR. GLEISSNER:

5 Q So tell the jury what this is a picture of now.

6 A So this is the front porch area. Now gotten all the
7 underbrush and everything cleaned out of there and ready
8 to start laying down my landscape stones all the way up to
9 the driveway on the right side and the landscape fabric
10 and my pine bark and the flowers.

11 Q And what's that in the middle?

12 A That's a peach tree that Gary picked out.

13 Q Mr. Gill picked out the peach tree?

14 A Yes.

15 Q That's a mouthful.

16 A It's a decorative peach tree -- flowering peach
17 tree, not like (indiscernible).

18 Q And who laid the stones down?

19 A I did.

20 Q And pine bark?

21 A I did.

22 Q Who went and got those?

23 A I did.

24 Q Mr. Gill picked out the peach tree?

25 A Yes.

1 Q Were you hired to do this landscaping?

2 A It's all part of the job.

3 (Plaintiff's Exhibit No. 14, Photograph of Flower
4 Bed, was marked for identification.)

5 BY MR. GLEISSNER:

6 Q Let me ask you to look at Exhibit No. 14. Can you
7 identify this exhibit?

8 A Yes. It's, again, another view of what I'm working
9 on that night.

10 Q Same area of the house?

11 A Yes.

12 Q Truly and accurately represents the part of the
13 house at the time the picture was taken?

14 A Yes.

15 MR. GLEISSNER: Your Honor, I'd like to move to
16 admit into evidence Exhibit No. 14.

17 MR. D'AGOSTINO: Without objection.

18 THE COURT: 14 is into evidence.

19 (Plaintiff's Exhibit No. 14 was received into
20 evidence.)

21 BY MR. GLEISSNER:

22 Q What time of day is this?

23 A It's at night.

24 Q What time of day was that last picture?

25 A At night.

1 Q Okay. What were your hours like working on this
2 house?

3 A Long and gruelling.

4 Q Okay. About when did you start each day?

5 A About 8:00 and 8:30 every day.

6 Q And when did you leave the house each day?

7 A Sometimes it was 3:00 and 4:00 in the morning. You
8 know, if I was in the middle of something and it needed to
9 get finished, it got finished so I could set up for me to
10 start the next day. When you do a flip, you have got to
11 get in and get out. It's not hard -- I mean, it's not
12 easy work. You have got to be committed.

13 Q You started in December?

14 A I did.

15 Q And this is somewhere in -- when?

16 A Well, if it was -- you know, I started in the
17 December, so it was cold. You know? So it was pretty and
18 I was at a point where I could work outside and I had
19 gotten a pretty day, I could stop inside and I'd jump
20 outside. The weather kind of dictated if I got to work
21 outside. But I would work in the cold. That was a
22 pretty -- we were coming into spring here, and it allowed
23 me to be able to work outside some.

24 Q Now, the bricks on the house, did you have to do
25 anything related to the bricks?

1 A Yeah. There were bricks coming off the steps there.
2 They had to be put back in and remortared.

3 Q Okay. And did you hire somebody to do that?

4 A No, I did that.

5 Q I see in this picture underneath the porch, is that
6 a grate?

7 A Here?

8 Q Under the porch.

9 A Under the porch. Is it a what?

10 Q A grate. A black square. Am I not communicating?

11 A Uh-uh.

12 Q Let me point.

13 A Here? Are we on the same picture?

14 Q We're on the same picture. What's that right there?

15 A Oh, it's a vent grate.

16 Q Vent grate?

17 A Yes.

18 Q I used the wrong term. I'm sorry.

19 Okay. What did you have to do with the vent grates?

20 A They all had to be taken out and cleaned and
21 repainted and put back in correctly, if they were even in.

22 (Plaintiff's Exhibit No. 15, Photograph of Spruce
23 Tree, was marked for identification.)

24 BY MR. GLEISSNER:

25 Q Let me hand you what's been marked as Plaintiff's

1 Exhibit No. 15 and ask you if you can identify this
2 picture.

3 A Yes. That's -- that's a -- some of the hedges that
4 we looked at when Gary and I went and looked at got
5 these -- to get some of these.

6 Q Did you take that picture?

7 A I did.

8 Q Is it a true and accurate picture on that day?

9 A Yes.

10 Q It's a picture that you took because it was
11 (indiscernible) something you would think about putting in
12 there?

13 A Correct.

14 MR. GLEISSNER: Your Honor, we'd like to move
15 Plaintiff's Exhibit No. 15, Your Honor.

16 THE COURT: Mr. D'Agostino, without objection?

17 MR. D'AGOSTINO: 15 is without objection too, Your
18 Honor.

19 THE COURT: 15 is into evidence.

20 (Plaintiff's Exhibit No. 15 was received into
21 evidence.)

22 BY MR. GLEISSNER:

23 Q And this was -- on this occasion, you and Mr. Gill
24 both went to?

25 A I can't say exactly that it was this day. I know,

1 when I went and got these and the peach trees, he went
2 with me because he borrowed a cargo trailer so I could
3 hook it up to my car and take some of these shrubs up.

4 But I was looking, if I had to go to Lowe's, for
5 what I might want to put in the back or something like
6 that as part of the designing.

7 (Plaintiff's Exhibit No. 16, Photograph of Flower
8 Bed, was marked for identification.)

9 BY MR. GLEISSNER:

10 Q Let me ask you to look at Plaintiff's No. 16. What
11 is this showing?

12 A Those are the end where the garage is at and the
13 knock out roses I got and some other shrubs.

14 Q Who picked these shrubs?

15 A I did.

16 Q Who planted them?

17 A I did.

18 Q Did you have help planting them?

19 A I did not. Not those.

20 Q There's shutters in this picture. Can you tell me
21 what you had to do with the shutters?

22 A Well, I had Joe put new windows in because, as you
23 have seen from the first pictures, the windows were busted
24 out and they were single-pane old windows. So Joe put us
25 new windows in and so the trim around the windows had to

1 be caulked and sealed and painted again and the shutters
2 had to be painted.

3 Q Okay. So Joe did the window --

4 A He installed the window.

5 Q You did the --

6 A The caulk and the seal.

7 Q And the painting?

8 A And the painting.

9 Q What about the --

10 A Now, he may have done, you know, some here and there
11 when he had to do it, for me to get a smooth paint line,
12 my windows around the brick were caulked and smooth and
13 dried and a smooth line done.

14 Q Okay. And why were you so fussy?

15 A Well, you're going to take a \$93,000 home and try to
16 get -- at one time we talked about a higher amount out of
17 it. You're going to have to be fussy.

18 (Plaintiff's Exhibit No. 17, Photograph of Back
19 Yard, was marked for identification.)

20 Q Okay. Let me ask you to look at Plaintiff's Exhibit
21 No. 17.

22 A Yes.

23 Q Can you identify that picture?

24 A This is the rear right of the home after I had Rick
25 McGill to come in and remove the trees -- a tree that was

1 to the right back there.

2 Q Okay. Does this picture truly and accurately
3 represent the property at the time that it was taken?

4 A Correct.

5 MR. GLEISSNER: Your Honor, I move to admit
6 Plaintiff's Exhibit No. --

7 BY MR. GLEISSNER:

8 Q Oh, did you take this picture?

9 A I did.

10 MR. GLEISSNER: Your Honor, I would move to admit
11 Plaintiff's Exhibit No. 17.

12 MR. D'AGOSTINO: Without objection.

13 THE COURT: No. 17 is in evidence.

14 (Plaintiff's Exhibit No. 17 was received in
15 evidence.)

16 BY MR. GLEISSNER:

17 Q Now, you were talking about Mr. McGill.

18 A Yes.

19 Q Is that him in the picture?

20 A It's his partner.

21 Q Oh. How did they become involved?

22 A So the house behind the gentleman that's on the
23 tractor is Mr. McGill's home. He was beside 445 Rainbow.
24 And he's known me since I was a child. So when he seen me
25 working out there, he would walk over and talk. And I

1 told him that we had issues here with water rushing down
2 the hill. And he gave his expert opinion on what needed
3 to be done --

4 Q Don't tell us what he said.

5 A Okay.

6 Q Okay. Did you ask him to help?

7 A I did.

8 Q And did you coordinate him being hired to help?

9 A I did.

10 Q And is that his tractor?

11 A It is.

12 Q Why does Mr. McGill have a tractor?

13 A Well, he owns -- he works for another company but,
14 on the side, he owns dump trucks and tractors because
15 that's what they do.

16 Q Okay. All right. So that's Mr. McGill's partner on
17 the tractor.

18 A Yes.

19 Q And what are they doing?

20 A So where the water is standing that we seen earlier,
21 he dug out what his Ditch Witch for me to connect those
22 lines to the gutters that you see there so I could run
23 those lines down to a drain -- a French drain to get that
24 water off the back of the house, then called some dirt in,
25 took a tree or two out, and we levelled the land out.

1 Q Okay. As it relates to these -- is that the black
2 thing coming down from the bottom of the gutter?

3 A Yes.

4 Q Okay. So the black thing coming down from the
5 bottom of the gutter goes into the ground.

6 A Goes into the ground.

7 Q And who hooked that up to the French drain?

8 A I did.

9 Q All right. But Mr. McGill was the one that dug the
10 trench?

11 A No. Mr. McGill, yes, with his -- with his Ditch
12 Witch. And then he and I together buried them.

13 Q So you guys covered up those black pipes.

14 A Yes. But behind the sunroom, the ones you see
15 there, I dug those by hand, those trenches because that's
16 not where Mr. Gill was working. He wasn't working behind
17 the sun room, so I had to do those by hand with a shovel.

18 Q With a shovel. Is that what you just said?

19 A Yes. And they went to a separate drain.

20 Q This is the backyard; right?

21 A Correct.

22 Q Okay. Were they -- what is that dirt? Is that
23 fresh dirt?

24 A That's fresh dirt. You remember from the picture,
25 it was low, and now, it's kind of levelled out.

1 Q Okay. And who brought that dirt?

2 A Mr. McGill.

3 Q Let me ask you to look at Plaintiff's Exhibit No. --

4 THE COURT: This would be a good place -- time to
5 take a break.

6 MR. GLEISSNER: Great idea.

7 THE COURT: Ladies and gentlemen, we're going to
8 take a 15-minute break. We'll probably run till about a
9 quarter to 1:00 or so after the break, just to give you an
10 idea of where we're heading. With that, I'm going to
11 allow you to go back to your jury room. Do not discuss
12 the case, anything you have heard. It's not proper. It's
13 improper to discuss anything you have heard even during
14 your break. With that, you're allowed to go back to the
15 jury room to refresh yourselves.

16 Everyone remain seated while this jury is excused.

17 (The jury exited the courtroom at 11:32 a.m.)

18 THE COURT: All right. We'll be at ease for 15
19 minutes.

20 Let me -- Mr. Bailiff, come here just a second.

21 And you can step down, Ms. Duncan; however, I'll
22 remind you, you're under oath, which that means you cannot
23 discuss any testimony you have given with anyone,
24 including the lawyers, or any testimony you may give, as
25 if you're on the stand, under oath, even during the break.

1 All right? Thank you.

2 (Pause in the proceedings.)

3 JUROR ISSUE

4 THE COURT: For the attorneys, I noticed that one of
5 the jurors who walked out, approached the bailiff, had a
6 short conversation with him. I asked the bailiff to come
7 to the Court to tell me what it was. The particular juror
8 that spoke to him indicated that he knows the man on the
9 tractor.

10 I don't -- let me ask the plaintiff. Is the man on
11 the tractor a potential witness in the case?

12 MR. GLEISSNER: No, Your Honor.

13 THE COURT: All right. Thank you.

14 We'll be at ease for 15 minutes.

15 (A brief recess was taken from 11:34 a.m. to 11:54
16 a.m.)

17 (The jury entered the courtroom at 11:54 a.m.)

18 THE COURT: All right. Thank you, ladies and
19 gentlemen.

20 Mr. Gleissner, this is your witness.

21 MR. GLEISSNER: Thank you, Your Honor.

22 CONTINUING DIRECT EXAMINATION

23 BY MR. GLEISSNER:

24 Q Let's see, we were just finishing with Plaintiff's
25 Exhibit No. 17. Can we put that back up on the screen?

1 All right. Tell me about this big pile at the
2 front.

3 A So these are some extra stones that was laying
4 around the property that I put in a circle so I could do
5 some burning to get rid of some of the -- all these limbs
6 and pallet and anything I needed to burn. While I was out
7 there working, I would burn. And then he'd scrape some
8 over that way for me to burn as well. We had tons of
9 debris.

10 Q Okay. What is the aluminum stuff at the front?

11 A So the gentleman that passed away was a heating and
12 air guy, and all of his tools and all that type of stuff
13 and supplies were still in the two sheds on the property.
14 And so this was some stuff that I rounded up that I had
15 attached to the gutters that was laying in the yard or
16 around the yard, that I attached to the gutters before I
17 got the drain lines attached to keep the water moving off
18 the house.

19 Q Okay. Let's move to Plaintiff's Exhibit 18.

20 (Plaintiff's Exhibit No. 18, Photograph of Back Yard
21 and Walkway, was marked for identification.)

22 MR. GLEISSNER: Your Honor, I move -- I think
23 Plaintiff's Exhibit No. 18 is admitted without objection,
24 so I move to admit Plaintiff's Exhibit 18.

25 THE COURT: It's in evidence.

1 BY MR. GLEISSNER:

2 Q Tell the jury what this is.

3 A Okay. So this is where the -- you see the tip of
4 the box load right there. They're bringing the dirt in.
5 And we are raking and -- Mr. McGill and I are raking and
6 levelling it out, and his partner is dropping the dirt for
7 us.

8 Q This is in the backyard?

9 A Backyard. The right to the sun room.

10 MR. GLEISSNER: Your Honor, I believe Plaintiff's
11 Exhibit No. 19 is admissible without objection, so I would
12 move Plaintiff's Exhibit 19 into evidence.

13 THE COURT: Mr. D'Agostino?

14 MR. D'AGOSTINO: That is right. It's without
15 objection.

16 May we approach for a moment?

17 THE COURT: Yes, you may.

18 19 is in evidence.

19 BENCH CONFERENCE

20 (A bench conference was held off the record and
21 outside the hearing of the jury and others.)

22 THE COURT: I think we're on Photo 19. There are 92
23 photos that are intending to be admitted. The lawyers
24 (indiscernible) at that point are not objecting to those
25 92 pictures coming into evidence, subject to a prior

1 objection (indiscernible). (Indiscernible) admitting the
2 remaining pictures, I assume are from 19 through 92 are
3 now into evidence. 19 through 92 are in evidence.

4 MR. GLEISSNER: But, Your Honor, it's actually 19
5 through 90 are the photos, I think. It's -- 91.

6 THE COURT: 19 through 90 are -- the Court is
7 admitting those into evidence. Thank you.

8 MR. GLEISSNER: Thank you.

9 (Plaintiff's Exhibit Nos. 19 through 90,
10 Photographs, was marked for identification and received
11 into evidence.)

12 MR. GLEISSNER: Thank you, Your Honor. Hopefully
13 that will move things along.

14 BY MR. GLEISSNER:

15 Q All right. Let's -- we were looking at Exhibit No.
16 18 but now we're going to move to Exhibit No. 19. Tell
17 the jury what this is.

18 A That's the area where the old air-condition was.
19 This is the new air-condition where I laid the stones and
20 plastic and gravelled it in to get a little bit higher
21 elevation than where I have got the grass and stuff
22 growing.

23 Q Okay. And who did the work?

24 A I did.

25 Q All right. But you didn't install the air

1 conditioner?

2 A I did not.

3 Q Okay. Who attached that black pipe to the
4 downspout?

5 A I did.

6 Q And it runs to...

7 A The French drain, over to the right of the home.

8 Q The gravel that is in this, did you go get the
9 gravel?

10 A I didn't. Dolly and her father brought me the
11 gravel. I had some, but it wasn't going to be enough to
12 cover the plastic. So she and her father-in-law brought
13 me some down.

14 Q So that's Mrs. Gill --

15 A Gill's wife.

16 Q Okay. Mrs. Gill and her father brought her some
17 gravel.

18 A Yes. Some bags, mm-hmm.

19 Q All right. Let's go to Picture No. 20 -- I mean,
20 Exhibit No. 20. Tell the jury what this picture is.

21 A This is one of the views of the backyard. As you
22 can see, the leaves that I'm now getting out of the yard
23 and back towards the back of the lot off the driveway and
24 started edging out this driveway because the earth was
25 higher than the driveway, and every time I cleaned it,

1 pressure washed it, we'd get a rain and it would wash back
2 over the driveway.

3 The area that's up right there was a little raised
4 garden. It also was red mud. And that's where you'll see
5 some of that. But it would wash over the driveway and
6 into the garage and actually penetrate the garage. I had
7 to shovel that down and level that down and then edged
8 everything out. So I'm in the process of that.

9 Q Okay. Now, Exhibit No. 21, is that before Exhibit
10 No. 20?

11 A Yes. This is -- this was before. You see those
12 stones and all that? That's what I used for my fire pit.
13 They were around the little garden area.

14 Q And who moved the stones?

15 A I did.

16 Q Whose truck is that?

17 A That's Mr. Joe Leitten's.

18 Q Is this before you moved the leaves?

19 A The leaves haven't been moved yet. No, that's why I
20 have the plastic and all down, to keep it from washing. I
21 have gotten them off the driveway, but not -- not back --
22 and you have got to remember, this was in December, so I
23 went through two seasons. You know, so...

24 When I'm going to remove leaves, I'm going to have
25 to end up doing them again. They had not been removed out

1 of the yard yet.

2 Q Did you show this picture to Mr. Gill?

3 A Probably not. I mean, I tried to take before,
4 during, and after pictures just so I could see the house
5 come alive.

6 Q Okay. Did anyone help you with the edging?

7 A Not all of it. One day, Mr. Gill asked me if I
8 needed any help from a gentleman that he has to come to
9 the gas station -- a gentleman named Scott. And I said I
10 could use some help pushing the earth back from the
11 sidewalk to do the edging, if he wanted to help me do that
12 for a little bit.

13 Q And how long did this Scott help you?

14 A That day, about two hours.

15 Q Let's look at Picture -- so we're on Picture 21. So
16 let's move to Picture 22.

17 A Mm-hmm.

18 Q Tell the jury what this picture is.

19 A That was right after I had hand-dug the drain lines
20 for the gutters at the sun room and I got -- I put those
21 steppingstones down and the straw to stay out of the mud
22 and planted grass, so I could get over to the other area,
23 you know, without tracking all the mud back over to the
24 drive.

25 Q And this left-hand side, is that the sun room?

1 A This is along the back of the sun room going to the
2 end of the home to the right, towards Mr. McGill's home.

3 Q Did you do anything to the -- to those windows of
4 the patio?

5 A Not yet I haven't. Right now, it's putting the
6 fires, you know, the things that are causing damage before
7 I can start with the icing on the cake.

8 Q Later on you did?

9 A I did later on, yes.

10 Q Okay. What did you do later on?

11 A Later on, they had, like, pine sap and stuff on
12 them. They needed to be scraped and cleaned really good.
13 Anywhere it needed to be caulked, they were caulked on the
14 outside and the inside.

15 Q Are these the old pavers that you relocated?

16 A Yes. Those pavers were originally in the front,
17 covered up with dirt. And I dug them up and moved them to
18 the back. They were just covered up. You couldn't even
19 hardly see them.

20 Q Okay. Let's move to Picture No. 23. Is that your
21 blower?

22 A It is.

23 Q I'm sorry. I should have asked you: Whose blower
24 is that?

25 A Mm-hmm.

1 Q All right. Whose car is that?

2 A Mine.

3 Q What's --

4 A Wait, that's not my blower. I can't remember
5 whose -- mine is the little red one. But that's my car.
6 I was using that one. I think that's one that was left in
7 the shed.

8 Q Okay. So that's one of the blowers that you were
9 using.

10 A Yes.

11 Q Not yours. Okay.

12 And what stage are we at right now?

13 A Well, this, as you can see, is a pretty day, so
14 that's why I'm working outside instead of inside and
15 getting those leaves moved because they have dried out
16 some and I can get them moved some more to the back. Just
17 keep pushing.

18 Q Did you do anything relating to those sheds that are
19 behind your car?

20 A There was undergrowth. If you see the swing set
21 there, there was undergrowth, vines and really hard twigs
22 and stuff like that growing. I have cut those back so I
23 can get all cleaned out around that because, later on, I'm
24 going to pressure wash that swing and try to save it,
25 clean that pad up.

1 Q And what about the sheds? Did you do anything to
2 the sheds later on?

3 A The blue one to the left was in great shape. I
4 pressure-washed it. The one that's in front of my truck,
5 you can see down in the corner it had some rotten wood and
6 fascia that was coming off of it. So I told Gary I need a
7 little help with that, and he let Scott -- again, the one
8 that helped me with the edging -- come down and work a
9 couple of hours to scrape that. And I went to my house
10 and got some wood and replaced all the rotten wood that
11 was on there, and I painted it.

12 Q Let's go to the next picture. We have got the
13 inside of the house now?

14 A We are.

15 Q What bathroom are we in?

16 A This is the master bath.

17 Q Okay. Was it that color?

18 A It's an ivory color but it didn't have all that in
19 the tub.

20 Q Oh, okay. So what's all that in the tub?

21 A So that's what Havana crew did when they started
22 scraping the ceilings with the acid. They scraped it, and
23 this is the popcorn -- the wet popcorn I was talking about
24 that got all over everything -- the cabinets, down in the
25 duct work, closet shelves. Anything that stuck out past

1 the wall -- the moulding, the crown moulding. It was on
2 everything. Wet and restuck to it.

3 Q Okay. Let's look at Plaintiff's Exhibit No. 25.

4 A That's a little bit of the wet popcorn. It's all
5 over the walls. It's all over the moulding.

6 Q What did you have to do to the moulding?

7 A It had to be -- a lot of scrubbing and scraping to
8 get it off because it was on everything. The walls
9 couldn't be -- nothing could be done until this was
10 cleaned off of everything.

11 Q What does it take to clean that stuff off the wall?

12 A Well, if you have ever dealt with wet sheet rock or
13 popcorn -- ceiling popcorn, it's -- it is like a mud. And
14 when it dries, it adheres, and it gets hard. You know?
15 So you have got to rewet it, take it back to its wet form
16 and just keep wiping and scrubbing until you get it off
17 and get it smooth. And it's a lot to clean up. And just
18 keep rinsing that rag out and -- it's a lot of elbow.

19 Q Okay. And why did you need to do all that?

20 A Well, because all this stuff had to be painted and
21 repaired, you know, to get it ready for the market. But
22 you can't paint it with all that all over the walls and
23 the doors and the shelves and the floors. You know?

24 Q Let me ask you to look at Plaintiff's Exhibit No.
25 26. What is this?

1 A That is a spider in the corner. That is showing you
2 how Havana Construction tore up the ceilings when they
3 were scraping it, and that's if they even got any of it
4 scraped. Like some there you can see they didn't scrape
5 at all.

6 MR. D'AGOSTINO: Your Honor, I'm going to have to
7 object as to how she knows what Havana was doing --

8 THE WITNESS: Because I was there --

9 THE COURT: Ma'am, you answer your lawyer's
10 questions.

11 THE WITNESS: Oh, I'm sorry.

12 THE COURT: I sustain the objection.

13 BY MR. GLEISSNER:

14 Q How do you know -- do you know who did this to the
15 ceiling?

16 A Havana Construction.

17 Q And how do you know Havana Construction did this to
18 the ceiling?

19 A Because I was there with Havana Construction to
20 supervise them.

21 Q Okay. All right. And this crown moulding, tell the
22 jury if this is -- about this crown moulding.

23 A About what?

24 Q What about the crown moulding.

25 A Yes. This is the really nice crown moulding I was

1 saying that's throughout this home, the wide. It's really
2 nice. And so you can see where it's been scraped, pushed
3 in, you know, dented, poked. And then where the crown
4 moulding meets the sheet rock, which is the ceiling, you
5 know, I mean, they have chunked into the ceiling. You
6 can't paint it like that. You have got to take it back to
7 its powder coat finish, smooth, and finish getting the
8 rest of the, you know, sheet rock that was left on there
9 off.

10 Q Okay. And what's the white stuff underneath the
11 crown moulding?

12 A Okay. So that is overspray. So they started
13 painting crown moulding before they even started scraping
14 ceilings. There was no rhyme or reason to the stuff they
15 were doing. So this is overspray on the walls that they
16 painted the crown and got it on the wall and changed the
17 texture of the walls as well. Now that's going to be fish
18 scaled.

19 Q Well, I think the next picture might have something
20 to do with what you just said. Look at Plaintiff's
21 Exhibit No. 27.

22 A Yes. That's fish scaling in walls.

23 Q So tell the jury what -- how does fish scaling
24 happen?

25 A Okay. Well, first of all, you can see, if you look

1 closely where the chemical that they used on the ceiling
2 so heavily ran down into the paint and ate it off, because
3 that's its job, is to remove whatever it touches. So
4 that's one thing.

5 And then this particular area is where --

6 THE COURT: Lawyers approach.

7 BENCH CONFERENCE

8 (A bench conference was held off the record and
9 outside the hearing of the jury and others.)

10 THE COURT: Next question, Mr. Gleissner.

11 BY MR. GLEISSNER:

12 Q All right. We're looking at this fish scaling, as
13 you refer to it. Did you have to fix that?

14 A I did.

15 Q All right. Why did you have to fix that?

16 A You're not going to get the amount of money we
17 wanted out of the house if it's not repaired.

18 MR. D'AGOSTINO: Your Honor, I'm going to have to
19 object to her continuing to say "we wanted, we wanted, we
20 wanted." There is no agreement. There is no joint
21 venture here.

22 THE COURT: All right. I'll overrule the objection.

23 BY MR. GLEISSNER:

24 Q Okay. Let me move on to Picture No. 28. What's
25 going on in Picture No. 28?

1 A This is after I have sanded the ceiling in the guest
2 hall bathroom. I have left the light because I need it,
3 although I can switch it out. But this is the walls, how
4 Havana left them -- Construction. They painted around
5 areas. They had not even started sanding yet.

6 Q Who fixed that?

7 A I did.

8 Q Why did you have to fix it?

9 A Because it was my job.

10 Q Did you do anything else to the ceiling other than
11 sand it at this point?

12 A It had to be primered and painted.

13 Q Is this --

14 A And, remember, the pictures of where it was gutted
15 out, that had to be mudded back in, sanded down and made
16 smooth, and then primer and painted and then caulked.

17 Q Let's look at Picture No. 30, I think. Oh, no, 29.
18 I'm sorry. I was looking at the wrong picture. Picture
19 29. What's this a picture of?

20 A The walls in one of the guest bedrooms and the
21 doors.

22 Q All right. I see white stuff on the walls. What's
23 that white stuff?

24 A That is filling holes. They had nail holes or tack
25 holes or whatever -- just all over this room. Posters and

1 stuff like that. So those had to be filled. And then it
2 had to be skim coated to get it smooth.

3 Q Okay. And who filled the holes?

4 A I did.

5 Q All right. What about this door? What's the deal?

6 A Well, the door had holes in it, and, as you can see,
7 it had Sharpie on it, so it had to be repaired and then
8 primer it -- cleaned, as we know. And then repaired and
9 primered and painted.

10 Q And who did all that work?

11 A I did.

12 Q Let's look at Picture No. 30.

13 A This is another bedroom, the third bedroom.

14 Q All right. Tell me about that door. What did you
15 have to do to that door?

16 A Well, the stickers had to be removed, you know, so
17 you could get it nice and smooth, back to the new finish.
18 A hole had to be filled in, you know, sanded out, cleaned,
19 primered, and painted.

20 Q And who did all that?

21 A I did.

22 Q Okay. Now, to the left of the door, what's going on
23 with the floor?

24 A When we got Havana or they walked -- however --
25 whichever one you want to say -- out of there, I cleaned

1 the floors to a level I was happy with that -- and covered
2 them and protected them after I cleaned the whole house so
3 that wouldn't happen again.

4 Q So that's floor covering?

5 A Yes. Protection. Because I'm going to be mudding,
6 sanding, painting.

7 Q Let's look at Exhibit No. 31. Okay?

8 A Mm-hmm.

9 Q Tell the jury about Exhibit No. 31. What's that
10 about?

11 A That's the kitchen sink. That's Havana
12 Construction, and that's what they left all over the
13 cabinets, the walls, the crown, the doors, the floors.
14 And stopped up the kitchen sink, plumbing.

15 Q Whose hand is that?

16 A It's mine.

17 Q Okay. And what did you have to do as it relates to
18 the -- to get the sink to drain?

19 A Trying to scoop it all out of there and keep any
20 more from going down in the drain because the water was
21 running out in the floor. So I turned the water off,
22 unhooked the piping underneath the sink, and it was
23 completely stopped up with sheet rock mud.

24 Q And you did all that?

25 A I did all that.

1 Q Let's look at Exhibit No. 32. What's Exhibit No. 32
2 a picture of?

3 A That's another example of what was left on top of
4 the cabinets, the walls, the doors, the closets. They had
5 to be cleaned and wiped off.

6 Q And who cleaned it?

7 A I did.

8 Q Let's look at Picture No. 33. What's Picture No. 33
9 of?

10 A I'm up on the roof and I'm taking a picture down
11 onto the dumpster.

12 Q Is this the first dumpster?

13 A I think it's the second one. It's a smaller
14 dumpster, so I believe it's the smaller one.

15 Q Okay. And who put all that stuff in that dumpster?

16 A Havana crew. That was in the very beginning, so
17 that might have been the first one. I'm not sure. I just
18 can't remember on that. But they helped me load that.

19 Q So they helped with taking the stuff out of the
20 house?

21 A Yes. Because they were only there two weeks.

22 Q The first -- what was the size of the first
23 dumpster?

24 A I'm sorry?

25 Q What was the size of the first dumpster?

1 A It was bigger. Or that might be it. It might be
2 the way the picture is, but they were big. They went from
3 one end of the garage to the other end of the garage.

4 Because we had another one in the front for the shrubs.

5 Q At that point in time, had you finished working on
6 the gutters?

7 A Yes. You can see the gutters are nice and smooth
8 and clean and ready for water to flow in them.

9 Q Did you have to paint the gutters or anything like
10 that?

11 A No. They just had to be cleaned out, pressure
12 washed out.

13 Q Was there any covering on the gutters?

14 A There were gutters on the far right end of the
15 house. They had gutter guards. So that means no leaves
16 can get in the gutters. They just go right over. But
17 that wasn't working.

18 Q It wasn't working. What was that doing?

19 A Well, the leaves were backing up, if you remember
20 the first pictures, and sitting on the roof, keeping it
21 wet. And that would cause rain to back up behind those
22 shingles and mess up the plywood.

23 Q And you took the gutter guards off?

24 A I did.

25 Q Let me ask you to look at Exhibit No. 34. Where are

1 you in the process in Picture No. 34?

2 A This is the way Havana Construction left the floors,
3 and I have actually got the loose stuff off of it, and I'm
4 getting ready to lay down protections. There's no reason
5 to clean them yet, but anything loose and powdery, I have
6 gotten off the floors. Now I'm going to cover them to
7 protect them.

8 Q Let's look at Picture No. 35. Tell the jury what
9 that is.

10 A That's the floors when I got done.

11 Q That's the floors when?

12 A When I finished them.

13 Q And you did the floors?

14 A I did.

15 Q Okay. Why did you take this picture?

16 A Because I'm proud of my work. I worked hard.

17 Q Did you show it to Mr. Gill?

18 A Probably. I mean, he come into the house. You
19 could see it.

20 Q Let me ask you to look at Picture No. 36 -- I mean,
21 that was Picture No. 36 -- that was 35. Let me ask you to
22 look at Plaintiff's Exhibit No. 36. Who is that in this
23 picture?

24 A Me.

25 Q Tell the jury about the plastic stuff that's towards

1 the ceiling.

2 A So I have gotten my ceilings smooth. It took two
3 processes to do it -- of sanding and mudding because they
4 had torn into it so bad to get it powder coated smooth.
5 I'd look at it under daylight and lamp light; it would
6 always show -- you know, it's two different reflections of
7 light. So I got that smooth. And I'm protecting the
8 moulding. That's what's up behind the plastic there to
9 keep from getting overspray on it because I have got those
10 nice and clean and smooth and sanded down and painted, so
11 I don't want to put another coat of overspray or footprint
12 it again. And I don't want any overspray or anything to
13 get on my walls because now they're nice and smooth and
14 ready for powder coat.

15 Q What's on the floor?

16 A My protective covering.

17 Q Okay. I'm looking through the door. What's through
18 that door?

19 A That's the -- that was the red kitchen, now white or
20 soft blue.

21 Q Okay. What is that? Is that --

22 A That's new backsplash.

23 Q Oh, backsplash. Okay. All right. Who installed
24 that?

25 A Joe did that for me.

1 Q Okay. Let's look at Picture No. 37. Why is there
2 plastic on the window?

3 A To protect the window sill and the window, less work
4 to have to clean. I don't have any paint or anything that
5 (indiscernible) new windows.

6 Q Okay. Is that type on the bottom there?

7 A It is. It's to protect the top of the trim, you
8 know, so you don't get mud and that type of stuff on it
9 again. I have just got it off.

10 Q Who put the --

11 A So I had to skim coat those walls.

12 Q Who put the plastic up there?

13 A I did.

14 Q You said skim coat? What's that?

15 A So anywhere where you see it's really white, that
16 meant the wall was deeper. You know, you have seen the
17 fish scaling earlier. So you dilute the mud and you
18 spread it over the walls, and then you go back with a
19 light sand. And that's what makes it powder smooth. You
20 have to sand it, primer it, and paint it.

21 Q And who did that?

22 A I did.

23 Q All right. As it relates to the window, who put the
24 window in?

25 A Joe put the window in.

1 Q What about the moulding around the window?

2 A Joe -- some of the moulding got -- the Havana crew
3 tore it off, and so some of the windows, I had to have Joe
4 put new trim around them again.

5 Q Okay. Did you have to do anything with the
6 moulding?

7 A I did the nail hole filling and painted and caulked.

8 Q Let me ask you to look at Picture 38. What's this a
9 picture of?

10 A Where I was protecting the floors and had gotten the
11 walls and everything clean.

12 Q What room is this?

13 A This is the dining room and a little sitting room.
14 To the left of that sitting room, you'll walk into the
15 kitchen. And then, if you stay straight there, that's the
16 foyer where you go out to the front door. So right
17 here -- I'm sorry, right here is the kitchen. Right here.
18 And then you have got the formal dining and then you have
19 got the foyer that I was talking about and the front door
20 is to the left.

21 Q The stuff on the floor is what?

22 A Protective floor covering.

23 Q Okay. Let me ask you to look at Picture No. 39.

24 A Yep, I'm doing my prepping.

25 Q Prepping meaning....

1 A Getting ready to sand and skim coat the walls and
2 get them smooth, the ceiling, fix all the scrapes and
3 chunk-outs and that type of thing. And you can see the
4 moulding, how bad it is. Going to have to fix all that.

5 Q Okay. What's that big light there for?

6 A Well, I'm working at nighttime.

7 Q Does it help you do anything else?

8 A It helps me see the walls, like I was saying, under
9 different light -- daylight, nighttime light.

10 Q Let's look at Exhibit No. 40. What did you have to
11 do in Picture No. 40?

12 A So when Havana Construction left, they had damaged
13 the wall right there. I'm not sure what they were doing,
14 but there was a hole there, and the wall was damaged, so I
15 had to fix that. I filled in the holes -- the nail holes
16 that are in this coral-colored room and then getting ready
17 to do the skim coat.

18 Q And in the, I guess, peach room that's in the
19 background, what's that stuff at the top?

20 A That's the spray, the primer.

21 Q Okay. Did you do that?

22 A In that room, I may have done that because I had not
23 skim-coated the walls yet.

24 Q Okay. Look at Picture No. 41. At what stage are
25 you in this process?

1 A So the chunk-outs have been filled in. There's
2 some -- they're sanded. You know, you see where there's
3 still -- I'm in the process of sanding it, trying to get
4 it smooth, get it ready for mud. Because you can see the
5 nails. You can see where (indiscernible) was removed
6 beside the trim right there at the attic, to get ready to
7 mud it and make it smooth. And you can see where they
8 have sprayed the trimming.

9 Q Who is "they" spraying the trimming?

10 A I'm sorry. Havana has sprayed the trimming with an
11 enamel and left that white at the top.

12 Q Okay. Does that cause a problem with painting the
13 walls?

14 A It's a -- yes.

15 Q What do you have to do to fix the problem?

16 A It's going to have to be sanded and skim-coated.

17 Q And who did the sanding and skim coating?

18 A I did.

19 Q Let's look at Picture No. 42.

20 A Now, the coral-colored room, that was just primer in
21 there. That was not an enamel. Because that room did not
22 have trim.

23 Q Oh, so you're thinking Picture 40 is the different
24 type of --

25 A Correct.

1 Q Ah, okay. All right. Picture 41. All right.

2 Let's look at Picture 42. What is that?

3 A That's the sun room.

4 Q Okay. And what needed to be done in the sun room?

5 A The floor needed to be at the end, you know, because
6 so much stuff was tracked over it and discolored the
7 grout. But it needed to be regROUTED. It needed to be
8 painted. It was red. So I painted it. It needed new
9 lights. There was a little fireplace left in there. I
10 stoned it. One of the little artificial ones, and made it
11 look real, just to give it some ambience. And I had to do
12 a lot of caulking around the windows. The windows had to
13 be scraped and cleaned. Just cleaned, you know. All the
14 old blinds, hardware, and all that had to be removed. And
15 all the trim and stuff had to be painted. The door needed
16 repairing, new hinges and stuff like that put on it.

17 And the three windows to the right needed new J
18 channel.

19 Q What do you mean by J channel?

20 A It's the window trim -- the vinyl window trim around
21 the windows that -- where you can't see where the windows
22 had been installed.

23 Q Okay. Let's look at Picture No. 43. Where are you
24 in the process in this picture?

25 A I'm priming, getting ready for paint.

1 Q Okay. What did you do to the windows in this
2 picture?

3 A Oh, the windows have been -- nothing really probably
4 yet except cleaned, because there's still hardware and
5 stuff up there. So towards the end, when I get done, I'll
6 fill all that and caulk it, seal it. That's an aluminum
7 metal running across the ledge there.

8 Q Let's look at Picture No. 44. What's that a picture
9 of?

10 A Just the brick. The old lighting. The old door.
11 That's still there.

12 Q It's the door to where?

13 A Going into the living room.

14 Q From where?

15 A From the sun room. But you see the grout, how they
16 had just -- you can see the grout, how it had gotten dirty
17 and -- from the powder -- the sheet rock powder.

18 Q Did you have to do anything to the door?

19 A Yeah, the door -- I mean, it's -- you know, like I
20 say, it's a flipper. We're trying not to have to go out
21 and buy, you know, new doors unless it has to -- I mean,
22 it still was serving its purpose. So I wood filled it,
23 sanded it, and got it back smooth and scraped all the
24 chunky monkey out of the glass and recaulked it, made it
25 smooth again.

1 Q On the left side of the door frame, what are those?

2 A The ornament hanging on the wall?

3 Q No, no, on the door frame. What are those?

4 A Oh, that's just junk, again, that was left in there.

5 Q Okay.

6 A But at that time, I wanted to save that piece of
7 furniture because I was going to redo it and put it in the
8 sun room.

9 Q Was there another door on this -- at this doorway?

10 A There was, on the other side of the chimney was a
11 patio door.

12 Q I mean, this door here. Was there another door in
13 this frame?

14 A Oh, there was a storm door at one time, as you can
15 see, and it's gotten ripped off. So I had to take all
16 that off and clean that up really good because we didn't
17 have a storm door there.

18 Q Okay. Picture No. 45. What's that a picture of?

19 A A powder coat ceiling and a powder coat wall.

20 Q So, in the process, this is a stage where you're
21 powder coating. Is this the final stage?

22 A For that room, it looked like it was, mm-hmm.

23 Q Okay. Let's look at Picture 46.

24 A Prepping.

25 Q More prepping?

1 A Mm-hmm. See where it's really white? That's where
2 it would sink in. You could see that, like, coming down
3 the hall.

4 Q Who did the prepping?

5 A I did.

6 Q How many times did you skim coat it?

7 A You -- first, it had to be cleaned, and then it had
8 to be mudded, the tear-outs. Then it had to be sanded,
9 primed. So sanded and primed twice and painted twice.

10 Q And who did all that?

11 A I did.

12 Q Okay. Did you let Mr. Gill know that's what you
13 were doing?

14 A He would come by and visit sometimes, so he would
15 see it and complement it, want some extra caulk here and
16 there.

17 Q Okay. Picture 47. Where are you in the process of
18 Picture 47?

19 A Primering, getting the walls ready. Getting the
20 ceiling smooth. Because you can see, I have already
21 filled it and it's smooth and it's probably getting
22 another layer of primer and then paint.

23 Q Okay. Let's look at Picture No. 48.

24 A Master bedroom.

25 Q And where are you in the process of No. 48?

1 A I'm pleased with the walls in the master bedroom. I
2 hadn't started on the moulding yet because I can see there
3 where there was a hole that I had filled. This is where
4 that window was busted out, if you recall in the very
5 beginning. The window was busted out, that's why the
6 floor looks like that. But I'm getting ready to start
7 filling around where Joe filled in his wood there. I'm
8 starting to caulk it and get it ready to be painted and do
9 the trim work at the bottom. Prepping.

10 Q Did you make any recommendations to Mr. Gill as it
11 relates to the floor?

12 A Yeah. I mean, it wasn't rotten, but it did sink in
13 right there, and so what I told him I felt we needed to do
14 was we needed to pour some filler in there and level it
15 out and sound it up because, at that time, we had talked
16 about putting another hardwood floor in there, not carpet.
17 Carpet is what ended up getting put into this
18 (indiscernible).

19 Q Okay. Let's look at Picture No. 49. Who is in that
20 picture?

21 A That's me.

22 Q Okay. And those doors in the middle, what are
23 those?

24 A Those are all the closet doors that I took down and
25 wood filled and sanded and painted -- or starting to.

1 Q Is one of those doors --

2 A Replaced with nice new knobs.

3 Q Is one of those doors the door that had all the
4 writing on it?

5 A Some of them. The front doors were broken off and I
6 had to go get new doors.

7 Q So there's more than one door that had all the
8 writing on it?

9 A Mm-hmm.

10 Q Okay. And who fixed it?

11 A I did.

12 Q Why did you fix it?

13 A It was my job.

14 Q All right. And let's look at Picture No. 50. Is
15 that the door that we saw earlier?

16 A Yes.

17 Q Okay. Is that after you finished it?

18 A It is.

19 THE COURT: (Indiscernible). Ladies and gentlemen
20 of the jury, we're going to stop for lunch. Don't discuss
21 the case at all among yourselves or with anyone else
22 (indiscernible). Be back and ready to go at 2:00. 2:00.
23 We'll start back at 2:00. (Indiscernible).

24 (The jury exited the courtroom at 12:42 p.m.)

25 THE COURT: It appears we have 40 more pictures to

1 go. We have heard of 50 pictures or so, and basically,
2 they're all the same questions, all the same answers. I
3 don't know (indiscernible) contract (indiscernible) allow
4 that. We have got 40 more pictures (indiscernible) this
5 jury is not completely bored. You certainly made your
6 point on the specific questions on each of the 50
7 pictures. They've all basically been the same. And
8 that's pretty (indiscernible).

9 When we start back at 2:00, Mr. Gleissner, let's try
10 to pick it up (indiscernible). I'm not going to put you
11 on a timer. Do you have any position on it,
12 Mr. Gleissner?

13 MR. GLEISSNER: Well, Your Honor, I think since the
14 issue of authenticity and stuff like that has been
15 resolved, I think we have been going through the pictures
16 at a pretty fast pace. I mean, I think when we took our
17 last break, I was at 17 and now I'm at 50. So I think I'm
18 going to be able to pick -- you know, finish off the
19 pictures very quickly, Your Honor. I totally agree with
20 you. I don't want to lose the jury. So I'm with you all
21 the way.

22 THE COURT: Let's try to do the last 40 pictures in
23 about 30 minutes.

24 MR. GLEISSNER: I will -- I will try to do them in
25 less than a minute a piece, Your Honor.

1 THE COURT: We'll see.

2 MR. GLEISSNER: That's what I'll work on, Your
3 Honor.

4 THE COURT: Well, here's the thing: The questions
5 for each picture have basically been the same. The
6 answers to each picture has basically been the same. Most
7 of the pictures -- at least 90 percent of them -- are all,
8 in essence, the same. And so it's the Court's
9 responsibility to try to keep moving the case along
10 reasonably to make sure the jury is not (indiscernible)
11 something that appears maybe to have (indiscernible). So
12 we'll try to deal with the last 40 pictures in about 30
13 minutes.

14 All right. We'll start back at 2:00. Thank you.

15 MR. GLEISSNER: Thank you, Your Honor.

16 (A lunch recess was taken from 12:45 p.m. to 2:00 p.m.)

17 THE COURT: Plaintiff ready?

18 MR. GLEISSNER: Yes, Your Honor.

19 THE COURT: Defense ready?

20 MR. D'AGOSTINO: Give me one minute, Your Honor.
21 I'm trying to get myself situated again, please.

22 Okay, Your Honor. I have got my stuff back to where
23 I need to be. Thank you.

24 THE COURT: Defense ready?

25 MR. D'AGOSTINO: Yes, sir, Your Honor.

1 THE COURT: Bring the jury in.

2 (The jury entered the courtroom at 2:00 p.m.)

3 THE COURT: Thank you, ladies and gentlemen.

4 Appreciate your promptness.

5 Mr. Gleissner, it's your witness.

6 MR. GLEISSNER: Thank you, Your Honor.

7 BY MR. GLEISSNER:

8 Q Ms. Duncan, I believe we left off at Picture No. 51.

9 A Yes, sir.

10 Q Ms. Duncan, is this another picture of the work that
11 you were performing to paint and plaster and skim coat the
12 wall in the bedroom?

13 A This bedroom was going to have to be re-sheet-rocked
14 because it had a cement plaster on the wall.

15 Q Okay. Who did the sheet rock?

16 A Joe hung the sheet rock.

17 Q Okay. And then after he put the new sheet rock on,
18 what did you have to do?

19 A Well, Robert Adams was supposed to fill the seams
20 in, and he came and he did a little bit, and he never
21 showed back up, so I ended up having to finish it up.

22 Q All right. Let's look at Picture No. 52.

23 A Mm-hmm.

24 Q I notice that there's circles in here. Tell us what
25 the circles are about.

1 A That is when Robert came and filled the seams in and
2 how bad they had bubbles in them and sunk-in spots. He
3 was done, he thought, but you couldn't -- I couldn't paint
4 that. It had to be redone.

5 Q So you had to redo it?

6 A Correct.

7 Q Okay. Let's look at Picture No. 53. Okay. This
8 way. All right. Is this the same room that had to get
9 re-sheet-rocked?

10 A Yes.

11 Q All right. And there's no moulding on the window.
12 Why not?

13 A Havana ripped it off.

14 Q Okay. So after the new sheet rock got put on, you
15 had to do what?

16 A New moulding had to be put up, caulked and painted.

17 Q All right. Now, is this the room that had the
18 problem with the floor?

19 A It's not -- I'm not sure. The house had animals in
20 it, and so that's a stain from the carpet that we ripped
21 out where a dog had urinated.

22 Q Okay. And after you ripped out the carpet, what did
23 you have to do?

24 A Well, the floors all had to be cleaned from the mess
25 that Havana left.

1 Q Okay.

2 A But that's a dry stain.

3 Q I see. Were there staples?

4 A Yes. There was thousands of staples. I had to use
5 the needle nose and a screwdriver to pop them all up to
6 get all the staples up out of the floor anywhere there was
7 carpet.

8 Q So that was you doing all that staple removal?

9 A Yes, sir.

10 Q Okay. Let's look at Picture 54. Is that you in the
11 picture?

12 A Yes, sir.

13 Q Okay. What's on your arm?

14 A That's a brace.

15 Q What happened?

16 A I had trigger finger and my fingers locked up. I
17 had to have surgery.

18 Q How long were you gone because of the surgery?

19 A The doctor wanted me to stay out six weeks, but I
20 had surgery on Friday and was back on Monday.

21 Q And what are you doing in this picture?

22 A I'm scrubbing the walls.

23 Q Okay. Let's look at Picture 55. See Picture 55?
24 What is that implement in the middle there?

25 A That's called a Gator, and it's a sander for sanding

1 the ceiling.

2 Q Who was using a Gator?

3 A I was.

4 Q What did you Gator?

5 A I Gated all the ceilings that had to be repaired
6 from the kitchen, from the garage, to the laundry room,
7 all the way back to all the bedrooms, all the ceiling.

8 Q Okay. Let's look at Picture No. 56. Who is that in
9 this picture?

10 A That's me.

11 Q Okay. And what are you doing?

12 A I'm caulking and filling in the holes and making the
13 window sill smooth to get ready to paint.

14 Q All right. Let's look at Picture No. 57. Whose
15 overspray?

16 A That's probably my overspray back there because I
17 know I'm going to be filling those walls and sanding them
18 and there's no moulding there, where I have done a sand
19 and getting ready to prime or prime again.

20 Q Okay. Let's look at Picture No. 58. Let's first
21 look at the moulding. What did you do?

22 A That's just an example of how all the moulding was
23 throughout the whole house. I had to sand it, smooth it,
24 caulk it, and get it back smooth.

25 Q Did you have to use any fill? Did you have to use

1 any fill?

2 A Yes. Wood fill and smooth caulk.

3 Q Okay. Now, let's look at the background of the
4 picture. What's in that background?

5 A That's a split in the sheet rock. A foundation
6 settle.

7 Q I mean the thing on the other side of the door.

8 A Okay. That's a -- on the ceiling is an attic fan,
9 vent cover, which no longer works. And we had new heating
10 and air put in, so that had to come out. And I put a
11 piece of sheet rock up in there and taped it -- filled it
12 back in and got it smooth.

13 Q Who took out the attic fan?

14 A I took the cover off and I had Mr. Leitten to take
15 the motor out of the attic for me and bring it down.

16 Q Okay. Did you talk to Mr. Gill about this?

17 A I'm sure I mentioned it to him.

18 Q All right. Let's look at Picture No. 59. Where is
19 No. 59?

20 A That's the master bathroom.

21 Q And where are you in the process?

22 A So I'm working on the ceilings, starting to. I
23 sanded out the stuff that was left on there, and I'm
24 getting to ready to start mudding and priming. And you
25 can see where the stuff ran down the walls there.

- 1 Q Are you looking below the light fixture?
- 2 A Mm-hmm, yes, sir.
- 3 Q Okay. And who fixed that?
- 4 A I did.
- 5 Q All right. And who fixed that?
- 6 A I did.
- 7 Q All right. And let's look at Picture No. 60.
- 8 A That's my -- a result of my work.
- 9 Q That's the same place?
- 10 A Yes, sir.
- 11 Q Did you install the light fixture?
- 12 A I installed the light fixture.
- 13 Q What about the fan?
- 14 A Joe installed the fan for me.
- 15 Q Let's look at Picture No. 61. Who is that in the
- 16 picture?
- 17 A That's me.
- 18 Q All right. And is that the same wall that we were
- 19 just looking at?
- 20 A Yes, sir.
- 21 Q Where are you in the process?
- 22 A Repairing them.
- 23 Q Okay.
- 24 A You see, I have got my tool and I'm skim coating and
- 25 filling in holes and getting it level.

1 Q Okay. The area in the lower left-hand corner, is
2 that where the vanity is going to go?

3 A Yes, sir.

4 Q Who put in the vanity?

5 A I purchased the vanity and left it sitting there,
6 and Joe set it for me, because he was hooking up the
7 plumbing.

8 Q And when you say you purchased the vanity, did you
9 use Mr. Gill's credit card?

10 A Yes, for all my materials I went and got.

11 Q Okay. And -- but you picked out the type of vanity?

12 A Yes, sir.

13 Q And let's look at Picture No. 62. Oh, that's the
14 picture we got. Never mind.

15 Who picked out the mirror?

16 A I did.

17 Q Who picked out the light fixture?

18 A I did.

19 Q And then let's look at 63. Is that the end result?

20 A It is.

21 Q Who installed the toilet?

22 A Joe installed the toilet.

23 Q Joe installed the toilet, vanity. Who picked out
24 the faucet?

25 A I did.

1 Q Joe installed it?

2 A That one, he did.

3 Q Okay. Let's look at Picture No. 64. Who is that?

4 A That's Jesus with Havana Construction.

5 Q What's he doing?

6 A That's the second set of tiles that I went and got
7 that they ended up messing up.

8 Q Didn't install the tiles right?

9 A No, sir.

10 Q All right. Let's look at Picture No. 65. What is
11 this showing?

12 A This is where they started in the bathroom
13 correcting the walls and started painting around it before
14 they even made it smooth.

15 Q What did you have to do?

16 A I had to sand it, go back and skim coat it to make
17 it flush, primer it, paint it. Probably a couple of times
18 on that wall because each time, it's footprinted.

19 Q Okay. Let's go back to 64 for just a really quick
20 second. As it relates to the picture in 64, what happened
21 to the drains there?

22 A Oh, they got nails and I had to get a magnet and run
23 down in there. They had nails and screws and pieces of
24 wire. They didn't cover any of the drains before I could
25 get to them and get them plugged up.

1 Q And then Picture 65, above the shower area, who did
2 that?

3 A Well, when Joe came in and installed the new tile,
4 he did some sheet rock above the shower, because the
5 plumbing had to be -- they had to come out and plumbing
6 had to be redone right there.

7 Q All right. And let's look at Picture No. 66. What
8 version of this particular bathroom is this?

9 A That's the same bathroom, and that's the first set
10 of tiles, which is like wallpaper. It has a pattern to be
11 visually pretty. And they just started slapping tile up
12 there, and that is not -- Gary loved that tile, and that
13 is not the look that he was shown when we looked at it.
14 That was the outcome.

15 Q So as it relates to the first set of tiles and the
16 second set of tiles, what happened?

17 A They got ripped out. And the rest of the second set
18 got returned.

19 Q All right. And now let's look at Picture No. 67.
20 First of all, what are these?

21 A So this is some tile that I found, and the manager
22 told me, if I bought all of it, he would give me a
23 discounted price on them. But this is the tile that I
24 chose to go in that bathroom.

25 Q Okay. And where is this tile laid out?

- 1 A It's in the garage, and Joe and I are going over --
2 on the garage floor -- over how we want the look -- the
3 end look to look like.
- 4 Q So you picked out the tile?
- 5 A Yes, sir.
- 6 Q You picked out how it was going to get installed --
- 7 A Yes, sir.
- 8 Q -- that Joe installed?
- 9 A Correct.
- 10 Q Let's look at Picture No. 68. I notice the window
11 changed.
- 12 A Yes, sir.
- 13 Q Why did the window change?
- 14 A Well, there's, you know, a window in the bathroom,
15 in the shower, so I thought it would be a good idea to put
16 a box window in there. At least it was frosted, and you
17 could only see a silhouette, you know.
- 18 Q So you decided that?
- 19 A Yes.
- 20 Q This is after Mr. Leitten installed the tile; is
21 that right?
- 22 A Yes. And he installed the window as well.
- 23 Q And then looking at the right-hand side, that's a
24 vanity?
- 25 A Yes.

1 Q What happened to that vanity?

2 A Well, that vanity was in great shape, and so I took
3 the drawers out and took the facing out, sanded them down,
4 and painted them.

5 Q What about the sink on top?

6 A I scrubbed it down with Barkeeper's Friend and got
7 all the stains out of it and got it back pretty and ivory
8 and saved it. Changed the new knob and put new knobs on
9 it.

10 Q Put new knobs on the vanity. What about the sink?
11 Did you put a new faucet on the sink?

12 A Yes, sir.

13 Q Did you install the faucet?

14 A I installed that faucet.

15 Q Let's look at Picture No. 69. Tell the jury about
16 the work done on the kitchen.

17 A So this kitchen had one of the big square
18 fluorescent lights, dated, in there and it was kind of
19 dark. Even though it was a fluorescent light, it just
20 didn't light the kitchen up. And so we decided to take --
21 Joe suggested can lights. Gary wanted can lights. He
22 wanted a lot of lights in the kitchen. So Joe removed the
23 light fixture and cut a hole and ran all the wiring for
24 the cans, and then I filled the hole back in and sealed it
25 back up and caulked it, primed it, and painted it.

1 Q What did you do as far as the cabinets are
2 concerned?

3 A Well, the cabinets had to be cleaned. They had a
4 great lacquer on them. That's why I wanted to save them.
5 They were in great, great shape. So all that mud -- wet
6 mud and popcorn had to come off of them and spray painted
7 the knobs and put those back on there.

8 And then you see the vent covers over there beside
9 the sink. All that mud had went down into the duct work.
10 Had to vacuum all that out, clean all that out, take a
11 rag, wipe it out, and clean and Murphy Oil those and get
12 them back, wood look to them.

13 Q Okay. And Picture No. 70? Is that the kitchen
14 appliances in the background?

15 A Yes, trying to save those.

16 Q And who moved them in there?

17 A I slid them in there. I had some dollies and I
18 moved stuff around on dollies.

19 Q Okay. And where are you in the fixing or the status
20 of this particular room?

21 A This is the dining room over to the sitting room,
22 and then you go into the kitchen. So it's -- that's a
23 reflection there. I'm working on the walls. The ceiling
24 is done, as you can see it looks like and powder coated.

25 Q All right. Now, let's look at some pictures from

1 when you're close to being done. Picture 71. Tell the
2 jury about Picture 71.

3 A So now we're moving into spring where it's warmed up
4 some and I can get outside and work too, because I'm
5 getting close to being finished inside, and I'm laying
6 down my -- on the other end of the house. I have started
7 now on my landscaping stones. I started there at the
8 front step, and I'm working my way around, using the dirt
9 that Joe -- that Rick brought me to level my pavers out,
10 and then put my fabric and my bark. But I needed some
11 more bark and I needed some more stones, about 14 more.

12 Q All right. And here's Picture No. 72.

13 A That's the result of the pressure washing.

14 Q Okay. That's just after you finished pressure
15 washing?

16 A Yes, sir.

17 Q Okay. Who got those flower pots?

18 A Now, that's in the beginning. That's when I first
19 started pressure washing. Because if you notice, the new
20 windows are not installed. So that's when I first
21 pressure washed.

22 Gary brought those flower pots down and a dolly,
23 dropped them off.

24 Q You didn't pick out the flower pots?

25 A No, sir.

1 Q Let's look at Picture No. 73. Where are you now?
2 Almost done?

3 A I'm done with that side. I'm taking a picture of
4 the beautiful Dogwood. Gary wanted to take the Dogwood
5 out, but I wanted to save it. And I trimmed it up and
6 pruned it up, and now it's rewarding us with how pretty it
7 was. It was a picture of the Dogwood and my landscaping
8 stones. And the grass coming in.

9 Q Picture No. 74?

10 A The grass has come in nice and pretty. Trees are
11 doing good. I kept them watered, all the bushes. Grass
12 watered.

13 Q Picture No. 75. That's the back of the house?

14 A Yes.

15 Q Back of the house?

16 A Yes.

17 Q And that's after you cleaned it up?

18 A Yes, sir.

19 Q Okay.

20 A And after we had the -- Quintin Deal (ph) came in
21 and scooped up all the tree branches that were left back
22 there and leaves and took them off in his big dump truck.
23 Hauled them off for us.

24 Q Okay.

25 A And the grass I planted and stuff like that is

1 coming in now.

2 Q Are those -- what about the garage doors?

3 A I ordered those, but those came in after I was no
4 longer at the home.

5 Q Are those the old garage doors or the new garage --

6 A These are the new ones.

7 Q These are the new garage doors?

8 A Yes, sir.

9 Q So you ordered them but you didn't get to install
10 them?

11 A I didn't get to (indiscernible) installation, no.

12 Q Okay. And what about Picture No. 76?

13 A Again, it's from the corner, the right hand -- from
14 Mr. McGill's back area showing how nice and level the land
15 is now and it flows down to the French drain. Around the
16 house instead of to the house.

17 Q Okay. Looking at Picture No. 77 now.

18 A Mm-hmm.

19 Q Is that your edging?

20 A Yes, sir.

21 Q But you didn't install those garage doors?

22 A I didn't. And you can see where I took big limbs
23 off the trees that were broken and hanging out, with the
24 chain saw. I did all the trees that way.

25 Q Okay. 78?

1 A Okay. That's the shed. I scraped and replaced the
2 roof on it and painted it. The other one was in great
3 shape. It just needed to be cleaned up, pressure washed.

4 Q And you told --

5 A The (indiscernible) is nice and clean and the pad
6 and all the roots are gone.

7 Q Okay. You told me somebody helped you with the
8 edging along the left side?

9 A Well, I ended up finishing the edging all the way up
10 to the corner and over to the right-hand side. But, yeah,
11 Scott Deal helped two or three hours on that.

12 Q Scott Falls?

13 A Falls. I'm sorry.

14 Q Scott Falls. Okay.

15 All right. Let's look at Picture No. 79. Tell the
16 jury about the swing.

17 A So this is after I got all the roots and stuff cut
18 back from the swing and pressure washed it, and I'm
19 getting ready to pressure wash the pad, and over to the
20 left is where I have hauled some dirt in there, covering
21 up the roots and levelling that out. Got everything
22 cleaned up around the sheds and all.

23 Q Picture No. 80?

24 A That is the dining room and sitting room.

25 Q Okay. You didn't --

1 A After I got done.

2 Q You did those floors?

3 A I did.

4 Q Did the walls?

5 A I did.

6 Q Did the painting?

7 A I did.

8 Q Who picked that chandelier?

9 A I did.

10 Q Picture No. 81.

11 A That's the foyer, the dining room, and the sitting
12 room.

13 Q Okay. The door, did you paint that door?

14 A I painted that door a teal, but they changed it back
15 to black. But I had to sand it and wood fill it to get it
16 smooth, back to new like that.

17 Q So you painted it teal, and then somebody, after you
18 left, painted it black?

19 A Correct.

20 Q All right. Let's look at Picture No. 82. We're
21 looking at the front door of Picture 81.

22 MR. D'AGOSTINO: Maybe I'm mistaken. I thought she
23 took all these photographs -- it was going to be that she
24 took all these photographs herself before she left. Are
25 these not --

1 THE WITNESS: I do have them.

2 THE COURT: Lawyers approach.

3 BENCH CONFERENCE

4 (A bench conference was held off the record and
5 outside the hearing of the jury and others.)

6 MR. GLEISSNER: Thank you, Your Honor.

7 BY MR. GLEISSNER:

8 Q Moving on to Picture No. 82. See Picture 82? Is
9 that how you left the property?

10 A Yes.

11 Q Okay. That's the color that you painted that door?

12 A Yes.

13 Q Is that the color that you painted the front door?

14 A Yes.

15 Q Okay. Did you pick that fan?

16 A I did.

17 Q Did you pick that color?

18 A I did.

19 Q Did you do the chimney?

20 A I did, yes, sir.

21 Q I mean, fireplace, I guess is what it is. Yeah?

22 You have to answer out loud.

23 A Yes, sir.

24 Q All right. Let's look at Picture 83. Is that how
25 the house looked when you left?

1 A Yes, sir.

2 Q Did you pick that fan?

3 A Yes, sir.

4 Q Did those floors?

5 A Yes, sir.

6 Q What about those French doors?

7 A I picked those out, and Mr. Leitten installed them
8 for me. And I painted the door.

9 Q Okay. Did you get those -- where did you get the
10 French doors from?

11 A Home Depot.

12 Q What about the windows? Where did you get the
13 windows from?

14 A Well, the first set of windows that were bought that
15 Havana Construction told us to go get were the wrong
16 windows. So those got stored in the garage. And when Joe
17 came in, he said, "That's not the right window. You need
18 this kind of window."

19 So the second set of windows came from Lowe's.

20 Q What happened to the first set of windows?

21 A They were returned. Picked up and returned.

22 Q Okay. So all the windows that you not from Home
23 Depot were returned?

24 A Correct.

25 Q But you kept the French doors.

1 A We kept the French doors. It was a good buy on it.

2 Q All right. Picture 84. Does this accurately
3 reflect the way that the sun room looked when you left?

4 A It is except for the light.

5 Q Okay. What about the light?

6 A I didn't install that light or pick it out or buy
7 it.

8 Q Okay. Somebody else did the light. But other than
9 that?

10 A The window trim has been painted brown, and I didn't
11 do that.

12 Q What color is the ceiling?

13 A It's a soft sky blue.

14 Q Who did that?

15 A I did.

16 Q Okay. Picture No. 85. Is this the way it looked
17 after you -- before you got, you know, kicked out of the
18 job or whatever?

19 A All but the carpet. The carpet was installed after
20 I was locked out.

21 Q So you didn't pick the carpet?

22 A I did not.

23 Q Didn't install the carpet?

24 A No, sir.

25 Q Didn't remove the staples?

- 1 A I did remove all the staples and padding and...
- 2 Q Did you pick that fan?
- 3 A Yes, sir.
- 4 Q Okay. Here's another picture. Is this a
- 5 different -- Picture No. 86, is this a different bedroom?
- 6 A Same bedroom, just a different view with the closet
- 7 doors.
- 8 Q Are those the closet doors that you worked on?
- 9 A Yes, sir.
- 10 Q Picture No. 87, is that a different room?
- 11 A Yes, sir. That's the coral-colored room. The
- 12 peach-colored room.
- 13 Q It was peach colored. Now what color is it?
- 14 A Front of the house. Yes, sir.
- 15 Q What color is it now?
- 16 A A soft blue. Gray blue.
- 17 Q Were all the bedrooms painted the gray blue?
- 18 A Yes, sir.
- 19 Q Okay. What about the carpet?
- 20 A I didn't pick the carpet or install the carpet.
- 21 Q That was done after you left?
- 22 A Correct.
- 23 Q All right. Picture 88, is that the guest bathroom?
- 24 A Yes, sir.
- 25 Q That's how it looked after it was done?

- 1 A Yes, sir.
- 2 Q Okay. And then the vanity on the right-hand side,
3 is that the one you testified to?
- 4 A Yes, sir.
- 5 Q What did you do to that one?
- 6 A I took all the facing off of it -- off the drawers
7 and sanded the cabinets, sanded the doors, and painted
8 them and put new knobs on them, new hinges.
- 9 Q All right. How about that shower door? Did you
10 pick the shower door?
- 11 A Yes, sir.
- 12 Q Who installed it?
- 13 A Joe installed that for me.
- 14 Q Okay. Kitchen sink, next picture, 89. Is that the
15 same kitchen sink as before?
- 16 A Yes, sir. Matches the one in the bathroom.
- 17 Q Okay. What did you do to the kitchen sink?
- 18 A Cleaned it, same way I did the one in the bathroom.
- 19 Q Did you pick out this faucet?
- 20 A I did.
- 21 Q Who installed it?
- 22 A Joe installed that.
- 23 Q Picture No. 90. I'm sorry, Exhibit No. 90. Is that
24 how the kitchen looked when you left?
- 25 A Yes, sir.

1 Q Joe installed the what?

2 A I installed the light over the sink. Joe installed
3 the can lights and he installed the backsplash. And the
4 door at the little pantry there in the corner, I replaced
5 it, but Gary had leaned up against it and knocked it off
6 again, so I imagine Joe fixed it. Same appliances.

7 (Plaintiff's Exhibit No. 92, Check from Gill to
8 Duncan, was marked for identification.)

9 BY MR. GLEISSNER:

10 Q Okay. We're going to skip over Exhibit No. 91 and
11 go to Exhibit No. 92. Oh, let me hand you what's been
12 marked as Plaintiff's Exhibit No. 92. Can you identify
13 what's in Plaintiff's Exhibit No. 92?

14 A This is Gary reimbursing me for ceiling fans.

15 Q Okay. There's actually -- how many checks are in
16 Exhibit No. 92?

17 A This is another that Gary had me write out and he
18 signed for reimbursement of materials, paint, carpet, for
19 the shelving that I put in the carport on the shelves --

20 Q Now, wait, wait. Before you talk about the exhibits
21 themselves --

22 MR. GLEISSNER: Your Honor, I'd like to move to have
23 these exhibits admitted. I think she testified these are
24 the checks that she received.

25 THE COURT: Any objection to Exhibit 92?

1 MR. D'AGOSTINO: Without objection, Your Honor.

2 MR. GLEISSNER: Thank you.

3 THE COURT: That's Exhibit 92?

4 MR. GLEISSNER: That's Exhibit No. 92.

5 THE COURT: 92 is into evidence.

6 (Plaintiff's Exhibit No. 92 was received into
7 evidence.)

8 MR. GLEISSNER: Right. We did not talk about or
9 offer 91, so that's not in evidence.

10 BY MR. GLEISSNER:

11 Q So Exhibit No. 92, okay. So now let's talk about
12 the checks themselves. The first check is a reimbursement
13 check. Is that what you just said?

14 A Yes, sir.

15 Q The second check is what?

16 A Reimbursement.

17 Q Third check is?

18 A Probably for reimbursement, stuff I picked up that I
19 found on clearance or whatever. Chandelier, stuff like
20 that.

21 Q Fourth check?

22 A A payment, a draw.

23 Q Okay. So how much is the draw?

24 A 2,000.

25 Q And how much were you asking for?

1 A 22 to 2400 on a draw, because my bills were 22.

2 Q Okay. And what's the date of that check?

3 A 4/23.

4 Q And what's the last check -- fifth check?

5 A 1100.

6 Q And what's the date of that last check?

7 A 5/20.

8 Q Okay. So May 20th. How much were you asking for in

9 May?

10 A The balance that I didn't get in April and enough to

11 pay my bills for May.

12 Q Did you talk to Mr. Gill about why you weren't

13 getting these draws?

14 A Well, he said he had to round the money up and

15 promised he would, but it went on for weeks.

16 Q Okay. While you were doing all this work in

17 December, January, February, March, and April, did you and

18 Mr. Gill ever talk about flipping other houses?

19 A We did.

20 Q Tell the jury about those discussions.

21 MR. D'AGOSTINO: Objection as to relevancy, Your

22 Honor.

23 THE COURT: (Indiscernible).

24 BY MR. GLEISSNER:

25 Q Okay. Mr. Gill talked to you about other

1 investments from the profits of this house?

2 MR. D'AGOSTINO: Objection, Your Honor.

3 THE COURT: I sustain the objection.

4 BY MR. GLEISSNER:

5 Q What about to the house after you completed the work
6 that you were allowed to do?

7 A Well, I got the house at about 98 percent and I was
8 locked out of it.

9 Q What was left unfinished?

10 A I had a few light covers that needed to be picked
11 up. Like I say, about 14 more landscaping stones. Some
12 more bags of bark to finish on the far end of the house to
13 take it around to the corner.

14 Q Okay. As a result of all your work, how much did
15 Mr. Gill sell the house for?

16 MR. D'AGOSTINO: Objection, Your Honor. That's
17 irrelevant.

18 THE COURT: I sustain the objection.

19 Lawyers approach.

20 MR. GLEISSNER: Thank you, Your Honor.

21 BENCH CONFERENCE

22 (A bench conference was held off the record and
23 outside the hearing of the jury and others.)

24 BY MR. GLEISSNER:

25 Q Ms. Duncan, when you were working on the house and

1 talking about flipping the house, how much did you think
2 you could sell it for?

3 MR. D'AGOSTINO: Your Honor, I'm going to object.
4 Objection, Your Honor. Speculation.

5 THE COURT: I'll overrule the objection.

6 You can answer the question.

7 A Well, at one time, we talked about listing it for
8 anywhere from 320 to 340. Plus there had been other --
9 two other homes that had sold on the block that were
10 smaller --

11 MR. D'AGOSTINO: Your Honor, I'm going to object.

12 THE COURT: Ladies and gentlemen of the jury, we
13 need to take up a matter outside of your presence. If
14 you'll go back to your jury room. Do not discuss the
15 case.

16 (The jury exited the courtroom at 2:37 p.m.)

17 THE COURT: Mr. D'Agostino, I'll hear you on
18 (indiscernible).

19 MR. D'AGOSTINO: Your Honor, first of all, the house
20 didn't sell until September of 2020. She's trying to use
21 comps and trying to do some kind of back door appraisal
22 evaluation of what she might think the house is worth.
23 She has no right to testify about the value of the house.
24 She's not the owner of the house. She's not the owner of
25 the real estate.

1 And so, Your Honor, as to what other houses sold for
2 down the street, that would be hearsay. As it relates to
3 this house, when it sold and how much it sold for, it's
4 not relevant because she can't tie it back into the value
5 of the house at the time that she stopped working, May of
6 2019. That's a year and five months later when it finally
7 did sell. So she's not competent to testify about
8 valuation of the house, Your Honor. And it's also hearsay
9 as to what she's about to go into.

10 THE COURT: All right. Mr. Gleissner?

11 MR. GLEISSNER: Your Honor, what she's testifying to
12 is what the partnership thought the partnership could sell
13 the house for, between 320 and 340, and the reason why the
14 partnership thought that. And she specifically referred
15 to her discussions with Mr. Gill as it relates to the
16 marketing and sale of that house.

17 So I don't see -- that's -- I mean, we have got both
18 people that talked about this sitting here in the
19 courtroom, so it's not hearsay, and as it relates to the
20 sales price, the reason why they thought that. So I don't
21 see why that's inadmissible or why that's hearsay or -- I
22 don't know what the objection is.

23 THE COURT: Mr. D'Agostino?

24 MR. D'AGOSTINO: Your Honor, the witness is about to
25 say, "I thought, based upon comps on it," not what she

1 talked to him about. She was about to say, "I thought."

2 My client bought the house. She keeps saying, "The
3 partnership, the partnership." There is no partnership.
4 My understanding is their claim is a joint venture now.
5 Now they're calling it a partnership. His pleadings are
6 that it was a joint venture between the two of them. She
7 has no interest in the real estate. Her name is not on
8 the title. We submit to you that just by her saying, "I
9 did this work, therefore, I'm entitled to an interest in
10 it," what they're trying to do is get -- you understand my
11 theory.

12 THE COURT: Well, the question of fact for the jury
13 is to determine was she working as a -- can they determine
14 she was working as a contractor if she's not a licensed
15 contractor. Or either they may determine that she is a
16 laborer doing labor. And the issue as far as -- we
17 haven't gotten there yet, but as far as what she claims
18 she's pocketed, what she claims to be compensated for, we
19 haven't gotten that far yet, as far as the value on it.
20 Or they have to determine whether there was some type of
21 binding agreement that (indiscernible) her as the
22 defendant, that she would be -- that she would be -- well,
23 what the Court knows so far is that she would do the work,
24 he'd put up the money and pay the expenses, and then they
25 would split any profit. I assume that's where we're doing

1 with that. That appears where it must have been presented
2 so far. Is that right?

3 MR. GLEISSNER: That's correct, Your Honor.

4 THE COURT: Now, whether -- well, it may be a
5 question of law about whether we get to that point or
6 whether it's a question of fact. So -- and I think
7 Mr. D'Agostino is right. Whether it was the value of what
8 was -- how do we determine or how is the value of the
9 property -- that's pretty speculative at best. You helped
10 me think through this, but it appears to be speculative at
11 best for her to be able to testify about what the fair
12 market value and what the value of this house was when she
13 was locked out in -- I believe that was in April of --

14 MR. GLEISSNER: '19.

15 THE COURT: 2019. That's the issue in the case when
16 it comes to -- well, how do you respond to all that,
17 Mr. Gleissner? Help me figure this out.

18 THE WITNESS: Mr. Gleissner, can I say something?

19 THE COURT: No, ma'am.

20 MR. GLEISSNER: No, ma'am.

21 Your Honor, the discussions between her and Mr. Gill
22 dealt with the value of the property and the profit that
23 would be made from the partnership. Now, Mr. Gill, he's
24 competent to testify as to the value of the property.
25 And, in those discussions, he admitted what he thought was

1 the value of the property. She should be allowed to
2 testify as to what he admitted.

3 THE COURT: Proffer your testimony. Outside the
4 presence of the jury, ask your questions and let's see
5 where you go.

6 MR. GLEISSNER: Yes, ma'am. I mean, yes, sir.

7 PROFFERED DIRECT EXAMINATION

8 BY MR. GLEISSNER:

9 Q Ms. Duncan, your discussions as it relates to
10 marketing the property, tell the Court what the
11 discussions were.

12 A When we originally came up with that number --
13 because he was aware of the other two homes that were for
14 sale on that block -- and if I'm not mistaken, it was
15 listed for more than 280,000 when it was originally
16 listed. That's what I wanted to say to you.

17 Q Okay. So now -- wait...

18 THE COURT: Hold on a minute. Now, this is the
19 proffer. You'll have an opportunity to cross-examine her
20 during the cross.

21 MR. D'AGOSTINO: Thank you.

22 BY MR. GLEISSNER:

23 Q Let's talk about your discussions with Mr. Gill.
24 Okay? What did he think the property was worth? What did
25 he think he could sell it for?

1 A Well, he wasn't sure. I mean, that's where --
2 that's why I'm speaking on it. He -- we were basing our
3 opinions on other homes that were smaller square footage
4 that had sold -- this was the biggest house on that end of
5 the block with a double-car garage. And so that's where
6 we came up with those numbers, basing it on the square
7 footage price, based on what the others had sold for.

8 Q All right. Did Mr. Gill come up with those numbers?

9 A Together we did.

10 Q Together, the two of you -- him and you -- agreed to
11 the numbers?

12 A Yes.

13 Q Okay.

14 MR. GLEISSNER: I think that's my proffer, Your
15 Honor.

16 THE COURT: Mr. D'Agostino?

17 PROFFERED CROSS-EXAMINATION

18 BY MR. D'AGOSTINO:

19 Q When are you saying you and Mr. Gill came up with
20 these numbers?

21 A When I was almost finished with the home and getting
22 ready -- we were talking about listing it.

23 Q Okay. So this was long after -- this would have
24 been in May of 2019? Is that what you're saying?

25 A Yes.

1 Q So -- and wasn't it a Realtor and not you who was --

2 A A Realtor did come in at the end and gave -- later,
3 after what we thought the house was worth, and gave her
4 assessment of the property.

5 Q So this is just guesstimates by you, her, and him?

6 A It was --

7 Q As to values.

8 A Pretty much. I mean, I'm not a Realtor. We were
9 just looking at the other homes and going by what they had
10 sold for to get an idea of possibly what this home value
11 would be.

12 Q At the end of your work on the property?

13 A Correct. I mean, we wouldn't have called them in in
14 the middle of it.

15 Q Well, I understand. But this was all in May of
16 2019, is what we're talking about?

17 A Yes, sir.

18 Q And there was no formal appraisal done by anyone at
19 that time?

20 A Not that I'm aware of.

21 Q And you had your opinion and he had his opinion and
22 the Realtor had her opinion?

23 A And we were looking at the property values that was
24 selling at that time.

25 Q That's my cross --

1 A He asked me to do that.

2 MR. D'AGOSTINO: That's my cross-examination as it
3 relates to the proffer. I still submit to you it's not
4 admissible, Your Honor.

5 THE COURT: (Indiscernible) note your objection.
6 I'm going to allow Mr. Gleissner to ask her about what the
7 property sold for. I think he indicated that she learned
8 that through looking at the deed the date that it was
9 sold.

10 Mr. D'Agostino, you can cross-examine her on all of
11 the above or whatever else you think is appropriate as far
12 as (indiscernible) any type of value. But I will not -- I
13 do sustain any objection to what other houses were
14 purportedly being sold for on the street or any other
15 listing. I'm going to do it contained to asking her what
16 the property sold for as she knows it. All right?

17 MR. GLEISSNER: I understand exactly what you're
18 saying, Your Honor.

19 Do you want me to offer into evidence the deed?

20 MR. D'AGOSTINO: That's up to you, if you want to.

21 MR. GLEISSNER: Okay. I'll offer into evidence the
22 deed, Your Honor.

23 THE COURT: Well --

24 MR. GLEISSNER: That will identify the date, the
25 amount, and the whole nine yards.

1 THE COURT: You handle it the way you think is
2 appropriate, if that's where we are. Let's bring the jury
3 back.

4 MR. GLEISSNER: Thank you, Your Honor.

5 (The jury entered the courtroom at 2:48 p.m.)

6 (Plaintiff's Exhibit No. 93, Deed, was marked for
7 identification.)

8 THE COURT: Mr. Gleissner, ask your next question.

9 CONTINUING DIRECT EXAMINATION

10 BY MR. GLEISSNER:

11 Q Ms. Duncan, I'm going to hand you what has been
12 marked as Plaintiff's Exhibit No. 93. Can you identify
13 this document?

14 A Yes, sir. It's the title of real estate to 445
15 Rainbow.

16 Q Okay. And --

17 MR. GLEISSNER: Your Honor, I'd like to move to
18 admit Plaintiff's Exhibit No. 93.

19 MR. D'AGOSTINO: Note my objection, Your Honor.

20 THE COURT: I'll note your objection. Plaintiff's
21 Exhibit 93 is into evidence.

22 (Plaintiff's Exhibit No. 93 was received into
23 evidence.)

24 BY MR. GLEISSNER:

25 Q All right. How much did the house sell for?

1 A 280. 280,000.

2 Q And when did the house sell?

3 A I don't have my glasses on here. I have to get my
4 glasses. I can't see it.

5 MR. D'AGOSTINO: Your Honor, for expediency, I'll
6 stipulate the deed is signed September 1st, 2020.
7 That's -- you might as well just publish that. That's
8 fine.

9 THE WITNESS: Thank you.

10 BY MR. GLEISSNER:

11 Q Okay. What do you think you should get paid as a
12 result of the sale of the house and your efforts?

13 A I felt like I should have got half of what we agreed
14 to as a partnership. I did all the work, except what we
15 contracted out.

16 Q Okay. And how much is that?

17 A That would have been half of the net of the 280.

18 Q What about the \$93,000 that Mr. Gill originally
19 paid?

20 A That was his investment.

21 Q Okay. Should that come off of the 280?

22 A I invested my time and talent. He invested the
23 money proceeds part.

24 Q Okay. What about the expenses for the materials
25 that Mr. Gill paid?

1 MR. D'AGOSTINO: I'm going to have to object, Your
2 Honor. That's all right. I'll handle it on cross.
3 That's fine.

4 A That was his investment.

5 BY MR. GLEISSNER:

6 Q Okay. Should that come off the \$280,000?

7 A You know, I just want to get paid what I was
8 promised. I'm willing to be fair. I want this to end.
9 It's been going on for four years. It's been a ball and
10 chain for four years. I did and honored my part and kept
11 my word, and I just want it over. I just want to be fair.
12 I want to get paid for my labor.

13 MR. GLEISSNER: Your Honor, that's all I have for
14 this witness. Thank you.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. D'AGOSTINO:

18 Q Just to be sure not just the jury but we all
19 understand what you just said, you want to be paid for
20 your labor; correct?

21 A Well, I was promised --

22 MR. GLEISSNER: Objection.

23 A Yes, what I was promised.

24 BY MR. D'AGOSTINO:

25 Q Now, let's go back a little bit then. You talked

1 about flipping houses before you got involved with
2 Mr. Gill. And as far as houses you had built when
3 flipping, those were through your husband while he was
4 your husband or after y'all got divorced; right?

5 A Not all.

6 Q Which -- you also flipped a house with a partner
7 that you met at Murrells Inlet; correct?

8 A I flipped a couple of houses with different people.

9 Q All right. Well, besides him -- I mean, I know
10 about him because you told us at your deposition about
11 your partner from Murrells Inlet. He put up 260,000 and I
12 think you put up 100 from when you had a house burn down.
13 And then you had these houses with your ex-husband and/or
14 your husband. Who was the other person you --

15 A Well, they were the money, and I was the talent.

16 Q Well, that wasn't my question. My question was, Who
17 was this other person besides your partner?

18 A I have done houses with Frank Eason. I have done
19 houses with my ex-husband. I have done houses with Danny
20 Fooze (ph). I mean, how far do you want to go back?

21 Q Well, during your deposition, you didn't tell us
22 about any of those.

23 A Well, they don't pertain to the case.

24 Q Well, you talked about flipping houses --

25 A I got paid for those.

1 THE COURT: All right. Hold on a minute.

2 You need to answer his question, and when you answer
3 his, (indiscernible).

4 THE WITNESS: Okay.

5 BY MR. D'AGOSTINO:

6 Q During the deposition, I asked you who all you
7 flipped houses with. You told me about your ex-husband
8 and your partner from Murrells Inlet. And that was it.
9 You didn't give me any other names.

10 A Well, I don't --

11 MR. GLEISSNER: Your Honor, I have got to object. I
12 have got to object. I mean, if he's asking about her
13 deposition, she should be allowed to see the deposition.

14 MR. D'AGOSTINO: Well, I don't need to show it to
15 her unless --

16 THE COURT: All right. Hold on a --

17 MR. D'AGOSTINO: I'm sorry.

18 THE COURT: I'll overrule the objection.

19 Ask your question.

20 BY MR. D'AGOSTINO:

21 Q During your deposition, when I asked you that same
22 question, you talked about and told me about your
23 ex-husband and you told me about your partner from
24 Murrells Inlet. And that was after this house, wasn't it?
25 The partner from Murrells Inlet?

1 A Mm-hmm.

2 Q That was after you met Mr. Gill?

3 A Yes, sir.

4 Q So other than your ex-husband, before Mr. Gill, you
5 didn't tell me about anybody else you had flipped a house
6 with, did you?

7 A Well, my ex-husband's family, B&E Foods, Hillbilly's
8 Barbecue, I said that we would go in together on homes.

9 Q I understand that.

10 A It was a family thing.

11 Q During your deposition, you told me about the ones
12 your ex-husband and you did. You didn't mention any other
13 relatives with whom you did flipping, did you?

14 A That's correct.

15 MR. D'AGOSTINO: I want to move this so it's not
16 between us.

17 BY MR. D'AGOSTINO:

18 Q And the other -- and the house you flipped with your
19 partner from Murrells Inlet, I believe that was in both of
20 y'all's names; right?

21 A Yes, sir.

22 Q All right. And so you had an interest in that piece
23 of property as well?

24 A Yes, sir.

25 Q As it relates to this situation with Mr. Gill, your

1 name is not on the deed anywhere, is it?

2 A I learned my lesson.

3 Q My question is --

4 A No, sir.

5 Q -- is your name on the deed?

6 A It's not.

7 Q All right. Do you have any -- you testified during
8 your deposition that there were 1200 photographs, emails,
9 and communications between yourself and Mr. Gill,
10 approximately, and you verified that, not in a single one
11 of those is there documentation relating to this agreement
12 you say exists; correct?

13 A I didn't say there wasn't text messages from Gary
14 after he finagled me down from the partnership and ran me
15 broke, he wanted me to draw up another contract, which I
16 did, and he's asking me, texting me, "Can you bring the
17 contract to the store?" And then he calls and says,
18 "Julia has to work. Can you bring it another day?"

19 So, yes, he did.

20 Q There was one communication in the text -- you gave
21 us all your text messages between yourself and Gary,
22 right, in discovery?

23 A It's there, correct.

24 Q And your text message that, you believe, began in
25 2019, and your last one was on May 20th of 2019.

1 A That's because he deleted the text messages before
2 that.

3 Q I'm talking about on your phone. You gave them to
4 me --

5 A Well, it comes off my phone.

6 Q Huh?

7 A It came off my phone. I had another phone, and
8 those could not get deleted. But, yes, I had text
9 messages where he asked me to draw up a contract because
10 he knew I was destitute at this point.

11 Q Ma'am, I'm just asking you -- my question was, you
12 gave us text messages -- the only text messages you gave
13 us were from February of 2019 through May 20th of 2019;
14 right?

15 A Possibly. I don't have them in front of me.

16 Q This is what you gave us in discovery. Take a look
17 at it. It starts on February 21st, 2019. Is that right?

18 A Yes, sir.

19 Q All right. The last sentence through there, last
20 page -- second-to-last page, what's the date on that one?

21 A 5/30.

22 Q Look at the page before that.

23 A 5/22.

24 Q 5/22.

25 A Of '19.

1 Q 2019. And that's a text message where Gary --
2 that's a text message Gary says to you, "Good morning,
3 Sherry. Can you drop the contract paper at the score,
4 please? You'll have that back tonight because Julia has a
5 doctor's appointment at 9:30 today." That's what he wrote
6 to you; right?

7 A Yes, sir.

8 Q And that's where he asked you to prepare -- asked
9 you to drop off the contract you were wanting to present
10 to him as it relates to this transaction; right?

11 A He wanted me to put what we had agreed on in
12 writing --

13 Q Okay.

14 A -- this time.

15 MR. D'AGOSTINO: I'd like to have this marked for
16 identification purposes as my exhibit and introduced.

17 (Defendant's Exhibit No. 1, Text Messages, was
18 marked for identification.)

19 THE WITNESS: And it also promised --

20 BY MR. D'AGOSTINO:

21 Q And the date immediately prior to that, there's
22 nothing in this communication between you and Gary about
23 contracts, money, or anything else, is there?

24 A No, because we were talking in person at the store.

25 Q Okay. So from February 24th through May 22nd,

1 that's the only entry relating to any contract or
2 agreement in all those text messages between you; correct?

3 A Correct, because that's not what we talked about --

4 Q And the --

5 A -- in the beginning.

6 Q -- entry on May 30th that you referenced, it just
7 says -- you saying (indiscernible); correct?

8 A Yes. He wanted to set up a meeting to give me a
9 draw.

10 Q All right. Now, as it relates to that contract that
11 you prepared and dropped off --

12 MR. D'AGOSTINO: Can I have this marked as
13 Defendant's No. 2 for identification?

14 (Defendant's Exhibit No. 2, Contract, was marked for
15 identification.)

16 BY MR. D'AGOSTINO:

17 Q This is a true and accurate copy of the contract
18 that you prepared and dropped off to Gary on May 22nd, is
19 it not?

20 MR. GLEISSNER: I'm sorry, Your Honor. Can I take a
21 look at that document?

22 THE COURT: Go ahead and show him.

23 MR. GLEISSNER: Thank you, Your Honor.

24 THE WITNESS: May I grab my glasses?

25 THE COURT: Ma'am?

1 THE WITNESS: May I grab my glasses?

2 THE COURT: Where are they?

3 THE WITNESS: They're in my purse right there in
4 that black --

5 THE COURT: They'll get that.

6 THE WITNESS: Thank you. It is really tiny writing.

7 BY MR. D'AGOSTINO:

8 Q That is a true and accurate copy of the contract
9 that you dropped off for Gary on May 22nd, 2022 -- 2020 --
10 '19? Excuse me. Correct?

11 A Yes, sir.

12 Q And at that time, on May 22, 2020 [sic], that
13 contract was for a total amount of 28,000, inclusive of
14 what he paid you; was it not?

15 A That's what I had gotten finagled down to.

16 Q So you say --

17 A I was desperate. Remember, my savings had ran out,
18 and I couldn't get my draws.

19 Q As it relates to your draws, you talked a few
20 minutes -- well, so, on May 22nd, that's what you filed.
21 Then --

22 MR. D'AGOSTINO: If we can get this marked as
23 Defendant's Exhibit No. 3 for identification.

24 (Defendant's Exhibit No. 3, Contract/Mechanic's
25 Lien, was marked for identification.)

1 BY MR. D'AGOSTINO:

2 Q I'm handing you Defendant's Exhibit No. 3. Is that
3 a true and accurate document that you had prepared?

4 A Yes. I was desperate. I had --

5 Q I just asked you if this was a true and accurate
6 copy --

7 A Yes.

8 Q -- of a document you had prepared.

9 A Yes.

10 MR. GLEISSNER: Your Honor, I believe she gets to
11 explain her answers.

12 THE COURT: Well, she's got to answer his question
13 first. And I have already explained to her that she has
14 to answer the question but then she can give an
15 explanation.

16 A So I had invested all this work for all these
17 months, and I couldn't get the draws. I was being
18 avoided. I had been locked out. I was desperate. I
19 needed to find a way to secure what I had invested into
20 the property. And that's why I filed that. Because it
21 was my labor, and I felt like I had to protect it.

22 BY MR. D'AGOSTINO:

23 Q So, on May 22nd, you submitted a contract to him for
24 \$28,000 total, inclusive of what you had been paid;
25 correct?

1 A Yes, sir.

2 Q All right. On May 22nd, you also said he was
3 setting up a meeting with you, with him at Mr. Pendleton's
4 office and paid Mr. Pendleton \$100 to set up to meet with
5 y'all; right?

6 A That was -- yes. And then the reason for that was
7 because he still never gave me my draw, and when I called
8 Mr. Pendleton, Mr. Pendleton --

9 MR. D'AGOSTINO: I object to her testifying to what
10 Mr. Pendleton says.

11 THE COURT: Well, you asked the question. All
12 right?

13 MR. D'AGOSTINO: I asked the question about setting
14 up the meeting.

15 THE WITNESS: And I'm telling you why I didn't show
16 up.

17 THE COURT: The question simply was the meeting was
18 set up?

19 MR. D'AGOSTINO: Yes.

20 THE COURT: All right. Ask your -- ask your next
21 question.

22 BY MR. D'AGOSTINO:

23 Q And Mr. Gary set up that meeting with Mr. Pendleton;
24 correct?

25 A He did.

1 Q Paid him \$100, did he not?

2 A I don't know.

3 Q That's fine.

4 Then on May 24th, just two days later --

5 A Okay.

6 Q -- is when you signed a document called mechanic's
7 lien. It was certified under oath; correct?

8 A Yes.

9 Q You swore to it under oath?

10 A Yes.

11 Q All right. And so two days later, you went from
12 \$28,000, inclusive of what he paid you, to now \$70,525;
13 correct?

14 A Because if I'm having to go -- yes.

15 Q My question was --

16 A Yes. And the reason for that is because, when I
17 called the attorney, Mr. Pendleton, he stated --

18 MR. D'AGOSTINO: Your Honor, I'm going to object to
19 what Mr. Pendleton --

20 THE COURT: You have asked the question about the
21 mechanic's lien and I'm going to allow her to answer your
22 next question.

23 A And the reason that -- thank you, sir. And the
24 reason I did that is because, when I called Mr. Pendleton
25 to let him know I was supposed to be going out of town,

1 how long is it going to take to sign this document, he
2 said, "Mr. Gurdip is changing everything in this
3 document."

4 I said, "Work that I have already done?"

5 "He's trying to add work to it."

6 And I said, "Well" -- at that point, he's changed
7 again on me. He's not giving me my draws. Now, he's
8 agreed to this, and two days later, he's changing it
9 again. I'm not going up there. I'm going to protect
10 myself because I'm tired of chasing my money.

11 Q So on May 24th, you filed a mechanic's lien
12 asserting you were entitled to \$70,525; correct?

13 A Back to the original agreement.

14 Q But that \$70,000 includes \$20,000 in attorney's fees
15 you hadn't paid anybody, doesn't it?

16 A Well, on the website -- yes. And on the website, it
17 said to estimate what I thought my fees would be. I never
18 had to pay an attorney before because I have never had
19 anybody to be dishonest with me before.

20 MR. D'AGOSTINO: Your Honor...

21 BY MR. D'AGOSTINO:

22 Q Your affidavit said that (indiscernible) is duly
23 undersigned, Sherry Duncan, for home construction services
24 authorized by the above said by way of verbal and provided
25 materials."

1 A Correct.

2 Q You're asserting the \$70,525, and you placed that as
3 a lien against this property; did you not?

4 A Yes. And that was with the attorneys' fees as well.

5 Q But you hadn't paid a penny on attorney's fees.

6 A No, it said to adjust -- to estimate what my
7 attorney's fees may be on the South Carolina website.

8 Q What website might this be?

9 A Well, I'd have to look it up for you.

10 Q You don't know what website you got --

11 A It's the South Carolina State, in order to file a
12 lien on a property to protect your labor and your
13 investment on a property.

14 Q I'm not aware of any such website, so that's why I
15 was asking.

16 A I wasn't either, but I had to figure out a way to
17 try to protect myself.

18 Q As it relates to -- but what you swore was it was
19 all for contract labor, the \$70,525 --

20 A The first time I ever had to do anything like that.

21 Q Now, as it relates to what you did afterwards -- so
22 you gave him a contract that said \$28,000 on May 22nd and
23 \$70,525 on May 24th. And then you subsequently filed this
24 lawsuit; correct?

25 A This has been going on for four years.

1 Q Well, I understand that. Part of that time was
2 because you actually had an attorney who represented you
3 before and served the wrong person; right? Correct?

4 A Correct.

5 Q And actually had the title to the property taken
6 away from Mr. Gary without him ever knowing it?

7 A I volunteered to sign the -- I had already won the
8 property deed.

9 Q But that's because you didn't serve the right
10 person. Gary never knew about your lawsuit; right?

11 A I still won it.

12 Q You won it without anybody present.

13 A But I still signed it back over as well.

14 Q So part of the delay of coming to court is because
15 of what you and your attorney failed to do?

16 A No, part of the delay is, is that he rented the
17 house out for six months and didn't -- trying not to pay
18 me, and then tried to auction the house off to keep from
19 paying me. But the deed stopped all that.

20 Q Well, the deed has been -- the property has been
21 sold.

22 A It has now. That's why it's been going on for four
23 years and me trying to protect myself.

24 Q And as it relates to what you said you're entitled
25 to, you said net profits; right?

1 A Yes.

2 Q So what do you -- you being a bookkeeper, what do
3 you understand net to be?

4 A Well, that's after his -- already put his stuff into
5 it. It's not my problem that he invested and dragged it
6 out this long for four years. I can't tell you what I
7 have in attorney fees just to make what's wrong right.

8 Q All right. I just asked what you defined as net
9 profits. You said you were a bookkeeper.

10 A And I also told you earlier, I just want to be fair
11 and get what I was promised.

12 Q You don't have any contracts -- you don't have a
13 contractor's license of any type, do you?

14 A Well, that didn't stop me from doing all the work
15 and him allowing me to do all the work with his credit
16 card for six months, did it?

17 Q We'll get to that in a moment.

18 You don't have a contractor's license or a
19 specialty --

20 A I never said I did. I was partners with him. He
21 owned the home.

22 Q As it relates to this partnership you say existed,
23 you said that Gary told -- asked you about the house. You
24 said you wanted to be partners, but he bought it without
25 you; right?

1 A Yes. He closed the deal without me.

2 Q All right. And so then he hired Havana; correct?

3 A For me to oversee.

4 Q So you were overseeing Havana?

5 A In our own pictures, you see me overseeing them.

6 Q Well, if you were overseeing them, why was all this
7 work being done so poorly?

8 A Well, they didn't last ten days and made more money
9 than I did.

10 Q You made -- we'll get to your money in a moment,
11 ma'am.

12 Why didn't you stop them from doing the bad work if
13 you were overseeing them?

14 A I did stop them. That's why we started bumping
15 heads.

16 Q Let's go back to the beginning. You were actually
17 living in the house -- your father's house down the
18 road --

19 A Yes.

20 Q -- at the time you entered this deal?

21 A Yes. I sold my home and improved on that home to
22 take care of him.

23 Q When did you sell your father's home?

24 A I had to sell it in September of '19.

25 Q So you sold that home in September of '19, and you

1 made how much on that one?

2 A After I paid back everybody that I owed for my
3 attorney's fees and stuff like that, I sold it, I made
4 about \$130,000 on it.

5 Q All right. Now -- and that was the house right down
6 the street; correct?

7 A Correct.

8 Q Right?

9 A Right.

10 Q And then you also were helping your ex at 462; is
11 that right?

12 A Correct.

13 Q That's where you were working when you told Gary
14 you'd help him with this house; correct?

15 A (Witness nodding.)

16 Q All right. Now, what things did you do -- that was
17 one of the other houses you helped your ex-husband flip,
18 wasn't it?

19 A Yes.

20 Q All right. What things did you do for that house?

21 A I didn't do a whole lot on that house. I was
22 overseeing the contractors in there. I painted the
23 outside brick because it was orange. Mortar filled it. I
24 built the gable boxes. I removed the cedar shake and put
25 in stone. I did the bathrooms inside there. We hired a

1 painter to come in, and install the kitchen cabinets,
2 which I went and got. I was in charge of all the
3 supplies. It was a 50/50 there of work done.

4 Q I think you told us you made -- he gave you \$6,000
5 for that.

6 A We have later worked it out, yes.

7 Q So you got a total of 6,000 from your husband for
8 overseeing that project and doing all the work you just
9 described?

10 A Yes. There wasn't very much money made on that
11 home. We paid too much for it.

12 Q Now, let's talk about this list, your Exhibit No. 2.
13 You testified, on Exhibit No. 2 -- your Exhibit No. 2, you
14 did all those things in the front yard, backyard, all
15 those other things; correct?

16 A Yes, sir.

17 Q All right. In reality, were there contractors that
18 Gary hired who did a lot of that work?

19 A I have given the name in my testimony and in my
20 deposition that -- who did that work. It was Joe --

21 Q Let's talk about specifics.

22 A I have not lied about any of them.

23 Q I didn't say you lied. You might have -- you might
24 say you oversaw them, but just like the "remove vines and
25 bushes, pressure washer the brick and patio," Ricky McGill

1 actually did tree removal, brought in the fill dirt, and
2 did lawn work, didn't he?

3 A In the backyard. In the backyard, I had him remove
4 a tree, and he helped me cover up the pipes that I ran to
5 the French drain.

6 Q As it relates to the brick around that tree where
7 all that debris was, the photograph you identified where
8 you saw a gentleman on a tractor --

9 A Yes.

10 Q -- there was a fire pit there but y'all started
11 working; wasn't there?

12 A No, there was not.

13 Q There was not a fire pit?

14 A It was a tree stump.

15 Q There wasn't any bricks around that?

16 A To keep from -- no, there was not.

17 Q As it relates to -- you said you repaired masonry
18 and bricks on the patio. That's one of the things you say
19 you did, right?

20 A The steps in the front.

21 Q All right. And you don't have any kind of masonry
22 license or anything like that as a specialty contractor?

23 A Uh-uh, no, sir.

24 Q You said you replaced light fixtures. You don't
25 have a specialty contractor license to --

1 A Gary asked me to hang them.

2 Q All right. Now, you also know that Quintin Deal, he
3 did yard clean-up and hauled off all the trash from the
4 yard; did he not?

5 A All the leaves -- yes, sir. All those leaves that I
6 blew to the back and all the limbs that I cut off all the
7 trees were at the back, and he picked him up with his
8 dumpster.

9 Q And Nathan Ryan put down the vapor barrier under the
10 house; did he not?

11 A He did, plastic.

12 Q And my client paid for him; didn't he?

13 A He did, yes, sir.

14 Q My client paid Ricky McGill 1725; didn't he?

15 A He did, yes, sir.

16 Q My client paid for Quintin McGill [sic]; did he not?

17 A He did. \$600, yes, sir.

18 Q Which subcontractor that worked out there did you
19 pay?

20 A I'm the one that brought McGill in. He's my
21 neighbor.

22 Q My question was, which subcontractor did you bring
23 in that you paid?

24 A That you mean I --

25 Q That you paid out of your pocket.

1 A I haven't paid any of them, except my niece that
2 helped me.

3 Q And I think you told us you paid her a couple of
4 hundred bucks?

5 A I did. That's because that was my part, my
6 investment and my gas and...

7 Q Well, your gas and things like that we'll get to,
8 but just generally, you actually got gas at Gary's; did
9 you not?

10 A No, I did not.

11 Q Joe Leitten, he did the light installation, the
12 garage repair, moulding installation, dryer vent repair,
13 home repairs, changed the locks. He did all that; did he
14 not?

15 A I have never disputed what Joe done.

16 Q And he also did the shower/tub bathroom repair,
17 garage door --

18 A The tile.

19 Q He did all that?

20 A Yes. And he grouted the floors.

21 Q My client paid him to do that?

22 A Yes, sir.

23 Q And didn't my client contract with him directly for
24 that?

25 A He did, yes, sir. But I overseen him and was adding

1 stuff to it that needed to be done because Joe didn't have
2 a set of keys. I had the keys.

3 Q All right. Grass mowing every month or every couple
4 of times a month. Who paid for that?

5 A That was in August. I kept the grass cut up until
6 the end of May, every week.

7 Q Robert Adams, did he not do pressure washer,
8 electrical, and yard work as well?

9 A He did remove some shrubs, but he never pressure
10 washed that house. The check copy you ought to have is
11 for the gas station.

12 Q The Piedmont Climate Control, Gary hired them to put
13 in a whole new HVAC system, didn't he?

14 A Yes, sir.

15 Q Paid them for all that too?

16 A I called him and told him it was out.

17 Q All right. Havana -- you said that's the company
18 y'all ran off; correct?

19 A They ran off, walked off.

20 Q Whatever, yeah.

21 Those are just some of the subs that worked out
22 there?

23 A Yes, sir.

24 Q And, in addition to that, you're aware that Gary
25 paid all the bills for Lowe's; right?

- 1 A Yes, sir.
- 2 Q All the bills for Home Depot? Invested all that
3 money?
- 4 A Well, the Home Depot got reimbursed because we
5 returned all that, except the patio doors.
- 6 Q Okay. Now --
- 7 A That was the deal, because he didn't have the cash.
- 8 Q Gary paid for the insurance for the home; correct?
- 9 A I'm assuming.
- 10 Q Paid for the utilities for the home; correct?
- 11 A Car bill, yes.
- 12 Q Now, as it relates to -- I believe you said that
13 your Exhibit No. 92 was a copy of all your checks; right?
14 Is that a copy of your checks?
- 15 A If that's 92, yes.
- 16 Q So Plaintiff's Exhibit No. 92. Now, those first few
17 checks, can I take a look at them?
- 18 A Sure.
- 19 Q That first one for 342.44, it says, "New fans." Is
20 that right?
- 21 A Correct.
- 22 Q Was that the reimbursement for fans that you got?
- 23 A Off eBay, mm-hmm.
- 24 Q Off eBay?
- 25 A Yes, sir.

1 Q All right. This next check for \$308, are you saying
2 that's for reimbursement?

3 A For paint and carpet for the shelves -- yeah, just
4 miscellaneous stuff I come across cheap that I couldn't
5 put on a Lowe's credit card, I'd find somewhere else.

6 Q All right.

7 A Or online that was cheaper.

8 Q Now, this check -- and this check, the one for the
9 308, that was on January 24th, 2019; right?

10 A Yes, sir.

11 Q All right. The next check you have is February 2nd,
12 2019; \$445.66; is that right?

13 A Yes, sir.

14 Q Is that for reimbursements too?

15 A It is.

16 Q Did you keep receipts of all these reimbursements
17 and give them to --

18 A He got them.

19 Q -- and give them to Gary?

20 In fact, at one time, you gave him a summary of
21 everything; did you not?

22 A I believe so. I mean, I have tried -- I kept up
23 with every picture. I tried to take pictures of all
24 receipts, all material.

25 Q Then on April 23rd, he gave you a draw for \$2,000;

1 right?

2 A Mm-hmm.

3 Q Is that right?

4 A Mm-hmm. Yes, sir.

5 Q All right. Now, the next draw was on -- you said he
6 was avoiding you, had been weeks or something since he
7 (indiscernible) that contract on February -- on May
8 21st -- 22nd? Is that what he was doing?

9 A Yes, he was avoiding me, and I'm going to tell you
10 why. He was avoiding -- the first draw, as you notice,
11 it's not 22- or \$2400, nor is the second draw. So he was
12 avoiding about the payments but wanted me to keep working
13 meanwhile. He was going to round it up.

14 Q And so on May 20th, he actually gave you a draw --
15 he gave you money, \$1100; right?

16 A Yeah, not enough to pay my bills.

17 Q Well, you wrote: Second draw, work for Rainbow Road
18 or Rainbow --

19 A Rainbow Circle. Rainbow House.

20 Q You wrote that on there?

21 A Yes, as he's standing on this side of the register,
22 I'm standing here, so that we both know this is the second
23 draw.

24 Q All right.

25 A No confusion.

1 Q So you wrote that on that check?

2 A In front of him on the counter at the gas station.

3 MR. D'AGOSTINO: Let me have this marked for
4 identification as No. 4.

5 (Defendant's Exhibit No. 4, Expense Sheet, was
6 marked for identification.)

7 BY MR. D'AGOSTINO:

8 Q Now, let me hand you what I have marked as
9 Plaintiff -- Defendant's Exhibit No. 4 for identification
10 purposes. Do you recognize that?

11 A Yes, sir.

12 Q You actually drew that up; did you not?

13 A Yeah, I was trying to keep up with the receipts.

14 Q Okay. So --

15 A What he had paid me for and what he still owed me.

16 Q But you itemized the receipts that -- for things you
17 were out of pocket for which you got reimbursed; correct?
18 And that's what that was?

19 A This amount but was still owed this amount.

20 Q Okay. But this total here, this is your summary of
21 whatever you had put out; correct?

22 A Cash out of my pocket, yes.

23 Q So the reason why I ask that is you have dates
24 besides all these receipts too; right?

25 A I do. They're all '19.

1 Q So you have a check you received from Gary on
2 January 24th for \$308; right?

3 A Let's see. Yeah, I'm not disputing he didn't --
4 that he reimbursed me for the materials that I bought
5 here.

6 Q Well, I understand that. He had reimbursed you on
7 January 24th, 2019, for \$308; right?

8 A Mm-hmm. Yes, sir.

9 Q Well, the reason why I ask is because there are no
10 receipts -- there's no entries on this exhibit that's
11 (indiscernible).

12 Prior to January 24th, 2019, you only have two
13 receipts on here. One is for Lowe's on January 17th for
14 \$27.21 and one is for, on January 31st, which is one of
15 those two fans, which he subsequently paid you with
16 another check. So --

17 A No. The two fans were here. I got one fan. Okay?
18 And he liked it so much he wanted me to get another fan.
19 Well, it might have been in the next check, but he was
20 credited for it. He liked it so much, he asked me if I
21 could purchase another one. And the gentleman from eBay
22 said he would find me one, and he did.

23 Q My question is, you had got a check for \$308 on
24 January 24th, 2019.

25 A Yes.

1 Q \$308. And you said that's for reimbursement for
2 monies you had been out of pocket; correct?

3 A Which was in that total there that he was credited
4 for.

5 Q Well, I understand, but you got the check in
6 January. That's my question. You got the check on
7 January 24th --

8 A Okay.

9 Q -- for \$308. As of January 24th, according to your
10 listing, you have not spent \$308 on the house, according
11 to what you gave him, had you?

12 A Well, yeah. The two fans alone cost more than that.

13 Q Well, the one fan was February 7th.

14 A He had the receipts. He wouldn't have gave me money
15 he didn't owe. He had the receipts.

16 Q So on February 20th -- I'm just going by your --

17 A I don't know. Without me sitting down and going
18 back, like I say, it's been four years.

19 Q Take a look at it. You knew this trial was coming
20 up.

21 A Well, look, he's been credited for \$1073. \$300 plus
22 \$300, that's \$600. Plus four, five, six, seven, eight. I
23 mean, you're coming up to \$1200.

24 Q That's not the point, ma'am. My question is --

25 A But --

1 Q -- when you got a \$308 check from him and you said
2 he was reimbursing you, you hadn't spent that money before
3 you got that check, according to the summary --

4 A These are the receipts. Now, I might not turn them
5 all in to him at the same time, but he knew what was being
6 spent on the house. The rest of it was on his credit
7 card, and he got copies of the receipts and approval of
8 anything before I bought it.

9 Q Okay.

10 A So he's not going to write me a check for
11 something -- to pay for something he doesn't believe that
12 he got.

13 Q So he had to approve anything before the expense
14 reports --

15 A Yes, I gave him the receipts. "Gary, I'm going to
16 Ollie's. I'm going to pick up some carpet to put on the
17 shelves in the garage. Gary, I have ran across the
18 chandelier. That's a \$400 chandelier; I can get it for
19 \$85. Do you want me to get it?"

20 "Yes, get it."

21 Q That's what I'm getting at.

22 A I didn't have his credit card with me.

23 But at the end of the day, Gary was credited for
24 what I spent and got copies of the receipts.

25 Q I understand. So we're clear that, before he goes

1 spending his money, you had to tell him you were going to
2 do it?

3 A We agreed on it, yes, absolutely. And he trusted
4 my -- my look.

5 Q So he had control over that; correct?

6 A Yes, sir.

7 Q All right. Secondly, as of February 24th, according
8 to the summary you had prepared, you had not -- I'm
9 looking at the summary you prepared --

10 A I'm not -- I'm just not understanding what you're
11 saying.

12 Q Okay. Look on that summary and tell me how much
13 money, based upon the dates that you spent the money, that
14 you spent prior to January 24th. Just tell the jury what
15 those entries are.

16 A Prior to January 24th?

17 Q Correct. How much money prior to January 24th did
18 you spend --

19 A 27.

20 Q \$27?

21 A Yep.

22 Q What else?

23 A And -- yeah, \$27.

24 Q Okay. So as of January 24th, you had spent \$27 but
25 you got \$308 from Gary?

1 A Well, because the receipts would add up. When he
2 wrote the check -- that's for the two fans on 2/13. On
3 1/24, yeah, there was a three -- I mean, maybe there was
4 more. I don't know. But it was for the fans.

5 Q Well, the fans was --

6 A It was for material. Okay. We're beating a dead
7 dog here. Gary paid me receipts back that maybe I held on
8 to, I don't know, but he paid for paint, he paint for Home
9 Depot --

10 Q That's all I'm trying (indiscernible) --

11 A And the ceiling fans that come off of eBay.

12 Q Correct.

13 A Home Depot wall lanterns.

14 Q Correct.

15 A This was stuff that I paid cash for because I didn't
16 have his card on me.

17 Q I understand. He let you have his card because you
18 have you a discount with the card; do you not?

19 A Yes, but some things I could get cheaper instead of
20 buying it at Lowe's.

21 Q I understand. But when you got the check for \$308,
22 you had only spent \$27 out of pocket. And when you got
23 the next check in February --

24 A 213, new fans. I can't remember what it was for.
25 Maybe I'm missing a receipt on here. But I never took

1 from Gary, as you can see. I gave before I took.

2 Q And part of the itemization you have listed is \$300
3 for gas; is that right?

4 A No. Let me -- what are you talking about? I don't
5 have any gas on there.

6 Q A minimum for gas for running for materials or six
7 months.

8 A Oh, for six months at the end, yes.

9 Q You did this at the end.

10 A Yes.

11 Q And you added --

12 A And put copies of receipts that I had.

13 Q You did this at the end, and then you added \$300 for
14 gas for going back and forth to Lowe's; correct? That's
15 what it says.

16 A Yes, because I was paying for my own gas.

17 Q And Lowe's was -- that's that Lowe's that's about
18 four miles from Gary's place; right?

19 A About six, yes.

20 Q All right. Now, as it relates to the photographs,
21 Plaintiff's Exhibit No. 75 through 90, you didn't take
22 these photographs after all, did you?

23 A I have them in my book over there.

24 Q That wasn't my question.

25 A No, I didn't.

1 Q My question was, did you take those photographs?

2 A Not this particular one, but I do have them.

3 Q Who took the photographs 75 --

4 A That was off the MLS. This is how I knew it was for
5 sale.

6 Q Who got those for you?

7 A I'm assuming me or myself took them --

8 Q No?

9 A -- offline.

10 Q Did you download those onto the computer?

11 A Probably, because I kept a portfolio of the home.

12 Q So --

13 A And that's how I knew it was for sale.

14 Q Exhibits 75 through 90 are photographs that were
15 taken by the MLS around the time this sold -- it was
16 listed for sale in 2020; correct?

17 A Say that again now.

18 Q Exhibits 75 through 90 --

19 A Okay, let me look at them. Yep. Yes.

20 Q And that was some approximately a year since you had
21 been to the property; correct?

22 A Yes. But the reason I told you it took so long is
23 because he rented the property out.

24 Q And during this time period, a whole 'nother season
25 of summer, fall, winter, spring had all occurred; right?

1 A Yes, sir.

2 Q And Gary was the one who was taking care of this
3 property. You weren't taking care of the property, were
4 you?

5 A Not after May, no. I left the very end of May. My
6 work was done.

7 Q Now, what was the worker's name, that young lady who
8 works at Gary's place? What's her name?

9 A I think -- I don't know her well. I think her name
10 is Julia.

11 Q Did you know that Julia kept track of any time you
12 went up there to get things such as gas or cigarettes
13 or --

14 A They made that up.

15 Q They made that up?

16 A Yes. They made that up. Look at my checking
17 account you subpoenaed, do you see me getting gas, drinks?
18 They're my debit card every day. Why would I be putting
19 it on something I never even knew anything about and never
20 signed off to? I don't work like that. You could have
21 pulled those numbers out of the sky.

22 Q So you don't work without documenting everything;
23 right?

24 A No. I'm not going to agree to that, just like he
25 had to agree to this before he paid me.

1 Q So you won't agree to things unless it's in writing,
2 is what you're telling us?

3 A No. I said I didn't see that. It could have been
4 pulled out of the sky.

5 Q So you deny --

6 A If I agree that I did it, then I don't mind paying
7 it.

8 Q You deny that you got \$150 from Julia on or about --
9 in the week of February 10th?

10 A Yes, I do.

11 Q You deny, during the week of December 18th, you got
12 \$20.41 in gas?

13 A Yes, I do.

14 Q \$21 on December -- in December as well?

15 A Yes. I didn't need his money. I had my own money
16 to live off of. He gave me \$5 one time in March for the
17 gas that I used for cutting -- keeping the yard up one
18 time. I think you'll see that on there, and I agreed to
19 that. And he gave me a bottle of wine for my birthday on
20 February 28th, and he charged me for that too, I don't
21 even drink wine.

22 Q You had surgery, I think you said -- was it carpal
23 tunnel?

24 A Yes, sir.

25 Q And how long were you in a splint?

1 A I was supposed to have been in them for six weeks.
2 I was supposed to have stayed out for six weeks.

3 Q Incidentally, do you know when any of these
4 photographs were taken, actually the week or month? Like
5 Exhibit No. 54?

6 A I can go back to my book because they're all
7 timestamped.

8 Q I don't have the timestamp. Tell me when 54 was, if
9 you know.

10 A I'll probably say January.

11 Q January?

12 A Possibly, by the time I made it back to that room.
13 I couldn't know without looking at my documents.

14 Q When did you have surgery?

15 A I don't remember that either. I know that I have
16 got my text messages where I was out on Friday and back on
17 Monday, with both of them. Because Gary is checking on
18 me, wanting to make sure I'm okay.

19 Q Who took that photograph?

20 A My niece.

21 Q All right. So your niece took that photograph, and
22 you think that was -- when did you do all this painting,
23 by the way?

24 THE WITNESS: Rick, could I have my book so I can
25 see the timestamps?

1 THE COURT: (Indiscernible) answer the questions.

2 THE WITNESS: Okay.

3 BY MR. D'AGOSTINO:

4 Q When did you do the painting?

5 A The painting went on -- like I said, I would paint
6 inside if it was cold, and I'd work outside if it was hot.

7 Q Okay.

8 A Everything went on for five months. There was no
9 certain plan. It was to get it done in how I could get it
10 done. I had to use my time wisely. Because all that
11 happened in five and a half months.

12 Q How many surgeries did you have?

13 A I had two.

14 Q When was the second one, that you remember?

15 A I don't remember. It was in May. The second was in
16 May. On a Friday, back on a Monday.

17 Q Were you also out because you had got bitten by a
18 spider at some point?

19 A Yes. When you seen all the water standing in the
20 backyard and I was trying to build the sandbags up to keep
21 it from watering on the house, a spider crawled up into my
22 suit and bit me. Made me very sick. On a weekend. I was
23 out for two days. Because I was working seven days a
24 week, 16 hours a day.

25 Q You were also -- when did you finish your

1 ex-husband's house?

2 A I was supposed to -- Gary was supposed to have
3 allowed me two weeks for that -- and the surgery -- during
4 that time, to finish that house up for him, but then
5 Havana wanted to start the very next day after he hired
6 him, so that got pushed out.

7 Q My question was simple: When did you finish your
8 ex-husband's --

9 A I'm not sure of the date.

10 Q Approximately.

11 A A couple of weeks.

12 Q Approximately.

13 A I'm not sure.

14 Q So you're not sure of that either?

15 A It was probably October.

16 Not without looking at my notes.

17 Q October of what year?

18 A Of '18.

19 Q So you finished your ex-husband's house in October
20 of '18?

21 A No, it would have been after that, because I started
22 for Gary in December and was still working on that home.
23 So I'd work on Gary's Monday through Friday, and I'd work
24 on that home on Sunday and Saturday. I had about two more
25 weeks left on that, finished that up, and then gave him

1 all of my time.

2 MR. D'AGOSTINO: May we take an afternoon break now,
3 Your Honor?

4 THE COURT: Yes.

5 All right. Ladies and gentlemen, it's the
6 appropriate time to take a break for 15 minutes. Do not
7 discuss the case or anything about the case while we take
8 a break.

9 Everyone remain seated while the jury exits the
10 courtroom.

11 (The jury exited the courtroom at 3:36 p.m.)

12 THE COURT: All right. We'll break for 15 minutes.

13 Again, you're under oath. Don't discuss the
14 testimony (indiscernible). Don't talk to the lawyers
15 about the case.

16 THE WITNESS: Yes, sir.

17 (A brief recess was taken from 3:37 p.m. to 3:56
18 p.m.)

19 THE COURT: Defendant ready to proceed?

20 MR. D'AGOSTINO: Yes, Your Honor.

21 THE COURT: Plaintiff ready to proceed?

22 MR. GLEISSNER: Yes, Your Honor.

23 THE COURT: All right. Let's bring the jury in.

24 (The jury entered the courtroom at 3:57 p.m.)

25 THE COURT: All right. Thank you.

1 Mr. D'Agostino?

2 MR. D'AGOSTINO: Thank you, Your Honor.

3 BY MR. D'AGOSTINO:

4 Q On these exhibits, you were asked numerous questions
5 about a lot of the photographs and things like that. And
6 then you talked a lot about prepping and painting and
7 mudding and things like that. But painting and prepping
8 for the painting, that all goes with someone who is going
9 to paint. They have got to prep the walls, they protect
10 the floors, and they paint the ceilings. That's what you
11 were hired to do, wasn't it?

12 A No, it's not.

13 Q You weren't hired to do the painting?

14 A I was hired to do anything that I needed to bring --
15 do to bring that house up to market value to sell for the
16 price that was (indiscernible).

17 Q All right. Let me ask it differently. Have you
18 been hired to do painting by anyone before?

19 A Not just painting, no.

20 Q All right.

21 A I'm not a painter by trade.

22 Q When you -- when those pavers that are around the
23 front of the house, Gary was at Lowe's and buying stuff,
24 and you were there and you and he brought those back to
25 the house; did you not?

1 A He borrowed a trailer one time from his friend named
2 Chief, and we went and got the -- some of the bushes and a
3 few of the stones. Because, as you can see, it went from
4 one end to the other. We cut some angles. It was not
5 enough stones. He used my card for that.

6 Q But Gary is the one who picked them up and brought
7 them to the house. And didn't he put them down too?

8 A No, he did not.

9 Q He did not?

10 A Absolutely did not.

11 Q As it relates to your carpal tunnel, you had two
12 carpal tunnel releases during this five months; right?

13 A Yes, sir.

14 Q And you had to wear -- it actually wasn't a splint,
15 was it? Or was it just --

16 A I would wrap it --

17 Q Wrap it.

18 A -- as best I could because I had stitches.

19 Q And you were actually required to keep it immobile.

20 A I was required to, but I didn't.

21 Q And you had both hands done; did you not? One at
22 each time?

23 A Six different months, yeah. One in December, I
24 guess it was, and one in May.

25 Q All right. Any of the photographs, when you were in

1 the picture, those were taken by your niece?

2 A Any pictures that was taken of me was taken by my
3 niece unless they took one.

4 Q Talking about the ones you --

5 A (Indiscernible).

6 Q -- on the ones you introduced into evidence. Those
7 were taken by your niece if you were in the photograph?

8 A Yes.

9 Q Your niece wasn't there every day, was she?

10 A She was not.

11 MR. D'AGOSTINO: That's all the questions I have.

12 Oh, wait one moment.

13 That's all the questions I have. Thank you, Your
14 Honor.

15 THE COURT: Redirect?

16 MR. GLEISSNER: Just briefly, Your Honor. I want to
17 ask her about what has been marked as Defendant's Exhibit
18 2, which is not in evidence.

19 REDIRECT EXAMINATION

20 BY MR. GLEISSNER:

21 Q Let me hand you what is marked for identification
22 purposes as Defendant's 2. How did this document come
23 about?

24 A Well, this document came about after I was destitute
25 and broken from the original agreement and driven down to

1 this. Because I just needed to get out.

2 Q Okay. So --

3 A So Gary asked me -- we sat at the store and talked
4 about everything I did and how it was done and my draws,
5 agreed to -- back to the draws again until the house sold.
6 He said, "Go write it up. Go type it up, bring it back,
7 and I'll sign it."

8 I went and bought a printer that afternoon after I
9 got done working and typed it up.

10 Q Okay. Where did you get all this fancy language
11 that's in here?

12 A That's what I downloaded off of the South Carolina
13 website because, if I was to die, beings I wasn't -- I
14 wasn't agreeing to getting paid right away, I wanted my
15 children to be able to collect my funds for my work.

16 Q Okay. And in your discussions with Gary, what was
17 the first offer that you made?

18 MR. D'AGOSTINO: Your Honor, I'm going to object to
19 the first offer. This is a contract that she presented to
20 him.

21 THE COURT: I'll overrule the objection.

22 MR. GLEISSNER: Thank you, Your Honor.

23 BY MR. GLEISSNER:

24 Q What was the first offer you made as it relates to
25 your walk-away?

1 A Well, our first offer was the partnership with the
2 draws that we have been talking about this entire time.
3 Now, I'm destitute. I didn't get the first full draw. I
4 didn't get the second full draw. And now I have got to
5 make my power bill. I have got to eat. You know, so I
6 just needed to get out from under Gary.

7 Q Okay.

8 A And when I called the attorney after that, and he
9 said he was adding more work --

10 Q No, no. No. We don't want to talk about what the
11 attorney said.

12 A All right.

13 Q Okay. All right. Was there a discussion -- did you
14 ask for more money than \$28,000?

15 A Not at this time. I just wanted out. In the
16 beginning, it was half of the partnership.

17 MR. GLEISSNER: Thank you, Your Honor. That's all I
18 had.

19 THE COURT: Recross?

20 MR. D'AGOSTINO: Just one moment, Your Honor. I
21 have got to get the document.

22 RECROSS-EXAMINATION

23 BY MR. D'AGOSTINO:

24 Q You said, in May, you were destitute. Are you
25 telling us you were out of the money in May of 2019?

1 A Yes.

2 Q And you had no money coming in?

3 A I was getting low, yes. Not after I paid \$2400 a
4 month in bills.

5 Q Well, do you recall that we had -- so what money did
6 you get in May? Whom did you get money from in May?

7 A I had to borrow money from Tony, one of my
8 witnesses, because Gary was avoiding me.

9 Q So --

10 A But I also sold my dad's pickup truck.

11 Q So how much money did you get in May?

12 A I can't recall.

13 Q How much?

14 A I cannot recall.

15 Q How much did you sell your dad's pickup truck for?

16 A I think it was 4600.

17 Q All right.

18 MR. GLEISSNER: I'm sorry, Your Honor, I have got to
19 object. I don't -- I think this is beyond cross --
20 redirect examination.

21 MR. D'AGOSTINO: She testified she was destitute.

22 THE COURT: I'll overrule the objection.

23 BY MR. D'AGOSTINO:

24 Q So you got \$4600 from the sale of your dad's pickup
25 truck in May; right? And you got -- excuse me?

1 A I think it was. I'd have to go back and look at my
2 checking account.

3 Q Okay.

4 A I'm blind here, from four years ago. You're asking
5 me to remember what I have -- I was broke, and so I had to
6 start selling things.

7 Q Well, I'm just trying to understand. You said you
8 got 46. Did you put the 4600 in your bank account in May?

9 A I'm sure I did. I had bills.

10 Q Well, here. Let me let you take a look at your bank
11 account.

12 A Yeah. That you illegally got?

13 MR. D'AGOSTINO: Your Honor, I did not illegally --

14 THE WITNESS: Yes, he --

15 THE COURT: Hold on a minute. Well, I'm going to
16 ask the jury to step out. Don't discuss the case.

17 (The jury exited the courtroom at 4:07 p.m.)

18 THE COURT: Mr. D'Agostino?

19 MR. D'AGOSTINO: Your Honor, I subpoenaed her bank
20 records. They filed a motion to quash. The motion to
21 quash was denied, and I have her bank records.

22 Mr. Holford filed that motion. We argued it.

23 THE COURT: All right.

24 THE WITNESS: May I speak?

25 THE COURT: No, ma'am. That's the rules of the

1 Court.

2 Here's the thing: He asked the question about he
3 was going to hand -- we were in this line of questioning
4 because, on redirect, the witness testified that -- on
5 redirect from her attorney, that she just wanted out.
6 That was the reason for the \$28,000, she's destitute.

7 On recross, we have -- Mr. D'Agostino has asked --
8 been asking questions about her being destitute. It's
9 gotten to the point where he asked about her bank account,
10 that he indicated he would show her a copy of his bank
11 statement, which, at that point, this particular witness
12 said to which -- in front of the jury, to which that was
13 obtained illegally. That was clearly improper. You're
14 not allowed to do that. You're not allowed to make those
15 type of statements.

16 Is there anything that the Court needs to do? I
17 could give a curative instruction. We could leave it
18 alone. I could have the jury come back in and you can ask
19 your next question. Where are we, Mr. D'Agostino?

20 MR. D'AGOSTINO: Your Honor, I do think a curative
21 instruction -- I'm not going to ask for a mistrial. I
22 mean, I don't want to do that, but I do think a curative
23 instruction along the lines that -- that they were not
24 obtained illegally; that I had sent a subpoena, I properly
25 got them. They filed a motion to compel, and it was

1 denied, and the Court allowed me to get the records.

2 THE COURT: All right. Mr. Gleissner, do you wish
3 to be heard?

4 MR. GLEISSNER: Your Honor, all this happened before
5 my time, and so I have a limited understanding of what
6 went on. I believe Ms. Duncan's objection relates to the
7 timing of things. My understanding is --

8 THE COURT: I don't -- all I know is that she stated
9 here in open court that the records were obtained
10 illegally. I'm satisfied that they were not. You are her
11 attorney of record here today.

12 MR. GLEISSNER: I am, Your Honor. And I'm just
13 trying to explain to you that perhaps the -- her use of
14 the word "illegal" is perhaps not in reference to a
15 criminal action --

16 THE COURT: I understand that.

17 MR. GLEISSNER: -- much as it is just something that
18 was improper. And so that's the reason.

19 THE COURT: All right. The Court understands that
20 and certainly witnesses in court interpret things
21 differently; however, they may have to learn the rules.
22 One of the rules is you cannot make those kind of
23 statements.

24 I'm going to bring the jury back in and tell them
25 that they're to disregard any statements about the records

1 being obtained illegally. All the records and the
2 evidence that's being presented here today in this
3 courtroom have been properly obtained through normal court
4 procedures. That's the way I'll give it.

5 MR. GLEISSNER: Thank you, Your Honor.

6 THE COURT: All right. Bring the jury in.

7 (The jury entered the courtroom at 4:11 p.m.)

8 THE COURT: Thank you, ladies and gentlemen. Right
9 before you were excused to your jury room, in response to
10 a question by the plaintiff's -- I mean, the defendant's
11 attorney, the answer that was given about how the
12 records -- bank records were obtained, the answer that was
13 given by the witness was nonresponsive to that question.
14 In fact, the answer of the witness is to be stricken.
15 You're not to consider that. The Court can inform you
16 that any records that are used here in this court today
17 have been obtained properly and legally through normal
18 court procedures. Thank you.

19 All right, Mr. D'Agostino?

20 MR. D'AGOSTINO: Thank you, Your Honor.

21 Let me get this marked for identification purposes
22 as No. 5.

23 (Defendant's Exhibit No. 5, Bank Records, was marked
24 for identification.)

25 MR. GLEISSNER: Sorry, Your Honor. Could I look at

1 Exhibit No. 5 --

2 THE COURT: Sure.

3 MR. GLEISSNER: -- for identification purposes?

4 THE COURT: Yes, sir.

5 MR. GLEISSNER: Do you have a copy? No? No copy?

6 BY MR. D'AGOSTINO:

7 Q I'll hand you what I have had marked as Defendant's
8 Exhibit No. 5 for identification purposes. That's a
9 document from where you bank; is it not?

10 A It is.

11 Q And that does not show the \$4600 deposit for the
12 sale of the truck, and it shows deposits of over \$2,000
13 for the month of May; correct?

14 A I have to go back. I mean, it shows deposits, yes.

15 Q I think the summary is on the first page that shows
16 deposits and how much you spent.

17 A Yeah, I'm trying to see if I deposited a check.

18 Q That check was for \$1,000 on --

19 A 1100 on 5/20. So that's 1100 of it there. And then
20 I might have got a check in on a refund for something.
21 I'm not sure. That's about right.

22 Q All right. And 4600 is not in there.

23 A Not yet, no.

24 Q All right. That shows you had deposits of 2383.33
25 that month.

1 A 1100 of it is that.

2 Q Correct.

3 A Yes.

4 Q All right. That's all the questions I have. Thank
5 you.

6 THE COURT: All right. Thank you.

7 Ms. Duncan, you can step down.

8 THE WITNESS: Thank you, sir.

9 THE COURT: Mr. Gleissner, call your next witness.

10 MR. GLEISSNER: Your Honor, my next witness is Rick
11 McGill, and he's out here, so I'll go get him, Your Honor.

12 THE CLERK: If you'll stop here to be sworn in.
13 Place your left hand on the Bible and raise your right
14 hand for me.

15 RICKY MCGILL,
16 after having been duly sworn, was examined and
17 testified to as follows:

18 THE CLERK: Thank you. Please be seated.

19 DIRECT EXAMINATION

20 BY MR. GLEISSNER:

21 Q Mr. McGill, can you state your name for the record.

22 A My name is Ricky McGill.

23 Q Okay. And what do you do for a living, Mr. McGill?

24 A I am a group leader as a tool and die maker.

25 Q Okay. And do you do some stuff on the side?

1 A I do.

2 Q What do you do on the side?

3 A I do small tractor work. I do mainly bush hogging.
4 I might clean up a little bit of yard debris, but the
5 majority of it is bush hogging for my family mainly.

6 Q Do you own your own equipment?

7 A Yes, sir.

8 Q All right. And where do you live, Mr. McGill?

9 A I live at 457 Rainbow Circle.

10 Q Is that far from 445 Rainbow Circle?

11 A Next door.

12 Q Next door.

13 How do you know Sherry Duncan?

14 A Sherry's family -- her father and mother -- live two
15 houses up from me.

16 Q How long have you known her?

17 A I would say Sherry's father passed in 2018. 2017.

18 Q And how did you become aware that Ms. Duncan was
19 involved in 445 Rainbow Circle?

20 A Well, I came home from church, and she was on top of
21 the house, blowing the leaves and gutters.

22 Q Okay. And --

23 A And I just walked down. I mean, the house is next
24 door to me. I wanted to know what was going on.

25 Q You go to church on Sunday?

1 A Oh, yeah.

2 Q So she was up on the roof on Sunday?

3 A On Sunday.

4 Q And she was blowing the roof?

5 A She was blowing the leaves and cleaning out the
6 gutters.

7 Q Okay. Did you two talk about anything?

8 A Well, yes. I mean, I asked her what she was doing.
9 And she said that Gary had purchased the house --

10 MR. D'AGOSTINO: Your Honor, I --

11 THE COURT: I sustain the objection.

12 Lawyers approach.

13 MR. GLEISSNER: Thank you, Your Honor.

14 BENCH CONFERENCE

15 (A bench conference was held off the record and
16 outside the hearing of the jury and others.)

17 BY MR. GLEISSNER:

18 Q (Indiscernible) talked for awhile; is that right?

19 A That is correct.

20 Q Now, without saying that Ms. Duncan said that
21 somebody else said, what did you and Ms. Duncan talk
22 about?

23 A The house in general. How bad the yard was and the
24 condition of it.

25 Q Did you talk about her flipping houses?

1 A Yes.

2 Q All right. Did she say that's what he was doing at
3 445 Rainbow Circle?

4 MR. D'AGOSTINO: Your Honor, I'm going to have to
5 object as to leading and also -- I object to leading, Your
6 Honor. And also self-serving.

7 THE COURT: All right. I sustain. Just rephrase
8 your questions. You can't lead.

9 MR. GLEISSNER: All right.

10 BY MR. GLEISSNER:

11 Q What did she say she was doing at Rainbow Circle?

12 A Flipping the house.

13 Q Okay. Did the previous owners take care of the
14 house?

15 A No.

16 Q Tell the jury how it looked.

17 A Where we live, there's a lot of trees and a lot of
18 debris that falls from the trees. And so for a year or
19 so, nobody taked care of the property. So there was a lot
20 of leaves, yard debris. The grass hadn't been cut and
21 etc. It was just -- it was taken over by debris and
22 whatnot.

23 Q Okay. And did you assist in doing any work?

24 A (Indiscernible).

25 Q Okay. And what work did you assist in doing?

1 A We actually did landscaping. We took my box blade
2 and we start landscaping the yard, removing the leaves,
3 the limbs, etc., piling them up. There was a tree in the
4 backyard that was close to the house. It was leaning. A
5 friend of mine had a backhoe. He (indiscernible) it down.
6 We pushed the tree down. We piled all of this up. We --
7 we dug a drain for the gutter and put in a drain system.
8 A pop-up head. We hauled some dirt in to fill the hole in
9 where the tree was, and we -- we took an auger that goes
10 behind a tractor, and we dug the holes for this new
11 shrubbery to be placed. From there, we transferred dirt
12 to the front yard to fill in the areas that needed to be
13 corrected.

14 Q Okay. How was Ms. Duncan involved in this process?

15 A Well, Ms. Duncan was -- she -- everything that
16 needed to be done, she brought it to my attention. And I
17 pointed out some things. That was her involvement. She
18 just pointed out what she thought needed to be done.

19 Q Okay. Did she do some of the work?

20 A Yes.

21 Q Okay. Let me ask you to look at what's been entered
22 as Plaintiff's Exhibit No. 17. Okay. It should be
23 showing up on your screen shortly.

24 A Yes.

25 Q Oh, maybe not.

- 1 A It did. It went away.
- 2 Q Technical difficulty. Did we get it?
- 3 A Yes, I have it.
- 4 Q All right. Now, who is that on that tractor?
- 5 A That is Edward Hughes, the gentleman that was
- 6 helping me.
- 7 Q Okay. So he worked under you?
- 8 A Yes, sir.
- 9 Q All right. And, in this particular picture, what is
- 10 he doing?
- 11 A He's piling up debris.
- 12 Q All right. And was that -- okay. So is that before
- 13 or after fill dirt?
- 14 A That was after the fill dirt because, at the corner
- 15 of the house where you can see the fill dirt, which is
- 16 gray, we had put a gutter system in right there on the
- 17 corner. We had put a drain system in, and we needed dirt
- 18 to go back, so we brought in topsoil. And the topsoil is
- 19 the brown-looking dirt. So that's after the fact.
- 20 Q All right. Now, while you were doing all this work,
- 21 did Mr. Gill help you?
- 22 A No, sir.
- 23 Q Not at all?
- 24 A No, sir.
- 25 Q Did he watch what you were doing?

1 A He did.

2 Q How many times did he see what you were doing?

3 A I remember seeing him twice.

4 Q Twice. And how many days were you on the property
5 doing that work?

6 A I was -- we were there -- we were there about a week
7 and a half.

8 Q Okay. And how many minutes did Mr. Gill spend
9 watching?

10 A Not long.

11 Q Not long?

12 A Not long.

13 Q Did you -- you live next door to 445?

14 A Yes, sir.

15 Q Okay. Did you see Ms. Duncan do anything else?

16 A I witnessed Ms. Duncan -- there was a drain system
17 above where we worked on, and she worked in that drain
18 system, and she put a pop-up head. She put landscaping
19 rocks around the air-condition unit. He put -- she had
20 plant shrubberies around the front as well as around the
21 back, and she placed landscaping stones.

22 Q Okay. What about inside the house? Did you see her
23 do any work inside the house?

24 A Yes. She did prep work. And once she completed her
25 prep work, then she painted.

1 Q Now, did you get paid for the work that you did?

2 A Yes, sir.

3 Q And who paid you?

4 A Gary. Gary paid me.

5 Q Mr. Gill?

6 A Yes.

7 Q All right. Do you remember how much you got paid?

8 A \$1725.

9 Q And would you have done the work if Ms. Duncan was
10 not involved in this case?

11 A No, sir.

12 MR. GLEISSNER: Your Honor, that's all I have for
13 Mr. Gill -- I mean, Mr. McGill.

14 THE COURT: Cross-examination?

15 CROSS-EXAMINATION

16 BY MR. D'AGOSTINO:

17 Q Good afternoon, Mr. McGill. I didn't catch what you
18 do for a living. What do you do for a living?

19 A I am a tool and die maker. I am the leader of a
20 tool and die. I work for a company called (indiscernible)
21 Filtration. We manufacture oil and air filters.

22 Q And do you work on site there?

23 A Yes, sir.

24 Q How many days a week do you go in?

25 A I work five to six days a week.

1 Q All right. And so when you said work -- you worked
2 on Gary's house for a week and a half, it wasn't you
3 working there for a week and a half, was it?

4 A It was, yes, sir.

5 Q It was you doing all the work?

6 A And the gentleman on the tractor, Mr. Hughes.

7 Q So you were not working at your regular job?

8 A I worked in the evenings, on my regular job. I work
9 from 2 p.m. to 10 p.m. at night.

10 Q Okay.

11 A So my work was during the a.m. hours.

12 Q All right. So you worked on this property during
13 the a.m. hours?

14 A Yes, sir.

15 Q And did your employee, I guess -- is he your
16 employee, the other guy?

17 A He's just a friend of mine that was willing to help.

18 Q And did you pay him?

19 A Yes, I did.

20 Q So did he work there any other times when you were
21 not working there?

22 A No, sir.

23 Q So both of y'all worked there together?

24 A We worked together.

25 Q All right. Now, let's talk about what you did. You

1 did work in both the front yard and the backyard; right?

2 A Yes, sir.

3 Q And what kind of tractor do you have? Is it John
4 Deere or what is it?

5 A I have a Massey Ferguson.

6 Q Massey Ferguson?

7 A Mm-hmm.

8 Q And you have a box blade?

9 A I have a box blade.

10 Q And how about an auger on the back? Do you got an
11 auger with a three (indiscernible) -- three --

12 A The auger was -- we used the auger on Mr. Hughes's
13 tractor.

14 Q All right. So you had two tractors out there or
15 just one?

16 A We had two tractors.

17 Q The whole time?

18 A No, no. No. Once -- once I completed my assignment
19 or what I was doing for the grading part, I mentioned to
20 them that we could use an auger to dig the holes to make
21 it easy on everybody.

22 Q Right.

23 A And so we attached the auger to his tractor because
24 he was more experienced in using an auger. We used it on
25 his particular tractor.

1 Q Was it a 6-inch or 8-inch auger?

2 A That was, I'm going to say, 8 inches.

3 Q 8-inch auger?

4 A Yeah.

5 Q And you dug the holes for each one of those bushes
6 in the front?

7 A Yes, sir.

8 Q Did you see who -- do you know where those bushes
9 came from?

10 A (No audible response.)

11 Q Did you dig the trenches with your tractor for the
12 drain system?

13 A We used Mr. Hughes's tractor.

14 Q Mr. Hughes? He has a bucket on it?

15 A He has a -- he brought his backhoe.

16 Q He brought a backhoe over there?

17 A Yes, sir.

18 Q All right. He used his backhoe to dig the trenches?

19 A Yes, sir.

20 Q And did you see anybody digging any trenches by
21 hand?

22 A I seen Ms. Sherry.

23 Q And what did she dig?

24 A She put a drain system in.

25 Q When you say "a drain system," what are you talking

1 about?

2 A A drain system from a gutter coming out to a pop-up
3 head.

4 Q How far away from the house is that?

5 A It led out probably 20 feet.

6 Q So you're saying -- and what time of year was that
7 that she dug this, are you saying?

8 A This -- this was I think around February, March.
9 First part of the year.

10 Q And Gary paid you for all this work, didn't he?

11 A He did.

12 Q Including that drain system, the drains? Well, let
13 me ask you this way: The time period for the -- that you
14 saw the pop-up drain put in, was that at or near the time
15 that you put the other drains in?

16 A This was before.

17 Q She dug the trench before or -- so she dug the
18 trench for that before y'all did the work out there?

19 A Yes.

20 Q All right. And what did you do to prepare for
21 today's testimony? Like, did you review any of your
22 documents, your receipt that you gave Gary, or anything
23 like that?

24 A I looked at the receipt and I gave Gary the receipt.
25 I item ized what we did.

1 Q All right.

2 A And I just pretty much thought back of everything
3 that I did.

4 Q All right. Did you review these receipts and these
5 invoices that you had provided for him before you got in
6 here today?

7 A Just the one that -- where I -- showing the work
8 that I did.

9 Q Is that what you reviewed?

10 A That is exactly it.

11 Q How about this next one? Did you review that too?

12 A Yes, I did a breakdown.

13 Q All right. You gave that to Gary at the time too?

14 A Yes.

15 Q And this is the check that Gary gave you; right?

16 A That is the check that he gave me.

17 Q So, now, the front yard, what did you do in the
18 front yard?

19 A The front yard was where we -- as I stated earlier,
20 we dug the holes for the roses. And we -- I took my
21 tractor in and I drug the dirt out -- the existing dirt
22 out and yard debris. And we spreaded some dirt through
23 the front yard to take up the holes and small amount
24 around the sidewalk.

25 Q And how about the trees? Did you remove any trees

1 or brush or vines in the front yard?

2 A I removed small limbs and whatnot from the front
3 yard.

4 Q And you brought them around to the backyard?

5 A Yes, sir.

6 Q All right. And how about -- you said you piled up a
7 bunch of leaves?

8 A Yes, sir.

9 Q All right. And where were those leaves at? Was
10 that the backyard?

11 A Everything was piled in the back.

12 Q And you used a box grate to do all that?

13 A Used a box grate.

14 Q Pulled it all away from the house?

15 A Yes, sir.

16 Q All right. And did you get the flow -- the
17 elevation so it's flowing away from the house?

18 A Yes, sir.

19 Q All right. And how often would you go over to the
20 house while it was being renovated or fixed up?

21 A I was there when we did our work.

22 Q Any other time?

23 A No. I didn't go over any other time, only when we
24 were doing our work. I could stand in my yard and see
25 everything else.

- 1 Q All right. Well, the reason why I ask is you did
2 this work, according to the receipts and invoices, in
3 March. I see March 12th, 13th, 14th, 18th, 19th. March
4 12th, you have 2.5 hours; right?
- 5 A Yes.
- 6 Q March 13th, 2.5 hours?
- 7 A Right.
- 8 Q March 14th, four hours; right?
- 9 A Yes, sir.
- 10 Q All right. And then the next time, you have 18th,
11 19th, and 20th; correct?
- 12 A Yes.
- 13 Q All right. And the 18th, you have -- says \$250 per
14 tree. I don't understand the breakdown here of \$50
15 charge; right? What does that mean?
- 16 A That's \$50 per hour.
- 17 Q \$50 per -- oh, okay. \$50 per hour.
- 18 A Mm-hmm.
- 19 Q All right. And then March 19th, \$50 per hour too?
- 20 A Yes.
- 21 Q All right. And March 20th?
- 22 A Yes.
- 23 Q And you had 5.5, 5.5, and 4.5; right?
- 24 A Mm-hmm, yes.
- 25 Q So you were there a total of six days. Between

1 those six days, the first two days five hours and then
2 four hours and then 10 and 14. So -- 14, 15 and a half,
3 19, 20, 21, 22, 23. A total of 24 hours. Does that sound
4 about right?

5 A Yes.

6 Q All right. So you worked there a total of 24 hours
7 in March during those two weeks; right?

8 A Yes.

9 Q Other than that, you didn't go over to the house?

10 A No.

11 Q And you weren't going over and inspecting the work
12 inside the house, were you?

13 A I only went over -- Sherry was doing -- doing the
14 prep work. I went over. I was invited in to look at some
15 of the painting that she was doing.

16 Q In March?

17 A Yes. I think it was March.

18 Q Well, it was when you were doing this work. You
19 said that was the only time you were over there. So it
20 would have been March.

21 A It would have been March, mm-hmm.

22 Q Was anybody else with Sherry?

23 A Yes.

24 Q Who was with Sherry?

25 A Jessica.

1 Q Who was with Sherry?

2 A Jessica, her --

3 Q Jessica?

4 A Jessica.

5 MR. D'AGOSTINO: Those are all the questions I have.

6 Thank you for your time, sir.

7 THE COURT: Any redirect?

8 MR. GLEISSNER: Nothing, Your Honor.

9 THE COURT: All right. Thank you, Mr. McGill. You
10 may step down.

11 Call your next witness. Who is your next witness?

12 MR. GLEISSNER: Our next witness is Scott Killian.

13 MR. D'AGOSTINO: While he's coming in, may we
14 approach, Your Honor?

15 THE COURT: Yes.

16 BENCH CONFERENCE

17 (A bench conference was held off the record and
18 outside the hearing of the jury and others.)

19 THE COURT: Mr. Killian, if you'll just come up
20 right up here just inside and just stand right here in
21 front of the table.

22 THE CLERK: We'll get you sworn in in just a minute.

23 THE WITNESS: Okay. I'm kind of hard of hearing.

24 THE COURT: Just step -- if you'll just step back a
25 little bit.

1 THE WITNESS: Okay.

2 THE COURT: That's good.

3 BENCH CONFERENCE

4 (A bench conference was held off the record and
5 outside the hearing of the jury and others.)

6 THE COURT: All right. Madam Clerk, if you'll swear
7 the witness in.

8 THE CLERK: If you'll place your left hand on the
9 Bible and raise your right hand for me.

10 SCOTT KILLIAN,
11 after having been duly sworn, was examined and
12 testified to as follows:

13 THE CLERK: Thank you. Please be seated.

14 THE WITNESS: Okay.

15 MR. GLEISSNER: Your Honor, with the Court's
16 permission, I'd like to go closer to Mr. Killian. He's a
17 little hard of hearing, so I'm going to have to talk up
18 loud. Okay?

19 THE COURT: You can get wherever you need to be.

20 MR. GLEISSNER: All right. I just wanted to make
21 sure that's okay with the Court.

22 DIRECT EXAMINATION

23 BY MR. GLEISSNER:

24 Q Mr. Killian, state your name for the record.

25 A Sir?

1 Q State your name for the record.

2 A Scott D. Killian.

3 Q And how do you know Sherry Duncan?

4 A She's my niece.

5 Q And how do you know Jessica Killian?

6 A She's my brother's granddaughter.

7 Q Okay. And how did you get involved in 445 Rainbow
8 Circle?

9 A She -- Sherry -- was to meet Gary, the owner of the
10 house, and I was called down there because he showed up
11 with two other people, and she felt intimidated that --

12 MR. D'AGOSTINO: Your Honor, I'm going to object
13 to --

14 A -- there were more than just him --

15 THE COURT: Hold on a minute.

16 I sustain the objection. You can't testify as to
17 how somebody else felt.

18 BY MR. GLEISSNER:

19 Q So, going back, you were called there by who?

20 A By Sherry.

21 Q And she wanted you there because Mr. Gill was there
22 with....

23 A They were supposed to meet there with her
24 understanding that it was --

25 MR. D'AGOSTINO: Again, Your Honor, it's not --

1 A -- a settlement.

2 THE COURT: Hold on. I sustain the objection. You
3 can't testify about what somebody else is thinking. He
4 can testify about what he observed.

5 BY MR. GLEISSNER:

6 Q Mr. Killian, my question was: Was Mr. Gill there
7 with somebody else?

8 A Sir?

9 Q Was Mr. Gill there with somebody else?

10 A Yes.

11 Q Who else did he have there?

12 A He has two other gentleman that I didn't know. I
13 was told that it was --

14 MR. D'AGOSTINO: Objection, Your Honor.

15 THE COURT: You know the rules. You can help him.

16 MR. GLEISSNER: I'm trying.

17 THE COURT: Well, you have got to try harder.

18 MR. GLEISSNER: I'll try harder, Your Honor.

19 A There was two other guys with him.

20 BY MR. GLEISSNER:

21 Q Stop. All right. Now, did you visit Ms. Duncan at
22 445 Rainbow Circle before this event happened?

23 A Yes. I was --

24 Q Okay. Stop.

25 A I went there.

1 Q All right. Did you see the work that she was doing?

2 A Yes, sir.

3 Q Was anybody else working with her?

4 A No, sir.

5 Q At some point, you met Mr. Gill. Was the first time
6 you met Mr. Gill at this meeting with these two other
7 gentlemen?

8 A Yes.

9 Q How did Ms. Duncan act?

10 A She was -- seemed to be frightened or intimidated.

11 MR. D'AGOSTINO: Your Honor...

12 THE COURT: I have overruled the objection. The
13 question was how did she act. I'll let him answer that
14 question.

15 BY MR. GLEISSNER:

16 Q Okay. So how did she act? How did Ms. Duncan act?

17 A She acted like she was sort of concerned about her
18 safety.

19 Q Okay. And what did she do?

20 A She called me to come down there.

21 Q Okay. And did you talk to Mr. Gill?

22 A Yes.

23 Q And what happened as a result of this meeting?

24 A I do not know what the results were when I left.

25 Q Did Ms. Duncan meet with these three gentlemen?

1 A Previously, before I got there.

2 MR. GLEISSNER: Your Honor, that's all I have for
3 this witness.

4 Thank you, Mr. Killian.

5 THE WITNESS: Yes, sir.

6 MR. GLEISSNER: No, no. He gets to ask you
7 questions.

8 THE WITNESS: Oh, okay.

9 THE COURT: Mr. D'Agostino, cross-examination?

10 CROSS-EXAMINATION

11 BY MR. D'AGOSTINO:

12 Q So it's your testimony that Sherry met with Mr. Gill
13 at the store before you got there; correct?

14 A Yeah, they met before I got there.

15 Q All right. So you weren't there?

16 A At the store?

17 Q Yeah.

18 A No. I was at the house.

19 Q All right. Was Gary at the house?

20 A That's where the meeting was supposed to be, at the
21 house.

22 Q Was Gary at the house?

23 A Yes. She was there.

24 Q Was Gary at the house?

25 A Yeah, he was there.

1 Q Gary at the house?

2 A With two other guys.

3 Q And who were those other guys?

4 A I was told that one was a prospective buyer and the
5 other one was a lawyer.

6 Q Okay. Oh, that's when Sherry told those people that
7 she was going to put a lien on the house and stop anybody
8 from buying it?

9 A I didn't know -- did not hear any of the
10 conversation.

11 Q You didn't hear any --

12 A No.

13 Q So you weren't part of the conversation?

14 A No.

15 Q All right.

16 A I was there for the intimidating part that he was
17 putting on.

18 Q He was there with somebody who wanted to buy the
19 house --

20 A So he says.

21 Q -- and a lawyer?

22 A So he says.

23 Q Would you know any differently?

24 A No. I don't know any differently.

25 Q Who asked you to come testify today?

1 A Sherry did.

2 Q Okay. And you said -- so how many times have you
3 been to 445 Rainbow?

4 A Total?

5 Q Total.

6 A The whole five months she was working or when?

7 Q When she was working.

8 A Probably estimated 10 to 15 times.

9 Q What do you do for a living?

10 A Retired.

11 Q You're retired? All right.

12 So you went to the house on this occasion. There
13 was a buyer and a lawyer. Could it have been a Realtor?

14 A No.

15 Q It wasn't a Realtor? How do you know it wasn't a
16 Realtor?

17 A I don't know that it was. I didn't know if this was
18 a lawyer or a prospective buyer.

19 Q You really don't know anything that happened that
20 day then other than you were there.

21 A I know that they met and she was under the
22 assumption that she was just meeting him, and there were
23 three of them that showed up. And she felt intimidated
24 and called me to be there.

25 Q Now, where do you live?

1 A I live about seven or eight miles from there.

2 Q All right. And you were at home at the time?

3 A Yes.

4 Q And so you left and went over there?

5 A Well, I wasn't, but my wife got the message. When
6 she told me, I went straight over there.

7 Q Where were you?

8 A I don't remember where I was at five years ago.

9 MR. D'AGOSTINO: That's all the questions I have.

10 THE COURT: Redirect?

11 MR. GLEISSNER: Your Honor, I don't have any
12 redirect.

13 THE COURT: All right. Mr. Killian, you can step
14 down.

15 THE WITNESS: Thank you.

16 THE COURT: Thank you.

17 Lawyers approach.

18 BENCH CONFERENCE

19 (A bench conference was held off the record and
20 outside the hearing of the jury and others.)

21 THE COURT: Ladies and gentlemen, I was just trying
22 to discuss with the lawyers where we are logistically.
23 The next witness may take certainly go well beyond 5:00.
24 So this will be an appropriate time for us to break for
25 the evening. I'm going to allow you to leave for the

1 evening. And do not discuss the case among yourselves or
2 with anybody at home tonight. Don't use your electronic
3 devices to look at anything that might be remotely related
4 to the case.

5 I am going to ask that, when you come back in the
6 morning, if you'll elect a foreperson from among
7 yourselves. Again, as I have instructed you earlier, a
8 foreperson has no greater say than any other person in the
9 jury room; however, the Court needs someone from the jury
10 in which to communicate with the jury with and be sure
11 that instructions from the Court are being carried out in
12 the jury room.

13 So select a foreperson from among yourselves in the
14 morning. If the foreperson, after you're elected, just
15 simply write your name on a sheet of paper -- your name
16 and number and hand that to the bailiff in the morning,
17 and he'll pass that up to the Court.

18 When we come back in, the foreperson will take this
19 end seat in the front row.

20 All right. With that, you're excused for the
21 evening.

22 Everyone remain seated while this panel exits.

23 (The jury exited the courtroom at 4:48 p.m.)

24 THE COURT: All right. Thank you. We'll be at ease
25 until 9:30 in the morning.

1 MR. GLEISSNER: Thank you, Your Honor.

2 (The trial adjourned at 4:49 p.m.)

3 WEDNESDAY, JULY 12, 2023

4 (The trial resumed at 9:37 a.m.)

5 THE COURT: Plaintiff ready to proceed?

6 MR. GLEISSNER: The plaintiff is ready to proceed,
7 Your Honor.

8 THE COURT: Defense ready?

9 MR. D'AGOSTINO: Defense is ready. Your Honor, I
10 want to address one matter before they put the next
11 witness up.

12 THE COURT: All right.

13 MOTIONS/MATTERS OF LAW

14 MR. D'AGOSTINO: I know I have to object for hearsay
15 and things like that, but I just want to ask the Court to
16 caution -- I would submit that it's hearsay if she's
17 trying to repeat what Sherry told her. That would be
18 self-serving hearsay. If she's trying to repeat -- if
19 their next witness is trying to say Sherry said, Gary said
20 this, or Sherry told me that we were doing this because A,
21 B, and C, all that is self-serving hearsay. Sherry has
22 already testified, and we don't need Jessica just
23 repeating their conversations.

24 So I'd just ask for it in limine as it relates to
25 any, you know, conversations between the two of them as

1 self-serving, Your Honor. It's just there to prolong
2 everything.

3 THE COURT: All right. Mr. Gleissner?

4 MR. GLEISSNER: Well, Your Honor, as the Court
5 knows, it's not hearsay. If you have a declarant, the
6 declarant is in the courtroom. The witness can testify as
7 it relates to what the declarant said. So it's not
8 hearsay.

9 As it relates to any contemporaneous statements that
10 were made, these are contemporaneous statements. So they
11 don't just go to the truth of the matter asserted. They
12 also go to the motive as to why Ms. Duncan was doing
13 certain things. Why was she spending so much time? Why
14 was she being so fussy? Why was she making sure that the
15 quality of the work was of such a high value?

16 I mean, as clearly shown, I mean, she didn't just
17 slap paint on. This woman cared about this property. She
18 tried to renovate this property, so she worked very hard.
19 So, Your Honor, it's not hearsay. It's a contemporaneous
20 statement. It shows more than just the truth of the
21 matter asserted.

22 THE COURT: Mr. D'Agostino?

23 MR. D'AGOSTINO: Your Honor, under Rule 801, this is
24 the whole reason why I'm asking the Court to give an in
25 limine. Just because somebody is present doesn't mean

1 that it's not hearsay. Hearsay is defined under 801(c), a
2 statement other than one made by the declarant while
3 testifying at trial or hearing, offered into evidence to
4 prove the truth of the matter asserted.

5 Sherry's testified as to what she did. Now, to have
6 Jessica come in and just repeat what Sherry might have
7 said, that's repeating -- that's an out-of-court statement
8 made by Sherry, not Jessica, for the purpose of the truth
9 of the matter asserted.

10 So it falls squarely within the definition of
11 hearsay. Sherry has already testified.

12 Now, Jessica can testify as to what she did on those
13 few times she was out there, what she saw, but just coming
14 in and repeating what Sherry may have said, that's
15 self-serving hearsay. We have that problem in criminal
16 court all the time when a defendant might give a --
17 another witness might give a statement, and he's not
18 allowed to testify when a defense wants to question him
19 about it because it's hearsay. It's out-of-court
20 statements.

21 THE COURT: All right. Here's the thing: Let's
22 take it from what we had to deal with yesterday.
23 Certainly, she cannot testify to what Sherry says that
24 Gary says.

25 MR. D'AGOSTINO: Thank you.

1 THE COURT: We're not going to cross that bridge
2 because she is -- that's double hearsay. And not only
3 double hearsay, I mean, she's, again, testifying to what
4 somebody else says.

5 Now, whether she can testify to what Sherry told
6 her -- let's look at whether it's a statement of a party
7 opponent. Well, that's -- that's -- that would be if
8 she's unavailable.

9 MR. GLEISSNER: I think we're dealing with --

10 THE COURT: That part of 803.

11 MR. GLEISSNER: I think we're dealing with
12 801(D)(1)(b). Statements that are consistent with the
13 declarant's testimony that's offered to rebut or express
14 or imply charge that the testimony is offered to -- I'm
15 sorry -- charge against the declarant of recent
16 fabrication or improper influence or motive provided,
17 however, the statement must have been made before the
18 alleged fabrication.

19 THE COURT: Well, 801(D)(1)(b) is testimony to rebut
20 fabrications or improper influence or motive, not to prove
21 motive but to rebut motive.

22 MR. GLEISSNER: Your Honor, Mr. D'Agostino's
23 position is that she is fabricating this partnership
24 stuff.

25 MR. D'AGOSTINO: I haven't presented any --

1 THE COURT: Well, that -- yeah, he hadn't -- all
2 he's done is cross-examination. That's a fact issue. I'm
3 going to sustain the objection or I'm going to rule as
4 part of the motion we're beyond motions in limine. This
5 is actually a motion after the jury has been sworn to keep
6 out certain testimony.

7 Well, let's do this: Bring her in. Let's proffer
8 the testimony. Bring her in.

9 MR. GLEISSNER: Your Honor, the plaintiff calls
10 Jessica Killian.

11 THE COURT: Well, here's what I'm going to do.
12 We're going to swear her in for the proffer. Once the
13 Court hears what the testimony that may be objected to,
14 when I rule on that, we're going to sit her back down.
15 We'll bring her back in and swear her in, in front of the
16 jury again.

17 All right. Place her under oath.

18 JESSICA KILLIAN (PROFFER),
19 after having been duly sworn, was examined and
20 testified to as follows:

21 THE CLERK: Thank you. Please be seated.

22 THE COURT: We don't need to go through whatever
23 entire testimony is. I think you understand the concerns
24 that Mr. D'Agostino has, questions that you believe are
25 pertinent to his objection, go ahead and ask her those.

1 MR. GLEISSNER: I will do that. Thank you, Your
2 Honor.

3 PROFFERED DIRECT EXAMINATION

4 BY MR. GLEISSNER:

5 Q Ms. Killian, did you personally witness discussions
6 between Ms. Duncan and Mr. Gill concerning 445 Rainbow
7 Circle?

8 A Yes, I did.

9 Q Tell the jury about those discussions.

10 A The discussions would either be down at 445 Rainbow
11 Circle or at his gas station that was down the street from
12 Rainbow Circle. Those discussions would be drawings that
13 he was supposed to be paying her because he was -- I mean,
14 he was paying her half of the money that she was supposed
15 to be, you know, paying in full for her draw that month;
16 discussions such as what needed to be done on the house
17 next, what they needed to progress to, you know, get the
18 next thing done. Just how awesome of a job she was doing.
19 You know, how great the house looked. Just discussions as
20 those.

21 Q Were any of those discussions about -- that you
22 witnessed personally -- about Ms. Duncan and Mr. Gill
23 being partners?

24 A Yes. The last time that I went into the gas
25 station, they were discussing becoming partners for 445

1 Rainbow Circle. He liked the work that she did at another
2 home that was on Rainbow Circle as well. He said it was
3 beautiful work, "I'd like to become partners with you for
4 445. You know, I'm getting it for a good deal. Would you
5 accept being a partner with me?"

6 She said she needed to look at it. She would, you
7 know, go and check it out with him, and they would discuss
8 it later on.

9 Q Okay. So one set of discussions that you witnessed
10 was before Ms. Duncan started to work on 445 Rainbow
11 Circle?

12 A For a partnership, yes.

13 Q All right. And then a different set of discussions,
14 you witnessed was later in the process when Ms. Duncan was
15 asking for draws?

16 A Yes.

17 MR. GLEISSNER: Okay. Those are the two discussions
18 we're talking about, Your Honor.

19 THE COURT: Mr. D'Agostino?

20 MR. D'AGOSTINO: May it please the Court? May I ask
21 a couple of questions?

22 THE COURT: Yes. Yeah, cross-examination.

23 PROFFERED CROSS-EXAMINATION

24 BY MR. D'AGOSTINO:

25 Q So the discussion at the store, you said that was

1 the last time you were at the store where they had the
2 discussion and you were present; right?

3 A One period of time, yes. I was at the store several
4 times.

5 Q But the discussion about the partnership was before
6 anything ever started, and Sherry's last comment was, "I
7 have to go look at it"? Correct?

8 A She -- yeah.

9 Q All right. And so that was the last time you talked
10 to Mr. Gill -- you were present when Mr. Gill was talking
11 about a partnership; correct?

12 A Yes.

13 Q All right. And, at that time, Sherry said, "I have
14 to go look at it"?

15 A Yep. She did.

16 Q So as it relates to the other time you said you
17 talked, were there any times -- the information you got
18 about Sherry doing this work and -- excuse me, the draws.

19 A Mm-hmm.

20 Q How do you know that she was only getting half the
21 draws? Who told you that?

22 A I was in the store with her when she was asking for
23 her draws. "Where is my part? I need to pay my bills."

24 Q How do you know she was -- he only paid -- number
25 one, did you see the check he paid her?

1 A I did not see checks, no.

2 Q Do you know how much each draw was supposed to be?

3 A From my recollection of what they agreed into the
4 store of what they talked about personally in front of me.

5 Q How do you know what a draw -- how much a draw was
6 supposed to be?

7 A Because I heard it personally.

8 Q From whom?

9 A Both of their lips. I knew for sure that her bills
10 are \$2200 a month. I know that because she lives right
11 across the street from me. My grandfather lived there
12 before she did. I knew what the bills were because I used
13 to live.

14 Q So you got that from Sherry, what her bills were?

15 A No. I knew what her bills were prior because I used
16 to live there.

17 Q How do you know what her living expenses are?

18 A I was with her every day.

19 Q Every day, you were with her? And you're on the
20 project every day?

21 A Pretty much. Four days out of the week.

22 Q And you were working there almost every day?

23 A When she needed help, I would go down there. I
24 worked -- I got up at 9 a.m., went to work. I worked in
25 Charlotte. Come home at 2:00. Picked my daughter up from

1 school at 2:30. And then, from there, I'd go down, make
2 sure she ate, because she was not eating. She was working
3 24/7. I mean, you know, I would be down there -- whatever
4 I could assist her with, I was assisting her with.

5 Q As it relates to the specific amount of any draw,
6 did you get the information about Sherry asking the draw
7 from Gary?

8 A Can you repeat that?

9 Q Sure. Was Sherry the one telling you she was asking
10 for the draws?

11 A When she went to the store, to the gas station, if I
12 was leaving with her, I'd go into the gas station with
13 her. I personally heard her ask him, "I need my money for
14 this month to take care of my bills." He says --

15 Q And how many times did you do that?

16 MR. GLEISSNER: Your Honor, can she finish answering
17 the question, Your Honor?

18 THE COURT: This is cross-examination during a
19 proffer. It's proper. I'll overrule your objection.

20 BY MR. D'AGOSTINO:

21 Q How many times did she do this?

22 A Several times.

23 Q What's several? Three? Four? Five?

24 A I mean, I can't count the days that I was -- you
25 know, the amount of days that I went to the gas station or

1 he was on the property and I was there and I have
2 overheard discussions. But I would say at least three or
3 four times that I was present, and I did hear the
4 discussions between them.

5 Q Were you part of the discussions?

6 A I was in the room.

7 Q Were you a part of the conversation?

8 A No. That was between the both of them.

9 Q How much did she get paid?

10 A I'm not sure. Like I said, it depended. I know
11 that -- what her bill amount was -- I used to live there,
12 and the times that I was there, it was not the full amount
13 of what he owed her for her draw. I can tell you that. I
14 don't know the exact amount, but it wasn't -- because I
15 heard the discussions. Again --

16 Q What I'm trying to find out is how you even knew the
17 amount of the draw.

18 A I don't know the -- I know the amount of her bills
19 per month, and their discussions in front of me were that
20 he was to help her out with a monthly draw to keep her
21 bills rolling while she was not working at another job, to
22 be able to keep her bills up until, at the end of
23 everything, once they received the profit off of the
24 house, he was going to take care of her.

25 Q Wait a minute. Where did that come from?

1 A Where did what come? I'm sorry.

2 Q The idea of paying her when the house sold. Now you
3 have brought up something that you haven't testified to
4 before. Where did this idea of splitting or giving her
5 something when the house sold come up?

6 A They went in partners. They went in together as
7 partners.

8 Q How do you know that?

9 A I was there when -- I mean, I have been --

10 Q The first conversation?

11 A The very first conversation to the very last that I
12 have been around.

13 MR. D'AGOSTINO: Your Honor, I don't have any other
14 questions, but I am going to ask -- I ask that this
15 witness's testimony not be allowed at all, because it's
16 totally -- it's inconsistent. It's not reliable testimony
17 because it's not clear as to -- you know, she's testifying
18 as it relates to their first conversation. That would be
19 prohibited under parole evidence rule.

20 THE COURT: All right. Well, here's what I'm going
21 to do. Obviously -- I don't know what the other questions
22 are going to be for her testifying, so I'll overrule your
23 objection to her even being called as a witness. That's
24 the plaintiff's choice.

25 However, on the issues of what she can be asked,

1 what the Court heard was that she was present in the
2 beginning when there were some discussion between Mr. Gill
3 and Ms. Turner [sic], and there was never -- clearly,
4 there was never a meeting of the minds --

5 MR. GLEISSNER: It's Duncan, Your Honor.

6 THE COURT: I'm sorry. Ms. Duncan.

7 There was a general discussion about what he and she
8 may wanted to do, and that ended. She doesn't say
9 anything else about it. That's all she heard. She can
10 testify to that.

11 Anything else -- I mean, she can testify what she
12 observed when she went to the convenience store with
13 Ms. Duncan. I'm not going to allow her to -- I didn't
14 actually hear any statements that were made by Mr. Gill in
15 the store. However, she can testify to what she saw. To
16 allow her to testify then to what some details of an
17 agreement that was -- that she testified earlier that
18 never was made, I'm not going to allow you to go into
19 that. Does that make sense?

20 MR. GLEISSNER: Yes, sir.

21 THE COURT: Do you understand the parameters?

22 MR. GLEISSNER: I think I understand the parameters,
23 Your Honor.

24 THE COURT: And she testified she went to the store
25 with Ms. Duncan and they had -- she saw and heard

1 Mr. Duncan -- Ms. Duncan and Mr. Gill have a general
2 discussion about he liked her work, he wanted her to work
3 with him, and then the way it was left, we don't know
4 where we're going.

5 MR. GLEISSNER: Right. But then --

6 THE COURT: Then she testifies that she was present
7 in the store several times later when Ms. Duncan was
8 asking for a draw.

9 MR. GLEISSNER: Right.

10 THE COURT: Now, she has no -- she has been unable
11 to give any details about where she learned what the draw
12 would be or whether there was an agreement on the draw or
13 that other -- she's wanting to testify what she believes
14 her monthly living expenses are. She can testify to that
15 if she knows that or she can be cross-examined on that as
16 well. That's her testimony. But that has no relation to
17 what she -- any statements that Mr. Gill may or may not
18 have made. I did not hear any specific statements made by
19 Mr. Gill that she heard other than what she testified as a
20 general thing, as they were partners. And there's no
21 basis for her to do that.

22 MR. GLEISSNER: Okay. Can I follow up with the
23 witness?

24 THE COURT: All right.

25 BY MR. GLEISSNER:

1 Q Did you hear any --

2 MR. D'AGOSTINO: Your Honor --

3 THE COURT: No. No, that's the ruling of the Court.
4 I mean, we're not going to now allow you to rehabilitate
5 her after I have given my basis for my ruling to then give
6 her an opportunity to respond to questions that could have
7 been asked during the proffer. So I'm going to limit you
8 to what she saw and heard on the first visit, and then she
9 can talk about what she observed and any other time she
10 was in the store with Ms. Duncan and Mr. Gill but not what
11 Mr. Gill may or may not have said. That would be hearsay
12 that the Court is not going to allow in. All right?

13 MR. GLEISSNER: All right, Your Honor. Thank you.

14 THE COURT: You can step down and we'll bring the
15 jury in. We're going to bring her back up and swear her
16 in front of the jury when the jury comes back.

17 (The jury entered the courtroom at 9:55 a.m.)

18 THE COURT: All right. Thank you, ladies and
19 gentlemen. It appears that I have a note from the jury --
20 is it Ms. Shackelford, Juror 161, has been elected the
21 foreperson. Thank you.

22 Thank y'all for your promptness. With that, we're
23 ready to begin the next witness.

24 Mr. Gleissner, call your next witness.

25 MR. GLEISSNER: May it please the Court? The

1 plaintiff calls Jessica Killian.

2 THE CLERK: Place your left hand on the Bible and
3 raise your right hand for me.

4 JESSICA KILLIAN,

5 after having been duly sworn, was examined and
6 testified to as follows:

7 THE CLERK: Thank you. Please be seated.

8 THE COURT: All right. Mr. Gleissner?

9 DIRECT EXAMINATION

10 BY MR. GLEISSNER:

11 Q Ms. Killian, can you state your name for the record.

12 A Jessica Killian.

13 Q Okay. And how do you know Sherry Duncan?

14 A She is my aunt.

15 Q Okay. And where do you live? I mean, in December
16 of 2018 through May of 2019, where did you live?

17 A 475 Rainbow Circle.

18 Q Okay. We had previously marked this -- oh, we have
19 marked this as a demonstrative exhibit. Can you point to
20 where on this map is the house that you lived at?

21 A It's Highway (indiscernible).

22 Q So right there?

23 A Across the street.

24 Q Across the street from where --

25 A Sherry lived.

1 Q Okay. And the house at 445 Rainbow Circle is....

2 A Two, three houses down.

3 Q And between the house you lived at and the house at
4 445 Rainbow Circle is --

5 A Is my house and then there was the neighbor's house,
6 and then 445 Rainbow Circle.

7 Q And before Ms. Duncan was involved at 445 Rainbow
8 Circle, do you know how Ms. Duncan made money?

9 A She was a bookkeeper.

10 Q Bookkeeper where?

11 A For Eason Roofing.

12 Q Okay. Do you know if she flipped any houses?

13 A She has.

14 Q Okay. Do you know if she had partners in flipping
15 those houses?

16 A She did.

17 Q All right. Did she help you with your house?

18 A She also helped me with mine, yes, she did.

19 Q And just before she became involved at 445 Rainbow
20 Circle, what was she working on?

21 A There was a house that was right beside her house,
22 which is 47 -- hers is 476, so it's directly beside her.
23 She was working -- 442. Or 462, I'm sorry, Rainbow
24 Circle.

25 Q This is the house that she was working on before she

1 got involved in 445?

2 A That's correct.

3 Q Okay. Do you know if Ms. Duncan ever hired herself
4 out as a contractor?

5 A Not -- not that I know of ever. It's always been
6 partnerships. She does more than --

7 MR. D'AGOSTINO: Your Honor, I'm going to have to
8 object as to speculation.

9 THE COURT: Yeah, I sustain the objection.

10 BY MR. GLEISSNER:

11 Q All right. Let's talk about 445 Rainbow Circle.
12 How were you involved?

13 A I made sure that my aunt was eating every day. She
14 was always down at this house for five, five and a half
15 months. Never would eat. She was constantly working. I
16 know I'd get up for morning -- you know, in the morning to
17 go to work, 9 a.m. She was already down there. Sometimes
18 when I got home from work, I'd go get my little girl from
19 school, go down there, make sure she needed -- you know,
20 anything that she needed, I was there to try to provide
21 for her, because she would not go and get it on her own.
22 She would work, I mean, up until the middle of the
23 night --

24 MR. D'AGOSTINO: I'm going to object again.

25 THE COURT: Hold on a second. Your objection?

1 MR. D'AGOSTINO: Basis of knowledge for working the
2 kind of hours she's talking about working and never
3 leaving the property. How does she know all this? She's
4 got a job herself.

5 THE COURT: I'll overrule the objection. You'll
6 have a right to cross-examine her.

7 BY MR. GLEISSNER:

8 Q So, Ms. Killian, you were talking about how much you
9 observed as it relates to Ms. Duncan working at this
10 house.

11 A Yes. I observed every day. Like I said, I woke up
12 at 9 a.m. to go to work. By the time I got home from
13 2:30, me and my daughter were down there. If she needed
14 help just to make things move along quicker for her, I was
15 there to help her. And I would go home, cook dinner for
16 my family, and I cooked dinner for her as well just to
17 make sure she ate for the day. I mean, I was there every
18 day.

19 Q And after you cooked dinner, would you go back to
20 445 Rainbow Circle?

21 A I would. After I put my daughter to bed and fed my
22 family, there were nights that she needed help getting
23 things done, so she'd, you know, have a lesser stress on
24 her for the next day.

25 Q Did she pay you something for the work that you did?

1 A She compensated me. I didn't want payment, but she
2 compensated me, whether it be buying my family dinner and
3 me going and picking it up or if I needed a little bit of
4 money for gas for work or whatever the case may be, she
5 did, you know, give me money or help me out when I needed
6 it.

7 Q Let's talk about before Ms. Duncan began working on
8 the house. So before she began working on the house, did
9 you witness -- personally witness any discussions between
10 Mr. Duncan -- I mean, Ms. Duncan and Mr. Gill concerning
11 Rainbow Circle?

12 A Before she started working on 445?

13 Q Right.

14 A Yes. She was almost finished with 462 Rainbow
15 Circle. The last thing that I think had to be completed
16 out there was the out -- exterior painting. Once that was
17 completed -- I mean, you know, several times we went to
18 the gas station together, and I overheard the both of them
19 discussing -- he asked her -- he said he liked how her
20 work was, and he asked her if they would possibly become
21 partners on a house that was further down the road.

22 Q Did you -- you personally witnessed the efforts done
23 by Ms. Duncan at 445 Rainbow Circle?

24 A Yes, I did.

25 Q All right. Before she began, can you tell us about

1 the outside of the home?

2 A It was completely ran down. To be quite frank, it
3 looked like a drug house. I mean, it was pretty bad. The
4 vines were overgrown outside on the house. The bushes
5 were overgrown. The rest of the homes in the neighborhood
6 are very nice homes, well kept, maintenanced yards. This
7 house just was not that.

8 Q Before she began working on the house, did you
9 witness the inside of the home?

10 A I did.

11 Q How was the inside of the home?

12 A Terrible. Just as bad as the outside.

13 Q Let me pull up Exhibit No. 33. Yeah, 33. So do you
14 know what this is?

15 A It's the trash dumpster that was outside.

16 Q Okay. Do you know how it got full?

17 A All of the cleaning that she was -- she had to clean
18 before she could even get in there to do any of the work.

19 Q Okay. Let's look at Exhibit No. 3. That's Exhibit
20 4. That's Exhibit 3. Okay. Is that how the outside of
21 the house looked before she got involved?

22 A Yes.

23 Q All right. Let's look at Exhibit No. 73. Is that
24 how the house looked after she got involved?

25 A Absolutely.

1 Q All right. Did you help with the outside of the
2 house?

3 A I did some. When she needed help with lifting or,
4 like, gravel or the back, whether it be moving -- moving
5 anything that she needed just to help her out, I did help
6 out with that.

7 Q Okay. In addition to you helping with the outside
8 of the house, she also got the help of some other people;
9 isn't that right?

10 A Mm-hmm, yes.

11 Q Do you remember their names?

12 A I think Mr. Singh was one of the people that may be
13 related to Mr. Gary.

14 Q Do you remember what Mr. Singh did?

15 A Moving the logs that -- from the trees that Sherry
16 had cut down.

17 Q And who else helped on the outside of the house?

18 A Mr. Gurdip did.

19 Q What did Mr. Gurdip do?

20 A He moved a few logs.

21 Q Okay. How much time did they spend working on the
22 outside of the house?

23 A For that day, probably, I would say, probably an
24 hour or two hours.

25 Q Okay. Did they help -- other than those hour or two

1 hours, did they help with anything else?

2 A No.

3 Q Okay. How about other people? Other people got
4 hired to help with the outside of the house; right?

5 A I think one other person. I don't know. I can't
6 remember. Or two other people. I don't remember their
7 names offhand. But they did help with the logs as well.
8 And then, once it got to the back portion of the house,
9 there was Rick, which was a neighbor -- my neighbor, he
10 did help with the trench work for the back portion of the
11 house to dig piping so -- the drain lines to be ran off.

12 Q Okay. Let's look at Exhibit 5, because you were
13 talking about the drains. Is that the backyard before
14 Ms. Duncan was involved?

15 A Yes.

16 Q Okay. And did you do any work in the backyard?

17 A I did help -- I did help often with the backyard
18 during the summertime.

19 Q Okay.

20 A When it was warmer weather, I did.

21 Q So not initial work but later on?

22 A Correct.

23 Q All right. Let's look at Exhibit No. 75. Is that
24 how the house looked after Ms. Duncan was involved?

25 A Yes.

1 Q Okay. We just saw some before and after pictures.
2 Who transformed the house from the before to the after?

3 A Sherry did.

4 Q Let's go to the inside of the house. Let's look at
5 Exhibit No. 24. Did you see the inside of the house
6 before Sherry Duncan got involved? Is that how the
7 bathroom looked before she got involved?

8 A Yes.

9 Q Can you tell the jury who transformed the bathrooms
10 in the house from Exhibit 24 to the way they look today?

11 A Sherry -- Sherry did.

12 Q Okay. But she had some help; right?

13 A She did.

14 MR. D'AGOSTINO: Objection to leading, Your Honor.
15 I'm going to object to leading, Your Honor.

16 THE COURT: I'm going to ask you to not lead. I
17 sustain the objection.

18 BY MR. GLEISSNER:

19 Q Did she have some help?

20 A She did.

21 Q All right. Who helped her with the bathrooms?

22 A I did, some.

23 Q Other than you, did anybody else help with the
24 bathrooms?

25 A I do know that there was Joe that helped with the

1 tile work in the bathrooms.

2 Q Okay. Let's look at Exhibit No. 35. I'm sorry.
3 Let's look at Exhibit No. 34. Is that how the living room
4 looked before Ms. Duncan was involved?

5 Was that a yes?

6 A Yes. I'm sorry.

7 Q That's all right. And let's look at Exhibit No. 35.
8 Is that how it looked after she got done?

9 A Yes. This is how it looked every night when she
10 left. She cleaned every night before she would leave.

11 Q Okay. So who changed this house from a \$94,000
12 house to a --

13 MR. D'AGOSTINO: Your Honor, I'm going to object to
14 that question. No. 1, asked and answered. No. 2, she has
15 no basis of knowledge of values of the home.

16 THE COURT: I sustain the objection.

17 MR. GLEISSNER: Okay, Your Honor. That's -- those
18 are the questions that I have for Ms. Duncan [sic] given
19 the instructions from the Court.

20 THE COURT: All right. Thank you.

21 Cross-examination?

22 CROSS-EXAMINATION

23 BY MR. D'AGOSTINO:

24 Q That time, in the very beginning before any work
25 started at the house, before it was even purchased, the

1 last thing Sherry said was, "I have to go look at it."

2 Correct?

3 A Correct.

4 Q And there was -- there was no agreement at that
5 time, was there, that she said she had to go look at?

6 A She needed to look at the house.

7 Q Okay. Now, you're saying that Sherry worked every
8 day for those five to five and a half months?

9 A Yes, besides the three days that she took off for
10 her hand surgery, yes.

11 Q Didn't she have two surgeries?

12 A I think she did, yes.

13 Q But those are the -- that's the only time she wasn't
14 out there?

15 A That's correct.

16 Q Well, what about the time she got bitten by a spider
17 and she wasn't out there for several days?

18 A Several days? That's not -- that's not a fact.

19 Q No?

20 A I know that being that she got bit by a spider. I
21 called an ambulance. The ambulance came out. They
22 evaluated her. She was fine. And -- I mean, it's been
23 four years. I can barely remember the dates, but I know
24 that she went to work. She may have had to -- I'm not
25 sure about the spider bites. But the surgeries -- hand

1 surgeries, I was there because I helped take care of her.

2 Q So how many surgeries did she have?

3 A She had one hand surgery the first time, and then
4 she had a second hand surgery.

5 Q And how much time did she take off for each one of
6 those?

7 A She went in for surgery for -- on a Friday, and she
8 was back to work on a Monday.

9 Q Did she have a splint on?

10 A Yes.

11 Q Now -- but other than that, you're saying she was
12 there every day?

13 A Mm-hmm.

14 Q Now, as it relates to these pictures you were shown,
15 have you seen them before today?

16 A I was there, so I seen it personally.

17 Q Well, that wasn't my question. My question was:
18 Have you looked at these pictures before today?

19 A No, I have not seen the pictures.

20 Q So you haven't seen any of these pictures before
21 today?

22 A Besides the ones that I took, if she's got any
23 photos or that I have sent her from the time that we were
24 there at the home. I have seen some photos but that's
25 because they were my photos that I had sent to her. But

1 the other photos, no.

2 Q So your testimony is that, prior to today, being
3 shown some other photos while you're sitting on the stand,
4 you have never seen any photographs of this house?

5 A Like I said, some of those --

6 Q Other than the ones you took?

7 A The photos that were shown in court today, those
8 were -- I did not take. So, no, I have not seen those.

9 Q Then how do you know when those photos were taken?

10 A I didn't say I did.

11 Q The photograph -- I think you were asked about
12 Photograph 75. That one.

13 A Mm-hmm.

14 Q Do you have any idea when that was taken?

15 A I do not. I just know it was in the warmer stages
16 of the month.

17 Q Would you be surprised that it was taken long after
18 Sherry hadn't been at the property at all?

19 A Possibly. It could be a possibility. The house was
20 left in good condition when she left.

21 Q Okay. You were asked about Photograph 83. Is that
22 the way it was when y'all were there?

23 A Yes.

24 Q Now, would you be surprised to know that this
25 photograph was taken a year after she left?

1 A I'm sure it was. Like I said, the house was
2 immaculate when she left.

3 Q Now -- well, there was still more work to be done,
4 wasn't there?

5 A Very, very little.

6 Q Now, you're saying she transformed the bathroom.
7 Didn't Joe Leitten do a lot of work in the bathroom?

8 A I'm sorry?

9 Q Didn't someone else do a lot of work in the
10 bathroom? Lay the tile? Put the --

11 A I know there was tile laid by -- I think his name is
12 Joe.

13 Q All right. So other people worked on that property?

14 A Yes.

15 Q How about the kitchen? Anybody else work on the
16 kitchen? Exhibit No. 90. Plaintiff's Exhibit No. 90.
17 Did anybody do any of the work other than Sherry in that
18 photograph?

19 A She did -- I'm not sure. I'm not sure.

20 Q You're not sure what she did and what other people
21 did?

22 A The tile work I'm pretty sure was done by her. I
23 know the can lights were done.

24 Q She did the can lighting too, according to you?

25 A I'm pretty sure, yeah.

1 Q You're saying she did the backsplash in the kitchen
2 and the canned lighting in the kitchen?

3 A Those walls were a mauve color, and I know that it
4 was -- when I went in, she was doing a pretty good bit of
5 work in the kitchen. But my main focus was --

6 Q But my question was, you're testifying before the
7 jury you know she did the can lighting, and according to
8 you, you know she did the backsplash; is that right?

9 A Mm-hmm.

10 Q And that's as accurate as all your other testimony
11 you have given; correct?

12 A Yes.

13 Q Let's talk about the outside of the house. You said
14 there were other people who worked on the outside of the
15 house too; right? Your neighbor?

16 A Yes. Rick worked on digging the drains.

17 Q Right.

18 A Like I said, the only other people that I really saw
19 outside working was Gary and Mr. Singh whenever they were
20 cutting down the logs because they were too heavy for one
21 person to load up.

22 Q And Mr. Singh is Gary's father-in-law; right?

23 A That's correct.

24 Q All right. And as it relates to the trenches on the
25 back of the house -- this is Exhibit 75 again -- you're

1 talking about the trenches for the pipes that come down
2 from the downspouts; right?

3 A That's correct.

4 Q So your neighbor dug those trenches where those
5 things hook up; right?

6 A Yes.

7 Q So these pipes -- these downspouts with the black
8 caps at the bottom, those actually go to a drainage
9 system. And Mr. McGill -- that's his name; right?
10 Mr. McGill dug the trenches that enabled everybody to hook
11 those up; right?

12 A (Inaudible).

13 Q Now, let's look at -- I think Mr. Gleissner asked
14 you about Picture 5, all those leaves and everything else;
15 right?

16 A Yes, sir.

17 Q All right. Mr. McGill moved all those leaves and he
18 and his worker removed all that from the property with the
19 box scrape, didn't they?

20 A Those leaves -- if that's the very -- before they
21 were even involved, those leaves were moved back before he
22 was even -- before Mr. McGill was even involved.

23 Q Okay. Now, you work in Charlotte, don't you?

24 A Yes.

25 Q All right. And you have a child?

- 1 A I do.
- 2 Q And you go to work and you work from what time till
- 3 2:00?
- 4 A 9:00 a.m. until 2:00.
- 5 Q And so you get off work in Charlotte at 2:00; right?
- 6 A Yes.
- 7 Q How far in Charlotte do you work?
- 8 A I'll leave 1:45, 2:00. It takes me literally 30
- 9 minutes to get to -- from my job to my daughter's school.
- 10 Q Where do you work in Charlotte?
- 11 A South Tryon.
- 12 Q South Tryon?
- 13 A The custom shop.
- 14 Q Custom shop?
- 15 A Mm-hmm.
- 16 Q And where is that? South Tryon runs a long way.
- 17 A Remount. Remount and South Tryon.
- 18 Q All right. And so you'd leave for work about 1:45,
- 19 2:00 and then go pick up your daughter?
- 20 A Yes.
- 21 Q From child care?
- 22 A No, at her school.
- 23 Q At her school.
- 24 A It's right across the street from my house.
- 25 Q Okay. And then you'd take her home or take her to

1 the -- take her -- across the street from your house?

2 You're talking about right there where --

3 A Right across the street from Gary's store.

4 Q Rainbow Circle?

5 A Yes.

6 Q All right. And then you'd go over to the -- and
7 you're saying you went over there every single day?

8 A Correct. We'd go home. I'd make her a snack. And
9 then we'd go down there.

10 Q So that put you there about 3:00?

11 A 2:00, 2:30, because I only walked down the street
12 where I drove (indiscernible).

13 Q Well, if you got off between 1:45 and 2:00 --

14 A Well, 2:30. After 2:30. So, yeah, you would say --
15 between -- before 3:00, most definitely. It just depended
16 on the time that day, what I had going on.

17 Q And you'd go home and cook dinner?

18 A After going down there for a little while. My
19 husband gets home at around 6:30, 7:00. I'd be cooking
20 dinner a little bit before that. And then, if she needed
21 me after that and after making her a plate or trying to
22 feed her, I'd go back down and help her when she needed
23 it. Or with cleaning.

24 Q Incidentally, how much did Sherry pay you?

25 A Like I said, I didn't ask for payment, and there was

1 not an exact number. If -- like I said, if I needed to
2 get food and I didn't feel like cooking that night, she
3 would pay for -- she paid me in different ways.

4 Q How many times did she pay you cash, money, check?

5 A She paid me, like, \$20 cash for gas one day. If I
6 asked for it, she gave it to me. And it was not very
7 often.

8 Q So it was more than one time?

9 A Mm-hmm, yeah.

10 MR. D'AGOSTINO: That's all the questions I have.
11 Thank you, Your Honor.

12 THE COURT: Any redirect?

13 MR. GLEISSNER: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. GLEISSNER:

16 Q I believe Mr. D'Agostino asked you about Exhibit No.
17 90, the picture of the kitchen. Now, I think he asked you
18 about the canned lights. Were you there when the canned
19 lights were installed?

20 A I think, yes, I was. Yes, I was.

21 Q Do you remember who was installed the canned lights?

22 A Sherry.

23 Q All right.

24 MR. GLEISSNER: That's all I have for this witness,
25 Your Honor.

1 THE COURT: Recross?

2 MR. D'AGOSTINO: No, thank you.

3 THE COURT: Ms. Killian, you can step down.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Mr. Gleissner, call your next witness.

6 MR. GLEISSNER: Your Honor, that's all the witnesses
7 I have. Plaintiff rests.

8 THE COURT: All right. Ladies and gentlemen, we're
9 at the point in the trial where the plaintiff has
10 indicated they have introduced all the evidence that they
11 intend to introduce at this point. I'm going to allow you
12 to go back to your jury room and refresh yourselves. We
13 have some matters we'll need to take up outside of your
14 presence. We'll have you back in here when we are ready
15 to resume.

16 Everyone remain -- do not discuss the case. Even
17 though you have heard the plaintiff's case, you haven't
18 heard all the facts or all the evidence in the case, so do
19 not discuss the case. Thank you.

20 (The jury exited the courtroom at 10:22 a.m.)

21 THE COURT: Thank you. Any motions from the
22 defense?

23 MOTIONS/MATTERS OF LAW

24 MR. D'AGOSTINO: Thank you, Your Honor. Yes, Your
25 Honor. I have a motion for a directed verdict as to the

1 various causes of action. I'll be glad to state those at
2 this time.

3 Your Honor, as it relates to the plaintiff's first
4 cause of action, breach of contract, they have alleged
5 this cause of action in the form of a joint venture
6 agreement. Your Honor, the joint venture agreement,
7 according to the law, Golson v. Thorne -- that's 288 S.C.
8 463, 343 S.E.2d 451, Court of Appeals case -- in order to
9 find that a joint venture agreement exists, an agreement
10 between two parties constitutes a joint venture only if
11 each party enjoys an equal right to control the conduct of
12 the other regarding their common purpose.

13 One of the very first questions I asked --

14 THE COURT: Do you have a copy of that case?

15 MR. D'AGOSTINO: Yes, sir, Your Honor.

16 THE COURT: Let me have that. And do you have a
17 copy for Mr. Gleissner?

18 MR. D'AGOSTINO: I do, Your Honor.

19 During Ms. Duncan's testimony and on
20 cross-examination, it was very clear -- and she said
21 without hesitation on cross-examination -- that, before
22 she'd spend any money, before she'd make any decisions,
23 she'd have to call Gary and get his okay and get his
24 approval. She kept saying, "We, we, we." But when it was
25 posed to her as a specific question, she clearly,

1 unequivocally said she had to get his approval to do
2 things as it relates to the property. And the property
3 was solely in his name.

4 So, Your Honor, as it relates to the issue of a
5 joint venture, I submit to you they have not proven a
6 joint venture. There's no evidence -- taking the
7 evidence -- excuse me, taking the evidence in the light
8 most favorable to the plaintiff, the evidence is clear
9 that they did not have an equal right to control the
10 conduct of the other regarding a common purpose. So,
11 therefore, they cannot have a joint venture.

12 Now, they phrase their first cause of action as a
13 breach of contract as it relates to a joint venture, which
14 is what makes this case so complicated because,
15 originally, it was a mechanic's lien and a breach of
16 contract because of labor.

17 Now, the other thing that's very important as it
18 relates to the breach of contract cause of action, the
19 other thing Ms. Duncan said without hesitation, during
20 direct examination, at the end of her testimony was, "I
21 just want to be paid for my labor and services associated
22 with this property."

23 Now, she testified that she did all these things.
24 She testified to painting. She testified to electricity.
25 In fact, she testified she was the one who did the canned

1 lights in the kitchen or Joe Leitten did the canned
2 lights. She testified that she fixed the steps in the
3 front. She fixed the -- you know, the concrete in the
4 front. She's testified about the painting. She's
5 testified about many other things she did that fall within
6 a residential specialty contractor. So she would either
7 have to be a residential specialty contractor and have a
8 license to do those things -- but the problem is, Your
9 Honor, is, under 40-59-20, the threshold for residential
10 contracting for which she must have a license is \$5,000.
11 "Anyone who engages or offers to engage in such
12 undertaking in this state is considered to have engaged in
13 the business of residential building."

14 So, as it relates to her work, if you get into the
15 issue of, well, there's a breach of contract as it relates
16 to her work, if you break it down, she doesn't have a
17 specialty contractor license and she doesn't have a
18 residential contractor's license. So there's no
19 licensing.

20 And so, therefore, under 40-59-30, as I have said
21 previously, she's prohibited from bringing an action in
22 law or in equity to enforce the terms of any contract.
23 She can't take it out of this statute by saying there's a
24 joint venture, because there's no joint venture agreement.
25 The property was always in my client's name, and he always

1 had total control over the real estate, and it was never
2 transferred.

3 And that also brings up the issue of the statute of
4 frauds. They have not presented anything in writing to
5 substantiate her interest in the land, which is required
6 and which prohibits her from having an interest.

7 Now, during pretrial motions, the first comment was
8 she clearly has an interest in the land. And then the
9 next comment was, she clearly had an interest in the joint
10 venture, which has an interest in the land. Well, any way
11 you slice it, she's trying to claim an interest in the
12 land, either through the joint venture or through the --
13 through a -- you know, through work that she did. But
14 that's what she's claiming.

15 So, Your Honor, I submit to you, as it relates to
16 the breach of contract, there is no evidence of damages,
17 Your Honor, as it relates to that claim.

18 As it relates to the issue of damages as well, Your
19 Honor, her testimony is what she's entitled to recover,
20 even if she gets into the issue of -- even if we pass that
21 threshold, is there a meeting of the minds: offer,
22 acceptance, consideration.

23 The damages that she says she's entitled to have not
24 been proven. She says she's entitled to the sales price
25 less what my client put into it, less what she put into

1 it. Well, okay. I mean -- and in her conversation is
2 what she put into it. Well, we have established, without
3 question, that she has no money in it. There's no
4 consideration on her part. She was paid \$3100 plus some
5 other monies for the work she did.

6 Now, then the question becomes, she said he is
7 entitled to what money he put back into it. Now, the
8 plaintiff has the burden of proving their damages, and
9 there has to be evidence of what their damages is. It
10 can't be left to speculation.

11 So she says, "Yes, Gary has money in it." She's not
12 presented any evidence as to what Gary has in it, and
13 that's her obligation as part of the proof of damages.
14 She acknowledges he has 93,000. She's put the purchase
15 price in there. She acknowledges he put a lot of other
16 money in there. She is the one claiming that they're
17 entitled to split the net, but she doesn't present any
18 evidence as to what her damages are.

19 So as it relates to the first cause of action,
20 breach of contract, Your Honor, I submit to you, taking
21 the evidence in light most favorable to the plaintiff, the
22 Court should grant a directed verdict as to that because
23 the evidence clearly demonstrates there's no joint
24 venture, even considering everything in the light of their
25 favor. And then you have got the bars to bringing a

1 lawsuit under the statutes for specialty contractor's
2 license and a contractor's license. You have got the
3 statute of frauds. And then they haven't presented the
4 evidence as it relates to damages, even considering
5 everything in the light most favorable to them.

6 The second cause of action --

7 THE COURT: Let's take it one cause at a time.

8 MR. D'AGOSTINO: Yes, sir.

9 THE COURT: Mr. Gleissner, I'll be glad to hear you
10 on the directed verdict motion as to your first cause of
11 action and the second amended complaint for breach of
12 contract based on -- that you allege in your complaint
13 that there was a joint venture agreement.

14 MR. GLEISSNER: Yes, Your Honor. A joint venture
15 agreement is nothing more than a partnership relating to a
16 particular project. I mean, that's what it is. And I
17 believe that there's an abundance of testimony that these
18 individuals entered into a partnership.

19 As it relates to control, she had his credit card,
20 Your Honor. She controlled the expenses on that credit
21 card. She's the one that spent the money on the project.
22 She's the one that -- she testified she's the one that
23 picked out the bathroom fixtures. She's the one that
24 picked out the light fixtures. She's the one that picked
25 out the paint colors. She's the one that picked out all

1 of this stuff that went into the house to improve it.

2 So as it relates to the issue of whether or not
3 there's a joint venture, Your Honor, there is an abundance
4 of evidence in this case showing the control that
5 Sherry -- that Ms. Duncan had relating to the improvements
6 to the project. She was the one that decided to remove
7 the bushes. She was the one that decided to plant the
8 rose bushes. She was the one that decided to put the
9 drainage system to keep the stuff away from the -- I mean,
10 Judge, I could go on and on as it relates to the control
11 over this project that Ms. Duncan asserted, without
12 objection --

13 MR. D'AGOSTINO: Well, I did object.

14 THE COURT: Well, hold on a minute. I'll listen to
15 you. I mean...

16 MR. GLEISSNER: But, now, he says --

17 THE COURT: I do have a question. In Golson v.
18 Thorne, that Court of Appeals case states that a joint
19 venture -- an agreement between two parties constitutes a
20 joint venture only if each party enjoys an equal right to
21 control the conduct of the other regarding their common
22 purpose. I don't see that it -- the "control the
23 property" would not be what this case states is an element
24 of a joint venture. Talk to me about when it says that a
25 joint venture is equal right to control the conduct of the

1 other party.

2 MR. GLEISSNER: Regarding the common --

3 THE COURT: Regarding their common purpose.

4 MR. GLEISSNER: -- purpose. The common purpose in
5 this particular case was the renovating, improving this
6 property for the purpose of resale. She had just as much
7 control over that common purpose as anybody else in this
8 project.

9 Now, what partners do is they talk to each other.
10 She was talking to him to let him know what she was doing.
11 She wasn't -- I mean, she wasn't controlling her. He
12 didn't pick out the lights. He didn't pick out the
13 bathroom fixtures. He didn't pick -- the common
14 purpose -- the control over that common purpose was both
15 Ms. Duncan and Mr. Gill -- I mean, I'm not saying he
16 didn't have input into the common purpose. I'm saying he
17 did. It's a partnership, Your Honor. A partnership is an
18 agreement as it relates to a specific project for the
19 purpose of making a profit and then there's an issue about
20 that profit. Fair enough, Your Honor?

21 THE COURT: You have got to answer the question --
22 I'm not going to tell you whether it's fair or not.

23 MR. GLEISSNER: All right.

24 THE COURT: That's your role. You're the lawyer.

25 MR. GLEISSNER: I just wanted to make sure that I

1 had addressed that particular issue.

2 As it relates to the second issue, the license
3 issue, I believe -- I'm going to hand up to the Court a
4 memo that I did. Here's the original for filing and a
5 copy for the judge.

6 THE CLERK: But it hasn't been filed yet; right?

7 MR. GLEISSNER: Right. I'm filing it now.

8 Your Honor, in addressing a motion that was made --
9 it may have been a motion in limine or whatever -- I
10 addressed the issue as it relates to licensing. And, Your
11 Honor, there's -- I'm actually addressing all four in this
12 memo, Your Honor. But as it relates to the Residential
13 Licensing Builders Act, Your Honor, the -- the case law
14 relating to that states that "The purpose of the statute
15 is to protect homeowners and the public." Okay? The
16 statute involved persons not qualified to render
17 professional services.

18 Now, Your Honor, as it relates to -- I have attached
19 as part of this, Chapter 106 of the Department of Labor
20 and Licensing. And Chapter 106 from the Department of
21 Labor and Licensing clearly defines classifications of
22 residential specialty contractors. And these are
23 residential contractors. And it clearly says, "The
24 following specialties are available for registration and
25 licensures." Okay? And that one includes painters.

1 Then, in Section 106-2, it talks about who must have
2 a license. And the three groups that must have a license
3 are heating and air-conditioning, plumbers, and
4 electricians.

5 Ms. Duncan didn't do any plumbing. Ms. Duncan
6 didn't do any heating. Ms. Duncan didn't do any
7 electrical work. They hired other people to do those
8 work.

9 Ms. Duncan is not in the categories requiring
10 licensure. Because she's not in the categories requiring
11 licensure -- right? -- she -- it doesn't fall within the
12 requirement of having to have a license in order to
13 recover for the work that she's done.

14 And to follow that up, Your Honor, I have attached
15 the list of the "no specific license is required" from the
16 South Carolina Contractors Licensing Board. So there's a
17 list that says, "Hey, not everybody that does work on
18 houses has to have a license." And here, clearly, we're
19 dealing with two different sections saying this group has
20 to have a license, this group may have a license, and this
21 group doesn't need to have a license at all.

22 And then lastly, Your Honor, I'd like to point out
23 that the case that I have copied, which is Marsh
24 Waterproofing vs. Steeple Dorchester, this is a case that
25 was heard on May 24th, 2023. It's a very recent case,

1 Your Honor. It is an opinion from the South Carolina
2 Court of Appeals. And it talks about when two business
3 people get involved in improving property and it talks
4 about the fact that, "We find that the South Carolina
5 Contractors Licensing Board correctly concluded that Marsh
6 was not supervising any work on the project and believed
7 that Hamilton was either a licensed contractor hiring,
8 organizing, supervising subcontractors, or that Hamilton
9 hired a licensed general contractor to organize, supervise
10 subcontractors."

11 So basically what happened in that case was, they
12 had these two people, neither of them was a licensed
13 contractor. Neither of them was relying upon the other to
14 be a licensed contractor. And the Court cites because --
15 an unlicensed professional from bringing -- "nothing
16 precludes an unlicensed professional from bringing a
17 cross-claim against its subcontractors. Pertinent
18 licensing statutes are intended to protect the public
19 interest. The purpose of protecting the public interest
20 by denying enforceability does not exist when dealing with
21 claims between contractors."

22 And it cites a Kentucky case, Kennoy v. Graves, for
23 the purpose of the statute involves similar ones are
24 designed to protect the public from being imposed upon
25 persons by -- being imposed upon by persons not qualified

1 to render professional services. The reason for the rule
2 denying enforceability does not exist when the person is
3 engaged in the same business or profession or dealing at
4 arm's length with each other. In this case, we're dealing
5 with an arm-length transaction between sophisticated
6 individuals and when there is no reliance placed upon the
7 existence of a license as presumably would be the case if
8 the appellant was dealing with the general public where
9 the licensure statutes do not apply.

10 And, Your Honor, that is found on the second page.
11 I actually shaded that section of this particular case.
12 This is the recent case on the South Carolina licensure.

13 So, Your Honor, nothing in the South Carolina
14 licensure statutes deny Ms. Duncan from having the ability
15 to collect on the work that she's done. Simply, it just
16 doesn't apply in this situation of two equals in an
17 arm-length transaction agreeing that certain stuff has to
18 be done.

19 Now, we believe it was a partnership, but even if
20 Mr. D'Agostino's theory that this is not a partnership is
21 sustained, nothing in that statute prevents her from
22 proceeding.

23 And Mr. D'Agostino talks about the statute of
24 frauds. And, Your Honor, I previously handed up to the
25 Court the case of -- I believe it was Graham v. Prince.

1 Yes, it was Graham v. Prince. Do you want another copy?

2 THE COURT: No, I have it.

3 MR. GLEISSNER: Okay. And in that case, the Court
4 clearly finds that, by performance, one takes the issue
5 out of the statute of frauds. And I believe we have an
6 abundance of evidence that Ms. Duncan performed her part
7 of the deal. She was there five and a half months,
8 working, performing pursuant to the agreement; therefore,
9 the agreement is taken out of the statute of frauds, and
10 the statute of frauds simply does not apply.

11 And then I think the last thing he talked about was
12 damages. And, Your Honor, as we know, damages don't have
13 to be -- they don't have to be proved by scientific
14 certainty. And, in this case, we have an abundance of
15 evidence as it relates to damages. We have what the house
16 was bought for. We have what the house was sold for. We
17 have an agreement for \$28,000. We have a demand for
18 \$70,000. So we have an abundance of damage statements.

19 THE COURT: Let's be sure that the facts are --
20 there was never an agreement for \$28,000.

21 MR. GLEISSNER: You're right, Your Honor. We have a
22 demand for \$28,000. And we have a demand for \$70,000.
23 So, Judge --

24 THE COURT: Well, I believe it was an offer of
25 20,000 and an offer of 28 and a demand for 70. Isn't that

1 what the facts are in the case?

2 In other words, the facts that's been presented to
3 the Court at this point, your client never demanded
4 \$20 [sic]. Your client never demanded \$28,000. The way
5 the Court heard the facts were those were -- those were
6 offers by the defendant through her testimony to agree to
7 \$20,000 or to agree to the \$78,000.

8 The mechanic's lien, I guess we can view for a
9 demand for 70,000. I just want to make sure that the
10 facts are right. Isn't that what the facts are?

11 MR. GLEISSNER: Yes, Your Honor. I think those are
12 the facts. And I don't disagree with that.

13 THE COURT: Well, you stated there was an offer
14 that -- of -- your client was -- the Court took it like
15 your client was offered 20, your client was offered 28,
16 your client was offered 70, and those are figures that can
17 be used for a jury to determine what are the appropriate
18 damages in the case.

19 I just want to be sure the record is clear.
20 Those -- the 20 and 28 came -- by your client's testimony,
21 came from the defendant. She did not agree to that.

22 MR. GLEISSNER: I'm -- okay. Right, Your Honor.
23 Yes, Your Honor. Yes, Your Honor.

24 All right. But all of those are damages, and all of
25 those can be determined by -- used by the jury to

1 determine what the appropriate amount for the partnership
2 distribution should be.

3 Now, as it relates to Mr. D'Agostino's argument that
4 she needs to prove what his contribution to the
5 partnership, I don't think that's the burden on her. I
6 think that's the burden on him. He's the one that has the
7 burden of proof to show set-offs. He's the one that has
8 to prove his contributions to the partnership, not my
9 client.

10 My client's burden is on, you know, what did she do.
11 She clearly performed her part of the partnership, and,
12 therefore, she should be entitled to a determination by
13 the jury as to what her damages and what her recovery
14 should be.

15 THE COURT: All right. Thank you.

16 MR. GLEISSNER: Thank you, Your Honor.

17 THE COURT: All right. Let's move to the -- your
18 next DV.

19 MR. D'AGOSTINO: Did you want any reply to that or
20 are you okay, Your Honor?

21 THE COURT: Yeah, I'll give you an opportunity to
22 reply, yes.

23 MR. D'AGOSTINO: Your Honor, first, as it relates to
24 damages, Your Honor, he has claimed that the plaintiff has
25 the burden of proving offer, acceptance, breach and

1 damages, if he has a breach of contract claim.

2 His theory is that -- and that his client's
3 testimony is that it's the net. And so he can't just come
4 in here and say now he has to prove a set-off. His
5 client's specific testimony in direct examination was that
6 it was the net, and she didn't prove the value of any of
7 her services. In fact, the values of her services are all
8 over the board because you got her getting \$6,000 from her
9 ex-husband for doing the same thing she's trying to claim
10 all this money for.

11 As it relates to the \$28,000, you're right. Those
12 were demands by the plaintiff of my client. The 70,000
13 was inclusive of \$20,000 in attorney's fees, to which
14 she's not entitled to.

15 So, Your Honor, we submit that, as it relates to the
16 damages, there's no evidence of damages. As it relates to
17 the memorandum of law as it relates -- dealing with the
18 LLR and the licensure requirement, first of all, that case
19 that he's handed up is an unpublished decision and it has
20 no precedential value.

21 Secondly, it does not deal with the Residential
22 Builders Commission. It deals with the contractor's
23 building provision, 40-11-370, which deals with -- and
24 it's written entirely different because it deals with
25 structures and things of that nature. That's general

1 contractors. We're not dealing with general contractors.
2 We're dealing with residential contractors.

3 Your Honor, in addition to him handing up -- he's
4 handed up something -- a flyer by the South Carolina
5 Contractor's Licensing Board. That's not the law. The
6 law is clearly set forth in the statute that's written in
7 the code book, 40-59-20 and 30, which specifically says
8 painters must have a license. Drywall installers. She's
9 testified extensively about doing all this drywall hanging
10 and skimming it. I mean, that was her testimony. I
11 didn't question her about it. She testified about
12 drywall.

13 And she testified about fixing the steps. Masonry
14 work. She testified that she doesn't have a license to do
15 any of that work and then her demand is for an amount of
16 money over \$5,000.

17 And as it relates to residential contracting, even
18 his own memorandum sets forth that -- excuse me. She
19 testified clearly that not only did she supervise but she
20 did the work herself.

21 So the basis of her claim is the work and the
22 supervision of the work. She falls squarely within the
23 statute.

24 And my client's a property owner, and she is holding
25 herself out as somebody who can do the work. So, Your

1 Honor, I don't believe there's any question that she falls
2 squarely within the statute, which requires her to have a
3 license.

4 And finally, Your Honor, as it relates -- I go back
5 to the case I handed up, of Golson v. Thorne. The
6 requirement for a joint venture is more than just an
7 agreement. It's got to be an agreement and "each party
8 enjoys an equal right to control the construct of the
9 other."

10 And although she says she might have picked out some
11 things, she also said she had to call Gary and ask him
12 before she could spend any money or do anything.

13 So taking all the evidence in the light most
14 favorable to the plaintiff -- that's why I'm arguing it
15 this way -- is I'm taking it in the light most favorable
16 to her. These are her words. She's just saying, "I did
17 this, I did this," but she clearly said she had to call
18 him before she did anything. She gave him receipts. She
19 had to present him receipts to get reimbursed. She didn't
20 control any of his conduct. Not one bit of his conduct.

21 So, Your Honor, as it relates to that, I go back
22 to -- that's my reply to the motion for directed verdict.

23 THE COURT: Let's hear your motion on the second
24 cause of action.

25 MR. D'AGOSTINO: Breach of contract by fraudulent

1 act, Your Honor. The same arguments, because the other
2 thing is they don't prove -- I mean, the one thing that's
3 lacking is what is the contract. There's no specific term
4 set forth of what this contract is. Is it a contract for
5 labor and improvements? It is a joint venture? Well, it
6 can't -- I submit to you, you can't find it to be a joint
7 venture. It can't be a contract on improvements. And you
8 can't have a breach of contract for a fraudulent -- by a
9 fraudulent act when the claims would be dismissed because
10 she's not licensed, and they don't prove the terms of the
11 contract.

12 So, Your Honor, I submit to you, as it relates to
13 breach of contract by fraudulent act, there is -- they
14 have not proven one bit of fraud or even bad conduct on
15 behalf of my client. So as it relates to that, I
16 incorporate my prior arguments but also argue that as it
17 relates to the additional requirement of fraudulent
18 conduct.

19 THE COURT: All right. Mr. Gleissner, I'll be glad
20 to hear you.

21 MR. GLEISSNER: Your Honor, I believe we have shown
22 the elements of a breach of contract. I believe we have
23 shown that there was a partnership agreement. I believe
24 we have shown damages.

25 And, Your Honor, as it relates to the fraudulent

1 act, we have -- we believe we have shown that Ms. Duncan
2 performed services for five and a half months, and when
3 she started to be entitled to getting draws on
4 partnership, we believe that Mr. Gill acted fraudulently.
5 And, in this case, fraud is merely dishonest, deceiving.

6 So instead of fulfilling his obligations, he
7 breached the contract by not paying it, and then he tried
8 to change it. He tried to change it into a construction
9 contract. And the reason he tried to change it into a
10 construction contract is so that it couldn't be enforced.

11 And so, Your Honor, I think there's evidence not
12 only of the breach of contract but also of that fraudulent
13 act. He engaged in deceptive conduct as it relates to
14 refusing to pay her her draws and then trying to change it
15 so she would compromise the amount that she's due, and she
16 couldn't get the paid the profits associated with this
17 business.

18 THE COURT: All right. Let's talk about the third
19 cause of action.

20 MR. D'AGOSTINO: Your Honor, the third cause of
21 action is for a constructive trust, and that goes back to
22 being based upon a joint venture. I don't believe that
23 the plaintiff has demonstrated any basis for the Court to
24 impose any constructive trust. I don't even know if
25 that's a cause of action that would go to the jury.

1 The property has been sold. My client got the money
2 long ago. And so, therefore, Your Honor, I submit to you
3 that there is no evidence to support a claim for
4 constructive trust as it relates to this -- as it relates
5 to this matter.

6 Your Honor, I just noticed something too. Paragraph
7 43 of the complaint that Mr. Gleissner prepared says, "The
8 labor and services provided by the plaintiff in
9 furtherance of the joint venture agreement to improve the
10 real property, including painting, landscaping, walls, and
11 flooring." That goes back, again, to my issue dealing
12 with -- and I incorporate herein -- the issue of the
13 licensing statute. I mean, his own pleadings allege that
14 she did labor and materials that fall within the statute.

15 So, Your Honor, I don't believe there's any basis
16 for the Court to grant or to impose a constructive trust
17 on anything. The property is gone.

18 THE COURT: All right. I'll hear y'all on your
19 third cause of action.

20 MR. GLEISSNER: Well, Your Honor, as it relates to
21 constructive trust, the plaintiff only need prove that the
22 defendant is in possession of property unjustly. And, in
23 this case, that unjust nature is the money that he got for
24 selling this house was a result of the improvements in the
25 real property made by my client. He got money that he

1 shouldn't be allowed to retain because there should be a
2 constructive trust imposed on that money for the benefit
3 of the person that contributed her time and talent to
4 generating that money. Thank you.

5 THE COURT: All right. Thank you.

6 All right. Let's talk about the fourth cause of
7 betterment. When I looked at the betterment statute, it's
8 the Court's view is that the betterment statute is not
9 applicable to any of the facts in this case.

10 MR. D'AGOSTINO: Well, that was going to be my
11 argument, because I don't even know which statute they're
12 going under.

13 THE COURT: Well, I look at what he cited in his
14 cause of action, 27-27-10, the betterment statute. When
15 the Court looked at that, that is to protect defendants by
16 wording of the statute says defendants, in essence who are
17 unjustly or whether unjustly, who do not prevail in an
18 action by a plaintiff and if the defendant -- that's the
19 wording of the statute -- makes improvements because they
20 live there and it took litigation, in essence, to get them
21 off the property, the defendant has a right for
22 betterments, for the improvements.

23 So that's the way I looked at it. I may be
24 completely wrong. I'll be glad to hear you on --
25 Mr. D'Agostino and then Mr. Gleissner.

1 MR. D'AGOSTINO: That's why I printed the statute
2 out, is that, after final judgment in favor of the
3 plaintiff in an action to recover, I didn't think that was
4 applicable to this --

5 THE COURT: I'll hear you, Mr. Gleissner, on the
6 betterments cause of action.

7 MR. GLEISSNER: Well, Your Honor, I think that the
8 statute deals with situations in which a party makes
9 improvements to property, and, in this case --

10 THE COURT: The statute says, "Defendants." Right?

11 MR. GLEISSNER: Yes, Your Honor. The statute does
12 say, "Defendants." But I don't think that it's dealing
13 with a particular defendant in terms of -- you know, in an
14 action. I mean, I don't think "defendant" is the -- I
15 think it applies not only to defendants but I think it
16 applies to plaintiffs. I don't know why it would make a
17 difference whether or not Ms. Duncan got sued first or if
18 Mr. Gill got sued first.

19 THE COURT: Well, it appeared to the Court it would
20 be the context of why the statute was written, was for
21 people who were occupants of property.

22 Anyway, all right. Anything else you want to say on
23 the betterments cause?

24 MR. GLEISSNER: With the Court's permission, I just
25 have to --

1 THE COURT: Yes, sir.

2 MR. GLEISSNER: I believe there was a motion for
3 summary judgment. I believe I prepared a memorandum in
4 opposition that addressed the betterment statute and the
5 betterment issue. I just need to refresh my memory on
6 memorandum.

7 THE COURT: I mean, there's no question she made
8 improvements to the property. I'm not -- that's not --
9 that's not even a fact in dispute in this case. She made
10 improvements to the property. The question is whether the
11 betterment statute provides a way for her to be
12 compensated. It's a legal question.

13 MR. GLEISSNER: Your Honor, I'm looking at
14 Section -- I'm looking at my memorandum in opposition to
15 the motion for summary judgment. That's what I'm looking
16 at. And the section that I'm looking at talks about
17 Section 27-27-100, which is part of the betterment
18 statutes. And in that section, it says that -- okay, "The
19 provision of the chapter shall not extend to any person
20 who has entered on land by virtue of any contract made
21 with the legal owner on such land unless it shall appear
22 on the trial of the action that such owner has neglected
23 to fulfill such contract on his part."

24 Mr. Gill has neglected to fulfill his contract on
25 his part.

1 And then it says, "In which case such person in
2 possession shall be entitled to all the privileges of this
3 chapter --

4 THE COURT: Well, let me -- I'm looking at the
5 statute. Where are you reading?

6 MR. GLEISSNER: I'm reading Section 27-27-100.

7 THE COURT: All right. Well, it goes on to say --
8 and you can help me to understand -- it says that, "Shall
9 be entitled to all the privilege this chapter provided by
10 those who entered upon the land upon supposed title." And
11 the same proceeding sheet -- all right. So even if we're
12 going to give the plaintiff some relief under this
13 statute, she certainly did not -- there's no evidence of
14 supposed title.

15 I mean, here's the thing: The statute applies to
16 people who think that they have -- that think that they
17 individually have title to a piece of property. And then
18 they make improvements under the -- the reason they make
19 improvements is because they suppose they have title to
20 the property. And then they find out later on, after
21 litigation, that they -- against them because they're on
22 it -- I guess either wouldn't leave or whatever -- that's
23 what the statute is for.

24 I don't need to anymore on that particular
25 provision. I grant the motion for summary judgment as to

1 the betterments cause of action.

2 I'm going to take about 15 minutes or so. We're
3 going to -- yes?

4 MR. GLEISSNER: You're granting the directed verdict
5 on the betterments statute?

6 THE COURT: On the betterment cause of action.

7 MR. GLEISSNER: You just said summary judgment, and
8 I just wanted to clarify for the record.

9 THE COURT: Okay, yeah. I think, regardless, the
10 motion before me is a directed verdict on betterments. I
11 am granting the motion for directed verdict as to that
12 fourth cause of action on the betterments.

13 We'll take -- Mr. D'Agostino?

14 MR. D'AGOSTINO: One thing I forgot to say when we
15 were talking about the constructive trust, Your Honor. I
16 believe the constructive trust is a remedy and not a cause
17 of action. That's why I really wasn't very eloquent when
18 I was trying to argue but that's what I believe it is.

19 THE COURT: We're going to talk about 15 or 20
20 minutes and then we'll -- I'll be back. Let's be at ease
21 for about 15 to 20 minutes.

22 MR. GLEISSNER: Thank you, Your Honor.

23 (A brief recess was taken from 11:02 a.m. to 11:27
24 a.m.)

25 THE COURT: We're back on the record in Sherry

1 Killian Duncan versus Gary Gill. We're at the point in
2 the trial where the plaintiff has rested and presented all
3 the evidence for directed verdict motions on the causes of
4 action. Let me pull that up.

5 And let me take it in reverse order. The Court has
6 ruled on the fourth cause of action which is betterment,
7 granted the motion for directed verdict as to that cause
8 of action.

9 The third cause of action, the constructive trust,
10 the Court finds that there's no sufficient evidence in
11 which the third cause of action, constructive trust, is an
12 issue for the jury to determine, so I'm going to grant the
13 motion for directed verdict as to constructive trust.

14 And as to the breach of contract by fraudulent act,
15 the second cause of action, there's no evidence that's
16 been presented to the Court in front of this jury that it
17 would indicate an action of fraud or a fraudulent act by
18 the defendant in this case. And I'll state some more
19 reasons why on that. And so the Court grants the motion
20 for directed verdict as to the fraudulent act, which
21 leaves the first cause of action for breach of contract.

22 The evidence before the Court is that at least on
23 three occasions -- or before the jury -- that there was a
24 discussion about a contract but never an agreement before
25 the Court was that -- the plaintiff's testimony and the

1 witnesses is that she had a conversation with the
2 defendant at his store and that -- and that there was no
3 agreement on any terms. Certainly nothing ever in
4 writing. So there was not a contract at that point in
5 time before the work began.

6 There were two attempts to settle their disagreement
7 over payment to the plaintiff in the case by contract that
8 were clearly rejected. One where the defendant offered
9 20 -- at least what's before the jury is they offered
10 \$20,000. We did not learn anything else about what may or
11 may not have been in that purported agreement to which the
12 plaintiff did not agree to. And a second attempt or I
13 guess we'd call it a third attempt of a contract that was
14 presented, including \$28,000 to pay the plaintiff in the
15 case for her labor. Again, we don't know anything about
16 any of the rest of it -- of those terms. Those were
17 rejected.

18 And so there's no -- there's nothing in writing in
19 this particular case to show that there was a -- one,
20 under the theory that this was a joint venture. The case
21 that was handed up, Golson v. Thorne, which appears to
22 still be a good case, indicates that an agreement between
23 two parties constitute a joint venture only if each party
24 enjoys an equal right to control the conduct of the other
25 party -- of the other regarding their common purpose.

1 In this particular case, again, there is no --
2 there's nothing in writing, no agreement. It's very clear
3 that Ms. Duncan did a lot of work, according to her
4 testimony, and it appeared to be very good work, lots of
5 effort into the -- and so the issue becomes is there a
6 contract. She's not a contractor. Well, if she is a
7 contractor, she's certainly not a licensed contractor.
8 She certainly did the work.

9 I find that the only evidence that a jury would have
10 to consider in this case would be the plaintiff indicating
11 in the beginning that she would provide the talent and the
12 time, the defendant would provide all of the other
13 expenses, and, according to her testimony, she would be
14 entitled to one-half of the net.

15 I find, based on the facts of the case, that there
16 isn't sufficient evidence for a jury to determine whether
17 it's a joint venture based upon the fact that she worked,
18 she used his credit card, certainly which he would have
19 controlled. The credit card certainly means that the
20 person whose name it's in ultimately controls whether
21 those bills get paid or not. She had access to it. He
22 paid all the bills she did make but appears there was
23 never an agreement on any terms of a joint venture. There
24 were several attempts to do that. Those were all
25 rejected. And that's the evidence before the jury.

1 Additionally, even if the Court found that there was
2 sufficient evidence for a jury to determine whether there
3 was a contract or not and if a jury determined there was a
4 contract, they'd have to go to the issue of damages.
5 Without knowing what the terms of the contract were, even
6 if we take them in the light most favorable to the
7 plaintiff that the terms were that she was entitled to
8 one-half of the net, there has been no evidence by the --
9 presented by the plaintiff by which a jury could make a
10 determination of what the net is in this case. There's
11 been no evidence of the amount of bills that were paid by
12 the defendant in the case. There's no evidence that's
13 been presented to the jury about the value or worth of the
14 plaintiff's long hours of hard work. However, there's no
15 evidence presented to the jury of what they value for
16 that, so a jury would be -- the only numbers are that the
17 property was bought for \$93,000 and then the property was
18 sold some two, two and a half years later for 200 and -- I
19 forgot -- whatever the amount was -- close to \$290,000.
20 There's no way that anything that a -- if a jury
21 determined that there was a contract, that the jury would
22 then have to determine damages; it would be speculative at
23 best for them to determine what the net is.

24 The plaintiff in the case presented -- her testimony
25 was that, in her other relationships with her ex-husband

1 and others, that -- and her involvement is that "they were
2 the money, I was the talent." And what she stated in this
3 particular case is that she believes that she's entitled
4 to one-half of what's agreed upon or one-half of the net.
5 There's certainly no -- nothing in the evidence to be able
6 for a jury to determine what the net is in the case. So
7 there again, those terms were not spelled out, not in
8 agreement.

9 She indicated that she -- "I want to get paid for my
10 labor." That would be speculative to determine what that
11 amount is. Again, the jury has -- what's before them is
12 that she did get some minimal amounts what were called
13 draws and then was offered 20,000 pursuant to a written
14 agreement, which she rejected, and was offered 28,000, a
15 written agreement, to which she rejected. I find that
16 there's not sufficient evidence for a jury to make a
17 determination on damages. So, therefore, I grant the
18 motion for directed verdict as to the first cause of
19 action.

20 Again, the Court clearly understands -- and I'm sure
21 this jury is going to understand it -- Sherry Killian
22 Duncan did an enormous amount of work on this piece of
23 property -- very good work on the property; however, this
24 is a setting under the law to determine whether the --
25 what has been brought before the Court under the four

1 causes of action, if she's entitled to recover under those
2 four legal theories. I find there's not evidence that
3 would merit a jury making that determination, and so I
4 grant the directed verdict on all four causes of action.

5 Thank you. That ends the case.

6 And, Mr. Gleissner, I'll give you ten days to file
7 any motions that you deem appropriate. All right? Thank
8 y'all.

9 MR. GLEISSNER: Thank you, Your Honor.

10 Are you going to bring the jury back in to dismiss
11 them?

12 THE COURT: Yes. Why don't y'all do this: I'll
13 give y'all an opportunity to leave, and I'll bring them in
14 and talk to them.

15 MR. GLEISSNER: Thank you.

16 So, Your Honor, you want us to leave?

17 THE COURT: I'm going to dismiss them and have a
18 discussion with them about jury service. You can stay if
19 you wish. On the other hand, that's the discussion I'm
20 going to have with them.

21 MR. GLEISSNER: It will take me just a few minutes
22 to pack up.

23 THE COURT: Yeah, they have been sitting back there.
24 They can wait a few more minutes.

25 (At 11:38 a.m., the above trial concluded.)

CERTIFICATE OF TRANSCRIBER

CASE NAME/NUMBER: Sherry Killian Duncan v. Gurdip Gill

2019-CP-46-02090

DATE OF HEARING: 7/10-12/2023

COURT REPORTER/MONITOR: DCRP

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information, and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.



_ / s/ Bobbi Fisher _____

Bobbi Fisher, RPR and Certified Transcriber

Date Submitted: November 16, 2023

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YORK COUNTY ASSESSOR

Tax Map:

465-00-00-038

Date: 11/30/2018

E H

Pendleton and Pendleton
Attorneys at Law
103 Kings Mountain Street
Clover, South Carolina 29710



2018050765

DEED
RECORDING FEES \$10.00
STATE TAX \$241.80
COUNTY TAX \$102.30

PRESENTED & RECORDED:

11-30-2018 08:57:26 AM

BK: RB 17299

PG: 392 - 394

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
BY: CHRISTY BENFIELD DEPUTY CLERK

STATE OF SOUTH CAROLINA

COUNTY OF YORK

DEED TO REAL PROPERTY

KNOW ALL MEN BY THESE PRESENTS, That **Jesse Lee Graham and Kayla Nicole Graham** (hereinafter whether singular or plural the "Grantor") in the State aforesaid, for and in consideration of the sum of **Ninety-Three Thousand and No/100 (\$93,000.00) Dollars**, to the Grantor paid by **Gurdip Gill** (hereinafter whether singular or plural the "Grantee") have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Grantee, his heirs and assigns the following described property:

All that certain piece, parcel or lot of land, with improvements thereon, lying, being and situated in Bethel Township, York County, South Carolina, and more particularly described as follows: Beginning at a point in Rainbow Circle thence N. 84-19-13 W. 252.06 feet to an iron; thence N. 15-25-00 E 217.02 feet to an iron; thence S. 71-47-29 E. 253.78 feet to an iron; thence with the edge of Rainbow Circle S. 17-12-02 W. 162.11 feet to the beginning point. The above described property is shown on Plat of Survey for Richard J. & Mary C. Shannon by Joe H. Baird, PE & LS, dated May 19, 1997, said plat being recorded in Plat Book A 229, Page 7 in the Office of the Clerk of Court for York County, South Carolina, and incorporated herein by reference. This is the identical property described in deed of Wade S. Grant and Marva A. Miracle to Gary L. Graham and Theresa B. Graham dated October 27, 2006, and recorded on November 3, 2006, in Record Book 8547, Page 66, Office of the Clerk of Court for York County, South Carolina.

Reference is prayed to Deed of Distribution for the Estate of Theresa Maxine Graham to Jesse Lee Graham, Kayla Nicole Graham and Gary Leland Graham, and known as Case No. 2016ES4600891 in the Office of the

Probate Court for York County, South Carolina.

Reference is further prayed to Deed of Distribution for the Estate of Gary Leland Graham, known as Case No. 2017ES46-546 in the Office of the Probate Court for York County, South Carolina, to Jesse Lee Graham and Kayla Nicole Graham, dated November 30, 2018, and recorded November , 2018, in Record Book 17299, Page 390, Office of the Clerk of Court for York County, South Carolina.

This conveyance is made subject to all easements, restrictions, and rights of way, if any, appearing of record in the chain of title of the subject property or visible upon an actual, physical inspection of the subject property.

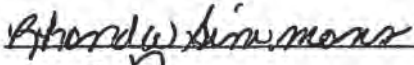
Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, his heirs and assigns forever.

And the Grantors do hereby bind themselves and their heirs and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee and the Grantee's heirs and assigns, against the Grantor and the Grantor's heirs and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Hand and Seal of the Grantor this 29 day of November in the year of our Lord Two Thousand Eighteen and in the two hundred forty-third year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of:


Rhonda Simmons




Jesse Lee Graham


Kayla Nicole Graham

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

ATTESTATION

I, G. Franklin Pendleton, II, do hereby certify that, Jesse Lee Graham and Kayla Nicole Graham, who are known to me or proved to me on the basis of satisfactory evidence to be the person(s) described, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing instrument for the purpose stated therein.

WITNESS my hand and official seal, this the 29 day of November, 2018.


Notary Public for South Carolina
My Commission Expires: 03/19/23

Grantee's address: 2048 Highway 557, Clover, SC 29710

OUTSIDE THE HOUSE

Front yard

- Cleaned the roof
- Pressure washed gutters
- Removed vines and bushes
- Pressure washed brick and patio
- Removed and cleaned yard waste
- Repaired and cleaned roof and gutters
- Repaired masonry/bricks on Patio
- Painted shutters and framing/eaves
- Replaced light fixtures
- Replaced several grates for crawl space-
- Laid garden pavers
- Planted new shrubs

Backyard

- Removed several trees
- Installed french drains
- Leveled yard
- Installed sandbags and plastic to protect AC unit
- Seeded lawn
- Built up the ground for fan and AC Unit/Pad
- Installed edging for the driveway
- Dug out garden to avoid wash-out on driveway
- Moved out 300 to 400 pounds of old pavers/bricks
- Cleaned screens and windows from patio
- Cleaned old pavers and relocated to side of the house
- Cleaned and landscaped around both sheds
- Replaced rotted lumber on smaller shed
- Scraped and painted larger shed

INSIDE THE HOUSE

Generally

- Removed more than two dumpsters of garbage, rubbish, and debris
- Polished floors
- Bombed for bugs
- Sanitized house with bleach to remove dog urine
- Repaired, sanded, and painted doors
- Cleaned chemicals, paint, and debris left on floors by first crew

Dining Room/Hallway

- Installed light fixtures
- Repaired edges of ceiling sheetrock and drywall caused by first crew
- Sanded crown molding and painted
- Repaired and finished window framing

Living Room

- Cleaned and polished floors
- Patched holes
- Sanded, mudded, and painted walls, trim, and ceiling
- Cleaned, oiled, and painted the fireplace fixture
- Cleaned and painted doors
- Cleaned and painted all closets
- Cleaned, caulked, and painted fireplace brick
- Installed light fixtures

Sunroom

- RegROUTED floors
- Cleaned and painted ceiling
- Re-stoned, cleaned and painted fireplace
- Refinished wood insert used in fireplace
- Painted french doors

INSIDE THE HOUSE (Bedrooms)

Master Bedroom

- Repaired edges of ceiling sheetrock and drywall caused by first crew
- Sanded crown molding and painted
- Repaired and finished window framing
- Installed light fixtures
- Selected fan installed by Joe
- Repaired, sanded, and painted doors
- Painted walls
- Cleaned and prepared floors for carpet installation

Guest Bedroom 1

- Cleaned and painted ceiling
- Repaired edges of ceiling sheetrock and drywall caused by first crew
- Cleaned and painted doors
- Cleaned and painted closet
- Painted walls
- Selected light fixture
- Repaired and finished window framing
- Cleaned and prepared floors for carpet installation

Guest Bedroom 2

- Repaired edges of ceiling sheetrock and drywall caused by first crew
- Sanded crown molding and painted
- Repaired and finished window framing
- Installed Light fixtures
- Cleaned and painted ceiling
- Clean and painted closet
- Painted walls
- Selected and installed light fixture

INSIDE THE HOUSE

Master Bathroom

- Mudded, sanded, and fixed holes in drywall
- Painted Walls
- Selected vanity and mirror
- Installed light fixtures and mirror

Guest Bathroom

- Stripped, sanded, and painted vanity
- Re-did the bathroom shower with Joe
- Painted walls
- Selected and designed the tile for Joe to install
- Selected window to replace standard window

Kitchen

- Cleaned up mud in pipes and floors left by first crew
- Sheetrocked and painted the ceiling
- Selected and installed light fixture over the sink
- Repaired, cleaned, and painted cabinets, and installed pulls
- Cleaned appliances and replaced broken parts (seals and water line)

YORK COUNTY ASSESSOR

Tax Map:
465-00-00-038
Date: 11/04/2020

E H

YORK COUNTY, SC	
2020053021	DEED
RECORDING FEES	\$15.00
STATE TAX	\$728.00
COUNTY TAX	\$308.00
11-03-2020	03:50:04 PM
BK:RB 18719	PG:316-317

Prepared by and return to:
FrickTrentLizzio, LLC
727 Dilworth Lane, Ste. 201
Rock Hill, SC 29732

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF York)

KNOW ALL PERSONS BY THESE PRESENTS, THAT **Gurdip Gill** ("GRANTOR") in the State and County aforesaid, for and in consideration of the sum of Two Hundred Eighty Thousand and NO/DOLLARS (U.S.) (\$280,000.00) to it in hand paid at and before the sealing of these presents by **Rodney O. Stancil** ("GRANTEE"), of 445 Rainbow Circle, Clover, SC 29710, in the State aforesaid for which the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said GRANTEE, his heirs and assigns, forever, in fee simple, the following described real property, to wit:

All that certain piece, parcel or lot of land, with improvements thereon, lying, being and situated in Bethel Township, York County, South Carolina, and more particularly described as follows: Beginning at a point in Rainbow Circle thence N. 84-19-13 W. 252.06 feet to an iron; thence N. 15-25-00 E 217.02 feet to an iron; thence S. 71-47-29 E. 253.78 feet to an iron; thence with the edge of Rainbow Circle S. 17-12-02 W. 162.11 feet to the beginning point. The above described property is shown on Plat of Survey for Richard J. & Mary C. Shannon by Joe H. Baird, PE & LS, dated May 19, 1997, said plat being recorded in Plat Book A 229, Page 7 in the Office of the Clerk of Court for York County, South Carolina, and incorporated herein by reference.

Derivation: This being the same property conveyed to Gurdip Gill by Deed from Jesse Lee Graham and Kayla Nicole Graham dated November 29, 2018 and recorded November 30, 2018 in Book 17299 at Page 392, in the Office of the Clerk of Court for York County, South Carolina.

Property Address: 445 Rainbow Circle, Clover, SC 29710
Tax Map #4650000038

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in any wise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said GRANTEE his heirs and assigns, forever, in fee simple.

AND, the GRANTOR does hereby bind itself and its Successors and Assigns, to warrant and forever defend, all and singular, the said Premises unto the said GRANTEE, his heirs and assigns, forever, in fee simple, against its Successors and Assigns, and all persons whomsoever now and hereafter lawfully claiming, or to claim the same or any part thereof.

WITNESS Grantor's hand and Seal this 1 day of September, 2020.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

WITNESSES:

GRANTOR:

Bonnie Elsin
Signature 1st Witness
Typed Name: Bonnie Elsin

Gurdip Gill
Gurdip Gill

Truman Smith
Signature 2nd Witness or Notary Public
Typed Name: Truman Smith

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF York)

I, the undersigned Notary Public do certify that Gurdip Gill, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my official seal this the 1 day of September, 2020.

Bonnie Elsin
1st Witness

Truman Smith
Notary Public for South Carolina

My Commission Expires: 5/24/24

Truman Smith
Notary Public, State of South Carolina
My Commission Expires May 24, 2024

Conversation with Gary Gill

iMessage Message sent 2/24/2019 8:45:28 AM - Delivered

Hey Gary! Suppose to be pretty today to decide what we're gonna do?

2/27/2019

iMessage Message sent 2/27/2019 9:54:58 PM - Delivered

Love love love that chainsaw!!! Gonna go to breakfast with Haley and the kids in the morning and then work in trees for a few hrs. Jimmy said he would come back so if it's ok I'll work him around 3 1/2 hours
And WOW WOW WOW curb appeal now!! That house looks huge sitting up on the hill now that it's opened up!!!

iMessage Message received from Gary Gill 2/27/2019 10:10:11 PM

GG

He can work I don't mind and happy birthday thanks again for your hard work let me know if you have time tomorrow night we can celebrate your birthday

iMessage Message sent 2/27/2019 10:12:20 PM - Delivered

Well thank you!! I will come by before I go to dinner and we'll talk about a time. Have a good night!

3/1/2019

iMessage Message sent 3/1/2019 5:10:02 PM - Delivered

Hey Gary I just came in from talking with you last time I've been doing my very best trying to move the water I have a lot of it moved but it's just coming down harder and faster than I can get moved. I will have to stop and go put some dry clothes on and take a hot shower and warm myself back up but I gave it everything I have. It's just coming down too hard

iMessage Message received from Gary Gill 3/1/2019 6:47:01 PM

GG

Thanks a lot sherry

iMessage Message sent 3/1/2019 6:47:51 PM - Delivered

You're welcome I'll work on it again when it dries out some

3/4/2019

iMessage Message sent 3/4/2019 7:04:05 AM - Delivered

Hey Gary it's Jessica, I have to take sherry to the doctor today, she was bitten by a spider a couple days ago and came in last night pouring sweat and couldn't walk! I had to call the paramedics. But I'll keep you updated.. it made her very sick and has given her very bad abdominal pain.. I'll let you know more later on when I know more. Thank you

iMessage Message received from Gary Gill 3/4/2019 7:10:12 AM

GG

Please let me know how is she

iMessage Message sent 3/4/2019 7:10:45 AM - Delivered

Can I call you later?

iMessage Message sent 3/4/2019 7:11:28 AM - Delivered

Hey she's sleeping I'll let you know!! We were up late from her being sick all night

iMessage Message received from Gary Gill 3/4/2019 7:12:10 AM

GG

Ok thanks

iMessage Message sent 3/4/2019 7:12:16 AM - Delivered

She resting now but when we get up I'll call you!

iMessage Message received from Gary Gill 3/4/2019 7:09:34 PM

GG

Hi sherry how are you feeling

iMessage Message sent 3/4/2019 7:13:05 PM - Delivered

Hey Gary! Much better this evening. Thank you for checking. Now last night I thought I was done!! I crawled through my door in pain craziest thing. But it must be clearing out of my system now.

iMessage Message received from Gary Gill 3/4/2019 7:24:43 PM

GG

Good i glad to hear that

iMessage Message sent 3/4/2019 7:25:07 PM - Delivered

Thank you

3/5/2019

iMessage Message sent 3/5/2019 10:07:11 AM - Delivered

Good morning Gary I'm sorry to bother ya. But Sunday I locked my keys in the house down the street. Are you going there this morning? Or can I come and get a key from you?

iMessage Message received from Gary Gill 3/5/2019 10:08:38 AM

GG

I bring you one

iMessage Message sent 3/5/2019 10:08:55 AM - Delivered

Ok thank you

3/6/2019

iMessage Message sent 3/6/2019 10:18:41 AM - Delivered

Morning Gary
I am going to take break today.. if you don't mind.
I have dr appt at 1:00 didn't have a good night and I'm not feeling 100 percent this way I can get an antibiotic and get back to normal self.
Have a good day.

3/14/2019

iMessage Message sent 3/14/2019 8:37:25 AM - Delivered

Morning Gary im about 30 mins out
See ya in a bit

iMessage Message received from Gary Gill 3/14/2019 8:48:42 AM

GG

Ok thanks

3/18/2019

iMessage Message sent 3/18/2019 12:45:05 PM - Delivered

Hey Gary OK so 830 to 1245 today Ed

3/21/2019

iMessage Message sent 3/21/2019 9:01:36 AM - Delivered

Good morning Gary I'm gonna be coming in a little later today I think my kidney still might be acting up again
Gonna lay back down for about an hour and let these meds kick in and then see if I can get going. Talk to ya in a bit.

3/26/2019

iMessage Message sent 3/26/2019 2:38:31 PM - Delivered

Hey Gary leaving my doctors appointment should be back about 310

3/29/2019

iMessage Message sent 3/29/2019 6:42:36 PM - Delivered

Hey Gary the hse is locked all good

4/1/2019

iMessage Message sent 4/1/2019 11:00:12 AM - Delivered

Damn Gary I forgot to tell you so With Robert the garage definitely has to have another scope and I know that he didn't coda because I stepped the mud out there and it hasn't been moved and it weighs the same so he only sanded the garage him and in the bedroom there is a few spots that he's gonna need to touch up and re-sand please

iMessage Message received from Gary Gill 4/1/2019 11:44:54 AM

GG

Ok I call him

4/5/2019

iMessage Message sent 4/5/2019 9:27:22 AM - Delivered

Out new area nice and clear of water



iMessage Message received from Gary Gill 4/5/2019 10:34:40 AM

GG

Vince i needs gas now I gave u gas order three days ago and today is Friday I always pay u on time I don't like do business that's way

iMessage Message sent 4/5/2019 10:58:04 AM - Delivered

Gary hi wrong person

4/6/2019

iMessage Message sent 4/6/2019 9:08:48 AM - Delivered

Good morning Gary

If it's ok with you I will work tomorrow at the hse. It's suppose to be thunderstorms. This way I can repair my lawnmower today. Robert never showed up yesterday. I did get the ceiling mudded. So a little touch ups In the house tomorrow and a few doors then will move to sunroom. Cus he still needs to sand the garage here and there which he knows. Have a good day! See y'all after while at the store.

4/7/2019

iMessage Message sent 4/7/2019 12:02:51 PM - Delivered

Aren't you glad that we say the Dogwood in the front he's pink he matches our roses





iMessage Message received from Gary Gill 4/7/2019 1:29:48 PM

GG

Yes looking so good

4/12/2019

iMessage Message sent 4/12/2019 11:00:28 AM - Delivered

Oh and I forgot to tell you that on the refrigerator was nice and cold this morning and ice maker is working we will need to replace that little valve eventually cause it scares me if it's not tight and just write it it might leak the water line for the fridge but it was nice and cold I sucked all the dust out of the motor yesterday

iMessage Message received from Gary Gill 4/12/2019 11:06:32 AM

GG

Thanks a lot

iMessage Message sent 4/12/2019 3:47:11 PM - Delivered



4/24/2019

iMessage Message sent 4/24/2019 4:14:28 PM - Delivered

Gary I don't know if I said thank you for lunch but thank you very much I appreciate it

iMessage Message received from Gary Gill 4/24/2019 4:22:04 PM

GG

You' deserve

5/3/2019

iMessage Message received from Gary Gill 5/3/2019 11:39:26 AM

GG

Hi sherry how was your surgery

iMessage Message sent 5/3/2019 4:09:38 PM - Delivered

Hey Gary all went well, meds wearing off and pretty sore
Thank you for asking though just been napping a lot

iMessage Message received from Gary Gill 5/3/2019 4:19:10 PM

GG

You need rest take couple days of

5/8/2019

iMessage Message sent 5/8/2019 12:26:56 PM - Delivered

Hey Gary I'm running to Lowe's to get my door paint mixed in those cans that I had it's not enough so I'll be right back

iMessage Message sent 5/8/2019 4:08:20 PM - Delivered





5/10/2019

iMessage Message sent 5/10/2019 11:09:22 AM - Delivered

Morning Gary if you need me I've run to Lowe's real quick I'll be right back

GG



GG

5/17/2019

DUNCAN_000104







5/21/2019

iMessage Message sent 5/21/2019 9:31:22 AM - Delivered

Morning Gary what do you wanna to meet this morning?

iMessage Message received from Gary Gill 5/21/2019 9:34:08 AM

GG

Can you come to store about 10.30 please

iMessage Message sent 5/21/2019 9:34:24 AM - Delivered

Ok will do

5/22/2019

iMessage Message received from Gary Gill 5/22/2019 7:09:31 AM

GG

Good morning sharry can you drop the contract paper at the store please you have that back tonight because Julia has a doctor appointment 9.30 today

5/30/2019

iMessage Message sent 5/30/2019 11:21:46 AM - Delivered

There in five

State of South Carolina Rev. 133EDCB
CONSTRUCTION CONTRACT AGREEMENT

This Construction Contract Agreement (this "Agreement") is made as of the 22 day of May, 2019 by and between Gary Gill Gurdip, an individual located at 2583 Courtland Dr, Clover, SC 29710 ("Owner") and Sherry Duncan, an individual located at 476 Rainbow Circle, Clover, SC 29710. Owner and Contractor may each be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

The Parties agree as follows:

1. Description of Work. Contractor shall perform the following described work at 445 Rainbow Circle, Clover, SC 29710 (the "Property"), in accordance with Owner's contract plans and specifications, this Agreement and any Change Order, as defined herein, (collectively, the "Contract Documents"): DEC 2018 Approximately 2100 sq ft. Gut inside home of debris. Over seen work of subs and gathered materials needed from material stores with personal vehicle and gas. Multiple daily trips. 2019 - Picked up ALL material needed, stones, bark, grass, lime, landscape, some windows, paints, etc. designed/picked out and/or ordered, picked up - All lighting, fans, paints, door hardware, doors, vanity's, mirrors, facets, windows, landscape etc. Removed layers of leaves from roof and gutters (and removed gutter covers) pressure washed exterior and removed multiple poison oak vines attached to home and gutters- December 2019 Repeated pressure of home and gutters again April 2019 Removed DEEP layers of leaves from yard and misc trash around home/in yard/ on porches. Removed all non working cable/phones lines and boxes off of home. Took multiple loads of Trash with trailer and personal vehicle. Reseeded approximately 1 acre, lime, and straw. Attached & trimmed 7 down spout lines to gutters and attach all lines together for basin. Approximately total 150 ft. Hand dug 2nd basin line 40 ft. and stalled drain line and basin. Built up AC area and installed plastic, pebbles and large trim stones for drainage. Approximately 6x4 ft area. Trip to Charlotte to purchase chain saw. Cut down 3 med to large trees and removed with some help provided for removal. Trimmed/pruned 5 trees. Removed large vines of poison oak from multiple trees and over brush around trees. Installed land scape fabric, mulch, and edging stones length of home front of home and side area. Installed 20 bushes/trees. (With some help provided) Filled many cracks in bricks of home and front-steps. Pressure washed driveway many times. Worked with contractor for removal tree and fill dirt for leveling yard. Removed large edging stones, hand dug and leveled small garden area beside driveway to keep from spilling mud over on to drive and covered with bark. Also installed edging on portion of drive way for this reason. Used those large stones to build a large fire pit for burning debris. Pressure washed swing, concrete pad and building. Painted & trimmed shed, also replaced rotten wood and painted, approximately 20x16 Removed old tiles from garage floor. Installed carpet on shelf. Installed hinges on crawl space door and painted. Re muddled garage ceiling, sanded, primed, caulked & painted. Remudded double garage walls, sanded, primed, caulked & painted walls & trim. Installed new garage interior door and hardware also caulked & painted. Caulked and painted all inside trim of 14 EXTERIOR windows. Inside - Cleaned up from previous contractor multiple times. Laid plastic sheeting (2) entire home to protect floors. Skim coated, filled holes, sanded, primed, painted WALLS, trim & doors. Installed new hardware. Skim coated, sanded, primed CEILINGS (from previous contractor. Kitchen, 2 baths, 3 bed rooms, hall, foyer, dining room, den, family room, mud room. Installed 2 bathroom mirrors Installed 4 bathroom lights Painted 1 vanity cabinet and replaced hardware Installed 7 lights, 1 sink, 2 br 1 hall, 1 foyer, 2 sunroom Installed 3 chandeliers 1 din, 1 den, 1 porch Painted to refurbish sunroom storm door installed new handles and pressure valve. Front door- Wood filled, sanded, painted, changed hardware Caulked all new molding for every window. Remudded ceiling and installed mud on 3rd bedroom additional work needed: 3 layers of painted on sunroom ceiling. caulked ALL cracks possible. Painted brick, fireplace, doors all trim. Cleaned - Installed stone on fake fireplace/mantel in sunroom. Painted mantel. Re grouted floors in sunroom. Painted & caulked holes fire place living room. Pulled up plastic to clean up former contractors mess left on wood floors. Vacuum multiple times, and mopped multiple times. Hand detailed all seams of floors to remove glue, Sheetrock mud Sheetrock dust deep in seams. Applied floor oil to polish floors. Will be applying 5/22/2019 wax to seal floors. Kitchen, din, den, hall, foyer

2. Contract Price and Payments. Owner agrees to pay Contractor the total amount of \$28,000.00 (the "Contract Price"). Payment of this amount is subject to additions or deductions in accordance with any mutually agreed to changes and/or modifications in the Work. Payment will be made by personal check, according to the following schedule:

- Paid 4/22/2019 \$2000 - 5/20/2019 \$1000 - DUE by 5/24/2019 \$3000.00 from the date of this Agreement.
- \$22,000.00 balance due immediately upon sale of home

IF home has not sold after 45 days, a payment that is satisfactory to Sherry Duncan of some form will need to be satisfied. After 90 days IF the home has not sold, another form of payment that is satisfactory will need to be negotiated.

3. Binding Effect. This Agreement shall be binding and enure to the benefit of the Parties and their respective legal representatives, heirs, administrators, executors, successors and permitted assigns.

4. Attorneys' Fees. If either Party brings legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover from the other Party its expenses (including reasonable attorneys' fees and costs) incurred in connection with the action and any appeal.

5. Disputes. Any dispute arising from this Agreement shall be resolved in the courts of the State of South Carolina.

6. Governing Law. This Agreement and the rights and obligations of the Parties hereto shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to its conflicts of laws provisions.

7. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, understandings and agreements.

8. Amendments. This Agreement may not be amended or modified except by a written agreement signed by the all of the Parties.

9. Other. Contract amount is not to be 1099 by home owner.

Sherry Duncan will report income on her personal taxes. IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Gary Gill Gurdip

Owner Signature

Owner Full Name

Sherry Duncan Contractor

Signature

Contractor Full Name

Witness:

Date:

Contractor Name: Sherry Duncan

Property Address: 445 Rainbow Circle, Clover, SC 29710

Contract Date: May 22, 2019 Completion Date: May 22, 2019 Construction Contract Agreement Rev. 133EDCB

DEPOSITION
EXHIBIT

1 Sherry Duncan
9-7-2021

A3

#TAX MAP

STATE OF SOUTH CAROLINA

NOTICE AND CERTIFICATE OF

COUNTY OF YORK

MECHANICS LIEN

465000038

BY: (Plaintiff)

TO: (Defendants)

NOTICE IS HEREBY GIVEN that Sherry Duncan (plaintiff) is due the sum of \$ 10,000 and 52500 Dollars from Gary Gill Burdip (defendant), a Statement of Just and true Account of said indebtedness, with all just credits given, being attached and made a part hereof as Attachment gls

That said indebtedness is due the undersigned, Sherry Duncan for Home Construction services authorized by the above said by way of verbal/provided materials These service fees are now delinquent as to the Real Estate hereafter described, and that Gary Gill Burdip (defendants) are the owners of such described Real Estate.

That, as shown by the attached Statement of Account, the described account is now delinquent.

That, by virtue thereof, by the service and filing of this Notice and Certificate of Lien, and pursuant to the provisions of Sect. 29-5, SC Code of Laws, the undersigned has and claims a lien to secure the payment for the debt so due and the costs of enforcing said lien upon the following described Real Property: SEE ATTACHMENT (or describe here)

PRESENTED & RECORDED
05-24-2019 01:36:29 PM
BK: LIENS 472
PG: 94 - 97
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
BY: KELLY RAMSEY CLERK

2019020304
MECHANICS LIEN
RECORDING FEES \$10.00

Sworn to before me on 24th day
of May, year 2019.

The forgoing is true of my own knowledge.

FOR: Sherry Duncan

BY: Sherry Duncan

Sherry Duncan-Duncan
PRINT NAME & TITLE

Jennifer Langford
NOTARY PUBLIC FOR: York County
My Commission Expires 9-28-28
STATE OF SOUTH CAROLINA

NOTE: This form does not constitute the rendering of legal advice. It is intended for information purposes only, and is not a substitute for legal advice. Consult an Attorney licensed to practice law in the State of South Carolina on legal matters.

DEPOSITION
EXHIBIT
2 Duncan
9-7-2021

ATTACHMENT _____
STATEMENT OF ACCOUNT

Personally appeared before me, a Notary Public for Sherry Duncan, the undersigned who deposes and declares as follows:

1. He is an agent for (Plaintiff) Sherry Duncan
2. (Plaintiff) Sherry Duncan furnished the below listed services & materials to Gary Bill (Defendant) Gurdip on the dates indicated.
3. The amount due and owing from (Defendant) Gary Bill Gurdip is as follows:

INVOICE NO.	INVOICE DATE	SERVICE/MATERIALS PROVIDED	AMOUNT OWED
\$	5/20/18	Contract Labor	\$70,525.00

Copies of Invoices are attached hereto.

Sworn to before me on 24th day
of May, 2019

Jennifer S. Langford
NOTARY PUBLIC FOR: Public County

My commission expires 8-28

FOR: _____ (Plaintiff) _____

BY: Sherry Duncan

Sherry Duncan - Duncan
PRINT NAME AND TITLE

THE STATE OF SOUTH CAROLINA
In The Court of Appeal

RECEIVED

Jul 29 2024

SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2019-CP-46-02090
Appellate Case No. 2023-001398

Sherry Killian Duncan, ... Appellant,
v.
Gurdip S. Gill a/k/a Gary Gurdip
a/k/a Gary Gurdip Gill, ... Respondent.

CERTIFICATE OF APPELLANT

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other materials.

Respectfully submitted,

By: 
Richard R. Gleissner (SC Bar No. 15139)
Gleissner Law Firm, LLC
1316 Washington Street, Suite 101
Columbia, SC 29201
(803) 787-0505
Rick@gleissnerlaw.com
Attorney for the Appellant

July 8, 2024