

2012-212770

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

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Case No. 2007-CP-23-0582

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**RECEIVED**

AUG 22 2012

**S.C. Supreme Court**

Cason Companies, Inc.,

Respondent,

v.

Joseph Gorrin and Sharon  
Gorrin,

Petitioners.

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**APPENDIX**

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Kimila L. Wooten  
ELMORE GOLDSMITH, PA  
Post Office Box 1887  
Greenville, South Carolina 29602  
(864) 255-9500-Telephone  
(864) 255-9505-Facsimile  
kwooten@elmoregoldsmith.com  
Counsel for Petitioners

David A. Wilson, Esquire  
DAVID A. WILSON, LLC  
200 Whitsett Street, Suite B  
Greenville, South Carolina 29601  
(864) 232-2329-Telephone  
(864) 232-2350-Facsimile  
dwilson@greenvillesclaw.com  
Counsel for Respondent

August 20, 2012

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**  
JUN 01 2011  
**SC Court of Appeals**

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2007-CP-23-0582

Cason Companies, Inc., ..... Respondent,

v.

Joseph Gorrin and Sharon Gorrin, ..... Appellants.

**RECORD ON APPEAL**

Kimila L. Wooten, Esquire  
ELMORE & WALL, P.A.  
Post Office Box 1887  
Greenville, South Carolina 29602  
(864) 255-9500-Telephone  
(864) 255-9505-Facsimile  
Counsel for Appellants

David A. Wilson, Esquire  
HORTON, DRAWDY, WARD,  
MULLINAX & FARRY, P.A.  
Post Office Box 10167  
Greenville, South Carolina 29603  
(864) 233-4351-Telephone  
(864) 233-7142-Facsimile  
Counsel for Respondent

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2007CP2300582

Cason Companies Inc vs. Joseph Gorrin

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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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; ☐ Statement of Judgment by the Court;

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 16th day of September, 2010, and a copy mailed first class this 16th day of September, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

David Alan Wilson Horton Drawdy Ward &  
Jenkins, PA P.O. Box 10167 FS Greenville, SC  
29603

Kimilia Lynn Wooten Elmore & Wall, Pa Po Box  
1887 Greenville, SC 296021887

---

ATTORNEY(S) FOR THE PLAINTIFF(S)

---

ATTORNEY(S) FOR THE DEFENDANT(S)

---

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

STATE OF SOUTH CAROLINA. ) THIRTEENTH JUDICIAL CIRCUIT  
COUNTY OF GREENVILLE )  
Cason Companies, Inc., )  
Plaintiff, )  
vs. )  
Joseph Gorrin and Sharon Gorrin, )  
Defendants. )

SEP 16 AM 11:32  
2007-CP-23-0582

**ORDER DENYING  
DEFENDANTS' MOTION FOR  
DIRECTED VERDICT ON  
ATTORNEYS' FEES**

After a four day trial, the jury awarded Plaintiff Cason Companies, Inc. actual damages in the amount of \$49,856.46. At the conclusion of Plaintiff's case, as well as at the close of all the evidence, the Defendants Joseph and Sharon Gorrin moved for a Directed Verdict on the issue of the Plaintiff's entitlement to attorney's fees under the South Carolina Personal Credit Application signed by the Defendants ("Cason/Gorrin Contract"). The Defendants rely upon S.C. Code Ann. §37-2-413 for the proposition that the Plaintiff is not entitled to any attorney's fees in connection with the Defendants breach of contract. The court, for the reasons that follow, denies the Directed Verdict motions, finds plaintiffs liable on the merits for defendant's attorney's fees and costs, and awards defendants reasonable attorney's fees and costs.

The Defendants failed to plead §37-2-413 as an affirmative defense under SCRCP 8. Affirmative defenses include any matters constituting an avoidance. Examples of affirmative defenses are illegality, fraud and statute limitations to name a few. An affirmative defense must be pleaded or it is waived. D & D Leasing Co. v. David Lipson, 305 S.C. 540, 409 S.E. 2d 794 (Ct. App. 1991).

In its Complaint and First Amended Complaint, Plaintiff specifically alleged that the Cason/Gorrin Contract provided for the Defendants to pay Plaintiff's attorney's fees, expenses and costs. The Defendants responded with a general denial to the allegations and asserted the affirmative defenses of unclean hands, estoppel and duress. At no point in time prior to the close of the Plaintiff's case in chief did the Defendants ever raise the applicability of §37-2-413 as a basis to limit the Plaintiff's award or avoid liability for attorney's fees, costs and expenses.

A defensive pleading should apprise the plaintiff of allegations in the complaint that a defendant will be required to establish in order to prevail. 24 S.C. Jur. Rules of Civil Procedure §8.2; Moore v. New South Express Lines, Inc., 184 S.C. 266, 192 S.E. 2d 261 (1997) (noting that it is a fundamental rule of pleading that the pleader must apprise his adversary of the grounds upon which he stands for the prosecution of the case on the one hand, or its defense on the other). Central to requiring the pleading of an affirmative defense is the prevention of unfair surprise. James v. Lister, 331 S.C. 277, 500 S.E. 2d (1998).

In this case, Defendants are attempting to invoke §37-2-413 to "avoid" liability for the First Cause of Action alleged in the Complaint and in the First Amended Complaint. I find as a matter of law and fact that the assertion of §37-2-413 is an affirmative defense. As such, the alleged applicability of this statute was waived when the Defendants failed to raise it as an affirmative defense.

The Defendants' reliance upon the holding in Ward v. West Oil Co., Inc., 387 S.C. 268, 692 S.E.2d 516 (2010), in support of its argument that it was not required to plead §37-2-413 is misplaced. The contract at issue in Ward was an *illegal* gambling

contract. The Supreme Court held that it would not enforce an illegal contract regardless of when the question of the illegality arises during the course of the trial, and regardless of whether it was pleaded or not.

In so holding, the Supreme Court distinguished the holding of Ward from Armstrong v. Collins, 367 S.C. 204, 621 S.E. 2d 368 (Ct. App. 2005). In Armstrong, the issue was whether the defendant was entitled to a directed verdict because the alleged contract relied upon by the Plaintiff was *unenforceable*. The Supreme Court found that the defendant failed to preserve the issue of the unenforceability of the contract.

The attorney's fees provision within the Cason/Gorin Contract signed by the Defendants is not illegal it is only arguably unenforceable. Section 37-2-413 states that a provision within a consumer credit sales agreement that provides for attorney's fees in excess of 15% of the unpaid debt is unenforceable. The statute does not, however, render the contract is illegal.

A defendant's reliance on a statute as a "shield with which to defend against plaintiff's right to recover" is an affirmative defense. Stephens v. J.E. Hendricks, 226 S.C 79, 83 S.E. 2d 634 (1954). A defendant's reliance on a statute to *limit liability* is likewise an affirmative defense. James v. Lister, 331 S.C. 277, 500 S.E. 2d 198 (Ct. App. 1999); see also Washington v. Whitaker, 317 S.C. 108, 451 S.E. 2d 894 (1994) (finding that reliance upon sovereign immunity to limit actual damages only (and not punitive damages) was an affirmative defense); Rakestraw v. S.C. Dep't of Highways & Pub. Trans., 323 S.C. 227, 473 S.E 2nd 890 (Ct. App. 1996); Niver v. S.C. Dep't of Highways & Pub. Trans., 302 S.461, 395 S.E. 2d 728 (Ct.App.1990) ( indicating that reliance on the

South Carolina Tort Claims Act is an affirmative defense when the SCTCA is asserted as a complete bar as well as claims in which the defense only seeks to limit liability).

I find as a matter of law and fact that the invocation of §37-2-413 to bar or limit the Plaintiff's claim for attorney's fees is an affirmative defense. The Defendants waived their right to rely upon this affirmative defense when they failed to assert it in their responsive pleadings and only raised the specific defense at trial after the Plaintiff presented its case, and more than three years after the filing of this lawsuit.

Even if it were not an affirmative defense, I find as a matter of law and fact that §37-2-413 does not apply in the present case to bar or limit the Plaintiff's claim for attorney's fees, expenses and costs.

The statute only applies to recovery of attorney's fees. It has no bearing on the Plaintiff's right to collect \$8,295.31 in expenses and costs related to this litigation. The Cason/Gorrin Contract signed by the Defendants obligates them to pay "costs and expenses." The Plaintiff is therefore entitled to an award of \$8,295.31 in costs and expenses as shown by the Affidavit of Attorney's Fees, Costs and Expenses submitted by the Plaintiff.

Additionally, the statute in question does not apply to the contract signed by the Defendants. I find as a matter of law and fact that the arrangement between the parties was not a "consumer credit sale" as defined by §37-2-413.

The evidence presented at trial established that the Gorrins paid for certain bricks, mortar and sand initially on a personal credit card. Subsequent to that initial purchase, the Gorrins signed the Cason/Gorrin contract so that bricks, mortar and sand could be delivered to the builder when the builder needed them for construction of the house. The

builder was a corporation. Sharon Gorrin testified that the liability to pay for the bricks, mortar and sand was the builder's liability. Once the bricks were delivered to the site, the builder was supposed to pay for the bricks either directly or through the construction draws. Regardless of who was supposed to pay for the materials, the Cason/Gorrin contract provides that the payments are due in full within (30) days of the date of Cason's invoice. The debt was not to be payable in installments. I find as a matter of law and fact that the Cason/Gorrin Contract was not the type of arrangement governed by §37-2-413.

A "consumer credit sale" is a sale of goods, services, or interest in land in which

- (a) Credit is granted by a person who regularly engages as a seller in credit transactions of the same kind,
- (b) The buyer is a person other than an organization,
- (c) The goods, services, or interest in land are purchased primarily for a personal family or household purpose,
- (d) Either the debt is payable in installments or a credit service charge is made, and
- (e) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars. S.C. Code §37-2-413 (1).

As relevant to the present case, the initial inquiry is whether the transaction between the Plaintiff and Defendants was a sale of goods purchased primarily for personal, family or household purposes. I find as a matter of law and fact that it was not and the statute does not apply.

Transactions which include materials to be incorporated into a structure are not agreements of sale. Epstein v. Giannattasio, 197 A. 2d 342 (Conn.1963). Bricks, mortar and sand are not "goods". "Ordinary building materials incorporated into an improvement on land" are not "goods." See S.C. Code 36-9-334 (a). As such, they are subject to the laws governing claims to real property. See e.g. S.C. Code Ann. §29-5-10 (mechanics' liens).

If somehow still considered "goods," bricks, mortar and sand are not goods purchased primarily for "personal, family or household purpose." They were purchased primarily for the builder to construct an improvement to real estate. The bricks, mortar and sand lost their identity as personalty. Bricks, mortar and sand are not for "normal consumptive activity by an individual." See Interstate Securities Corp. v. Constantino, 72 B.R. 189 (D.S.C. 1986). "Goods" are personal property. Accord In re Shaffer, 78 B.R. 783 (D.S.C. 1987). The concept of "goods" is limited to personalty which is movable or severable from realty and does not apply to lumber, bricks, cement or other like building materials. See Vernali v. Centrella, 266 A. 2d 200 (Conn. 1970); See also Kennedy v. Vacation International, Ltd., 841 F. Supp. 986 (D. Haw. 1994) (finding the tile installed in condominium was not a "good"); Dilorio v. Structural Stone & Brick Co., Inc., 845 A. 2d 658 (N.J. 2004) (findings that the installation of stones on a house was a transaction in real property and not a sale of goods); Dorsey v. Bowers, 709 So. 2d 51 (Ala. 1998) (finding that a chimney was not a "good").

If bricks, mortar and sand installed in the Defendant's house are still considered "goods," then §37-2-104 directly conflicts with §29-5-10 which provides for attorney's fees and costs to the prevailing party enforcing the mechanics' lien. Under §29-5-10, the attorney's fees and court costs are not limited to 15%. Instead, they "may not exceed the amount of the lien."

If bricks, mortar and sand purchased on behalf of a builder to use in the construction of a house are "goods" purchased "primarily for a personal, family or household purpose," I find as a matter of law and fact that the Cason/Gorrin Contract is still not governed by §37-2-104 for several reasons.

First, the debt was not payable in installments. Each time bricks, mortar or sand were delivered at the request of the builder, the invoice was to be paid. Payment was due on sale. The arrangement did not call for regular installment payments.

Additionally, the Cason/Gorrin Contract does not provide for the payment of "credit service charge." This term does "not include charges as a result of default." The Cason/Gorrin Contract provides that interest does not begin to accrue until after the account is "considered past due and in default." Interest does not accrue until (30) days after payment is due. As such, these are charges "as a result of default" and not governed by §37-2-104.

Furthermore, I find that, based on the affidavit of attorney's fees, costs, and expenses submitted by the Plaintiff, the attorney's fees are proper. Multiple criteria are used to determine the reasonableness of an attorney's fee award. Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989). The factors articulated by Baron are: (1) the nature, extent and difficulty of the legal services rendered by counsel, (2) the time and labor necessarily devoted to the case, (3) the professional standing of counsel, (4) the fee customarily charged in the locality for similar legal services, and (5) the beneficial results obtained.

Applying these factors to the facts of record, I find that the attorney's fees, costs, and expenses are proper. I specifically find that attorney's fees in the amount of \$51,560.00 are proper.<sup>1</sup> The complexity of the litigation between the parties required the

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<sup>1</sup> Plaintiff has requested \$51,560.00 as attorney's fees, based on 257.8 hours at a \$200 hourly rate. The court finds the time expended and the rate to be within the realm of reasonableness. Notably, in Baron the Supreme Court upheld an award of \$26,000.00 based on 260 hours billed at an hourly rate of \$100.00. Baron is now over 20 years old and no one would seriously contend that \$200.00 per hour is excessive in today's market, particularly for a lawyer as skilled and experienced as Mr. Wilson. Moreover, Baron involved litigation over two equipment leases, a subject that is similar in complexity to this action, which

plaintiff's counsel to expend considerable time and effort in case preparation and actual trial. The time and labor devoted by Plaintiff's counsel to the case were reasonable and not unnecessarily duplicative. There were numerous complex issues involved and the plaintiff's stubborn denial of the validity of and their responsibility for the debt protracted the litigation. Plaintiff's complaint contained numerous causes of action, forcing defendant to expend considerable time and resources to mount a proper defense. It was also transparently evident that plaintiffs exploited every opportunity to use their litigation as leverage for their ongoing dispute with the builder, who was not a party to their action. The Plaintiff's counsel is an experienced attorney who enjoys a high professional standing in the Greenville legal community. The hourly rate of \$200.00 charged by plaintiff's counsel is reasonable in comparison to attorney's fees customarily charged in the community. Plaintiff's counsel prevailed in this lawsuit and obtained a highly beneficial result for his client.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Directed Verdict on Attorneys' Fees is Denied, and Defendants are hereby awarded \$51,560.00 in attorney's fees and \$8,295.31 costs, for a total award and \$59,855.31 in attorney's financial costs.

IT IS SO ORDERED.

September 15, 2010  
Greenville, South Carolina

  
\_\_\_\_\_  
D. Garrison Hill  
Circuit Judge

---

morphed from a simple collection action into a referendum on the entire construction of a large residential home.

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

FILED-CLERK OF COURT  
GREENVILLE CO. SC  
JUDGMENT IN A CIVIL CASE

CASE NO: 2007CP2300582 A 10:41  
2007 SEP 15

Cason Companies Inc vs. Joseph Gorrin

CHECK ONE:

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☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other: \_\_\_\_\_

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

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

Dated at Greenville, South Carolina, this .

Court Reporter: \_\_\_\_\_

\_\_\_\_\_  
PRESIDING JUDGE -

This judgment was entered on the 15th day of October, 2010, and a copy mailed first class this 15th day of October, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

David Alan Wilson Horton Drawdy Ward &  
Jenkins, PA P.O. Box 10167 FS Greenville, SC  
29603

Kimilia Lynn Wooten Elmore & Wall, Pa Po Box  
1887 Greenville, SC 296021887

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ATTORNEY(S) FOR THE PLAINTIFF(S)

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ATTORNEY(S) FOR THE DEFENDANT(S)

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

FILED - CLERK OF COURT  
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 COUNTY OF GREENVILLE  
 2010 OCT 15 AM 10:41  
 2007-CP-23-0582  
 Cason Companies, Inc.,  
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 vs.  
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 Defendants.

AMENDED ORDER DENYING  
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In this case, Defendants are attempting to invoke §37-2-413 to "avoid" liability for the First Cause of Action alleged in the Complaint and in the First Amended Complaint. I find as a matter of law and fact that the assertion of §37-2-413 is an affirmative defense. As such, the alleged applicability of this statute was waived when the Defendants failed to raise it as an affirmative defense.

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The evidence presented at trial established that the Gorrins paid for certain bricks, mortar and sand initially on a personal credit card. Subsequent to that initial purchase, the Gorrins signed the Cason/Gorrin contract so that bricks, mortar and sand could be delivered to the builder when the builder needed them for construction of the house. The

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- (a) Credit is granted by a person who regularly engages as a seller in credit transactions of the same kind,
- (b) The buyer is a person other than an organization,
- (c) The goods, services, or interest in land are purchased primarily for a personal family or household purpose,
- (d) Either the debt is payable in installments or a credit service charge is made, and
- (e) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars. S.C. Code §37-2-413 (1).

As relevant to the present case, the initial inquiry is whether the transaction between the Plaintiff and Defendants was a sale of goods purchased primarily for personal, family or household purposes. I find as a matter of law and fact that it was not and the statute does not apply.

Transactions which include materials to be incorporated into a structure are not agreements of sale. Epstein v. Giannattasio, 197 A. 2d 342 (Conn.1963). Bricks, mortar and sand are not "goods". "Ordinary building materials incorporated into an improvement on land" are not "goods." See S.C. Code 36-9-334 (a). As such, they are subject to the laws governing claims to real property. See e.g. S.C. Code Ann. §29-5-10 (mechanics' liens).

If somehow still considered "goods," bricks, mortar and sand are not goods purchased primarily for "personal, family or household purpose." They were purchased primarily for the builder to construct an improvement to real estate. The bricks, mortar and sand lost their identity as personalty. Bricks, mortar and sand are not for "normal consumptive activity by an individual." See Interstate Securities Corp. v. Constantino, 72 B.R. 189 (D.S.C. 1986). "Goods" are personal property. Accord In re Shaffer, 78 B.R. 783 (D.S.C. 1987). The concept of "goods" is limited to personalty which is movable or severable from realty and does not apply to lumber, bricks, cement or other like building materials. See Vernali v. Centrella, 266 A. 2d 200 (Conn. 1970); See also Kennedy v. Vacation International, Ltd., 841 F. Supp. 986 (D. Haw. 1994) (finding the tile installed in condominium was not a "good"); DiIorio v. Structural Stone & Brick Co., Inc., 845 A. 2d 658 (N.J. 2004) (findings that the installation of stones on a house was a transaction in real property and not a sale of goods); Dorsey v. Bowers, 709 So. 2d 51 (Ala. 1998) (finding that a chimney was not a "good").

If bricks, mortar and sand installed in the Defendant's house are still considered "goods," then §37-2-104 directly conflicts with §29-5-10 which provides for attorney's fees and costs to the prevailing party enforcing the mechanics' lien. Under §29-5-10, the attorney's fees and court costs are not limited to 15%. Instead, they "may not exceed the amount of the lien."

If bricks, mortar and sand purchased on behalf of a builder to use in the construction of a house are "goods" purchased "primarily for a personal, family or household purpose," I find as a matter of law and fact that the Cason/Gorrin Contract is still not governed by §37-2-104 for several reasons.

First, the debt was not payable in installments. Each time bricks, mortar or sand were delivered at the request of the builder, the invoice was to be paid. Payment was due on sale. The arrangement did not call for regular installment payments.

Additionally, the Cason/Gorin Contract does not provide for the payment of "credit service charge." This term does "not include charges as a result of default." The Cason/Gorin Contract provides that interest does not begin to accrue until after the account is "considered past due and in default." Interest does not accrue until (30) days after payment is due. As such, these are charges "as a result of default" and not governed by §37-2-104.

Furthermore, I find that, based on the affidavit of attorney's fees, costs, and expenses submitted by the Plaintiff, the attorney's fees are proper. Multiple criteria are used to determine the reasonableness of an attorney's fee award. Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989). The factors articulated by Baron are: (1) the nature, extent and difficulty of the legal services rendered by counsel, (2) the time and labor necessarily devoted to the case, (3) the professional standing of counsel, (4) the fee customarily charged in the locality for similar legal services, and (5) the beneficial results obtained.

Applying these factors to the facts of record, I find that the attorney's fees, costs, and expenses are proper. I specifically find that attorney's fees in the amount of \$51,560.00 are proper.<sup>1</sup> The complexity of the litigation between the parties required the

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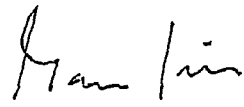
<sup>1</sup> Plaintiff has requested \$51,560.00 as attorney's fees, based on 257.8 hours at a \$200 hourly rate. The court finds the time expended and the rate to be within the realm of reasonableness. Notably, in Baron the Supreme Court upheld an award of \$26,000.00 based on 260 hours billed at an hourly rate of \$100.00. Baron is now over 20 years old and no one would seriously contend that \$200.00 per hour is excessive in today's market, particularly for a lawyer as skilled and experienced as Mr. Wilson. Moreover, Baron involved litigation over two equipment leases, a subject that is similar in complexity to this action, which

plaintiff's counsel to expend considerable time and effort in case preparation and actual trial. The time and labor devoted by Cason's counsel to the case were reasonable and not unnecessarily duplicative. There were numerous complex issues involved and the Defendant's stubborn denial of the validity of and their responsibility for the debt protracted the litigation. Defendant's Answer and Counterclaim contained numerous causes of action, forcing Cason to expend considerable time and resources to mount a proper defense to the counterclaims. It was also transparently evident that the Defendants exploited every opportunity to use this litigation as leverage for their ongoing dispute with the builder, who was not a party to this action. The Plaintiff's counsel is an experienced attorney who enjoys a high professional standing in the Greenville legal community. The hourly rate of \$200.00 charged by plaintiff's counsel is reasonable in comparison to attorney's fees customarily charged in the community. Plaintiff's counsel prevailed in this lawsuit and obtained a highly beneficial result for his client.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Directed Verdict on Attorneys' Fees is Denied, and Defendants are hereby awarded \$51,560.00 in attorney's fees and \$8,295.31 costs, for a total award and \$59,855.31 in attorney's financial costs.

IT IS SO ORDERED.

<sup>28</sup>  
September 15, 2010  
Greenville, South Carolina

  
\_\_\_\_\_  
D. Garrison Hill  
Circuit Judge

morphed from a simple collection action into a referendum on the entire construction of a large residential home.

A Certified Copy  
Paul B. Widenmaier  
Clerk of Court C.P. & G.S.  
Greenville County, SC  
Dated 10/15/10

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

FILED CLERK OF COURT  
GREENVILLE  
PAUL B. WICKENSIMER

JUDGMENT IN A CIVIL CASE

CASE NO: 2007CP2300582

2010 JUN 21 A 11:44

Cason Companies Inc vs. Joseph Gorrin

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: \_\_\_\_\_

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☐ Statement of Judgment by the Court:

*See attached verdict & jury. Parties have 10 days to serve and file post-trial motions and to submit memoranda on the attorneys fees issue.*

Dated at Greenville, South Carolina, this June 17, 2010

Court Reporter: Susan Hudgins

*Man / in*

PRESIDING JUDGE - D. Garrison Hill

This judgment was entered on 6/21/10, and a copy mailed first class 6/21/10, to attorneys of record or to parties (when appearing pro se) as follows:

David Alan Wilson Horton Drawdy Ward & Jenkins, PA  
P.O. Box 10167 FS Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kimilia Lynn Wooten Elmore & Wall, Pa Po Box 1887  
Greenville, SC 296021887

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP-24/FORM 4

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

ENTERED COMPUTER

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
JUDGE WILLIAM W. WILKINSON

Cason Companies, Inc.,

Plaintiff,

v.

Joseph Gorrin and Sharon Gorrin,

Defendants.

2010 JUN 21 A 11:44 2007-CP-23-0582

VERDICT FORM

1. ☒ As to Plaintiff Cason Companies, Inc.'s claims against defendants Joseph Gorrin and Sharon Gorrin, we the jury unanimously find for the plaintiff, Cason Companies, Inc., in the amount of \$ 49,856.46 actual damages.

\_\_\_\_\_ As to Plaintiff Cason Companies, Inc.'s claims against defendants Joseph Gorrin and Sharon Gorrin, we the jury unanimously find for the defendants, Joseph Gorrin and Sharon Gorrin.

2.

\_\_\_\_\_ As to Defendants Joseph Gorrin and Sharon Gorrin's claim against plaintiff Cason Companies, Inc., we the jury unanimously find for the defendants, Joseph Gorrin and Sharon Gorrin in the amount of \$ \_\_\_\_\_ actual damages.

☒ As to Defendants Joseph Gorrin and Sharon Gorrin's claim against plaintiff Cason Companies, Inc., we the jury unanimously find for the plaintiff, Cason Companies, Inc.

June 17, 2010  
Greenville, South Carolina

Cheryl Frazer  
Foreperson

A CERTIFIED COPY  
Paul B. Wilkerson  
Clerk of Court C.P. & G.S.  
Greenville County, SC  
Dated 6/21/10

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Cason Companies, Inc.,

Plaintiff

v.

Joseph Gorrin and Sharon Gorrin,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2007-CP-23- 0582

2007 JAN 25 A 10:50

DEED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENS

COMPLAINT  
(NON-JURY)

The Plaintiff, complaining of the Defendants above-named, would respectfully allege and show unto this Court as follows:

1. The Plaintiff is a corporation organized and existing under the laws of the State of North Carolina and authorized to do business in the State of South Carolina.
2. The Defendants Joseph & Sharon Gorrin are citizens and residents of the County of Greenville, State of South Carolina.
3. This court has jurisdiction over the parties and subject matter of this action and venue is proper in this court.

FIRST CAUSE OF ACTION

4. At the special instance and request of the Defendants, the Plaintiff sold bricks and mortar to the Defendants during the timeframe of June 2005 through February of 2006 at the prices shown on the verified itemized Statement of Account attached hereto as Exhibit "A" and made a part hereof.

5. The Defendants accepted said goods and agreed to pay for same at the prices shown on the aforementioned statement and there is a balance due on this account in the amount of \$28,709.89 plus interest at the highest legal rate.

6. Pursuant to the agreement between the parties, the Defendants agreed to pay finance charges to the Plaintiff for any credit extended at the rate of 18% per annum for all past due balances.

7. The Plaintiff has repeatedly demanded payment from the Defendants for the outstanding balance due and owing on said account but the Defendants have repeatedly failed and refused, and continue to fail and refuse, to pay same.

8. The Plaintiff requests that this court grant judgment in its favor against the Defendants, jointly and severally, for the sum of \$28,709.89 plus interest at the highest legal rate together with attorney's fees and the costs and expenses of this matter for breach of contract.

#### FOR A SECOND CAUSE OF ACTION

9. The Plaintiffs reincorporate by reference hereto, each of the allegations contained in the preceding paragraphs not inconsistent herewith.

10. Upon the Defendants' order, Plaintiff delivered brick and mortar to the Defendants and remitted invoices for payment. The Defendants have failed to pay the Plaintiff for the brick and mortar received by the Defendants and, upon information and belief, the Defendants have used said brick and mortar in the construction of their home.

11. As a result of the Defendants' refusal to pay, the Defendants have been unjustly enriched to the detriment of the Plaintiff.

12. The Plaintiff seeks restitution in the amount of \$28,709.89 to compensate the Plaintiff for the unjust enrichment to the Defendants.

#### FOR A THIRD CAUSE OF ACTION

13. The Plaintiff reincorporate, by reference hereto, each of the allegations contained in the preceding paragraphs not inconsistent herewith.

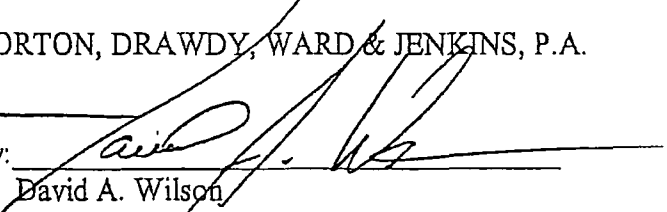
14. The Defendants purchased brick and mortar from the Plaintiff and the Defendants have failed to pay Plaintiff for the goods shipped to, received by and accepted by the Defendants.

15. Should the court find no express contracts between the Plaintiff and the Defendants, the Plaintiff is entitled to recover from the Defendant under the doctrine of *quantum meruit*.

16. The Plaintiff seeks payment under the doctrine of *quantum meruit* in the sum of \$28,709.89 based upon the implied-in-fact contracts between the Plaintiff and Defendants.

WHEREFORE, the Plaintiff prays for judgment against the Defendants, jointly and severally, for the sum of \$28,709.89 plus interest at the highest legal rate, the attorney's fees, costs and expenses of this matter. The Plaintiff also prays for such other and further relief as this court, in its discretion, may deem just and proper considering the circumstances herein prevailing.

HORTON, DRAWDY, WARD & JENKINS, P.A.

By: 

David A. Wilson

P.O. Box 10267

Greenville, South Carolina 29603

(864) 233-4351

Attorneys for Plaintiffs

January 24, 2007

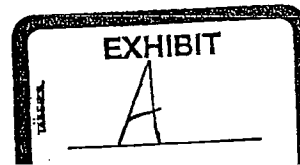
Law Offices  
Horton, Drawdy  
Ward &  
Jenkins, P.A.  
Greenville, S.C.

STATE OF SOUTH CAROLINA    )  
                                          )  
COUNTY OF GREENVILLE    )

STATEMENT OF ACCOUNT

Personally appeared before me John B. Gould who, first being duly sworn, deposes and says:

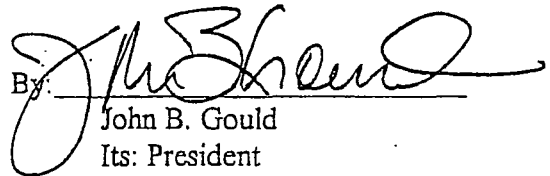
1. That he the President of Cason Companies, Inc. and has authorization to make this Affidavit.
2. That during the timeframe of June of 2005 through February of 2006, Plaintiff bricks and mortar to the Defendants totaling \$28,709.89 as shown by the invoices attached hereto collectively as Exhibit "1".
3. That the Plaintiff has repeatedly demanded payment from the Defendants for the outstanding balance due and owing on said account but the Defendants have repeatedly failed and refused, and continue to fail and refuse to pay same.
4. That there is justly due and owing by Defendants over and above any discount and without deduction or set-off, the sum of Twenty-Eight Thousand Seven Hundred Nine and 89/100 (\$28,709.89) Dollars, together with any interest at the highest legal rate, and reasonable attorney's fees and costs.
5. That pursuant to the terms of the agreement between the parties, the Defendant agreed to pay finance charges for any credit extended at the rate of 18% per annum for all past due balances.
6. That Cason Companies, Inc. has not, directly or indirectly, received any of the money charged herein as due or received any security or satisfaction for which credit has not already been given.



7. That Cason Companies, Inc., by and through its duly authorized undersigned agent, certifies that this is a just and true Statement of Account, no part of which has been paid by discount, or otherwise.

Further, your deponent sayeth not.

Cason Companies, Inc.

By:   
John B. Gould  
Its: President

SWORN to before me this 24<sup>th</sup> day  
of January, 2007

  
Notary Public for South Carolina  
My Commission Expires: 3/30/14

01/12/2018 21:48 FAX

002

# ASON BUILDERS SUPPLY STATEMENT

A Division of Cason Companies, Inc.

P.O. BOX 1820

ANDERSONVILLE, NORTH CAROLINA 28793

PHONE (828) 892-5716

FAX (828) 897-7327

STATEMENT DATE

6/30/06

ACCOUNT NUMBER

GORRIN, JOSEPH & SHARON  
JOSEPH GORRIN

SIMPSONVILLE, SC  
USA

CODES: I = INVOICE D = DEBIT MEMO C = CREDIT MEMO B = BALANCE FORWARD  
P = PAYMENT A = DISCOUNT ALLOWED F = FINANCE CHARGE

| DATE    | CODE | REFERENCE | CHARGES AND CREDITS | BALANCE   |
|---------|------|-----------|---------------------|-----------|
| 2/07/06 | I    | 765074    | 794.33              | 20,040.45 |
| 2/07/06 | I    | 765084    | 35.70               | 20,076.15 |
| 2/13/06 | I    | 765376    | 1,642.20            | 21,718.35 |
| 2/14/06 | I    | 765515    | 35.70               | 21,754.05 |
| 2/16/06 | I    | 765579    | 763.53              | 22,517.58 |
| 2/16/06 | I    | 765650    | 1,763.22            | 23,780.80 |
| 2/24/06 | I    | 766195    | 154.27              | 23,935.07 |
| 2/28/06 | I    | 766326    | 22.06               | 23,957.07 |
|         |      |           | Finance Charges     | 4,752.82  |

ALL DUE BALANCES ARE SUBJECT  
18% APR INTEREST CHARGE. (F)

PLEASE PAY

28,709.89

CURRENT

OVER 30  
PAST DUE

OVER 60  
PAST DUE

90 AND OVER  
PAST DUE

.00

.00

.00

26,014.72

EXHIBIT

01/12/2018 21:48 FAX

003

# CASON BUILDERS SUPPLY STATEMENT

A Division of Cason Companies, Inc.

P.O. BOX 1520

HENDERSONVILLE, NORTH CAROLINA 28793

PHONE (828) 692-5718

FAX (828) 697-7327

STATEMENT DATE

6/30/06

ACCOUNT NUMBER

GORRYN, JOSEPH & SHARON  
JOSEPH GORRYN

SIMPSONVILLE, SC  
USA

CODES: I=INVOICE D=DEBIT MEMO C=CREDIT MEMO B=BALANCE FORWARD  
P=PAYMENT A=DISCOUNT ALLOWED F=FINANCE CHARGE

| DATE     | CODE | REFERENCE | CHARGES AND CREDITS | BALANCE   |
|----------|------|-----------|---------------------|-----------|
| 8/31/05  | B    | Bal Fwd   | .00                 | .00       |
| 8/31/05  | I    | 757361    | 1,850.84            | 1,850.84  |
| 9/06/05  | I    | 757530    | 18.23               | 1,869.07  |
| 9/07/05  | I    | 757639    | 1,735.37            | 3,604.44  |
| 9/07/05  | I    | 757640    | 1,763.76            | 5,368.20  |
| 9/13/05  | I    | 757918    | 209.48              | 5,577.68  |
| 9/16/05  | I    | 758092    | 27.93               | 5,605.61  |
| 9/16/05  | I    | 758130    | 1,890.88            | 7,496.49  |
| 9/19/05  | I    | 758267    | 1,787.21            | 9,283.70  |
| 9/20/05  | I    | 758305    | 463.67              | 9,747.37  |
| 9/21/05  | I    | 758437    | 211.47              | 9,958.84  |
| 10/07/05 | I    | 759268    | 184.00              | 10,142.84 |
| 10/25/05 | P    | 49713     | 2,000.00c           | 8,142.84  |
| 10/25/05 | F    | 20061025  | 119.37              | 8,262.01  |
| 10/31/05 | I    | 760694    | 3,213.00            | 11,475.01 |
| 11/10/05 | I    | 761235    | 24.15               | 11,499.16 |
| 11/14/05 | I    | 761656    | 2,429.23            | 13,928.39 |
| 11/18/05 | F    | 20061118  | 123.93              | 14,052.32 |
| 12/07/05 | C    | 762533    | 243,300c            | 13,809.02 |
| 1/17/06  | C    | 763635    | 123.93c             | 13,685.09 |
| 1/17/06  | I    | 763671    | 518.67              | 14,203.76 |
| 1/17/06  | I    | 764145    | 2,521.18            | 16,724.94 |
| 1/19/06  | I    | 764159    | 2,521.18            | 19,246.12 |

PLEASE PAY

Gorin, Joseph & Sharon  
Finance Charges Thru 1/15/07  
Acct #

|                  | \$         | Months | 1.5%<br>Interest |
|------------------|------------|--------|------------------|
| 9/25/05 Balance  | 9,957.84   | 15.5   | 2,315.20         |
| 10/25/05 Balance | (1,695.83) | 14.5   | (368.84)         |
| 11/25/05 Balance | 5,790.31   | 13.5   | 1,172.54         |
| 12/31/05 Balance | (243.30)   | 12.5   | (45.62)          |
| 1/25/06 Balance  | 5,437.10   | 11.5   | 937.90           |
| 2/25/06 Balance  | 4,688.90   | 10.5   | 738.50           |
| 3/25/06 Balance  | 22.05      | 9.5    | 3.14             |
|                  |            |        | 4,752.82         |

|                                  |   |                                |  |
|----------------------------------|---|--------------------------------|--|
| STATE OF SOUTH CAROLINA          | ) | IN THE COURT OF COMMON PLEAS   |  |
|                                  | ) | C.A. NO.: 2007-CP-23-0582      |  |
| COUNTY OF GREENVILLE             | ) |                                |  |
| Cason Companies, Inc.,           | ) |                                |  |
|                                  | ) | <b>ANSWER AND COUNTERCLAIM</b> |  |
| Plaintiff,                       | ) |                                |  |
|                                  | ) | <b>(Jury Demanded)</b>         |  |
| v.                               | ) |                                |  |
|                                  | ) |                                |  |
| Joseph Gorrin and Sharon Gorrin, | ) |                                |  |
|                                  | ) |                                |  |
| Defendants.                      | ) |                                |  |

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2007 APR -9 P 1:18  
 FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSHER

The Defendants, Joseph Gorrin and Sharon Gorrin ("the Gorrins") answering the Plaintiff's Complaint, show as follows:

1. The Gorrins are without sufficient information to either admit or deny the allegations of Paragraph 1 of the Complaint; therefore, same are denied.
2. The Gorrins admit the allegations of Paragraph 2 of the Complaint.
3. The Gorrins are without sufficient information to either admit or deny the allegations of Paragraph 3 of the Complaint; therefore, same are denied.
4. The Gorrins admit the allegations of Paragraph 4 of the Complaint to the extent that they purchased brick from Cason and were invoiced for the same.
5. The Gorrins deny the allegations of Paragraph 5 of the Complaint.
6. The Gorrins deny the allegations of Paragraph 6 of the Complaint.
7. The Gorrins admit that the Plaintiff has demanded payment for materials furnished. However, the Gorrins have been justified in the failure to pay

the alleged amount due. Therefore, the remaining allegations of Paragraph 7 of the Complaint are denied.

8. The Gorrins deny the allegations of Paragraph 8 of the Complaint.
9. Paragraph 9 is a reallegation of previous Paragraphs of the Complaint. Accordingly, the Gorrins reallege each of the allegations contained in the preceding Paragraphs of this Answer and Counterclaim as if fully set forth herein.
10. The Gorrins admit that the Plaintiff delivered brick and mortar to the Defendants and have sent invoices. The Defendants admit that some of said brick and mortar was used in the construction of their home. The Gorrins are justified in their failure to pay the amount alleged to be due. Accordingly, the remaining allegations of Paragraph 10 of the Complaint are denied.
11. The Gorrins deny the allegations of Paragraphs 11 of the Complaint.
12. The Gorrins deny the allegations of Paragraph 12 of the Complaint.
13. Paragraph 13 is a reallegation of previous Paragraphs of the Complaint. Accordingly, the Gorrins reallege each of the allegations contained in the preceding Paragraphs of this Answer and Counterclaim as if fully set forth herein.
14. The Gorrins admit that the Plaintiff delivered brick and mortar to the Defendants and have sent invoices. The Defendants admit that some of said brick and mortar was used in the construction of their home. The Gorrins are justified in their failure to pay the amount alleged to be due.

Accordingly, the remaining allegations of Paragraph 14 of the Complaint are denied.

15. The Gorrins deny the allegations of Paragraph 15 of the Complaint.
16. The Gorrins deny the allegations of Paragraph 16 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

##### **(For a First Affirmative Defense)**

17. Plaintiff's Complaint fails to state a claim upon which relief may be granted pursuant to Rule (12)(b)(6) of the South Carolina Rules of Civil Procedure.

##### **(For a Second Affirmative Defense)**

18. The Plaintiff's claim is barred by the doctrine of unclean hands.

##### **(For a Third Affirmative Defense)**

19. The Plaintiff is estopped by its own conduct from asserting a claim against the Defendants.

##### **(For a Fourth Affirmative Defense and By Way of Counterclaim)**

The Gorrins assert the following by way of Counterclaim:

20. In June of 2005, the Gorrins went to Cason's office and viewed samples of brick. At that time, Cason was asked to order the brick for the Gorrins' house.
21. The Gorrins' builder asked Cason to do a takeoff of the plans in order to get an accurate count of the brick needed. Cason undertook the responsibility to calculate how many brick were needed.
22. Cason determined that 35,000 brick would be needed for the Gorrins' home. At this time, the Gorrins told Cason that they contemplated an

additional fireplace and wanted to make sure there would be enough brick available if they decided to add the fireplace.

23. Cason represented that the addition of the fireplace would require approximately 3,000 extra brick. Cason's representative told the Gorrins that there over 100,000 additional brick available in the style chosen by the Gorrins, and represented that it would be "no problem" if the fireplace were added.
24. The brick order was placed on June 7, 2005. After the order for the brick was placed, in mid-August of 2005, Cason informed the Gorrins that the builder's credit was denied. At that time, Cason told the Gorrins that they could apply for credit themselves. This was the only way that the brick order could be delivered. The Gorrins did so, and were approved by Cason for the credit. The brick was ordered, and delivered to the jobsite.
25. In October, 2005, the masonry work came to a standstill. The Gorrins discovered that Cason had made an error on the calculation on the brick needed to complete the house. By October of 2005, all of the 35,000 brick that had been delivered had already been used.
26. The Gorrins discovered that there was no more brick available, despite Cason's representation that 100,000 brick were available at the yard.
27. Mrs. Gorrin met with two representatives of Cason and the Gorrins' builder at the Gorrins' home in the fall of 2005. Cason informed Mrs. Gorrin that he would take responsibility to find a solution for the brick shortage.

Cason also stated that an additional 15,000 brick would be needed in order to complete the house.

28. At this time, Cason made the suggestion that the house could be finished on the back with some other type of material. The Gorrins refused this suggestion.
29. Mrs. Gorrin reminded Cason at this meeting that Cason had promised that there were over 100,000 additional brick available.
30. On November 14, 2005, Mrs. Gorrin spoke with a representative of Cason, who said that he was doing "everything within his power" to locate more brick, and that Cason would place an order for a "run" of brick. At this time, Cason's representative stated that the brick would now not be shipped until right before Christmas.
31. The Gorrins' contract with the builder was to be completed by December 31, 2005. Because of the delay caused by Cason's error in calculating the number of brick, the Project was delayed, and costs began to escalate. Without the brick being completed, the roof could not be completed, the sheetrock could not be completed, and materials had to be ordered to protect the home. Major leaks took place during this time, due to not having the house "dried in." Contractors that had been scheduled for the Gorrins' Project went to other projects due to not being able to work on the scheduled times.
32. In the late fall of 2005, Cason informed the Gorrins that more brick could not be located. The Gorrins explained to Cason that draws could not be

paid to the builder until the brick was completed, and that financing would be lost if the brick were not found.

33. On December 30, 2005, Cason's representative called Mrs. Gorrin and stated that the only way to get enough brick to finish the house was to order 180,000 brick. At no time did Cason indicate that extra money would be charged due to their error in calculating the number of brick needed.
34. On January 11, 2005, Cason's representative called Mrs. Gorrin and stated that they were very upset with their brick supplier because the brick had been located. The brick were finally delivered to the jobsite in mid-February, 2006.

**FOR A FIRST CAUSE OF ACTION**  
**(BREACH OF CONTRACT)**

35. The facts as alleged above demonstrate that a contract was made between Cason and the Gorrins to purchase enough brick to finish the home.
36. Cason breached the contract in many aspects, including, but not limited to, the following:
  - A. By failing to order the proper amount of brick for the home.
  - B. By failing to assure that enough brick would be available to finish the home.
  - C. By furnishing defective brick to the home.
37. As a direct and proximate result of Cason's breaches of contract, the Gorrins have suffered damages and losses for delays to the work,

defective work, and loss of financing, together with other actual and consequential damages, for which they hereby sue.

**FOR A SECOND CAUSE OF ACTION**  
**(BREACH OF CONTRACT ACCOMPANIED**  
**BY FRAUDULENT ACT)**

38. The Gorrins reassert and reallege Paragraphs 1 through 37 above to the extent consist herewith.
39. Cason has breached the contract with the Gorrins as described above.
40. Cason made fraudulent misrepresentations to the Gorrins in that representations were made as to the number of brick available, when Cason knew or should have known that the brick would not be available. Cason also misrepresented the quality of the brick ultimately delivered.
41. Cason's misrepresentations were false when made, and they were known to be false.
42. Upon information and belief, Cason intended to deceive the Gorrins with these misrepresentations.
43. As a direct and proximate result of this breach of contract accompanied by fraudulent act, the Gorrins have suffered damages in an amount greater than the minimum jurisdictional limits of this Court, for which they hereby sue, and further request punitive damages in an amount to be determined by the jury.

**FOR A THIRD CAUSE OF ACTION**  
**(BREACH OF WARRANTY)**

44. The Gorrins reassert and reallege Paragraphs 1 through 43 above to the extent consistent herewith.

45. In connection with contracting to sell construction materials, Cason impliedly warranted that the materials would be free of defects.
46. The Gorrins have discovered that the some of the brick on their home is defective and will need to be replaced.
47. As a direct and proximate result of this breach of warranty, the Gorrins have suffered damages in an amount greater than the minimal jurisdictional limits of this Court, for which they hereby sue.

**FOR A FOURTH CAUSE OF ACTION**  
**(NEGLIGENCE/GROSS NEGLIGENCE)**

48. The Gorrins reassert and reallege Paragraphs 1 through 47 above to the extent consistent herewith.
49. Cason owed a duty to the Gorrins to exercise the degree of skill necessary to properly calculate the number of brick to be used on the house, and to supply brick that is not defective.
50. Cason breached its duty of care and acted negligently and/or grossly negligent in the following particulars:
  - A. By supplying defective brick to the Project.
  - B. By failing to properly calculate the number of brick required for use on the Gorrins' home.
  - C. By misrepresenting the number of brick which would be available for construction on the Gorrins' home.
51. As a direct and proximate result of the negligence and/or gross negligence of Cason, the Gorrins have suffered damages in the amount greater than the minimum jurisdictional limits of this Court, for which they hereby sue,

and further request punitive damages in an amount to be determined by the jury.

**FOR A FIFTH CAUSE OF ACTION**  
**(NEGLIGENT MISREPRESENTATION)**

52. The Gorrins reassert and reallege Paragraphs 1 through 51 above to the extent consistent herewith.
53. Cason represented to the Gorrins that it would order enough brick to finish the home and that further brick would be available if necessary. In addition, Cason represented that the brick would be of good quality, and acceptable by industry standards.
54. Cason owed the Gorrins a duty of care to communicate and provide information and representations truthfully and accurately.
55. The Gorrins were ignorant of the falsity of the representations made by Cason, and justifiably relied upon them and had a right to rely upon them.
56. As a direct and proximate result of these negligent misrepresentations, the Gorrins have suffered damages in an amount greater than the minimum jurisdictional limits of this Court, for which they hereby sue.

**FOR A SIXTH CAUSE OF ACTION**  
**(UNFAIR TRADE PRACTICES)**

57. The Gorrins reassert and reallege Paragraphs 1 through 56 above to the extent consistent herewith.
58. The actions of Cason described above constitute deceptive acts or practices in the conduct or trade or commerce which can have an adverse impact on the public interest.

59. Cason's deceptive acts and practices are capable of repetition in that Cason continues to be actively engaged in business in the State of South Carolina. In addition, upon information and belief, Cason has committed such deceptive acts and practices on other occasions with other customers.
60. Cason's unfair and deceptive acts constituted violations of the South Carolina Unfair Trade Practices Act, South Carolina Code § 39-5-10, *et seq.*
61. As a direct and proximate result of Cason's deceptive acts and practices, the Gorrins have suffered actual and consequential damages in an amount greater than the minimum jurisdictional limits of this Court.
62. Cason's deceptive acts and practices constitute a willful and knowing violation of South Carolina Code § 39-5-10, *et seq.*
63. The Gorrins are, therefore, entitled to three times their actual damages plus interest, costs, and attorney's fees, for which they hereby sue.

**FOR A SEVENTH CAUSE OF ACTION**  
**(BREACH OF IMPLIED COVENANT**  
**COVENANT OF GOOD FAITH AND FAIR DEALING)**

64. The Gorrins reassert and reallege Paragraphs 1 through 63 above to the extent consistent herewith.
65. By entering into a contract to be performed in the State of South Carolina, Cason owed the Gorrins an obligation of good faith and fair dealing in the performance of the said contract. Cason breached its obligation of good faith and fair dealing by intentionally disregarding the

contract, intentionally promising things which they knew or should have known they could not deliver, and by misrepresenting the condition of the products sold.

66. As the result of Cason's breach of the implied covenant of good faith and fair dealing, the Gorrins have suffered pecuniary and other losses, in excess of the jurisdictional minimum of this Court, and request the award of punitive damages in an amount to be determined by the jury.

**FOR AN EIGHTH CAUSE OF ACTION**  
**(BREACH OF IMPLIED WARRANTY**  
**FITNESS FOR A PARTICULAR PURPOSE)**

67. The Gorrins reassert and reallege Paragraphs 1 through 66 above to the extent consistent herewith.
68. Pursuant to South Carolina Code Ann. §36-2-315, Cason impliedly warranted that the products sold would be fit for their intended purpose in connection with the Gorrins home.
69. Cason has breached the express warranty of fitness for a particular purpose by providing defective brick, and as a result, the Gorrins are entitled to recover actual, consequential, and incidental damages occasioned thereby.

**FOR AN NINTH CAUSE OF ACTION**  
**(BREACH OF IMPLIED WARRANTY--**  
**MERCHANTABILITY)**

70. The Gorrins reassert and reallege Paragraphs 1 through 69 above to the extent consistent herewith.

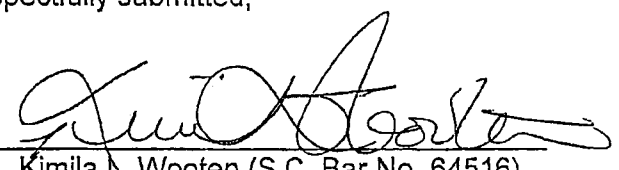
71. Pursuant to South Carolina Code Ann. §36-2-314, Cason impliedly warranted that its products would be merchantable.
72. Cason has breached the implied warranty and merchantability in that certain quantities of the product sold were defective and unusable.
73. As a result, the Gorrins are entitled to recover actual, incidental and consequential damages occasioned thereby.

WHEREFORE, the Gorrins respectfully request:

1. A trial by jury;
2. Damages on the causes of action set forth herein;
3. Punitive damages in an amount to be determined by the jury;
4. Costs and attorney's fees as provided by South Carolina law;
5. Such other and further relief to which the Gorrins may be justly entitled.

Dated this 6th day of April, 2007.

Respectfully submitted,

By: 

Kimila L. Wooten (S.C. Bar No. 64516)  
ELMORE & WALL, P.A.  
301 North Main Street, Suite 2000 (29601)  
Post Office Box 1887  
Greenville, South Carolina 29602  
Phone: (864) 255-9500  
Fax: (864) 255-9505  
kim.wooten@elmorewall.com  
Attorneys for Defendants

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Cason Companies, Inc.,

Plaintiff,

v.

Joseph Gorrin and Sharon Gorrin,

Defendants.

IN THE COURT OF COMMON PLEAS  
Case No.: 2007-CP-23-0582

REPLY TO COUNTERCLAIM

The Plaintiff, Cason Companies, Inc., by way of reply to the Counterclaim of Joseph Gorrin and Sharon Gorrin, would show in this Court as follows:

**FOR A FIRST DEFENSE**

1. Each and every allegation contained in the Answer and Counterclaim not hereinafter admitted, qualified, modified or explained, is denied as strict proof as to thereof.

2. The Plaintiff reincorporates and realleges the allegations contained within its Complaint, not inconsistent herewith, as if fully set forth herein.

3. With reference to the allegations contained in Paragraph 20 of the Counterclaim, the Plaintiff admits that in or around June of 2005 the Defendants came to the Plaintiff's office and viewed samples of brick and that, in or around that time, the Plaintiff was asked to, and did, order a strap sample of the brick chosen by the Defendants.

4. The Plaintiff denies the allegations contained in Paragraph 21 of the Counterclaim and demands strict proof thereof.

5. With reference to the allegations contained in Paragraph 22 of the Counterclaim, the Plaintiff estimated that 35,000 brick would be needed for the construction of the Defendants' home based upon the information available at the time. The remaining

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allegations contained in Paragraph 22 of the Counterclaim are denied and strict proof is demanded thereof.

6. With reference to the allegations contained in Paragraph 23 of the Counterclaim, the Plaintiff denies that it represented that the addition of the fireplace required an additional 3,000 extra brick. In fact, the Defendants' builder estimated that an extra 10,000 brick would be necessary for the construction of the proposed fireplace. With further reference to the allegations contained in Paragraph 23 of the Counterclaim, the Plaintiff alleges that its representative called the manufacturer and inquired about the brick specified by the Defendant and was informed that there were over 100,000 additional brick available and that the Plaintiff's representative was informed and believed that there would be no problem if additional brick was needed for a fireplace.

7. With reference to the allegations contained in Paragraph 24 of the Counterclaim, the Plaintiff admits that the brick order was placed on or about June 7, 2005. With further reference to the allegations contained in Paragraph 24 of the Counterclaim, the Plaintiff denies that in mid August 2005 it informed the Gorrins that the builder's credit had been denied. The builder's credit was denied in mid-June of 2005. The remaining allegations contained in Paragraph 24 of the Counterclaim are admitted.

8. With reference to the allegations contained in Paragraph 25 of the Counterclaim, the Plaintiff lacks knowledge or information sufficient to form a belief as to if and when masonry work came to a standstill at the Defendants' home and strict proof is demanded thereof. Additionally, the Plaintiff lacks knowledge or information sufficient to form a belief as to what or when the Defendants may have discovered. The remaining allegations contained in Paragraph 25 of the Counterclaim are denied and strict proof is demanded thereof.

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9. With reference to the allegations contained in Paragraph 26 of the Counterclaim, the Plaintiff lacks knowledge or information sufficient to form a belief as to what or when the Defendants discovered anything and therefore the Plaintiff demands strict proof of the allegations contained in Paragraph 26 of the Counterclaim.

10. With reference to the allegations contained in Paragraph 27 of the Counterclaim, the Plaintiff denies that Mrs. Gorrin met with two representatives of Cason and the Gorrins' builder at the Gorrins' home in the fall of 2005 or that Cason informed Mrs. Gorrin that "he" would take responsibility to find a solution for the brick shortage. The Plaintiff admits that one of its representatives made an informal walk around the house and estimated that an additional 15,000 brick would be needed to complete the house. The remaining allegations contained in Paragraph 27 of the Counterclaim are denied and strict proof is demanded thereof.

11. With reference to the allegations contained in Paragraph 28 of the Counterclaim, the Plaintiff admits that one of its representatives suggested that the construction of the house could be completed with the same color and style of brick but a slightly different size and the Defendants refused the suggestion. The remaining allegations contained in Paragraph 28 of the Counterclaim are denied and strict proof is demanded thereof.

12. The Plaintiff denies the allegations contained in Paragraph 29 of the Counterclaim and demands strict proof thereof.

13. With reference to the allegations contained in Paragraph 30 of the Counterclaim, the Plaintiff admits that in November of 2005 it undertook reasonable efforts to place an order for the additional brick needed for completion of the Defendants' home and that one of the possible solutions was to order a "run" of brick which was scheduled to

be shipped sometime before Christmas of 2005. The remaining allegations contained in Paragraph 30 of the Counterclaim are denied and strict proof is demanded thereof.

14. With reference to the allegations contained in Paragraph 31 of the Counterclaim, the Plaintiff lacks knowledge or information sufficient to form a belief as to the terms and conditions contained within the Defendants' contract with their builder and therefore demands strict proof thereof. The remaining allegations contained in Paragraph 31 of the Counterclaim are denied and strict proof is demanded thereof.

15. With reference to the allegations contained in Paragraph 32 of the Counterclaim, the Plaintiff admits that sometime in the late fall of 2005 Cason was informed and believed that additional brick could not be located and the Defendants indicated that draws could not be paid to the builder until the brick was completed and the financing would be lost if the brick was not found but denies that these statements were true and demands strict proof thereof.

16. With reference to the allegations contained in Paragraph 33 of the Counterclaim, the Plaintiff denies that it erred in calculating the number of brick needed for the construction of the Defendants' home and strict proof is demanded thereof. The Plaintiff denies the remaining allegations contained in Paragraph 33 of the Counterclaim and demands strict proof thereof.

17. The Plaintiff admits the allegations contained in Paragraph 34 of the Counterclaim.

18. With reference to the allegations contained in Paragraph 35 of the Counterclaim, the Plaintiff admits that there was a contact between the parties whereby the Plaintiff would provide brick and the Defendants would purchase brick from the Plaintiff.

The Plaintiff denies that there was a contract between the Plaintiff and the Defendants for the provision of "enough brick to finish the home" and strict proof is demanded thereof.

19. The Plaintiff denies the allegations contained in Paragraphs 36 and 37 of the Counterclaim and demands strict proof thereof.

20. With reference to the allegations contained in Paragraph 38 of the Counterclaim, the Plaintiff reincorporates and realleges the previous responses as if set forth fully herein.

21. The Plaintiff denies the allegations contained in Paragraphs 39, 40, 41, 42 and 43 of the Counterclaim and demands strict proof thereof.

22. With reference to the allegations contained in Paragraph 44 of the Counterclaim, the Plaintiff reincorporates and realleges the previous responses as if set forth fully herein.

23. With reference to the allegations contained in Paragraph 45 of the Counterclaim, the Plaintiff admits there is an implied warranty that the materials would be free of material defects and such implied warranty runs from the manufacturer.

24. The Plaintiff denies the allegations contained in Paragraphs 46 and 47 of the Counterclaim and demands strict proof thereof.

25. With reference to the allegations contained in Paragraph 48 of the Counterclaim, the Plaintiff reincorporates and realleges the previous responses as if set forth fully herein.

26. With reference to the allegations contained in Paragraph 49 of the Counterclaim, the duties owed by the Plaintiff to the Defendants are contractual in nature and, therefore, the allegations contained in Paragraph 49 of the Counterclaim are denied and strict proof is demanded thereof.

27. The Plaintiff denies the allegations contained in Paragraphs 50 and 51 of the Counterclaim and demands strict proof thereof.

28. With reference to the allegations contained in Paragraph 52 of the Counterclaim, the Plaintiff reincorporates and realleges the previous responses as if set forth fully herein.

29. The Plaintiff denies the allegations contained in Paragraphs 53, 54, 55 and 56 of the Counterclaim and demands strict proof thereof.

30. With reference to the allegations contained in Paragraph 57 of the Counterclaim, the Plaintiff reincorporates and realleges the previous responses as if set forth fully herein.

31. The Plaintiff denies the allegations contained in Paragraphs 58, 59, 60, 61, 62 and 63 of the Counterclaim and demands strict proof thereof.

32. With reference to the allegations contained in Paragraph 64 of the Counterclaim, the Plaintiff reincorporates and realleges the previous responses as if set forth fully herein.

33. With reference to the allegations contained in Paragraph 65 of the Counterclaim, the Plaintiff admits that both parties have an obligation of good faith and fair dealing in connection with their dealings with each other. The remaining allegations contained in Paragraph 65 of the Counterclaim are denied and strict proof is demanded thereof.

34. The Plaintiff denies the allegations contained in Paragraph 66 of the Counterclaim and demands strict proof thereof.

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35. With reference to the allegations contained in Paragraph 67 of the Counterclaim, the Plaintiff reincorporates and realleges the previous responses as if set forth fully herein.

36. The Plaintiff denies the allegations contained in Paragraph 68 of the Counterclaim and demands strict proof thereof.

37. The Plaintiff denies the allegations contained in Paragraph 69 of the Counterclaim and demands strict proof thereof.

38. With reference to the allegations contained in Paragraph 70 of the Counterclaim, the Plaintiff reincorporates and realleges the previous responses as if set forth fully herein.

39. The Plaintiff admits the allegations contained in Paragraph 71 of the Counterclaim.

40. The Plaintiff denies the allegations contained in Paragraphs 72 and 73 of the Counterclaim and demands strict proof thereof.

#### FOR A SECOND DEFENSE

41. The Plaintiff reincorporates and realleges the previous responses as if set forth fully herein.

42. The Defendants' Counterclaim fails to state a claim upon which relief may be granted pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

#### FOR A THIRD DEFENSE

43. The Plaintiff reincorporates and realleges the previous responses as if set forth fully herein.

44. The Plaintiff asserts that some or all of the claims against it are barred or limited by the contribution, concurring, intervening, superceding or insulating fault or

breach of persons or entities other than this Plaintiff, and that any fault or breach by this Plaintiff, the existence of which is denied, was passive and secondary in light of the primary and active fault or breach of person or entities other than this Plaintiff, all of which this Plaintiff pleads as an affirmative defense to the claims set forth in the Defendants' Counterclaim.

FOR A FOURTH DEFENSE

45. The Plaintiff reincorporates and realleges the previous responses as if set forth fully herein.

46. This Plaintiff is not responsible for any warranties or representations made by third parties.

FOR A FIFTH DEFENSE

47. The Plaintiff reincorporates and realleges the previous responses as if set forth fully herein.

48. The Defendants' damages, if any, are a result of the acts or omissions of persons or entities other than this Plaintiff and any damages that were suffered or sustained were due to, caused by, and/or a result of the negligent acts, omissions or breaches of third parties over whom the Plaintiff had no control and were not caused by any acts, omissions or breaches on the part of the Plaintiff.

FOR A SIXTH DEFENSE

49. The Plaintiff reincorporates and realleges the previous responses as if set forth fully herein.

50. If the Defendants has a viable cause of action against the Plaintiff for negligence, which is denied, then the damages sustained by the Defendants were due to and proximately caused by the Defendants' own negligence, recklessness, willfulness and

wantonness which contributed more than 50% to the Defendants' alleged damages resulting in the Plaintiff having no liability to the Defendants.

FOR A SEVENTH DEFENSE

51. The Plaintiff reincorporates and realleges the previous responses as if set forth fully herein.

52. Even assuming the Plaintiff was careless, negligent, grossly negligent, willful, wanton or reckless in any respect, which is expressly denied, and even if such conduct on its part operated as greater than 50% cause of the Defendants' alleged damages, if any, which is also expressly denied, the Plaintiff is entitled to a determination as to a percentage of which the Defendants' negligence, gross negligence, recklessness, willfulness contributed to their damages and to a reduction of any award to the Defendants in an amount equal to a percentage of the Defendants' own negligence, gross negligence, recklessness and willfulness.

FOR AN EIGHTH DEFENSE

53. The Plaintiff reincorporates and realleges the previous responses as if set forth fully herein.

54. The Plaintiff would show the remedy for any alleged breach of warranty, express or implied, that accompanied the product in question is limited to the remedies provided in the express terms of any written warranty that may have accompanied the product, and therefore, if the Defendants are entitled to recovery against this Plaintiff on a basis of an alleged breach of warranty, which is expressly denied, Defendants' recovery is limited to any express terms of any written warranty.

FOR A NINTH DEFENSE

55. The Plaintiff reincorporates and realleges the previous responses as if set forth fully herein.

56. The Defendants failed to mitigate its damages required by law.

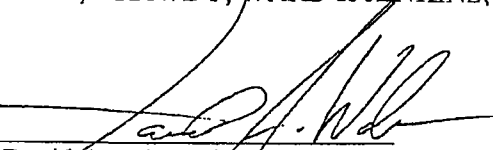
FOR A TENTH DEFENSE

57. The Plaintiff reincorporates and realleges the previous responses as if set forth fully herein.

58. The Plaintiff reserves any additional or further defenses as may be revealed by additional information acquired in the course of discovery, investigation or otherwise.

WHEREFORE, having fully responded to the Counterclaim of the Defendants, the Plaintiff prays for same to be dismissed and costs assessed against the Defendants. The Plaintiff also prays for damages as set forth in its Complaint and reincorporates and realleges that request herein, and also asks for such other and further relief as this Court may deem just and proper.

HORTON, DRAWDY, WARD & JENKINS, P.A.

By: 

David A. Wilson (S.C. Bar #65273)  
307 Pettigru Street  
Greenville, South Carolina 29601  
Attorneys for the Plaintiff

May 22, 2007

Law Offices  
Horton, Drawdy  
Ward &  
Jenkins, P.A.  
Greenville, S.C.

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF GREENVILLE ) C.A. NO.: 2007-CP-23-0582  
Cason Companies, Inc., )  
Plaintiff, )  
v. )  
Joseph Gorrin and Sharon Gorrin, )  
Defendants. )

---

The Defendants, Joseph Gorrin and Sharon Gorrin ("the Gorrins") answering the Plaintiff's Complaint, show as follows:

1. The Gorrins are without sufficient information to either admit or deny the allegations of Paragraph 1 of the Complaint; therefore, same are denied.
2. The Gorrins admit the allegations of Paragraph 2 of the Complaint.
3. The Gorrins are without sufficient information to either admit or deny the allegations of Paragraph 3 of the Complaint; therefore, same are denied.
4. The Gorrins admit the allegations of Paragraph 4 of the Complaint to the extent that they purchased brick from Cason and were invoiced for the same.
5. The Gorrins deny the allegations of Paragraph 5 of the Complaint.
6. The Gorrins deny the allegations of Paragraph 6 of the Complaint.
7. The Gorrins admit that the Plaintiff has demanded payment for materials furnished. However, the Gorrins have been justified in the failure to pay

the alleged amount due. Therefore, the remaining allegations of Paragraph 7 of the Complaint are denied.

8. The Gorrins deny the allegations of Paragraph 8 of the Complaint.
9. Paragraph 9 is a reallegation of previous Paragraphs of the Complaint. Accordingly, the Gorrins reallege each of the allegations contained in the preceding Paragraphs of this Answer and Counterclaim as if fully set forth herein.
10. The Gorrins admit that the Plaintiff delivered brick and mortar to the Defendants and have sent invoices. The Defendants admit that some of said brick and mortar was used in the construction of their home. The Gorrins are justified in their failure to pay the amount alleged to be due. Accordingly, the remaining allegations of Paragraph 10 of the Complaint are denied.
11. The Gorrins deny the allegations of Paragraphs 11 of the Complaint.
12. The Gorrins deny the allegations of Paragraph 12 of the Complaint.
13. Paragraph 13 is a reallegation of previous Paragraphs of the Complaint. Accordingly, the Gorrins reallege each of the allegations contained in the preceding Paragraphs of this Answer and Counterclaim as if fully set forth herein.
14. The Gorrins admit that the Plaintiff delivered brick and mortar to the Defendants and have sent invoices. The Defendants admit that some of said brick and mortar was used in the construction of their home. The Gorrins are justified in their failure to pay the amount alleged to be due.

Accordingly, the remaining allegations of Paragraph 14 of the Complaint are denied.

15. The Gorrins deny the allegations of Paragraph 15 of the Complaint.
16. The Gorrins deny the allegations of Paragraph 16 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

##### **(For a First Affirmative Defense)**

17. Plaintiff's Complaint fails to state a claim upon which relief may be granted pursuant to Rule (12)(b)(6) of the South Carolina Rules of Civil Procedure.

##### **(For a Second Affirmative Defense)**

18. The Plaintiff's claim is barred by the doctrine of unclean hands.

##### **(For a Third Affirmative Defense)**

19. The Plaintiff is estopped by its own conduct from asserting a claim against the Defendants.

##### **(For a Fourth Affirmative Defense)**

20. The Defendants signed the credit application referenced by the Plaintiff in its complaint under duress.

##### **(For a Fifth Affirmative Defense and By Way of Counterclaim)**

The Gorrins assert the following by way of Counterclaim:

20. In June of 2005, the Gorrins went to Cason's office and viewed samples of brick. At that time, Cason was asked to order the brick for the Gorrins' house.

21. The Gorrins' builder asked Cason to do a takeoff of the plans in order to get an accurate count of the brick needed. Cason undertook the responsibility to calculate how many brick were needed.
22. Cason determined that 35,000 brick would be needed for the Gorrins' home. At this time, the Gorrins told Cason that they contemplated an additional fireplace and wanted to make sure there would be enough brick available if they decided to add the fireplace.
23. Cason represented that the addition of the fireplace would require approximately 3,000 extra brick. Cason's representative told the Gorrins that there over 100,000 additional brick available in the style chosen by the Gorrins, and represented that it would be "no problem" if the fireplace were added.
24. The brick order was placed on June 7, 2005. After the order for the brick was placed, in mid-August of 2005, Cason informed the Gorrins that the builder's credit was denied. At that time, Cason told the Gorrins that they could apply for credit themselves. This was the only way that the brick order could be delivered. The Gorrins did so, and were approved by Cason for the credit. The brick was ordered, and delivered to the jobsite.
25. In October, 2005, the masonry work came to a standstill. The Gorrins discovered that Cason had made an error on the calculation on the brick needed to complete the house. By October of 2005, all of the 35,000 brick that had been delivered had already been used.

26. The Gorrins discovered that there was no more brick available, despite Cason's representation that 100,000 brick were available at the yard.
27. Mrs. Gorrin met with two representatives of Cason and the Gorrins' builder at the Gorrins' home in the fall of 2005. Cason informed Mrs. Gorrin that he would take responsibility to find a solution for the brick shortage. Cason also stated that an additional 15,000 brick would be needed in order to complete the house.
28. At this time, Cason made the suggestion that the house could be finished on the back with some other type of material. The Gorrins refused this suggestion.
29. Mrs. Gorrin reminded Cason at this meeting that Cason had promised that there were over 100,000 additional brick available.
30. On November 14, 2005, Mrs. Gorrin spoke with a representative of Cason, who said that he was doing "everything within his power" to locate more brick, and that Cason would place an order for a "run" of brick. At this time, Cason's representative stated that the brick would now not be shipped until right before Christmas.
31. The Gorrins' contract with the builder was to be completed by December 31, 2005. Because of the delay caused by Cason's error in calculating the number of brick, the Project was delayed, and costs began to escalate. Without the brick being completed, the roof could not be completed, the sheetrock could not be completed, and materials had to be ordered to protect the home. Major leaks took place during this time, due to not

having the house "dried in." Contractors that had been scheduled for the Gorrins' Project went to other projects due to not being able to work on the scheduled times.

32. In the late fall of 2005, Cason informed the Gorrins that more brick could not be located. The Gorrins explained to Cason that draws could not be paid to the builder until the brick was completed, and that financing would be lost if the brick were not found.
33. On December 30, 2005, Cason's representative called Mrs. Gorrin and stated that the only way to get enough brick to finish the house was to order 180,000 brick. At no time did Cason indicate that extra money would be charged due to their error in calculating the number of brick needed.
34. On January 11, 2005, Cason's representative called Mrs. Gorrin and stated that they were very upset with their brick supplier because the brick had been located. The brick were finally delivered to the jobsite in mid-February, 2006.

**FOR A FIRST CAUSE OF ACTION**  
**(BREACH OF CONTRACT)**

35. The facts as alleged above demonstrate that a contract was made between Cason and the Gorrins to purchase enough brick to finish the home.
36. Cason breached the contract in many aspects, including, but not limited to, the following:
  - A. By failing to order the proper amount of brick for the home.

- B. By failing to assure that enough brick would be available to finish the home.
  - C. By furnishing defective brick to the home.
37. As a direct and proximate result of Cason's breaches of contract, the Gorrins have suffered damages and losses for delays to the work, defective work, and loss of financing, together with other actual and consequential damages, for which they hereby sue.

**FOR A SECOND CAUSE OF ACTION**  
**(BREACH OF CONTRACT ACCOMPANIED**  
**BY FRAUDULENT ACT)**

38. The Gorrins reassert and reallege Paragraphs 1 through 37 above to the extent consist herewith.
39. Cason has breached the contract with the Gorrins as described above.
40. Cason made fraudulent misrepresentations to the Gorrins in that representations were made as to the number of brick available, when Cason knew or should have known that the brick would not be available. Cason also misrepresented the quality of the brick ultimately delivered.
41. Cason's misrepresentations were false when made, and they were known to be false.
42. Upon information and belief, Cason intended to deceive the Gorrins with these misrepresentations.
43. As a direct and proximate result of this breach of contract accompanied by fraudulent act, the Gorrins have suffered damages in an amount greater than the minimum jurisdictional limits of this Court, for which they hereby

sue, and further request punitive damages in an amount to be determined by the jury.

**FOR A THIRD CAUSE OF ACTION**  
**(BREACH OF WARRANTY)**

44. The Gorrins reassert and reallege Paragraphs 1 through 43 above to the extent consistent herewith.
45. In connection with contracting to sell construction materials, Cason impliedly warranted that the materials would be free of defects.
46. The Gorrins have discovered that the some of the brick on their home is defective and will need to be replaced.
47. As a direct and proximate result of this breach of warranty, the Gorrins have suffered damages in an amount greater than the minimal jurisdictional limits of this Court, for which they hereby sue.

**FOR A FOURTH CAUSE OF ACTION**  
**(NEGLIGENCE/GROSS NEGLIGENCE)**

48. The Gorrins reassert and reallege Paragraphs 1 through 47 above to the extent consistent herewith.
49. Cason owed a duty to the Gorrins to exercise the degree of skill necessary to properly calculate the number of brick to be used on the house, and to supply brick that is not defective.
50. Cason breached its duty of care and acted negligently and/or grossly negligent in the following particulars:
  - A. By supplying defective brick to the Project.

- B. By failing to properly calculate the number of brick required for use on the Gorrins' home.
  - C. By misrepresenting the number of brick which would be available for construction on the Gorrins' home.
51. As a direct and proximate result of the negligence and/or gross negligence of Cason, the Gorrins have suffered damages in the amount greater than the minimum jurisdictional limits of this Court, for which they hereby sue, and further request punitive damages in an amount to be determined by the jury.

**FOR A FIFTH CAUSE OF ACTION**  
**(NEGLIGENT MISREPRESENTATION)**

52. The Gorrins reassert and reallege Paragraphs 1 through 51 above to the extent consistent herewith.
53. Cason represented to the Gorrins that it would order enough brick to finish the home and that further brick would be available if necessary. In addition, Cason represented that the brick would be of good quality, and acceptable by industry standards.
54. Cason owed the Gorrins a duty of care to communicate and provide information and representations truthfully and accurately.
55. The Gorrins were ignorant of the falsity of the representations made by Cason, and justifiably relied upon them and had a right to rely upon them.
56. As a direct and proximate result of these negligent misrepresentations, the Gorrins have suffered damages in an amount greater than the minimum jurisdictional limits of this Court, for which they hereby sue.

FOR A SIXTH CAUSE OF ACTION  
(UNFAIR TRADE PRACTICES)

57. The Gorrins reassert and reallege Paragraphs 1 through 56 above to the extent consistent herewith.
58. The actions of Cason described above constitute deceptive acts or practices in the conduct or trade or commerce which can have an adverse impact on the public interest.
59. Cason's deceptive acts and practices are capable of repetition in that Cason continues to be actively engaged in business in the State of South Carolina. In addition, upon information and belief, Cason has committed such deceptive acts and practices on other occasions with other customers.
60. Cason's unfair and deceptive acts constituted violations of the South Carolina Unfair Trade Practices Act, South Carolina Code § 39-5-10, *et seq.*
61. As a direct and proximate result of Cason's deceptive acts and practices, the Gorrins have suffered actual and consequential damages in an amount greater than the minimum jurisdictional limits of this Court.
62. Cason's deceptive acts and practices constitute a willful and knowing violation of South Carolina Code § 39-5-10, *et seq.*
63. The Gorrins are, therefore, entitled to three times their actual damages plus interest, costs, and attorney's fees, for which they hereby sue.

**FOR A SEVENTH CAUSE OF ACTION**  
**(BREACH OF IMPLIED COVENANT**  
**COVENANT OF GOOD FAITH AND FAIR DEALING)**

64. The Gorrins reassert and reallege Paragraphs 1 through 63 above to the extent consistent herewith.
65. By entering into a contract to a be performed in the State of South Carolina, Cason owed the Gorrins an obligation of good faith and fair dealing in the performance of the said contract. Cason breached its obligation of good faith and fair dealing by intentionally disregarding the contract, intentionally promising things which they knew or should have known they could not deliver, and by misrepresenting the condition of the products sold.
66. As the result of Cason's breach of the implied covenant of good faith and fair dealing, the Gorrins have suffered pecuniary and other losses, in excess of the jurisdictional minimum of this Court, and request the award of punitive damages in an amount to be determined by the jury.

**FOR AN EIGHTH CAUSE OF ACTION**  
**(BREACH OF IMPLIED WARRANTY**  
**FITNESS FOR A PARTICULAR PURPOSE)**

67. The Gorrins reassert and reallege Paragraphs 1 through 66 above to the extent consistent herewith.
68. Pursuant to South Carolina Code Ann. §36-2-315, Cason impliedly warranted that the products sold would be fit for their intended purpose in connection with the Gorrins home.

69. Cason has breached the express warranty of fitness for a particular purpose by providing defective brick, and as a result, the Gorrins are entitled to recover actual, consequential, and incidental damages occasioned thereby.

**FOR AN NINTH CAUSE OF ACTION**  
**(BREACH OF IMPLIED WARRANTY--**  
**MERCHANTABILITY)**

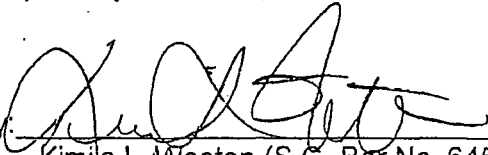
70. The Gorrins reassert and reallege Paragraphs 1 through 69 above to the extent consistent herewith.
71. Pursuant to South Carolina Code Ann. §36-2-314, Cason impliedly warranted that its products would be merchantable.
72. Cason has breached the implied warranty and merchantability in that certain quantities of the product sold were defective and unusable.
73. As a result, the Gorrins are entitled to recover actual, incidental and consequential damages occasioned thereby.

WHEREFORE, the Gorrins respectfully request:

1. A trial by jury;
2. Damages on the causes of action set forth herein;
3. Punitive damages in an amount to be determined by the jury;
4. Costs and attorney's fees as provided by South Carolina law;
5. Such other and further relief to which the Gorrins may be justly entitled.

Dated this 20<sup>th</sup> day of February, 2009.

Respectfully submitted,

By:   
Kimila L. Wooten (S.C. Bar No. 64516)  
ELMORE & WALL, P.A.  
301 North Main Street, Suite 2000 (29601)  
Post Office Box 1887  
Greenville, South Carolina 29602  
Phone: (864) 255-9500  
Fax: (864) 255-9505  
kim.wooten@elmorewall.com  
Attorneys for Defendants

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
Case No.: 2007-CP-23-0582

Cason Companies, Inc.,

FILED - CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENS, JR.

v.

Joseph Gorrin and Sharon Gorrin,  
Defendants.

REPLY TO AMENDED ANSWER  
AND COUNTERCLAIM

The Plaintiff, Cason Companies, Inc., by way of reply to the Amended Answer and Counterclaim of Joseph Gorrin and Sharon Gorrin, would show in this Court as follows:

**FOR A FIRST DEFENSE**

1. Each and every allegation contained in the Amended Answer and Counterclaim not hereinafter specifically admitted, qualified, modified or explained, is denied as strict proof as to thereof.
2. The Plaintiff reincorporates and realleges the allegations contained within its Complaint, not inconsistent herewith, as if fully set forth herein.
3. With reference to the allegations contained in the second Paragraph "20" of the Amended Answer and Counterclaim, the Plaintiff admits that in or around June of 2005 the Defendants came to the Plaintiff's office and viewed samples of brick and that, in or around that time, the Plaintiff was asked to, and did, order a strap sample of the brick chosen by the Defendants.
4. The Plaintiff denies the allegations contained in Paragraph 21 of the Amended Answer and Counterclaim and demands strict proof thereof.

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5. With reference to the allegations contained in Paragraph 22 of the Amended Answer and Counterclaim, the Plaintiff estimated that 35,000 brick would be needed for the construction of the Defendants' home based upon the information available at the time. The remaining allegations contained in Paragraph 22 of the Amended Answer and Counterclaim are denied and strict proof is demanded thereof.

6. With reference to the allegations contained in Paragraph 23 of the Amended Answer and Counterclaim, the Plaintiff denies that it represented that the addition of the fireplace required an additional 3,000 extra brick. In fact, the Defendants' builder estimated that an extra 10,000 brick would be necessary for the construction of the proposed fireplace. With further reference to the allegations contained in Paragraph 23 of the Amended Answer and Counterclaim, the Plaintiff alleges that its representative called the manufacturer and inquired about the brick specified by the Defendant and was informed that there were over 100,000 additional brick available and that the Plaintiff's representative was informed and believed that there would be no problem if additional brick was needed for a fireplace.

7. With reference to the allegations contained in Paragraph 24 of the Amended Answer and Counterclaim, the Plaintiff admits that the brick order was placed on or about June 7, 2005. With further reference to the allegations contained in Paragraph 24 of the Amended Answer and Counterclaim, the Plaintiff denies that in mid August 2005 it informed the Gorrins that the builder's credit had been denied. The builder's credit was denied in mid-June of 2005. The remaining allegations contained in Paragraph 24 of the Amended Answer and Counterclaim are admitted.

8. With reference to the allegations contained in Paragraph 25 of the Amended Answer and Counterclaim, the Plaintiff lacks knowledge or information sufficient to form a

belief as to if and when masonry work came to a standstill at the Defendants' home and strict proof is demanded thereof. The remaining allegations contained in Paragraph 25 of the Amended Answer and Counterclaim are denied and strict proof is demanded thereof.

9. With reference to the allegations contained in Paragraph 26 of the Amended Answer and Counterclaim, the Plaintiff lacks knowledge or information sufficient to form a belief as to what or when the Defendants discovered anything and therefore the Plaintiff demands strict proof of the allegations contained in Paragraph 26 of the Amended Answer and Counterclaim.

10. With reference to the allegations contained in Paragraph 27 of the Amended Answer and Counterclaim, the Plaintiff denies that Mrs. Gorrin met with two representatives of Cason and the Gorrins' builder at the Gorrins' home in the fall of 2005 or that Cason informed Mrs. Gorrin that "he" would take responsibility to find a solution for the brick shortage. The Plaintiff admits that one of its representatives made an informal walk around the house and estimated that an additional 15,000 brick would be needed to complete the house. The remaining allegations contained in Paragraph 27 of the Amended Answer and Counterclaim are denied and strict proof is demanded thereof.

11. With reference to the allegations contained in Paragraph 28 of the Amended Answer and Counterclaim, the Plaintiff admits that one of its representatives suggested that the construction of the house could be completed with the same color and style of brick but a slightly different size and the Defendants refused the suggestion. The remaining allegations contained in Paragraph 28 of the Amended Answer and Counterclaim are denied and strict proof is demanded thereof.

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12. The Plaintiff denies the allegations contained in Paragraph 29 of the Amended Answer and Counterclaim and demands strict proof thereof.

13. With reference to the allegations contained in Paragraph 30 of the Amended Answer and Counterclaim, the Plaintiff admits that in November of 2005 it undertook reasonable efforts to place an order for the additional brick needed for completion of the Defendants' home and that one of the possible solutions was to order a "run" of brick which was scheduled to be shipped sometime before Christmas of 2005. The remaining allegations contained in Paragraph 30 of the Amended Answer and Counterclaim are denied and strict proof is demanded thereof.

14. With reference to the allegations contained in Paragraph 31 of the Amended Answer and Counterclaim, the Plaintiff lacks knowledge or information sufficient to form a belief as to the terms and conditions contained within the Defendants' contract with their builder and therefore demands strict proof thereof. The remaining allegations contained in Paragraph 31 of the Amended Answer and Counterclaim are denied and strict proof is demanded thereof.

15. With reference to the allegations contained in Paragraph 32 of the Amended Answer and Counterclaim, the Plaintiff admits that sometime in the late fall of 2005 Cason was informed and believed that additional brick could not be located and the Defendants indicated that draws could not be paid to the builder until the brick was completed and the financing would be lost if the brick was not found but denies that these statements were true and demands strict proof thereof.

16. With reference to the allegations contained in Paragraph 33 of the Amended Answer and Counterclaim, the Plaintiff denies that it erred in calculating the number of

brick needed for the construction of the Defendants' home and strict proof is demanded thereof. The Plaintiff denies the remaining allegations contained in Paragraph 33 of the Amended Answer and Counterclaim and demands strict proof thereof.

17. The Plaintiff admits the allegations contained in Paragraph 34 of the Amended Answer and Counterclaim.

18. With reference to the allegations contained in Paragraph 35 of the Amended Answer and Counterclaim, the Plaintiff admits that there was a contact between the parties whereby the Plaintiff would provide brick and the Defendants would purchase brick from the Plaintiff and pay interest on any past due balance. Additionally, the Defendant agreed to pay attorneys' fees and costs if the Plaintiff was forced to hire an attorney and collect on the account. The Plaintiff denies that there was a contract between the Plaintiff and the Defendants for the provision of "enough brick to finish the home" and strict proof is demanded thereof.

19. The Plaintiff denies the allegations contained in Paragraphs 36 and 37 of the Amended Answer and Counterclaim and demands strict proof thereof.

20. With reference to the allegations contained in Paragraph 38 of the Amended Answer and Counterclaim, the Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

21. The Plaintiff denies the allegations contained in Paragraphs 39, 40, 41, 42 and 43 of the Amended Answer and Counterclaim and demands strict proof thereof.

22. With reference to the allegations contained in Paragraph 44 of the Amended Answer and Counterclaim, the Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

23. With reference to the allegations contained in Paragraph 45 of the Amended Answer and Counterclaim, the Plaintiff admits there is an implied warranty that the materials would be free of material defects and such implied warranty runs from the manufacturer.

24. The Plaintiff denies the allegations contained in Paragraphs 46 and 47 of the Amended Answer and Counterclaim and demands strict proof thereof.

25. With reference to the allegations contained in Paragraph 48 of the Amended Answer and Counterclaim, the Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

26. With reference to the allegations contained in Paragraph 49 of the Amended Answer and Counterclaim, the duties owed by the Plaintiff to the Defendants are contractual in nature and, therefore, the allegations contained in Paragraph 49 of the Amended Answer and Counterclaim are denied and strict proof is demanded thereof.

27. The Plaintiff denies the allegations contained in Paragraphs 50 and 51 of the Amended Answer and Counterclaim and demands strict proof thereof.

28. With reference to the allegations contained in Paragraph 52 of the Amended Answer and Counterclaim, the Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

29. The Plaintiff denies the allegations contained in Paragraphs 53, 54, 55 and 56 of the Amended Answer and Counterclaim and demands strict proof thereof.

30. With reference to the allegations contained in Paragraph 57 of the Amended Answer and Counterclaim, the Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

31. The Plaintiff denies the allegations contained in Paragraphs 58, 59, 60, 61, 62 and 63 of the Amended Answer and Counterclaim and demands strict proof thereof.

32. With reference to the allegations contained in Paragraph 64 of the Amended Answer and Counterclaim, the Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

33. With reference to the allegations contained in Paragraph 65 of the Amended Answer and Counterclaim, the Plaintiff admits that both parties have an obligation of good faith and fair dealing in connection with their dealings with each other. The remaining allegations contained in Paragraph 65 of the Amended Answer and Counterclaim are denied and strict proof is demanded thereof.

34. The Plaintiff denies the allegations contained in Paragraph 66 of the Amended Answer and Counterclaim and demands strict proof thereof.

35. With reference to the allegations contained in Paragraph 67 of the Amended Answer and Counterclaim, the Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

36. The Plaintiff denies the allegations contained in Paragraph 68 of the Amended Answer and Counterclaim and demands strict proof thereof.

37. The Plaintiff denies the allegations contained in Paragraph 69 of the Amended Answer and Counterclaim and demands strict proof thereof.

38. With reference to the allegations contained in Paragraph 70 of the Amended Answer and Counterclaim, the Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

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39. The Plaintiff admits the allegations contained in Paragraph 71 of the Amended Answer and Counterclaim.

40. The Plaintiff denies the allegations contained in Paragraphs 72 and 73 of the Amended Answer and Counterclaim and demands strict proof thereof.

**FOR A SECOND DEFENSE**

41. The Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

42. The Defendants' Amended Answer and Counterclaim fails to state a claim upon which relief may be granted pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

**FOR A THIRD DEFENSE**

43. The Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

44. The Plaintiff asserts that some or all of the claims against it are barred or limited by the contribution, concurring, intervening, superceding or insulating fault or breach of persons or entities other than this Plaintiff, and that any fault or breach by this Plaintiff, the existence of which is denied, was passive and secondary in light of the primary and active fault or breach of person or entities other than this Plaintiff, all of which this Plaintiff pleads as an affirmative defense to the claims set forth in the Defendants' Amended Answer and Counterclaim.

**FOR A FOURTH DEFENSE**

45. The Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

46. This Plaintiff is not responsible for any warranties or representations made by third parties.

**FOR A FIFTH DEFENSE**

47. The Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

48. The Defendants' damages, if any, are a result of the acts or omissions of persons or entities other than this Plaintiff and any damages that were suffered or sustained were due to, caused by, and/or a result of the negligent acts, omissions or breaches of third parties over whom the Plaintiff had no control and were not caused by any acts, omissions or breaches on the part of the Plaintiff.

**FOR A SIXTH DEFENSE**

49. The Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

50. If the Defendants have a viable cause of action against the Plaintiff for negligence, which is denied, then the damages sustained by the Defendants were due to and proximately caused by the Defendants' own negligence, recklessness, willfulness and wantonness which contributed more than 50% to the Defendants' alleged damages resulting in the Plaintiff having no liability to the Defendants.

**FOR A SEVENTH DEFENSE**

51. The Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

52. Even assuming the Plaintiff was careless, negligent, grossly negligent, willful, wanton or reckless in any respect, which is expressly denied, and even if such

conduct on its part operated as greater than 50% cause of the Defendants' alleged damages, if any, which is also expressly denied, the Plaintiff is entitled to a determination as to a percentage of which the Defendants' negligence, gross negligence, recklessness, willfulness contributed to their damages and to a reduction of any award to the Defendants in an amount equal to a percentage of the Defendants' own negligence, gross negligence, recklessness and willfulness.

#### FOR AN EIGHTH DEFENSE

53. The Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

54. The Plaintiff would show the remedy for any alleged breach of warranty, express or implied, that accompanied the product in question is limited to the remedies provided in the express terms of any written warranty that may have accompanied the product, and therefore, if the Defendants are entitled to recovery against this Plaintiff on a basis of an alleged breach of warranty, which is expressly denied, Defendants' recovery is limited to any express terms of any written warranty.

#### FOR A NINTH DEFENSE

55. The Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

56. The Defendants failed to mitigate its damages required by law.

#### FOR A TENTH DEFENSE

57. The Plaintiff reincorporates and realleges its previous responses as are set forth fully herein.

58. The defenses and counterclaims alleged by the Defendants are clearly not warranted under existing law and there are no good faith or reasonable arguments for extension, modification or reversal of the existing law.

59. The defenses and counterclaims alleged by the Defendants are intended merely to harass or injure the Plaintiff.

60. The defenses and counterclaims alleged by the Defendants are frivolous and not reasonably founded in fact but, rather, are interposed merely for delay and brought for purposes other than securing proper discovery, joinder of proposed parties, or adjudication of the counterclaim or defense upon which the proceedings are based. More specifically, but without limitation, the Defendants' affirmative defense of duress and the counterclaims for breach of contract accompanied by fraudulent act and unfair trade practices are frivolous.

#### FOR AN ELEVENTH DEFENSE

61. The Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

62. The Defendants obtained credit from the Plaintiff by signing a "South Carolina Personal Credit Application" on or about August 30, 2005.

63. The Defendants misrepresented relevant facts in this South Carolina Personal Credit Application including, but not limited to, their net incomes and outstanding debts.

64. Additionally, as evidenced by the assertion of the defense of duress in their Amended Answer and Counterclaim, the Defendants entered into the contractual South Carolina Personal Credit Application with the Defendants knowing full well that they had no intention of complying with the terms and conditions contained therein.

65. The representations made by the Defendants were false and material and made with the intent that the Plaintiff would rely upon them.

66. The Plaintiff was ignorant of the falsely representations made by the Defendants.

67. The Plaintiff reasonably relied upon the representations of the Defendant to the Plaintiff's injury and damages.

68. On or about March 20, 2006, the Defendants refinanced their mortgage on the real estate located at 346 Crepe Myrtle Drive in the Willow Creek Subdivision in the County of Spartanburg, State of South Carolina.

69. As part of the finance process, the Defendants represented to the Plaintiff and third-parties that the Plaintiff would be paid at closing.

70. As part of the closing process, the Defendants swore under oath that there were no unpaid bills or claims for labor or services performed or material furnished or delivered during the preceding 12 months for alterations, repair work or new construction on the improvements located at 346 Crepe Myrtle Drive in the Willow Creek Subdivision in the County of Spartanburg, State of South Carolina.

71. The representations made by the Defendants as referenced in Paragraph 70 were false when made.

72. The Defendants did not pay to Plaintiff at closing or out of money received at closing.

73. Based upon the Defendants' misrepresentations in connection with the South Carolina Personal Credit Application signed for the benefit of the Plaintiff as well as their

conduct and misrepresentations in connection with the financing of the subject real estate, the Defendants' Counterclaims are barred by the Doctrine of Equitable Estoppel.

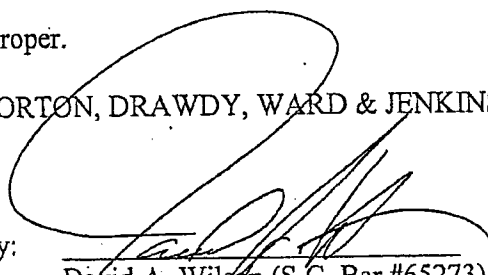
**FOR A TWELFTH DEFENSE**

74. The Plaintiff reincorporates and realleges its previous responses as if set forth fully herein.

75. The Plaintiff reserves any additional or further defenses as may be revealed by additional information acquired in the course of discovery, investigation or otherwise

WHEREFORE, having fully responded to the Amended Answer and Counterclaim of the Defendants, Plaintiff prays for the same to be dismissed and costs assessed against the Defendants. The Plaintiff also prays for damages as set forth in its Complaint and reincorporates and realleges that request herein, and also asks for such other and further relief as this Court may deem just and proper.

HORTON, DRAWDY, WARD & JENKINS, P.A.

By: 

David A. Wilson (S.C. Bar #65273)  
307 Pettigrew Street  
Greenville, South Carolina 29601  
Attorneys for the Plaintiff

March 9, 2009

Law Offices  
Horton, Drawdy  
Ward &  
Jenkins, P.A.  
Greenville, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Cason Companies, Inc.,

Plaintiff,

v.

Joseph Gorrin and Sharon Gorrin,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2007-CP-23-0582

2009 MAR -9 A 11: 59

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL F. WICKENS

**FIRST AMENDED COMPLAINT**

The Plaintiff, complaining of the Defendants above-named, would respectfully allege and show unto this Court as follows:

1. The Plaintiff is a corporation organized and existing under the laws of the State of North Carolina and authorized to do business in the State of South Carolina.
2. The Defendants Joseph & Sharon Gorrin are citizens and residents of the County of Spartanburg, State of South Carolina.
3. This court has jurisdiction over the parties and subject matter of this action and venue is proper in this court.

**FIRST CAUSE OF ACTION**

4. At the special instance and request of the Defendants, the Plaintiff sold bricks and mortar to the Defendants during the timeframe of June 2005 through February of 2006 at the prices shown on the verified itemized Statement of Account attached as Exhibit "A" to the original Complaint and made a part hereof.
5. The Defendants accepted said goods and agreed to pay for same at the prices shown on the aforementioned statement and there is a balance due on this account in the amount of \$28,709.89 plus interest at the highest legal rate.

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6. Pursuant to the contract between the parties, the Defendants agreed to pay finance charges to the Plaintiff for any credit extended at the rate of 18% per annum for all past due balances and also agree to pay attorney's fees and costs incurred by the Plaintiff to collect on past due balances.

7. The Plaintiff has repeatedly demanded payment from the Defendants for the outstanding balance due and owing on said account but the Defendants have repeatedly failed, refused and neglected, and continue to fail, refuse and neglect, to pay same.

8. The Plaintiff requests that this court grant judgment in its favor against the Defendants, jointly and severally, for the sum of \$28,709.89 plus interest at the highest legal rate together with attorney's fees and the costs and expenses of this matter for breach of contract.

#### **FOR A SECOND CAUSE OF ACTION**

9. The Plaintiff reincorporates by reference hereto, each of the allegations contained in the preceding paragraphs not inconsistent herewith.

10. Upon the Defendants' order, Plaintiff delivered brick and mortar to the Defendants and remitted invoices for payment. The Defendants have failed to pay the Plaintiff for the brick and mortar received by the Defendants and, upon information and belief, the Defendants have used said brick and mortar in the construction of their home.

11. As a result of the Defendants' refusal to pay, the Defendants have been unjustly enriched to the detriment of the Plaintiff.

12. The Plaintiff seeks restitution in the amount of \$28,709.89 to compensate the Plaintiff for the unjust enrichment to the Defendants.

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### FOR A THIRD CAUSE OF ACTION

13. The Plaintiff reincorporates by reference hereto, each of the allegations contained in the preceding paragraphs not inconsistent herewith.

14. The Defendants purchased brick and mortar from the Plaintiff and the Defendants have failed to pay Plaintiff for the goods shipped to, received by and accepted by the Defendants.

15. Should the court find no express contracts between the Plaintiff and the Defendants, the Plaintiff is entitled to recover from the Defendant under the doctrine of *quantum meruit*.

16. The Plaintiff seeks payment under the doctrine of *quantum meruit* in the sum of \$28,709.89 based upon the implied-in-fact contracts between the Plaintiff and Defendants.

### FOR A FOURTH CAUSE OF ACTION

17. Plaintiff reincorporates by reference hereto, each of the allegations contained in the preceding paragraphs not inconsistent herewith.

18. The Defendants obtained credit from the Plaintiff by signing a "South Carolina Personal Credit Application" on or about August 30, 2005.

19. The Defendants misrepresented relevant facts in this South Carolina Personal Credit Application including, but not limited to, their net incomes and outstanding debts.

20. Additionally, as evidenced by the assertion of the defense of duress in their Amended Answer and Counterclaim, the Defendants entered into the contractual South Carolina Personal Credit Application with the Defendants knowing full well that they had no intention of complying with the terms and conditions contained therein.

21. The representations made by the Defendants were false and material and made with the intent that the Plaintiff would rely upon them.

22. The Plaintiff was ignorant of the falsely representations made by the Defendants.

23. The Plaintiff reasonably relied upon the representations of the Defendants by issuing credit and selling bricks to the Defendants, all to the Plaintiff's injury and damages.

24. Based upon the foregoing, the Plaintiff requests actual and punitive damages related to the Defendants' negligent or fraudulent inducement for Plaintiff to enter into a contract with the Defendants and negligent or fraudulent misrepresentations.

#### FOR A FIFTH CAUSE OF ACTION

25. The Plaintiff reincorporates by reference hereto each of the allegations contained in the preceding paragraphs not inconsistent herewith.

26. On or about March 20, 2006, the Defendants refinanced their loan and mortgage on the real estate located at 346 Crepe Myrtle Drive in the Willow Creek Subdivision in the County of Spartanburg, State of South Carolina.

27. As part of the finance process, the Defendants represented to the Plaintiff and third-parties that the Plaintiff would be paid at closing.

28. As part of the closing process, the Defendants swore under oath that there were no unpaid bills or claims for labor or services performed or material furnished or delivered during the preceding 12 months for alterations, repair work or new construction on the improvements located at 346 Crepe Myrtle Drive in the Willow Creek Subdivision in the County of Spartanburg, State of South Carolina.

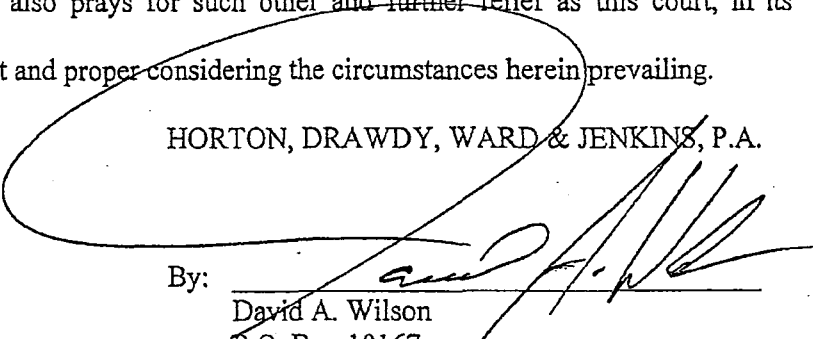
29. The representations made by the Defendants as referenced in Paragraph 28 were false when made.

30. The Defendants did not pay to Plaintiff at closing or from money received at closing as promised.

31. Based upon the foregoing, the Plaintiff is entitled to actual and punitive damages as a result of the Defendants' breach of contract accompanied by fraudulent acts.

WHEREFORE, the Plaintiff prays for judgment against the Defendants, jointly and severally, in the amount of actual damages equal to the sum of \$28,709.89, interest at the highest legal rate, the attorney's fees, costs and expenses of this matter and punitive damages. The Plaintiff also prays for such other and further relief as this court, in its discretion, may deem just and proper considering the circumstances herein prevailing.

HORTON, DRAWDY, WARD & JENKINS, P.A.

By: 

David A. Wilson  
P.O. Box 10167  
Greenville, South Carolina 29603  
(864) 233-4351  
Attorneys for Plaintiff

March 5, 2009

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Jenkins, P.A.  
Greenville, S.C.

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|----------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA          | ) | IN THE COURT OF COMMON PLEAS      |
|                                  | ) | THIRTEENTH CIRCUIT                |
| COUNTY OF GREENVILLE             | ) | C.A. NO.: 2007-CP-23-0582         |
|                                  | ) |                                   |
| Cason Companies, Inc.,           | ) |                                   |
|                                  | ) |                                   |
|                                  | ) | <b>ANSWER TO FIRST AMENDED</b>    |
| Plaintiff,                       | ) | <b>COMPLAINT AND COUNTERCLAIM</b> |
|                                  | ) |                                   |
| v.                               | ) |                                   |
|                                  | ) | <b>(Jury Demanded)</b>            |
| Joseph Gorrin and Sharon Gorrin, | ) |                                   |
|                                  | ) |                                   |
| Defendants.                      | ) |                                   |

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 FILED IN COURT  
 THIRTEENTH CIRCUIT  
 GREENVILLE, SC

The Defendants, Joseph Gorrin and Sharon Gorrin ("the Gorrins") answering the Plaintiff's First Amended Complaint, show as follows:

1. The Gorrins are without sufficient information to either admit or deny the allegations of Paragraph 1 of the Complaint; therefore, same are denied.
2. The Gorrins admit the allegations of Paragraph 2 of the Complaint.
3. The Gorrins are without sufficient information to either admit or deny the allegations of Paragraph 3 of the Complaint; therefore, same are denied.
4. The Gorrins admit the allegations of Paragraph 4 of the Complaint to the extent that they purchased brick from Cason because their builder would not get credit and were invoiced for the same.
5. The Gorrins deny the allegations of Paragraph 5 of the Complaint.
6. The Gorrins deny the allegations of Paragraph 6 of the Complaint.
7. The Gorrins admit that the Plaintiff has demanded payment for materials furnished. However, the Gorrins have been justified in the failure to pay

the alleged amount due. Therefore, the remaining allegations of Paragraph 7 of the Complaint are denied.

8. Paragraph 8 of the Complaint is merely a request to the Court and requires no answer of the Defendants. Therefore, no admission or denial is required. However, in an abundance of caution, the Defendants deny the allegations of Paragraph 8 of the Complaint and ask that the Court deny this request of the Plaintiff.
9. Paragraph 9 is a reallegation of previous Paragraphs of the Complaint. Accordingly, the Gorrins reallege each of the allegations contained in the preceding Paragraphs of this Answer and Counterclaim as if fully set forth herein.
10. The Gorrins admit that the Plaintiff delivered brick and mortar to the Defendants and have sent invoices. The Defendants admit that some of said brick and mortar was used in the construction of their home. The Gorrins are justified in their failure to pay the amount alleged to be due. Accordingly, the remaining allegations of Paragraph 10 of the Complaint are denied.
11. The Gorrins deny the allegations of Paragraphs 11 of the Complaint.
12. The Gorrins deny the allegations of Paragraph 12 of the Complaint.
13. Paragraph 13 is a reallegation of previous Paragraphs of the Complaint. Accordingly, the Gorrins reallege each of the allegations contained in the preceding Paragraphs of this Answer and Counterclaim as if fully set forth herein.

14. The Gorrins admit that the Plaintiff delivered brick and mortar to the Defendants and have sent invoices. The Defendants admit that some of said brick and mortar was used in the construction of their home. The Gorrins are justified in their failure to pay the amount alleged to be due. Accordingly, the remaining allegations of Paragraph 14 of the Complaint are denied.
15. The Gorrins deny the allegations of Paragraph 15 of the Complaint.
16. The Gorrins deny the allegations of Paragraph 16 of the Complaint.
17. Paragraph 17 is a reallegation of previous Paragraphs of the Complaint. Accordingly, the Gorrins reallege each of the allegations contained in the preceding Paragraphs of this Answer and Counterclaim as if fully set forth herein.
18. The Gorrins admit the allegations of Paragraph 18 of the Complaint.
19. The Gorrins deny the allegations of Paragraph 19 of the Complaint.
20. The Gorrins deny the allegations of Paragraph 20 of the Complaint.
21. The Gorrins deny the allegations of Paragraph 21 of the Complaint.
22. The Gorrins deny the allegations of Paragraph 22 of the Complaint.
23. The Gorrins deny the allegations of Paragraph 23 of the Complaint.
24. Paragraph 24 of the Complaint is merely a request to the Court and requires no answer of the Defendants. Therefore, no admission or denial is required. However, in an abundance of caution, the Defendants deny the allegations of Paragraph 24 of the Complaint and ask that the Court deny this request of the Plaintiff.

25. Paragraph 25 is a reallegation of previous Paragraphs of the Complaint. Accordingly, the Gorrins reallege each of the allegations contained in the preceding Paragraphs of this Answer and Counterclaim as if fully set forth herein.
26. The Gorrins admit the allegations of Paragraph 26 of the Complaint.
27. The Gorrins deny the allegations of Paragraph 27 of the Complaint.
28. The Gorrins deny the allegations of Paragraph 28 of the Complaint.
29. The Gorrins deny the allegations of Paragraph 29 of the Complaint.
30. The Gorrins admit the allegations of Paragraph 30 of the Complaint.
31. The Gorrins deny the allegations of Paragraph 31 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

##### **(For a First Affirmative Defense)**

32. Plaintiff's Complaint fails to state a claim upon which relief may be granted pursuant to Rule (12)(b)(6) of the South Carolina Rules of Civil Procedure.

##### **(For a Second Affirmative Defense)**

33. The Plaintiff's claim is barred by the doctrine of unclean hands.

##### **(For a Third Affirmative Defense)**

34. The Plaintiff is estopped by its own conduct from asserting a claim against the Defendants.

##### **(For a Fourth Affirmative Defense)**

35. The Defendants signed the credit application referenced by the Plaintiff in its complaint under duress.

**(For a Fifth Affirmative Defense and  
By Way of Counterclaim)**

The Gorrins assert the following by way of Counterclaim:

36. In June of 2005, the Gorrins went to Cason's office and viewed samples of brick. At that time, Cason was asked to order the brick for the Gorrins' house.
37. The Gorrins' builder asked Cason to do a takeoff of the plans in order to get an accurate count of the brick needed. Cason undertook the responsibility to calculate how many brick were needed.
38. Cason determined that 35,000 brick would be needed for the Gorrins' home. At this time, the Gorrins told Cason that they contemplated an additional fireplace and wanted to make sure there would be enough brick available if they decided to add the fireplace.
39. Cason represented that the addition of the fireplace would require approximately 3,000 extra brick. Cason's representative told the Gorrins that there over 100,000 additional brick available in the style chosen by the Gorrins, and represented that it would be "no problem" if the fireplace were added.
40. The brick order was placed on June 7, 2005. After the order for the brick was placed, in mid-August of 2005, Cason informed the Gorrins that the builder's credit was denied. At that time, Cason told the Gorrins that they could apply for credit themselves. This was the only way that the brick order could be delivered. The Gorrins did so, and were approved by Cason for the credit. The brick was ordered, and delivered to the jobsite.

41. In October, 2005, the masonry work came to a standstill. The Gorrins discovered that Cason had made an error on the calculation on the brick needed to complete the house. By October of 2005, all of the 35,000 brick that had been delivered had already been used.
42. The Gorrins discovered that there was no more brick available, despite Cason's representation that 100,000 brick were available at the yard.
43. Mrs. Gorrin met with two representatives of Cason and the Gorrins' builder at the Gorrins' home in the fall of 2005. Cason informed Mrs. Gorrin that he would take responsibility to find a solution for the brick shortage. Cason also stated that an additional 15,000 brick would be needed in order to complete the house.
44. At this time, Cason made the suggestion that the house could be finished on the back with some other type of material. The Gorrins refused this suggestion.
45. Mrs. Gorrin reminded Cason at this meeting that Cason had promised that there were over 100,000 additional brick available.
46. On November 14, 2005, Mrs. Gorrin spoke with a representative of Cason, who said that he was doing "everything within his power" to locate more brick, and that Cason would place an order for a "run" of brick. At this time, Cason's representative stated that the brick would now not be shipped until right before Christmas.
47. The Gorrins' contract with the builder was to be completed by December 31, 2005. Because of the delay caused by Cason's error in calculating the

number of brick, the Project was delayed, and costs began to escalate. Without the brick being completed, the roof could not be completed, the sheetrock could not be completed, and materials had to be ordered to protect the home. Major leaks took place during this time, due to not having the house "dried in." Contractors that had been scheduled for the Gorrins' Project went to other projects due to not being able to work on the scheduled times.

48. In the late fall of 2005, Cason informed the Gorrins that more brick could not be located. The Gorrins explained to Cason that draws could not be paid to the builder until the brick was completed, and that financing would be lost if the brick were not found.
49. On December 30, 2005, Cason's representative called Mrs. Gorrin and stated that the only way to get enough brick to finish the house was to order 180,000 brick. At no time did Cason indicate that extra money would be charged due to their error in calculating the number of brick needed.
50. On January 11, 2006, Cason's representative called Mrs. Gorrin and stated that they were very upset with their brick supplier because the brick had been located. The brick were finally delivered to the jobsite in mid-February, 2006.

**FOR A FIRST CAUSE OF ACTION**  
**(BREACH OF CONTRACT)**

51. The facts as alleged above demonstrate that a contract was made between Cason and the Gorrins to purchase enough brick to finish the home.
52. Cason breached the contract in many aspects, including, but not limited to, the following:
  - A. By failing to order the proper amount of brick for the home.
  - B. By failing to assure that enough brick would be available to finish the home.
  - C. By furnishing defective brick to the home.
53. As a direct and proximate result of Cason's breaches of contract, the Gorrins have suffered damages and losses for delays to the work, defective work, and loss of financing, together with other actual and consequential damages, for which they hereby sue.

**FOR A SECOND CAUSE OF ACTION**  
**(BREACH OF CONTRACT ACCOMPANIED**  
**BY FRAUDULENT ACT)**

54. The Gorrins reassert and reallege Paragraphs 1 through 37 above to the extent consist herewith.
55. Cason has breached the contract with the Gorrins as described above.
56. Cason made fraudulent misrepresentations to the Gorrins in that representations were made as to the number of brick available, when Cason knew or should have known that the brick would not be available. Cason also misrepresented the quality of the brick ultimately delivered.

57. Cason's misrepresentations were false when made, and they were known to be false.
58. Upon information and belief, Cason intended to deceive the Gorrins with these misrepresentations.
59. As a direct and proximate result of this breach of contract accompanied by fraudulent act, the Gorrins have suffered damages in an amount greater than the minimum jurisdictional limits of this Court, for which they hereby sue, and further request punitive damages in an amount to be determined by the jury.

**FOR A THIRD CAUSE OF ACTION**  
**(BREACH OF WARRANTY)**

60. The Gorrins reassert and reallege Paragraphs 1 through 43 above to the extent consistent herewith.
61. In connection with contracting to sell construction materials, Cason impliedly warranted that the materials would be free of defects.
62. The Gorrins have discovered that the some of the brick on their home is defective and will need to be replaced.
63. As a direct and proximate result of this breach of warranty, the Gorrins have suffered damages in an amount greater than the minimal jurisdictional limits of this Court, for which they hereby sue.

**FOR A FOURTH CAUSE OF ACTION**  
**(NEGLIGENCE/GROSS NEGLIGENCE)**

64. The Gorrins reassert and reallege Paragraphs 1 through 47 above to the extent consistent herewith.

65. Cason owed a duty to the Gorrins to exercise the degree of skill necessary to properly calculate the number of brick to be used on the house, and to supply brick that is not defective.
66. Cason breached its duty of care and acted negligently and/or grossly negligent in the following particulars:
- A. By supplying defective brick to the Project.
  - B. By failing to properly calculate the number of brick required for use on the Gorrins' home.
  - C. By misrepresenting the number of brick which would be available for construction on the Gorrins' home.
67. As a direct and proximate result of the negligence and/or gross negligence of Cason, the Gorrins have suffered damages in the amount greater than the minimum jurisdictional limits of this Court, for which they hereby sue, and further request punitive damages in an amount to be determined by the jury.

**FOR A FIFTH CAUSE OF ACTION**  
**(NEGLIGENT MISREPRESENTATION)**

68. The Gorrins reassert and reallege Paragraphs 1 through 51 above to the extent consistent herewith.
69. Cason represented to the Gorrins that it would order enough brick to finish the home and that further brick would be available if necessary. In addition, Cason represented that the brick would be of good quality, and acceptable by industry standards.

70. Cason owed the Gorrins a duty of care to communicate and provide information and representations truthfully and accurately.
71. The Gorrins were ignorant of the falsity of the representations made by Cason, and justifiably relied upon them and had a right to rely upon them.
72. As a direct and proximate result of these negligent misrepresentations, the Gorrins have suffered damages in an amount greater than the minimum jurisdictional limits of this Court, for which they hereby sue.

**FOR A SIXTH CAUSE OF ACTION**  
**(UNFAIR TRADE PRACTICES)**

73. The Gorrins reassert and reallege Paragraphs 1 through 56 above to the extent consistent herewith.
74. The actions of Cason described above constitute deceptive acts or practices in the conduct or trade or commerce which can have an adverse impact on the public interest.
75. Cason's deceptive acts and practices are capable of repetition in that Cason continues to be actively engaged in business in the State of South Carolina. In addition, upon information and belief, Cason has committed such deceptive acts and practices on other occasions with other customers.
76. Cason's unfair and deceptive acts constituted violations of the South Carolina Unfair Trade Practices Act, South Carolina Code § 39-5-10, *et seq.*

77. As a direct and proximate result of Cason's deceptive acts and practices, the Gorrins have suffered actual and consequential damages in an amount greater than the minimum jurisdictional limits of this Court.
78. Cason's deceptive acts and practices constitute a willful and knowing violation of South Carolina Code § 39-5-10, *et seq.*
79. The Gorrins are, therefore, entitled to three times their actual damages plus interest, costs, and attorney's fees, for which they hereby sue.

**FOR A SEVENTH CAUSE OF ACTION**  
**(BREACH OF IMPLIED COVENANT**  
**COVENANT OF GOOD FAITH AND FAIR DEALING)**

80. The Gorrins reassert and reallege Paragraphs 1 through 63 above to the extent consistent herewith.
81. By entering into a contract to be performed in the State of South Carolina, Cason owed the Gorrins an obligation of good faith and fair dealing in the performance of the said contract. Cason breached its obligation of good faith and fair dealing by intentionally disregarding the contract, intentionally promising things which they knew or should have known they could not deliver, and by misrepresenting the condition of the products sold.
82. As the result of Cason's breach of the implied covenant of good faith and fair dealing, the Gorrins have suffered pecuniary and other losses, in excess of the jurisdictional minimum of this Court, and request the award of punitive damages in an amount to be determined by the jury.

**FOR AN EIGHTH CAUSE OF ACTION**  
**(BREACH OF IMPLIED WARRANTY**  
**FITNESS FOR A PARTICULAR PURPOSE)**

83. The Gorrins reassert and reallege Paragraphs 1 through 66 above to the extent consistent herewith.
84. Pursuant to South Carolina Code Ann. §36-2-315, Cason impliedly warranted that the products sold would be fit for their intended purpose in connection with the Gorrins home.
85. Cason has breached the express warranty of fitness for a particular purpose by providing defective brick, and as a result, the Gorrins are entitled to recover actual, consequential, and incidental damages occasioned thereby.

**FOR AN NINTH CAUSE OF ACTION**  
**(BREACH OF IMPLIED WARRANTY--**  
**MERCHANTABILITY)**

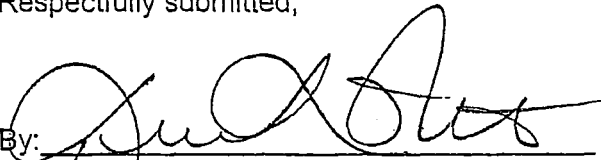
86. The Gorrins reassert and reallege Paragraphs 1 through 69 above to the extent consistent herewith.
87. Pursuant to South Carolina Code Ann. §36-2-314, Cason impliedly warranted that its products would be merchantable.
88. Cason has breached the implied warranty and merchantability in that certain quantities of the product sold were defective and unusable.
89. As a result, the Gorrins are entitled to recover actual, incidental and consequential damages occasioned thereby.

WHEREFORE, the Gorrins respectfully request:

1. A trial by jury;
2. Damages on the causes of action set forth herein;
3. Punitive damages in an amount to be determined by the jury;
4. Costs and attorney's fees as provided by South Carolina law;
5. Such other and further relief to which the Gorrins may be justly entitled.

Dated this 13<sup>th</sup> day of April, 2009.

Respectfully submitted,

By: 

Kimila L. Wooten (S.C. Bar No. 64516)  
ELMORE & WALL, P.A.  
301 North Main Street, Suite 2000 (29601)  
Post Office Box 1887  
Greenville, South Carolina 29602  
Phone: (864) 255-9500  
Fax: (864) 255-9505  
kim.wooten@elmorewall.com  
Attorneys for Defendants

|                                  |   |                              |
|----------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA          | ) | IN THE COURT OF COMMON PLEAS |
|                                  | ) | THIRTEENTH CIRCUIT           |
| COUNTY OF GREENVILLE             | ) | C.A. NO.: 2007-CP-23-0582    |
| Cason Companies, Inc.,           | ) |                              |
|                                  | ) |                              |
| Plaintiff,                       | ) |                              |
|                                  | ) |                              |
| v.                               | ) |                              |
|                                  | ) |                              |
| Joseph Gorrin and Sharon Gorrin, | ) |                              |
|                                  | ) |                              |
| Defendants.                      | ) |                              |

200 JUN 24 AM 10:47  
 FILED  
 CLERK OF COURT  
 GREENVILLE, SC  
 JAMES L. HARRIS, JR.

**MEMORANDUM IN SUPPORT OF MOTION FOR DIRECTED VERDICT ON  
ATTORNEYS' FEES**

The Defendants, Joseph and Sharon Gorrin, by order of the court at the close of the evidence in the above-referenced case, hereby submit their Memorandum in Support of their Motion for Directed Verdict, and show as follows:

The Plaintiff claims that it is entitled to attorneys' fees pursuant to the "South Carolina Personal Credit Application" attached hereto as Exhibit "A." Page 3 of that Credit Application provides, in the last paragraph, that "in the event this account is placed in the hands of an attorney or attorneys for collection or suit instituted to collect same or any portion thereof, I, and/or we agree and promise to pay all Cason's attorneys' fees, costs and expenses." At the close of the Plaintiff's case, and again at the close of the evidence in this case, Defendants moved for directed verdict as to attorneys' fees, costs and expenses.

The Court granted ten (10) days from the date of the verdict in this case (June 17, 2010), for the parties to brief the issue.

This attorneys' fees provision is void *ab initio* under the applicable South Carolina statute; accordingly, directed verdict should be granted on this issue.

S.C. Code Ann. § 37-2-413 provides that

- (1) With respect to a consumer credit sale or consumer lease the agreement may provide for the payment by the buyer or lessee of reasonable attorney's fees not in excess of fifteen percent of the unpaid debt after default and referral to an attorney not a salaried employee of the seller, or of the lessor or his assignee. A provision in violation of this section is unenforceable.

A "consumer credit sale" is a sale of goods, services, or an interest in land, in which

- (a) Credit is granted by a person who regularly engages as a seller in credit transactions of the same kind,
- (b) The buyer is a person other than an organization;
- (c) The goods, services, or interest in land are purchased primarily for a personal, family or household purpose,
- (d) Either the debt is payable in installments or a credit service charge is made, and
- (e) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars.

S.C. Code Ann. § 37-2-104.

In the present case, it is undisputed that all five conditions are met. Both Bryan Carpenter and Deedee Gould testified on cross-examination that Cason regularly engaged in extensions of credit like the one made to the Gorrins. The Gorrins are by definition "persons," not organizations. The goods in question, here, bricks, were purchased for the family and household purpose of building a family home. Further, the debt was subject to a service charge of 18% per annum (which is allowed under S.C. Code Ann. § 37-2-201 and is defined therein

as a "credit service charge"), and was also payable in installments, according to Mrs. Gould's testimony that the Application provided for \$5000 in credit per month. Finally, the amount actually financed totaled \$23,780.80, which falls within the statutory amount.

It has long been the law in South Carolina that individuals may not contract in contravention of the expressed public policy of the state. *Dill v. Sovereign Camp, W.O.W.*, 202 S.C. 401, 25 S.E.2d 285 (1943). Courts will not enforce any such contract if it is violative of public policy, statutory law, or constitutional provisions. *Simpson v. MSA of Myrtle Beach, Inc.*, 644 S.E.2d 663 (2007); *White v. J.M. Brown Amusement Co., Inc.*, 601 S.E.2d 342 (2004); *The Beach Company v. Twillman, Ltd.*, 351 S.C. 56, 566 S.E.2d 863 (Ct. App. 2002). Such provisions in contracts are void *ab initio* (not voidable) and may not be enforced by the courts of this State. *Batchelor v. American Health Insurance Co.*, 234 S.C. 103, 107 S.E.2d 36 (1959).

Because the contract in question does not track the statutory language required for an enforceable attorney's fee clause (i.e., it does not limit the attorneys' fees to fifteen percent of the unpaid debt, nor does it provide that attorney's fees must be "reasonable"), it is void and may not be enforced.

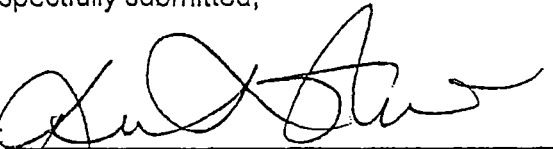
The only record argument presented by the Plaintiff, and thus, the only argument that should be considered by the Court, is that the Defendants did not plead the statute and thus should not be allowed to assert it as a defense. This argument is without merit. Where a contractual provision is void *ab initio*, not voidable, the issue of unenforceability may even be raised for the first time on

appeal. This is made clear in Ward v. West Oil Company, Inc., 387 S.C. 268, 692 S.E.2d 516 (2010), wherein the Supreme Court stated that where a statute provided that a certain contract was void *ab initio*, due to a statutory prevention of such a contract, the issue of enforceability of that contract could be raised even at the Supreme Court level, for the Supreme Court could not enforce a contract that was prohibited by statute. Accordingly, the Defendants are not required to plead this issue under either Rule 8 of the South Carolina Rules of Civil Procedure or otherwise. Nor can the applicable statute be considered an affirmative defense under Rule 8.

For these reasons, the Defendants should be granted a directed verdict on the attorney's fees, costs and expenses sought by the Plaintiff.

Dated this 24<sup>th</sup> day of June, 2010.

Respectfully submitted,

By: 

Kimila L. Wooten (S.C. Bar No. 64516)  
ELMORE & WALL, P.A.  
301 North Main Street, Suite 2000 (29601)  
Post Office Box 1887  
Greenville, South Carolina 29602  
Phone: (864) 255-9500  
Fax: (864) 255-9505  
kim.wooten@elmorewall.com  
Attorneys for Defendants

**E  
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**A**

# 381870

*personal home construction  
Gen Contractor was denied credit  
from CBS earlier this yr, per Bryan*

*BRYAN CARPENTER*

Cason Companies, Inc.  
and Cason Builders Supply  
Hereinafter referred to as "Cason"

ATTN: DEE DEE  
PG. 1 OF 3

**SOUTH CAROLINA  
PERSONAL CREDIT APPLICATION**

(Please fill out completely - type or print legibly - return to Cason by mail or in person)

This Credit Application and Agreement (herein referred to as "AGREEMENT") is entered into this 30 day of AUG, 2005, by and between "CASON" and the following applicant (herein referred to as "PURCHASER")

Joseph / Sharon GORRIN 864 967 7562 906-8600 235-4327  
Applicant Name Telephone Number Cell Number Fax Number

Simpsonville SC  
Mailing Address City State Zip Code

Full Street Address (If different than mailing address)

No Social Security Number self Date of Birth 5,000.00 Amount of Credit Requested NA

yes Do you Rent Property? 11 East Park Ave, Greenville SC 29601 Landlord Name and Address 15 yr Landlord Telephone Number

yes Do you Own Property? Greenville SC Location 18 yr w Long? 1 yr

100,000.00 Applicant's Present Net \$ Income 4 yr No. of Dependents 1 Their Ages 9 yrs.

GORRIN'S CLINIC 11 East Ave, Greenville SC 29601  
Employer Name and Address

30 yrs. Date Employed President/CEO Position self Supervisor 233-2270 Telephone Number

Rental Property Other Income Source 10,000.00 \$ Amount 4 yr Per

Sharon Gorrin Spouse's Full Name GORRIN'S CLINIC Social Security No. 103 Date of Birth

6 yrs Date Employed VP Position 233-2270 Telephone Number

6 yrs Date Employed VP Position 233-2270 Telephone Number

DEPOSIT  
EXHIBIT  
2  
GORRIN

*make "artificial"  
all - prints  
& installs  
tints, per*

*This SS# not provided.*

*Advised Bryan 8-30-05 of 2 negative  
actions on her Equifax report + to*

CREDIT INFORMATION

List at least three credit references (currently extending credit to you):

*See attached*

1. ~~BBT~~ BBT Kathy McKay 864-282-3552  
 Name Contact Telephone Number

Gville SC  
 Address

Home Equity 110,000<sup>00</sup>  
 Type of Credit/Loan Approx. Balance

2. ~~BBT~~ Palmetto Bank Chad Wilson 864-255-4710  
 Name Contact Telephone Number

Greenville SC  
 Address

Business Loan on Clinic \$65,000<sup>00</sup> (Approx.)  
 Type of Credit/Loan Approx. Balance

3. American Express 1-800-297-6200  
 Name Contact Telephone Number

Credit Card for Business 6,000  
 Type of Credit/Loan Approx. Balance

Regions 864-271-1413 - Local  
800-392-5669  
 Bank Name and Address Account Number

BBT, Gville SC 2 Acct's  
 Bank Name and Address Account Number

Has applicant ever filed for bankruptcy or been a party to a lawsuit? No

PLEASE MAIL OR DELIVER THE COMPLETED APPLICATION TO THE C&S ON OFFICE WITH WHICH YOU WISH TO HAVE AN ACCOUNT. FAXED COPIES WILL BE ACCEPTED FOR CREDIT APPROVAL PURPOSES ONLY; HOWEVER, CREDIT WILL NOT BE EXTENDED UNTIL THE ORIGINAL COMPLETED AND SIGNED CREDIT APPLICATION IS RECEIVED.

## CASON BUILDERS SUPPLY

P. O. Box 1520 (28793)  
 1830 Spartanburg Hwy.  
 Hendersonville, NC 28792  
 (828) 692-5716  
 FAX (828) 697-6751

## CASON BUILDERS SUPPLY

2800 Woodruff Road  
 Simpsonville, SC 29681  
 (864) 673-9159  
 FAX (864) 458-9537

## CASON BUILDERS SUPPLY

P. O. Box 785  
 1405 Ecusta Rd.  
 Pisgah Forest, NC 28768  
 (828) 833-2711  
 FAX (828) 833-3206

Purchaser hereby applies for credit with Cason and understands and agrees that this Agreement does not become effective unless and until Cason approves this Credit Application, which is incorporated into, and becomes part of, the Agreement. Purchaser further understands that nothing herein obligates Cason to approve this Credit Application, and that if the Credit Application is approved Cason has the right not to extend credit to Purchaser at any time, particularly if the account is not paid in full each month.

Purchaser hereby authorizes Cason at any time to make or have made whatever credit investigation it feels is proper to evaluate the credit and personal or financial standing of Purchaser, including but not limited to contacting credit references, and obtaining credit information from credit bureaus or credit reporting agencies. Purchaser also authorizes Cason to share its credit experience with credit bureaus, credit reporting agencies, creditors and others.

Purchaser certifies and declares that all the information in this Credit Application is correct to the best of his/her knowledge. By signing below, the undersigned states that he/she has received a copy of this Agreement and agrees to all terms and conditions contained herein.

Purchaser hereby agrees and promises to pay Cason for all services and materials purchased from Cason, now or in the future, on this account. Purchaser understands that payments are due in full within thirty (30) days of the date of Cason's invoice. Should payments not be made within thirty (30) days, the account will be considered past due and in default, and shall accrue finance charges of 18% per annum from the first day the account is past due, until payment is made in full. Purchaser agrees to pay these finance charges. Purchaser also agrees to pay all Cason's attorneys fees, costs and expenses. Each of the undersigned agrees to pay court costs, and all other costs of collection allowed by law.

If it is necessary for Cason to commence proceedings to collect any amounts Purchaser owes under this Agreement, Purchaser consents to be subject to the jurisdiction of the courts of the State of South Carolina, and further agrees to venue being situated in Greenville County, or any other county in which venue would be proper.

This Agreement is governed by law of the State of South Carolina. Any modifications to this Agreement must be in writing and signed by both parties.

This the 30 day of AUG, 2005.

Joseph Gorrin

Applicant (Print name)

Sharon Gorrin

Spouse (Print name)

(Signature)

(Signature)

### GUARANTY AGREEMENT ✓

In consideration of credit being extended by Cason to the above named applicant for merchandise to be purchased, whether applicant be an individual or individuals, the undersigned guarantor or guarantors each hereby contract and guarantee to Cason the faithful payment, when due, of all accounts of said applicant for purchases made within five years next after the date of this application. The undersigned guarantor or guarantors each hereby expressly waive all notice of acceptance of this guaranty notice of extension of credit to applicant, presentment, and demand for payment on applicant, protest and notice to undersigned guarantor or guarantors of dishonor or default by applicant or with respect to any security held by Cason, extension of time of payment of applicant, acceptance of partial payment or partial compromise, all other notices to which the undersigned guarantor or guarantors might otherwise be entitled and demand for payment under this guaranty. Any revocation of this guaranty shall be in writing and delivered to Cason.

In the event this account is placed in the hands of an attorney or attorneys for collection or suit instituted to collect same or any portion thereof, I, and/or we agree and promise to pay all Cason's attorneys' fees, costs and expenses.

Purchases and/or deliveries are herewith authorized to be made without signature.

Applicant

Date

Witness

Date

Spouse

Date

Witness

Date

|                                  |   |                             |
|----------------------------------|---|-----------------------------|
| STATE OF SOUTH CAROLINA          | ) |                             |
|                                  | ) |                             |
| COUNTY OF GREENVILLE             | ) | THIRTEENTH JUDICIAL CIRCUIT |
|                                  | ) | 2007-CP-23-0582             |
| Cason Companies, Inc.,           | ) |                             |
|                                  | ) |                             |
| Plaintiff,                       | ) | MEMORANDUM IN               |
|                                  | ) | OPPOSITION TO DEFENDANTS'   |
| vs.                              | ) | MOTION FOR DIRECTED         |
|                                  | ) | VERDICT ON ATTORNEY'S FEES  |
| Joseph Gorrin and Sharon Gorrin, | ) |                             |
|                                  | ) |                             |
| Defendants.                      | ) |                             |

FILED JUN 28 PM 1:11  
 CLERK OF COURT  
 GREENVILLE COUNTY  
 S.C.

After a four day trial, the jury awarded the Plaintiff Cason Companies, Inc. actual damages in the amount of \$49,856.46. At the conclusion of the Plaintiff's case, as well as at the close of all the evidence, the Defendants Joseph and Sharon Gorrin moved for a Directed Verdict on the issue of the Plaintiff's entitlement to attorney's fees under the South Carolina Personal Credit Application. ("Cason/Gorrin Contract"). The Defendants rely upon S.C. Code Ann. §37-2-413 for the proposition that the Plaintiff is not entitled to any attorney's fees in connection with the Defendants breach of contract.

First of all, the Defendants failed to plead §37-2-413 as an affirmative defense under SCRCP 8. Illegality is an affirmative defense as is "any other matter constituting an avoidance." SCRCP 8 (c). An affirmative defense must be pleaded or it is waived. D & D Leasing Co. v. David Lipson, 305 S.C. 540, 409 S.E. 2d 794 (Ct. App. 1991).

In its Complaint and First Amended Complaint, the Plaintiff specifically alleged that the Cason/Gorrin contract provided for the Defendants to pay the Plaintiff's attorney's fees, expenses and costs. The Defendants responded with a general denial to the allegations and asserted the affirmative defenses of unclean hands, estoppel and duress. At no point in time prior to the close of the Plaintiff's case in chief did the

Defendants ever raise the applicability of §37-2-413 as a basis to limit the Plaintiff's award or avoid liability for attorney's fees, costs and expenses.

A defensive pleading should apprise the plaintiff of allegations in the complaint that a defendant will be required to establish in order to prevail. 24 S.C. Jur. Rules of Civil Procedure §8.2; Moore v. New South Express Lines, Inc., 184 S.C. 266, 192 S.E. 2d 261 (1997) (noting that it is a fundamental rule of pleading that the pleader must apprise his adversary of the grounds upon which he stands for the prosecution of the case on the one hand, or its defense on the other). Central to requiring the pleading of an affirmative defense is the prevention of unfair surprise. James v. Lister, 331 S.C. 277, 500 S.E. 2d 1998 (citing favorably Ingraham v. United States, 808 F.2d 1075, 1079 (5th Cir. 1987)).

The Defendants are attempting to invoke §37-2-413 to "avoid" liability for the First Cause of Action alleged in the Complaint and in the First Amended Complaint. As such, the alleged applicability of this statute was waived when the Defendants failed to raise it as an affirmative defense.

The Defendants' reliance upon the holding in Ward v. West Oil Co., Inc., 387 S.C. 268, 692 S.E.2d 516 (2010), to revive this affirmative defense is misplaced. The contract at issue in Ward was an *illegal* gambling contract. The Supreme Court held that it would not enforce an illegal contract regardless of when the question of the illegality develops during the course of the trial and whether pleaded or not.

In so holding, the Supreme Court distinguished the holding of Ward from the holding in Armstrong v. Collins, 367 S.C. 204, 621 S.E. 2d 368 (Ct. App. 2005). In Armstrong, the issue was whether the defendant was entitled to a directed verdict because

the alleged contract relied upon by the Plaintiff was *unenforceable*. The Supreme Court found that the defendant failed to preserve the issue of the unenforceability of the contract.

The case at bar is similar. The attorney's fees provision within the Cason/Gorin contract signed by the Defendants is not illegal-it is arguably unenforceable. This statute in question indicates that a provision within a consumer credit sales agreement which provides for attorney's fees in excess of 15% of the unpaid debt is unenforceable. The statute does not indicate that the contract is illegal.

A defendant's reliance on a statute as a "shield with which to defend against plaintiff's right to recover" is an affirmative defense. Stephens v. J.E. Hendricks, 226 S.C. 79, 83 S.E. 2d 634 (1954). A defendant's reliance on a statute to limit liability is an affirmative defense. James v. Lister, 331 S.C. 277, 500 S.E. 2d 198 (Ct. App. 1999). See also Washington v. Whitaker, 317 S.C. 108, 451 S.E. 2d 894 (1994) (finding that reliance upon sovereign immunity to limit actual damages only (and not punitive damages) was an affirmative defense). See Rakestraw v. S.C. Dep't of Highways & Pub. Trans., 323 S.C. 227, 473 S.E. 2d 890 (Ct. App. 1996); Niver v. S.C. Dep't of Highways & Pub. Trans., 302 S.461, 395 S.E. 2d 728 (Ct.App.1990) ( indicating that reliance on the South Carolina Tort Claims Act is an affirmative defense when the SCTCA is asserted as a complete bar as well as claims in which the defense only seeks to limit liability).

The invocation of §37-2-413 to bar or limit the Plaintiff's claim for attorney's fees is an affirmative defense. The Defendants waived their right to rely upon this affirmative defense when they failed to assert it in its Answer or Answer to Amended Complaint and sat on it for three years after the filing of this lawsuit.

Whether an affirmative defense or not, §37-2-413 does not apply in the present case to bar or limit the Plaintiff's claim for attorney's fees, expenses and costs.

In their Memorandum in Support in Motion for Directed Verdict on Attorney's Fees, the Defendants indicate that they moved for directed verdict as to the issue of attorney's fees, costs and expenses. Quite to the contrary, the Defendants only moved for directed verdict on the issue of attorney's fees- not costs and expenses.

Nevertheless, upon its face, the statute only applies to attorney's fees. It has no bearing on the Plaintiff's right to collect \$8,295.31 in expenses and costs related to this litigation. The Cason/Gorrin Contract signed by the Defendants obligates them to pay "costs and expenses." The Plaintiff is entitled to an award of \$8,295.31 in costs and expenses as shown by the Affidavit of Attorney's Fees, Costs and Expenses attached as Exhibit "A".

Additionally, the statute in question does not apply to the contract signed by the Defendants because the arrangement between the parties was not a "consumer credit sale" as defined by §37-2-413.

A "consumer credit sale" is a sale of goods, services, or interest in land in which

- (a) Credit is granted by a person who regularly engages as a seller in credit transactions of the same kind,
- (b) The buyer is a person other than an organization,
- (c) The goods, services, or interest in land are purchased primarily for a personal family or household purpose,
- (d) Either the debt is payable in installments or a credit service charge is made, and
- (e) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars. S.C. code §37-2-413 (1).

The evidence presented at trial established that the Gorrins paid for certain bricks, mortar and sand initially on a personal credit card. Subsequent to that initial purchase,

the Gorrins signed the Cason/Gorrin contract so that bricks, mortar and sand could be delivered to the builder when the builder needed them for construction of the house. The builder was a corporation. Sharon Gorrin testified that the liability to pay for the bricks, mortar and sand was the builder's liability. Once the bricks were delivered to the site, the builder was supposed to pay for the bricks either directly or through the construction draws. Regardless of who was supposed to pay for the materials, the Cason/Gorrin contract provides that the payments are due in full within (30) days of the date of Cason's invoice. The debt was not to be payable in installments.

As relevant to the present case, the initial inquiry is whether the transaction between the Plaintiff and Defendants was a sale of goods purchased primarily for personal, family or household purposes. It was not and the statute does not apply.

Transactions which include materials to be incorporated into a structure are not agreements of sale. Epstein v. Giannattasio, 197 A. 2d 342 (Conn.1963). Bricks, mortar and sand are not "goods". "Ordinary building materials incorporated into an improvement on land" are not "goods." See S.C. Code 36-9-334 (a). As such, they are subject to the laws governing claims to real property. See e.g. S.C. Code Ann. §29-5-10 (mechanics' liens).

If somehow still considered "goods", bricks, mortar and sand are not goods purchased primarily for "personal, family or household purpose." They were purchased primarily for the builder to construct an improvement to real estate. The bricks, mortar and sand lost their identity as personalty. Bricks, mortar and sand are not for "normal consumptive activity by an individual." See Interstate Securities Corp. v. Constantino, 72 B.R. 189 (D.S.C. 1986). "Goods" are personal property. Accord In re Shaffer, 78 B.R.

783 (D.S.C. 1987). The concept of “goods” is limited to personalty which is movable or severable from realty and does not apply to lumber, bricks, cement or other like building materials. See Vernali v. Centrella, 266 A. 2d 200 (Conn. 1970). See also Kennedy v. Vacation International, Ltd., 841 F. Supp. 986 (D. Haw. 1994). (finding the tile installed in condominium was not a “good”); DiIorio v. Structural Stone & Brick Co., Inc., 845 A. 2d 658 (N.J. 2004) (findings that the installation of stones on a house was a transaction in real property and not a sale of goods); Dorsey v. Bowers, 709 So. 2d 51 (Ala. 1998) (finding that a chimney was not a “good”).

If bricks, mortar and sand installed in the Defendant’s house are still considered “goods”, then §37-2-104 is directly at odds with §29-5-10 which provides for attorney’s fees and costs to the prevailing party enforcing the mechanics’ lien. Under §29-5-10, the attorney’s fees and court costs are not limited to 15%. Instead, they “may not exceed the amount of the lien.”

If bricks, mortar and sand purchased on behalf of a builder to use in the construction of a house are “goods” purchased “primarily for a personal, family or household purpose,” the Cason/Gorrin Contract is still not governed by §32-2-104. The Defendants are trying to fit a square peg into a round hole.

The debt was not payable in installments. Each time bricks, mortar or sand were delivered at the request of the builder, the invoice was to be paid. Payment was due on sale. The arrangement did not call for regular installment payments.

Additionally, the Cason/Gorrin Contract does not provide for the payment of “credit service charge.” This term does “not include charges as a result of default.” The Cason/Gorrin contract provides that interest does not begin to accrue until after the

account is "considered past due and in default." Interest does not accrue until (30) days after payment is due. As such, these are charges "as a result of default" and not governed by §32-2-104.

Even if the Cason/Gorrin Contract is governed by §37-2-104, the Guaranty Agreement signed by the Defendants is not. The Guaranty Agreement has nothing to do with the underlying transaction as a matter of law. The Guaranty Agreement signed by the Gorrins requires them to pay all of Plaintiff's attorney's fees, costs and expenses.

Finally, even if the transaction between the parties constituted a "consumer credit sale" under §37-2-104, the contract provision in question is not violative of §37-2-413. §37-2-413 renders unenforceable a provision in a consumer credit sale agreement which provides for payment by the buyer of attorney's fees in excess of 15% to the unpaid debt after default and referral to an attorney. The provisions within the Cason/Gorrin Contract are not in violation of this statute.

The exact language contained within the subject contract is:

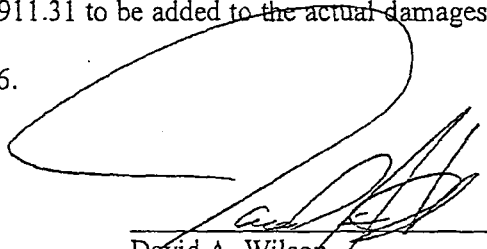
Purchaser also agrees to pay all of Cason's attorney's fees, costs and expenses.

This contractual language does not limit the Plaintiff's entitlement to attorney's fees to those associated with collection of an "unpaid debt after default." The Cason/Gorrin Contract requires the Defendants to pay the Plaintiff's attorney's fees, costs and expenses defending the Defendants' Counterclaims as well.

Additionally, the Cason/Gorrin Contract does not require that the "buyer" pay attorney's fees in excess of 15% of the unpaid debt. It merely says "all" attorney's fees. In the event that the Court does not find persuasive the arguments above, the Plaintiff asserts alternatively that §37-2-413 and the Cason/Gorrin Contract be construed together

to support an award of attorney's fees in an amount up to \$7, 478.47 (15% of \$49,856.46) plus expenses and costs of \$8,295.31.

Based upon the foregoing, the Plaintiff Cason Companies, Inc. opposes the Defendant's Motion for Directed Verdict. The Plaintiff prays for attorney's fees, interest and costs in the amount of \$59,911.31 to be added to the actual damages awarded by the jury in the amount of \$49,856.46.



David A. Wilson  
HORTON, DRAWDY, WARD, MULLINAX  
& FARRY, P.A.  
P.O. Box 10167  
Greenville, SC 29603  
(864)233-4351  
ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Cason Companies, Inc.,

Plaintiff,

v.

Joseph Gorrin and Sharon Gorrin,

Defendant.

IN THE COURT OF COMMON PLEAS  
C.A. NO.: 2007-CP-23-0582

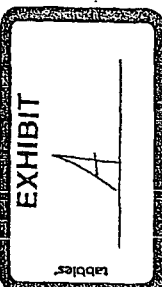
**AFFIDAVIT OF ATTORNEY'S FEES  
EXPENSES AND COSTS**

Personally appeared before me David A. Wilson of the law firm Horton, Drawdy, Ward, Mullinax & Farry, P.A. who, first being duly sworn, deposes and says as follows:

1. That he is the attorney for the Plaintiff Cason Companies, Inc.;
2. That David A. Wilson has expended time on behalf of Plaintiff in this action.
3. That David A. Wilson was admitted to the South Carolina Bar in 1992 and is a partner in the law firm of Horton, Drawdy, Ward, Mullinax & Farry, P.A., Greenville, South Carolina.

4. That David A. Wilson has acted as attorney for Plaintiff in the proceedings which have been pending before the Court concerning the disputes of the above parties and this Affidavit is filed in support of a request for attorney's fees and costs.

5. That David A. Wilson incorporates herein the South Carolina Appellate Court Rules, which contain the Rules of Professional Conduct concerning the setting of attorney's fees; that David A. Wilson calls to the attention of the Court the numerous case law decisions by the Supreme Court of South Carolina concerning the factors and criteria which should be considered in setting attorney's fees; that David A. Wilson relies upon the discretion of the Court in the determination of the amount of fees based, among other things, upon the Court's file herein and the Court's knowledge of the litigation between the parties, which reflects the difficulty of the



services rendered, the time necessarily expended, the results accomplished and to be accomplished, the professional standing of counsel, the fees customarily charged in this area for similar legal services, and the necessity for full discovery in this case to avoid surprise, assure full financial disclosure, narrow the issues, clarify the issues in dispute and ultimately shorten the time for trial.

6. That David A. Wilson agreed to his representation on the basis of an hourly rate of Two Hundred and No/100ths (\$200.00) Dollars, plus actual costs incurred.

7. That the undersigned is informed and believes that the time spent in these matters was necessary to protect the client's interest and to make as concise and clear a presentation to the Court of the issues as possible. Such representation by David A. Wilson, includes but is not limited to: Multiple interoffice and telephone conferences with client; preliminary discussion of alternatives; preparation, review and revisions to Complaint; review of documents produced by client and through discovery; preparation, attendance and travel to and from Final Hearing. An itemized statement indicating the work performed and the fees and costs incurred is attached as Exhibit "A".

That the total time expended by David A. Wilson is as follows:

David A. Wilson

|                                                |             |
|------------------------------------------------|-------------|
| 257.8 hours at \$200.00 per hour.....          | \$51,560.00 |
| .80 hours (Paralegal) at \$70.00 per hour..... | \$56.00     |
| Filing, Service Fees, Expenses and Costs.....  | \$8,295.31  |

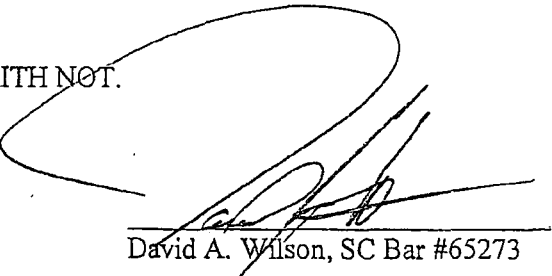
Total Attorney Fee's, Expenses and Costs.....\$59,911.31

8. It being further the information and belief of the undersigned that expenditures should be equitably added into any fees which the Court may hereafter award.

9. That based, not only upon the time necessarily devoted to this case, but also upon the criteria which have been held to be relevant in the setting of attorney's fees, costs and suit

monies, the undersigned requests that this Court review the Affidavit and the case itself, and award judgment in favor of the undersigned's client for attorney's fees, costs and suit monies as the Court may deem appropriate and to require the Defendants Joseph and Sharon Gorrin to pay same in a reasonable time.

FURTHER YOUR AFFIANT SAITH NOT.



David A. Wilson, SC Bar #65273

SWORN to before me this  
12<sup>th</sup> day of April, 2006

Viكية R. Little

Notary Public for South Carolina  
My Commission Expires: 10/28/14

Exhibit "A"

06/28/2010 DAW

HORTON, DRAWDY, WARD & JENKINS, P.A.  
P.O. Box 10167  
Greenville, SC 29603  
(864)233-4351  
Federal ID #57-0522927

Chip Gould  
Cason Companies  
203 W. King Street  
East Flat Rock NC 28726

\* indicates work-in-process  
Client #:  
File #: 42092  
As of Date: 06/28/2010  
Last Billed 04/12/2010

RE: Cason v. Gorrin

| SERVICES RENDERED |      | REGULAR ACCOUNT ACTIVITY                                                                                                                                                                      |        |       |        |
|-------------------|------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|-------|--------|
| DATE              | TKPR | DESCRIPTION OF SERVICES RENDERED                                                                                                                                                              | RATE   | HOURS | AMOUNT |
| * 07/06/2006      | JMJ  | In-debth review of Gorrin documents; telephone call to client; telephone conference with Mike Tinsley; meet with Mike Tinsley and Bryan Carpenter; internal office conference regarding case. | 200.00 | 1.50  | 300.00 |
| * 07/07/2006      | JMJ  | Telephone conference with Mike Tinsley; internal office conference regarding Gorrin case                                                                                                      | 200.00 | 1.00  | 200.00 |
| * 07/13/2006      | JMJ  | Draft letter regarding Gorrin matter; review and revise letter                                                                                                                                | 200.00 | .40   | 80.00  |
| * 07/14/2006      | JMJ  | Final review of correspondence regarding Gorrin matter; have same delivered; review notes regarding other miscellaneous matters and email to client regarding same                            | 200.00 | .40   | 80.00  |
| * 08/04/2006      | JMJ  | Review filss and letters to client and Kim Wooten regarding same                                                                                                                              | 200.00 | .80   | 160.00 |
| * 08/14/2006      | JMJ  | Review file materials regarding Gorrin matter                                                                                                                                                 | 200.00 | .60   | 120.00 |
| * 08/15/2006      | JMJ  | Review file; respond to client's email; note to Kim Wooten                                                                                                                                    | 200.00 | .80   | 160.00 |
| * 08/16/2006      | JMJ  | Telephone conference with Kim Wooten                                                                                                                                                          | 200.00 | .20   | 40.00  |
| * 08/17/2006      | JMJ  | Receipt, review and reply to Kim Wooten's letter regarding Gorrin matter with email to client regarding same                                                                                  | 200.00 | .40   | 80.00  |
| * 08/18/2006      | JMJ  | Brief review and revision of letter drafted previous day                                                                                                                                      | 200.00 | .20   | 40.00  |

\* indicates work-in-process

|                  |                                                                                                                                     |        |      |        |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 09/12/2006 DAW | Receipt and review of correspondence from JMJ; telephone conference with opposing attorney                                          | 200.00 | .30  | 60.00  |
| * 09/12/2006 JMJ | In-depth review of Gorrin file with telephone call to client regarding same; brief internal office conference; letter to Kim Wooten | 200.00 | 1.40 | 280.00 |
| * 09/14/2006 JMJ | Brief inter-office conference regarding Gorrin matter                                                                               | 200.00 | .30  | 60.00  |
| * 09/17/2006 JMJ | Brief inter-office conference; telephone conference with client with note to client regarding Gorrin matter                         | 200.00 | .80  | 160.00 |
| * 09/26/2006 JMJ | Brief inter-office conference concerning ding Gorrin claim                                                                          | 200.00 | .20  | 40.00  |
| * 10/02/2006 DAW | Review file materials for meeting with client                                                                                       | 200.00 | .50  | 100.00 |
| * 10/05/2006 DAW | Inter-office conference with Chip Gould and Mike Tinsley                                                                            | 200.00 | 1.50 | 300.00 |
| * 10/10/2006 DAW | Correspondence to opposing attorney regarding status of case                                                                        | 200.00 | 3.00 | 600.00 |
| * 10/17/2006 DAW | Final preparation of settlement proposal with exhibits                                                                              | 200.00 | 1.20 | 240.00 |
| * 10/25/2006 DAW | Receipt and review of email from client regarding revisions to letter; revisions thereto                                            | 200.00 | .30  | 60.00  |
| * 11/02/2006 DAW | Receipt and review of correspondence from the Clerk of Court; reply to same                                                         | 200.00 | .30  | 60.00  |
| * 11/03/2006 DAW | Telephone conference with John Campbell from Willow Creek HOA                                                                       | 200.00 | .20  | 40.00  |
| * 11/07/2006 DAW | Correspondence to client regarding status of cases                                                                                  | 200.00 | .30  | 60.00  |
| * 11/15/2006 DAW | Receipt and review of correspondence from opposing attorney; correspondence to client regarding same                                | 200.00 | .30  | 60.00  |
| * 01/09/2007 DAW | Preparation of Complaint and Statement of Account; correspondence to client                                                         | 200.00 | 1.00 | 200.00 |
| * 01/11/2007 DAW | Receipt and review of correspondence from client; update Complaint & Statement; correspondence to client                            | 200.00 | .40  | 80.00  |
| * 01/24/2007 DAW | Execution of Complaint; filing and service of same                                                                                  | 200.00 | .20  | 40.00  |
| * 01/30/2007 DAW | Receipt and review of Acceptance of Service                                                                                         | 200.00 | .20  | 40.00  |

\* indicates work-in-process

|                  |                                                                                                                                        |        |      |        |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 02/15/2007 DAW | Receipt, review and reply to<br>correspondence from opposing attorney                                                                  | 200.00 | .20  | 40.00  |
| * 04/09/2007 DAW | Receipt and review of Answer and<br>Counterclaim; correspondence to<br>client regarding same                                           | 200.00 | .30  | 60.00  |
| * 04/10/2007 DAW | Receipt and review of correspondence<br>from opposing attorney                                                                         | 200.00 | .20  | 40.00  |
| * 04/16/2007 JMJ | Receipt and review of audit letter<br>and assemble information for response<br>to same                                                 | 200.00 | .30  | 60.00  |
| * 04/24/2007 JMJ | Assemble additional information to<br>reply to CPA audit letter and respond<br>to same                                                 | 200.00 | .80  | 160.00 |
| * 04/28/2007 DAW | Receipt and review of correspondence<br>from opposing attorney regarding<br>subpoena                                                   | 200.00 | .20  | 40.00  |
| * 05/01/2007 DAW | Inter-office conference with client<br>regarding Answer and Counterclaim                                                               | 200.00 | 1.00 | 200.00 |
| * 05/07/2007 DAW | Telephone conference with opposing<br>attorney confirming extension                                                                    | 200.00 | .30  | 60.00  |
| * 05/21/2007 DAW | Initial preparation of Reply to<br>Counterclaim                                                                                        | 200.00 | .60  | 120.00 |
| * 05/22/2007 DAW | Reply to Counterclaim; filing and<br>service of same                                                                                   | 200.00 | 1.50 | 300.00 |
| * 08/13/2007 DAW | Receipt and review of correspondence<br>from opposing attorney                                                                         | 200.00 | .20  | 40.00  |
| * 08/30/2007 DAW | Email to opposing attorney regarding<br>discovery; preparation of Motion to<br>Compel                                                  | 200.00 | .70  | 140.00 |
| * 08/31/2007 DAW | Receipt, review and reply to email<br>from opposing attorney regarding<br>discovery                                                    | 200.00 | .20  | 40.00  |
| * 09/05/2007 DAW | Receipt and review of ADR, Notice;<br>correspondence to opposing attorney<br>regarding same                                            | 200.00 | .30  | 60.00  |
| * 09/06/2007 DAW | Receipt, review and reply to several<br>emails from opposing attorney<br>regarding mediation                                           | 200.00 | .40  | 80.00  |
| * 09/11/2007 DAW | Receipt and review of discovery<br>responses; email to opposing attorney<br>regarding same; correspondence to<br>client regarding same | 200.00 | .60  | 120.00 |
| * 09/20/2007 DAW | Receipt and review of documents<br>pursuant to Request for Production of<br>Documents; subpoena to GMAC, BB&T,<br>Willow Creek etc.    | 200.00 | 1.00 | 200.00 |
| * 09/28/2007 DAW | Receipt and review of Title Notes;<br>subpoena for additional mortgage and<br>supplemental subpoena to Willow Creek                    | 200.00 | .70  | 140.00 |

\* indicates work-in-process

|                  |                                                                                                                                             |        |     |       |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------|--------|-----|-------|
| * 09/29/2007 DAW | Receipt and review of houseplan; correspondence to client regarding same                                                                    | 200.00 | .30 | 60.00 |
| * 10/02/2007 DAW | Receipt and review of Discovery requests from opposing attorney; correspondence to client regarding same                                    | 200.00 | .30 | 60.00 |
| * 10/02/2007 DAW | Receipt and review of correspondence from opposing attorney                                                                                 | 200.00 | .30 | 60.00 |
| * 10/03/2007 DAW | Receipt and review of documents received from Hartman Law Firm pursuant to Subpoena; correspondence to opposing attorney regarding same     | 200.00 | .40 | 80.00 |
| * 10/08/2007 DAW | Receipt and review of documents pursuant to subpoena to Homeowners Mortgage Enterprises; correspondence to opposing attorney regarding same | 200.00 | .30 | 60.00 |
| * 10/09/2007 DAW | Receipt and review of correspondence from opposing attorney                                                                                 | 200.00 | .20 | 40.00 |
| * 10/12/2007 DAW | Receipt and review of correspondence from attorney for Coastal Mortgage; correspondence serving subpoena by Certified mail                  | 200.00 | .30 | 60.00 |
| * 10/19/2007 DAW | Telephone conference from attorney for Willow Creek                                                                                         | 200.00 | .10 | 20.00 |
| * 10/23/2007 DAW | Correspondence to opposing attorney                                                                                                         | 200.00 | .30 | 60.00 |
| * 10/29/2007 DAW | Receipt and review of documents from BB&T pursuant to Subpoena; correspondence to opposing attorney regarding same                          | 200.00 | .30 | 60.00 |
| * 11/05/2007 DAW | Receipt and review of two letters from opposing attorney; reply correspondence regarding subpoena                                           | 200.00 | .30 | 60.00 |
| * 11/07/2007 DAW | Telephone conference from client regarding subpoena from Hanson Brick                                                                       | 200.00 | .20 | 40.00 |
| * 11/07/2007 DAW | Receipt and review of Request for Production of Documents; correspondence to client regarding same                                          | 200.00 | .30 | 60.00 |
| * 11/15/2007 DAW | Receipt and review of correspondence from opposing attorney to Chief Administrative Judge                                                   | 200.00 | .20 | 40.00 |
| * 12/03/2007 DAW | Receipt, review and reply to correspondence from opposing attorney                                                                          | 200.00 | .30 | 60.00 |
| * 12/18/2007 DAW | Telephone conference from opposing attorney regarding discovery                                                                             | 200.00 | .20 | 40.00 |
| * 01/24/2008 DAW | Receipt and review of Notice of Pretrial Hearing                                                                                            | 200.00 | .20 | 40.00 |

\* indicates work-in-process

|                  |                                                                                                                                                                                              |        |      |        |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 01/24/2008 DAW | Receipt and review of correspondence from court regarding status conference; receipt, review and reply to email from opposing attorney regarding mediation, status conference and trial date | 200.00 | .20  | 40.00  |
| * 01/25/2008 DAW | Preparation of Interrogatories and Request for Production of Documents                                                                                                                       | 200.00 | 1.00 | 200.00 |
| * 01/30/2008 DAW | Receipt and review of several emails from opposing attorney scheduling mediation                                                                                                             | 200.00 | .30  | 60.00  |
| * 01/30/2008 DAW | Telephone conference from mediator; email to opposing attorney regarding mediation                                                                                                           | 200.00 | .20  | 40.00  |
| * 02/01/2008 DAW | Receipt and review of correspondence from mediator                                                                                                                                           | 200.00 | .20  | 40.00  |
| * 02/06/2008 DAW | Inter-office conference with client regarding mediation and discovery                                                                                                                        | 200.00 | .50  | 100.00 |
| * 02/07/2008 DAW | Telephone conference from Mike Tinsley regarding names of experts                                                                                                                            | 200.00 | .20  | 40.00  |
| * 02/07/2008 DAW | Preparation of Answers to Requests for Production; telephone conference from Hanson representative; correspondence to Hansen representative regarding "downgrade"                            | 200.00 | 1.70 | 340.00 |
| * 02/11/2008 DAW | Telephone conference from masonry expert                                                                                                                                                     | 200.00 | .20  | 40.00  |
| * 02/11/2008 DAW | Telephone conference from Hansen Brick representative Chester Lewels regarding "downgrade issue"                                                                                             | 200.00 | .20  | 40.00  |
| * 02/12/2008 DAW | Telephone conference from estimator                                                                                                                                                          | 200.00 | .20  | 40.00  |
| * 02/13/2008 DAW | Preparation for mediation                                                                                                                                                                    | 200.00 | .80  | 160.00 |
| * 02/14/2008 DAW | Inter-office conference with clients; attendance at mediation                                                                                                                                | 200.00 | 2.50 | 500.00 |
| * 02/15/2008 DAW | Receipt and review of email from opposing attorney regarding jury coordinator                                                                                                                | 200.00 | .10  | 20.00  |
| * 02/19/2008 DAW | Receipt and review of correspondence from mediator; reply correspondence                                                                                                                     | 200.00 | .30  | 60.00  |
| * 02/20/2008 DAW | Receipt and review of Proof of ADR Exemption                                                                                                                                                 | 200.00 | .20  | 40.00  |
| * 02/26/2008 DAW | Receipt and review of correspondence from opposing attorney to Judge Few                                                                                                                     | 200.00 | .10  | 20.00  |
| * 03/20/2008 DAW | Receipt, review and reply to email from opposing attorney                                                                                                                                    | 200.00 | .20  | 40.00  |
| * 03/24/2008 DAW | Receipt and review of Affidavit of Scott Ibbotson                                                                                                                                            | 200.00 | .20  | 40.00  |

\* indicates work-in-process

|                  |                                                                                                               |        |      |        |
|------------------|---------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 04/02/2008 DAW | Receipt and review of additional responses to discovery; correspondence to client regarding same              | 200.00 | .30  | 60.00  |
| * 04/14/2008 DAW | Receipt, review and reply to several emails from opposing attorney regarding experts and continuance          | 200.00 | .30  | 60.00  |
| * 04/14/2008 DAW | Receipt and review of supplemental answers to Interrogatories; correspondence to client                       | 200.00 | .20  | 40.00  |
| * 04/16/2008 DAW | Telephone conference from Chip Gould regarding new documents                                                  | 200.00 | .20  | 40.00  |
| * 04/22/2008 DAW | Review file regarding discovery to be completed and expert to be disposed; lengthy email to opposing attorney | 200.00 | .70  | 140.00 |
| * 04/23/2008 DAW | Receipt and review of email from opposing attorney regarding discovery                                        | 200.00 | .20  | 40.00  |
| * 04/23/2008 DAW | Receipt, review and reply to email from opposing attorney                                                     | 200.00 | .20  | 40.00  |
| * 04/23/2008 DAW | Email to jury-coordinator regarding continuance                                                               | 200.00 | .20  | 40.00  |
| * 04/29/2008 DAW | Receipt and review of order granting motion for continuance                                                   | 200.00 | .20  | 40.00  |
| * 05/16/2008 DAW | Inter-office conference with client to discuss Answers to Interrogatories                                     | 200.00 | .60  | 120.00 |
| * 05/16/2008 MAC | Inter-office conference with client regarding Discovery                                                       | 70.00  | .30  | 21.00  |
| * 06/05/2008 DAW | Final preparation of Answer to Interrogatories; service of same                                               | 200.00 | 1.20 | 240.00 |
| * 06/10/2008 DAW | Receipt, review and reply to email from opposing attorney                                                     | 200.00 | .20  | 40.00  |
| * 06/11/2008 DAW | Telephone conference from client regarding expert                                                             | 200.00 | .10  | 20.00  |
| * 06/13/2008 DAW | Receipt and review of correspondence from opposing attorney to Judge Few                                      | 200.00 | .20  | 40.00  |
| * 06/17/2008 DAW | Telephone conference from expert                                                                              | 200.00 | .20  | 40.00  |
| * 07/01/2008 DAW | Receipt, review and reply to several emails from opposing attorney regarding continuance and depositions      | 200.00 | .30  | 60.00  |
| * 07/07/2008 DAW | Email to opposing attorney regarding scheduling inspection of home                                            | 200.00 | .10  | 20.00  |
| * 07/09/2008 DAW | Receipt, review and reply to email from opposing attorney (short email)                                       | 200.00 | .10  | 20.00  |
| * 07/10/2008 DAW | Receipt and review of email from expert; email to opposing attorney                                           | 200.00 | .20  | 40.00  |
| * 07/10/2008 DAW | Email to expert regarding home inspection                                                                     | 200.00 | .10  | 20.00  |

\* indicates work-in-process

|                  |                                                                                                                                                                           |        |      |        |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 07/29/2008 DAW | Receipt, review and reply to several emails form opposing attorney regarding deposition of Scott Ibbotson and home inspector                                              | 200.00 | .20  | 40.00  |
| * 08/04/2008 DAW | Preparation of Supplemental Interrogatories                                                                                                                               | 200.00 | .30  | 60.00  |
| * 08/04/2008 DAW | Telephone conference from client; email to expert regarding home inspection                                                                                               | 200.00 | .20  | 40.00  |
| * 08/04/2008 DAW | Receipt, review and reply to email from expert; email to opposing attorney                                                                                                | 200.00 | .20  | 40.00  |
| * 08/06/2008 DAW | Receipt and review of fee agreement from expert; reply correspondence                                                                                                     | 200.00 | .30  | 60.00  |
| * 08/06/2008 DAW | Email to expert regarding reports of other experts; Brief research regarding efflorescence                                                                                | 200.00 | .60  | 120.00 |
| * 08/06/2008 DAW | Receipt, review and reply to email from expert                                                                                                                            | 200.00 | .20  | 40.00  |
| * 08/07/2008 DAW | Preparation for deposition of Defendant's experts Newman & Truluck                                                                                                        | 200.00 | 2.50 | 500.00 |
| * 08/07/2008 DAW | Telephone conference with expert regarding areas of inquiry for depositions of opposing party's experts                                                                   | 200.00 | .50  | 100.00 |
| * 08/08/2008 DAW | Attendance at depositions of the Defendant's expert                                                                                                                       | 200.00 | 4.00 | 800.00 |
| * 08/14/2008 DAW | Telephone conference with Mike Tinsley                                                                                                                                    | 200.00 | .20  | 40.00  |
| * 08/19/2008 DAW | Telephone conference with client regarding scheduling email regarding expert depositions                                                                                  | 200.00 | .20  | 40.00  |
| * 08/20/2008 DAW | Supplementary Discovery responses; several emails to and from opposing attorney regarding same; correspondence to client regarding same                                   | 200.00 | 1.50 | 300.00 |
| * 08/22/2008 DAW | Receipt, review and reply to email from opposing attorney                                                                                                                 | 200.00 | .20  | 40.00  |
| * 08/26/2008 DAW | Receipt, review and reply to email from opposing attorney regarding home inspection; depositions of Plaintiffs, expert fees; email to my expert regarding home inspection | 200.00 | .30  | 60.00  |
| * 08/26/2008 DAW | Numerous emails to and from opposing attorney, to and from client and to and from expert regarding scheduling issues                                                      | 200.00 | .50  | 100.00 |

\* indicates work-in-process

|                  |                                                                                                                                                                                                                              |        |      |        |
|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 08/27/2008 DAW | Telephone conference from Mike Tinsley                                                                                                                                                                                       | 200.00 | .20  | 40.00  |
| * 08/27/2008 DAW | Preparation for deposition of Ibbotson                                                                                                                                                                                       | 200.00 | 2.00 | 400.00 |
| * 08/28/2008 DAW | Attendance at 1st half of Deposition with Scott Ibbotson; inter-office conference with client                                                                                                                                | 200.00 | 2.10 | 420.00 |
| * 08/28/2008 DAW | Additional preparation for deposition of Ibbotson                                                                                                                                                                            | 200.00 | .60  | 120.00 |
| * 09/04/2008 DAW | Receipt and review of correspondence from opposing attorney                                                                                                                                                                  | 200.00 | .20  | 40.00  |
| * 09/05/2008 DAW | Home inspection with expert                                                                                                                                                                                                  | 200.00 | 3.00 | 600.00 |
| * 09/08/2008 DAW | Receipt and review of several emails from expert                                                                                                                                                                             | 200.00 | .20  | 40.00  |
| * 09/08/2008 DAW | Receipt, review and reply to email from client                                                                                                                                                                               | 200.00 | .20  | 40.00  |
| * 09/08/2008 DAW | Receipt and review of drawings from client and Lab Test results from Hanson; forward to expert and client; email to client regarding brick estimate ; preparation of supplemental interrogatories and request for production | 200.00 | .90  | 180.00 |
| * 09/08/2008 DAW | Email to client regarding discovery                                                                                                                                                                                          | 200.00 | .20  | 40.00  |
| * 09/09/2008 DAW | Email to experts regarding potential trial date; receipt, review and reply to email                                                                                                                                          | 200.00 | .20  | 40.00  |
| * 09/10/2008 DAW | Preparation of Motion for Continuance                                                                                                                                                                                        | 200.00 | 1.00 | 200.00 |
| * 09/10/2008 DAW | Telephone conference from Mike Tinsley regarding Brian Carpenter and Defendant's new brick expert                                                                                                                            | 200.00 | .20  | 40.00  |
| * 09/10/2008 DAW | Serving opposing attorney with Supplemental Discovery requests                                                                                                                                                               | 200.00 | .30  | 60.00  |
| * 09/10/2008 DAW | Receipt, review and reply to emails from opposing attorney regarding depositions of Defendants and expert                                                                                                                    | 200.00 | .20  | 40.00  |
| * 09/11/2008 DAW | Email to client regarding deposition of Defendants                                                                                                                                                                           | 200.00 | .10  | 20.00  |
| * 09/12/2008 DAW | Receipt and review of information from client; revise discovery responses; serve on opposing attorney                                                                                                                        | 200.00 | .50  | 100.00 |
| * 09/15/2008 DAW | Several emails to and from opposing attorney and docket coordinator                                                                                                                                                          | 200.00 | .30  | 60.00  |
| * 09/15/2008 DAW | Inter-office conference with Mike Tinsley & Bryan Carpenter                                                                                                                                                                  | 200.00 | 1.40 | 280.00 |
| * 09/16/2008 DAW | Receipt, review and reply to email from expert                                                                                                                                                                               | 200.00 | .20  | 40.00  |

\* indicates work-in-process

|                  |                                                                                                                                                                                        |        |      |        |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 09/30/2008 DAW | Receipt, review and reply to email from opposing attorney regarding Ibbotson's deposition                                                                                              | 200.00 | .20  | 40.00  |
| * 10/02/2008 DAW | Receipt, review and reply to another email from opposing attorney regarding deposition of Ibbotson                                                                                     | 200.00 | .20  | 40.00  |
| * 10/15/2008 DAW | Receipt and review of Defendant's Responses to Second Set of Interrogatories; correspondence to client regarding same                                                                  | 200.00 | .30  | 60.00  |
| * 10/27/2008 DAW | Telephone conference from Mike Tinsley regarding Ibbotson                                                                                                                              | 200.00 | .20  | 40.00  |
| * 11/05/2008 DAW | Receipt and review of documents from Five Star Builders; reply correspondence; correspondence to client                                                                                | 200.00 | .40  | 80.00  |
| * 11/21/2008 DAW | Review of Day 1 of Ibbotson's deposition; telephone conference from client regarding Day 3 of Ibbotson's deposition; receipt and review of fax from client; preparation for deposition | 200.00 | 1.90 | 380.00 |
| * 11/21/2008 DAW | Receipt, review and reply to email from opposing attorney regarding deposition                                                                                                         | 200.00 | .20  | 40.00  |
| * 12/01/2008 DAW | Receipt, review and reply to email from opposing attorney regarding deposition of Ibbotson and Defendants; receipt and review of answers to Third Set of Interrogatories               | 200.00 | .20  | 40.00  |
| * 12/17/2008 DAW | Attendance at Day 2 of Ibbotson's deposition                                                                                                                                           | 200.00 | 1.70 | 340.00 |
| * 12/17/2008 DAW | Numerous emails with opposing attorney attempting to schedule deposition of Defendants.                                                                                                | 200.00 | .20  | 40.00  |
| * 12/17/2008 DAW | Receipt and review responses to Second Request for Production                                                                                                                          | 200.00 | .20  | 40.00  |
| * 12/19/2008 DAW | Subpoena to Defendant and Scott Ibbotson; supplemental requests for production                                                                                                         | 200.00 | .50  | 100.00 |
| * 12/19/2008 DAW | Receipt, review and reply to email regarding depositions of Defendants; email regarding document production                                                                            | 200.00 | .20  | 40.00  |
| * 01/05/2009 DAW | Email to expert                                                                                                                                                                        | 200.00 | .20  | 40.00  |
| * 01/05/2009 DAW | Receipt, review and reply to several emails from opposing attorney; forward to client regarding emails between Defendant and Ibbotson                                                  | 200.00 | .30  | 60.00  |

\* indicates work-in-process

|                  |                                                                                                                                                                             |        |      |          |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|----------|
| * 01/06/2009 DAW | Telephone conference with Mike Tinsley regarding builder                                                                                                                    | 200.00 | .10  | 20.00    |
| * 01/07/2009 DAW | Telephone conference from Mike Tinsley regarding witness interview                                                                                                          | 200.00 | .20  | 40.00    |
| * 01/09/2009 DAW | Interview with witness                                                                                                                                                      | 200.00 | 1.50 | 300.00   |
| * 01/11/2009 DAW | Review file and ensure all discovery completed; preparation of supplemental responses to request for production                                                             | 200.00 | 1.00 | 200.00   |
| * 01/12/2009 DAW | Initial preparation for deposition of Defendants                                                                                                                            | 200.00 | .70  | 140.00   |
| * 01/12/2009 DAW | Telephone conference with client regarding narrowing witnesses for trial                                                                                                    | 200.00 | .20  | 40.00    |
| * 01/12/2009 DAW | Two telephone conferences with opposing attorney regarding rescheduling depositions                                                                                         | 200.00 | .30  | 60.00    |
| * 01/12/2009 BBC | Preparation of Jury Charges                                                                                                                                                 | 200.00 | 2.10 | 420.00   |
| * 01/13/2009 DAW | Preparation for Deposition of Sharon Gorrin                                                                                                                                 | 200.00 | 4.30 | 860.00   |
| * 01/13/2009 BBC | Preparation of Jury Charges                                                                                                                                                 | 200.00 | 2.00 | 400.00   |
| * 01/14/2009 DAW | Telephone conference with opposing attorney regarding discovery; preparation for deposition of Sharon Gorrin; Deposition of Sharon Gorrin; email to expert regarding report | 200.00 | 6.50 | 1,300.00 |
| * 01/15/2009 DAW | Telephone conference from Chester Lewis at Hanson regarding Hanson's attorney                                                                                               | 200.00 | .20  | 40.00    |
| * 01/15/2009 DAW | Telephone conference from Builder regarding recollection of events                                                                                                          | 200.00 | .20  | 40.00    |
| * 01/15/2009 DAW | Telephone conference with Mike Tinsley regarding issues with Hanson's witnesses                                                                                             | 200.00 | .20  | 40.00    |
| * 01/15/2009 DAW | Numerous emails to and from opposing attorney regarding request for continuance; telephone conference with expert (message to Hanson's rep.)                                | 200.00 | .40  | 80.00    |
| * 01/15/2009 BBC | Continue work on Jury Charges                                                                                                                                               | 200.00 | .80  | 160.00   |
| * 01/16/2009 DAW | Email to opposing attorney regarding deposition of Mr. Gorrin; review of Mrs. Gorrin's files                                                                                | 200.00 | .10  | 20.00    |
| * 01/19/2009 DAW | Receipt and review of preliminary report from expert; reply email; email to client                                                                                          | 200.00 | 1.20 | 240.00   |
| * 01/19/2009 DAW | Receipt and review of email from expert regarding lab test report from Hanson; email to client regarding same; reply email to expert                                        | 200.00 | .20  | 40.00    |

\* indicates work-in-process

|                  |                                                                                                                                                                              |        |      |        |
|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 01/19/2009 DAW | Receipt, review and reply to email from opposing attorney regarding documents review                                                                                         | 200.00 | .20  | 40.00  |
| * 01/20/2009 DAW | Receipt, review and reply to email from opposing attorney regarding Defendant's document production; telephone conference from client regarding summary of damages (message) | 200.00 | .20  | 40.00  |
| * 01/20/2009 DAW | Telephone conference from client regarding finance charges; preparation of Supplemental Responses to Discovery                                                               | 200.00 | .30  | 60.00  |
| * 01/20/2009 DAW | Receipt, review and reply to email from client with expert's report for review                                                                                               | 200.00 | .20  | 40.00  |
| * 01/21/2009 DAW | Receipt, review and reply to email from opposing attorney regarding motion to consolidate                                                                                    | 200.00 | .20  | 40.00  |
| * 01/23/2009 DAW | Receipt and review of additional documents pursuant to discovery                                                                                                             | 200.00 | .20  | 40.00  |
| * 01/27/2009 DAW | Telephone conference with attorney for builder                                                                                                                               | 200.00 | .30  | 60.00  |
| * 01/27/2009 DAW | Preparation of Deposition Notice of Joseph Gorrin; correspondence to opposing attorney regarding same                                                                        | 200.00 | .30  | 60.00  |
| * 01/28/2009 DAW | Receipt and review of box of additional documents from Gorrins                                                                                                               | 200.00 | 1.00 | 200.00 |
| * 01/28/2009 DAW | Receipt and review of Motion to Consolidate; reply email                                                                                                                     | 200.00 | .30  | 60.00  |
| * 01/29/2009 DAW | Preparation and service of numerous subpoenas to vendors and suppliers for Gorrin residence                                                                                  | 200.00 | 1.20 | 240.00 |
| * 01/30/2009 DAW | Preparation of six additional subpoenas                                                                                                                                      | 200.00 | 1.20 | 240.00 |
| * 01/30/2009 DAW | Preparation of two more subpoenas                                                                                                                                            | 200.00 | .40  | 80.00  |
| * 02/03/2009 DAW | Receipt, review and reply to email from opposing attorney regarding deposition of Mr. Gorrin                                                                                 | 200.00 | .20  | 40.00  |
| * 02/04/2009 DAW | Telephone conference with Bob Connor regarding Subpoena                                                                                                                      | 200.00 | .20  | 40.00  |
| * 02/05/2009 DAW | Receipt and review of correspondence from BB&T                                                                                                                               | 200.00 | .20  | 40.00  |
| * 02/05/2009 DAW | Receipt and review of additional documents from opposing attorney                                                                                                            | 200.00 | .20  | 40.00  |
| * 02/05/2009 DAW | Receipt and review of email from opposing attorney regarding request for consent to amend Answer and Counterclaim                                                            | 200.00 | .20  | 40.00  |

\* indicates work-in-process

|                  |                                                                                                                                                                                                                                                         |        |      |        |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 02/06/2009 DAW | Receipt, review and reply to email from expert                                                                                                                                                                                                          | 200.00 | .20  | 40.00  |
| * 02/09/2009 DAW | Receipt and review of additional documents from opposing attorney                                                                                                                                                                                       | 200.00 | .30  | 60.00  |
| * 02/09/2009 DAW | Receipt, review and reply to several emails regarding subpoenas and Motion to Quash                                                                                                                                                                     | 200.00 | .20  | 40.00  |
| * 02/10/2009 DAW | Receipt and review of Motion to Quash subpoena to BB&T                                                                                                                                                                                                  | 200.00 | .20  | 40.00  |
| * 02/10/2009 DAW | Status update email to client                                                                                                                                                                                                                           | 200.00 | .20  | 40.00  |
| * 02/11/2009 DAW | Receipt and review of Motion to Amend Answer and Counterclaim; telephone conference with client regarding Motion to Consolidate; email to expert regarding A/V equipment; telephone conference with attorney for builder; email to Defendant's attorney | 200.00 | 1.00 | 200.00 |
| * 02/11/2009 DAW | Preparation for Deposition of Joseph Gorrin                                                                                                                                                                                                             | 200.00 | 1.50 | 300.00 |
| * 02/11/2009 DAW | Preparation for Motion to Consolidate                                                                                                                                                                                                                   | 200.00 | .40  | 80.00  |
| * 02/12/2009 DAW | Inter-office conference with client; Deposition of Joseph Gorrin                                                                                                                                                                                        | 200.00 | 2.90 | 580.00 |
| * 02/12/2009 DAW | Attendance at Motion to Consolidate                                                                                                                                                                                                                     | 200.00 | 1.20 | 240.00 |
| * 02/13/2009 DAW | Receipt and review of hearing notice on Motion to Quash                                                                                                                                                                                                 | 200.00 | .20  | 40.00  |
| * 02/13/2009 DAW | Receipt and review of supplemental discovery responses; correspondence to client regarding same                                                                                                                                                         | 200.00 | .30  | 60.00  |
| * 02/17/2009 DAW | Receipt and review of subpoenaed documents from Best Distributing                                                                                                                                                                                       | 200.00 | .20  | 40.00  |
| * 02/17/2009 DAW | Receipt and review of subpoenaed documents from Tile With Style                                                                                                                                                                                         | 200.00 | .30  | 60.00  |
| * 02/18/2009 DAW | Receipt and review of subpoenaed documents from Carolina Stoneworks                                                                                                                                                                                     | 200.00 | .30  | 60.00  |
| * 02/18/2009 DAW | Receipt, review and reply to email from opposing attorney regarding transfer of venue and consolidation                                                                                                                                                 | 200.00 | .20  | 40.00  |
| * 02/18/2009 DAW | Receipt and review of form order from Judge Patterson continuing case; receipt and review of Order Granting Motion to Amend Counterclaim; correspondence to client regarding same                                                                       | 200.00 | .30  | 60.00  |
| * 03/01/2009 DAW | Inter-office conference with David Wilson to brainstorm amended pleadings; review same.                                                                                                                                                                 | 200.00 | .50  | 100.00 |

\* indicates work-in-process

|                  |                                                                                                                                             |        |      |        |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 03/05/2009 DAW | Preparation of Reply to Amended Answer.                                                                                                     | 200.00 | 1.00 | 200.00 |
| * 03/05/2009 DAW | Preparation of Amended Complaint (Westlaw) regarding 3rd party beneficiary, constructive trust and equitable estoppel                       | 200.00 | 2.00 | 400.00 |
| * 03/06/2009 DAW | Additional preparation of Reply and Amended Answer and Complaint; filed Amended Complaint; correspondence to Clerk of Court regarding same. | 200.00 | 2.50 | 500.00 |
| * 03/09/2009 DAW | Receipt and review of 2 emails from opposing counsel regarding Amended Complaint.                                                           | 200.00 | .30  | 60.00  |
| * 03/09/2009 JMJ | Review of Reply to Amended Complaint.                                                                                                       | 200.00 | .30  | 60.00  |
| * 03/09/2009 DAW | Filing and service of Reply and Amended Complaint.                                                                                          | 200.00 | .40  | 80.00  |
| * 03/23/2009 DAW | Receipt and review of Errata Sheet without notary; reply correspondence to Court Reporter.                                                  | 200.00 | .30  | 60.00  |
| * 03/24/2009 DAW | Receipt and review Amended Answer and Counterclaim.                                                                                         | 200.00 | .20  | 40.00  |
| * 03/27/2009 DAW | Telephone call from builder regarding money owed to Mr. Cordas.                                                                             | 200.00 | .20  | 40.00  |
| * 03/27/2009 DAW | Receipt and review of email from court reporter and opposing attorney regarding errata sheet.                                               | 200.00 | .20  | 40.00  |
| * 04/01/2009 DAW | Telephone conference with painting contractor regarding money owed to him from Gorrins                                                      | 200.00 | .20  | 40.00  |
| * 04/13/2009 DAW | Receipt, review and reply to email from opposing attorney regarding Answer to 1st Amended Complaint                                         | 200.00 | .20  | 40.00  |
| * 04/16/2009 DAW | Preparation for Motion to Quash                                                                                                             | 200.00 | 1.50 | 300.00 |
| * 04/17/2009 DAW | Preparation of Exhibits for Motion to Quash hearing                                                                                         | 200.00 | .50  | 100.00 |
| * 04/20/2009 DAW | Receipt and review of email from opposing attorney withdrawing Motion to Quash; correspondence to BB&T regarding same                       | 200.00 | .30  | 60.00  |
| * 04/27/2009 DAW | Receipt, review and reply to several emails from opposing attorney regarding Motion to Quash                                                | 200.00 | .30  | 60.00  |
| * 04/27/2009 DAW | Receipt and review of Notice of Hearing on Motion to Quash                                                                                  | 200.00 | .20  | 40.00  |
| * 05/04/2009 DAW | Receipt and review of hearing notice regarding Motion to Quash                                                                              | 200.00 | .20  | 40.00  |
| * 05/12/2009 DAW | Receipt, review and reply to email from opposing attorney                                                                                   | 200.00 | .20  | 40.00  |

\* indicates work-in-process

|                  |                                                                                                            |        |      |        |
|------------------|------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 06/16/2009 DAW | Receipt and review of rescheduling notice                                                                  | 200.00 | .10  | 20.00  |
| * 07/06/2009 DAW | Receipt and review of correspondence and motion from attorney for Five Star Builders                       | 200.00 | .20  | 40.00  |
| * 07/10/2009 DAW | Receipt, review and reply to email from expert                                                             | 200.00 | .20  | 40.00  |
| * 07/18/2009 DAW | Receipt, review and reply to several emails from opposing attorney                                         | 200.00 | .30  | 60.00  |
| * 07/20/2009 DAW | Preparation for Motion to Quash hearing                                                                    | 200.00 | .80  | 160.00 |
| * 08/24/2009 DAW | Receipt and review of hearing notice from Non-Jury Coordinator                                             | 200.00 | .20  | 40.00  |
| * 08/26/2009 DAW | Receipt, review and reply to email from client regarding status                                            | 200.00 | .20  | 40.00  |
| * 08/27/2009 DAW | Receipt and review of hearing notice from opposing attorney                                                | 200.00 | .20  | 40.00  |
| * 09/02/2009 DAW | Receipt and review of correspondence and summary of documents produced by Defendants; reply correspondence | 200.00 | .40  | 80.00  |
| * 09/02/2009 DAW | Receipt and review (and calendar) pretrial conference notice                                               | 200.00 | .20  | 40.00  |
| * 09/02/2009 DAW | Receipt, review and reply to email from opposing attorney regarding pretrial conference                    | 200.00 | .20  | 40.00  |
| * 09/08/2009 DAW | Receipt, review and reply to email from opposing attorney regarding BB&T records                           | 200.00 | .20  | 40.00  |
| * 09/10/2009 DAW | Initial preparation of Memorandum in Opposition to Motion to Quash Subpoena                                | 200.00 | .80  | 160.00 |
| * 09/10/2009 DAW | Email to client regarding Motion to Compel and potential trial dates                                       | 200.00 | .10  | 20.00  |
| * 09/12/2009 DAW | Additional preparation of Memorandum in Opposition to Motion to Quash Subpoena                             | 200.00 | .80  | 160.00 |
| * 09/14/2009 DAW | Final preparation of Memorandum in Opposition to Motion to Quash; service of same                          | 200.00 | 1.50 | 300.00 |
| * 09/14/2009 DAW | Preparation of Affidavit of Attorney's Fees for Motion to Quash hearing                                    | 200.00 | .50  | 100.00 |
| * 09/14/2009 DAW | Preparation of notes for Motion to Quash hearing                                                           | 200.00 | .50  | 100.00 |
| * 09/15/2009 DAW | Preparation for and attendance at Motion to Quash hearing (estimated)                                      | 200.00 | 2.00 | 400.00 |
| * 09/15/2009 DAW | Preparation for and attendance at Motion to Quash Subpoena hearing                                         | 200.00 | .90  | 180.00 |

\* indicates work-in-process

|                  |                                                                                                                                                                                           |        |      |        |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 09/17/2009 DAW | Brief email to opposing attorney requesting proposed language for protective order                                                                                                        | 200.00 | .10  | 20.00  |
| * 09/22/2009 DAW | Initial preparation of Order Denying Motion to Quash Subpoena                                                                                                                             | 200.00 | .50  | 100.00 |
| * 09/28/2009 DAW | Additional preparation of Order Denying Motion to Quash Subpoena; email to opposing attorney regarding same                                                                               | 200.00 | .40  | 80.00  |
| * 09/28/2009 DAW | Review docket; email to opposing attorney regarding possible trial dates                                                                                                                  | 200.00 | .20  | 40.00  |
| * 09/29/2009 DAW | Email to opposing attorney asking for comments about proposed Order Denying Motion to Quash                                                                                               | 200.00 | .10  | 20.00  |
| * 09/29/2009 DAW | Preparation of Trial Week Selection Form                                                                                                                                                  | 200.00 | .30  | 60.00  |
| * 09/30/2009 DAW | Inter-office conference with client regarding fraudulent conveyance                                                                                                                       | 200.00 | .30  | 60.00  |
| * 09/30/2009 DAW | Telephone conference from closing attorney; research regarding attachment, fraudulent conveyances, several emails with opposing attorney; telephone conference with client regarding same | 200.00 | .80  | 160.00 |
| * 10/02/2009 DAW | Revisions to Order Denying Motion to Quash; email to Judge regarding same                                                                                                                 | 200.00 | .30  | 60.00  |
| * 10/07/2009 DAW | Receipt and review of Order Denying Motion to Quash; correspondence to BB&T regarding same                                                                                                | 200.00 | .30  | 60.00  |
| * 10/12/2009 DAW | Preparation of Subpoena to closing attorney; service of same                                                                                                                              | 200.00 | .30  | 60.00  |
| * 10/16/2009 DAW | Receipt, review and reply to email from opposing attorney regarding her client not selling house                                                                                          | 200.00 | .20  | 40.00  |
| * 10/19/2009 DAW | Receipt and review of supplemental answers to Interrogatories from opposing attorney; reply correspondence                                                                                | 200.00 | .20  | 40.00  |
| * 10/21/2009 DAW | Receipt and review of documents subpoenaed from BB&T; correspondence to opposing attorney regarding same; correspondence to client regarding same                                         | 200.00 | 1.00 | 200.00 |
| * 10/30/2009 DAW | Preparation of Second Subpoena to BB&T                                                                                                                                                    | 200.00 | .30  | 60.00  |
| * 11/18/2009 DAW | Telephone conference from Chip Gould                                                                                                                                                      | 200.00 | .20  | 40.00  |

\* indicates work-in-process

|                  |                                                                                                           |        |      |        |
|------------------|-----------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 12/16/2009 DAW | Telephone conference with Dee Dee Gould regarding status                                                  | 200.00 | .20  | 40.00  |
| * 02/01/2010 DAW | Correspondence to opposing attorney regarding documents received related to closing                       | 200.00 | .30  | 60.00  |
| * 02/16/2010 DAW | Email to expert regarding trial date                                                                      | 200.00 | .10  | 20.00  |
| * 02/24/2010 DAW | Check Jury Trial Roster; email to client and expert regarding same                                        | 200.00 | .20  | 40.00  |
| * 02/28/2010 DAW | Preparation of Deposition Summary and trial notes for Scott Ibbotson, Newman and Truluck                  | 200.00 | 3.70 | 740.00 |
| * 03/01/2010 DAW | Telephone conference with Chip Gould regarding meeting with witnesses                                     | 200.00 | .20  | 40.00  |
| * 03/02/2010 DAW | Email to expert regarding photos taken of house                                                           | 200.00 | .10  | 20.00  |
| * 03/02/2010 DAW | Summary of Joseph Gorrin Deposition                                                                       | 200.00 | 1.00 | 200.00 |
| * 03/02/2010 DAW | Preparation of Summary of Sharon Gorrin's deposition                                                      | 200.00 | 3.00 | 600.00 |
| * 03/02/2010 DAW | Receipt and review of photos from expert; supplemental discovery responses to opposing attorney           | 200.00 | .40  | 80.00  |
| * 03/02/2010 DAW | Email to expert regarding photos he intends to rely upon at trial                                         | 200.00 | .10  | 20.00  |
| * 03/04/2010 DAW | Inter-office conference with builder and his attorney                                                     | 200.00 | 1.00 | 200.00 |
| * 03/05/2010 DAW | Telephone conference from Mike Tinsley regarding my conversation with Rusty Starr                         | 200.00 | .20  | 40.00  |
| * 03/05/2010 DAW | Telephone conference with Steve Stout, Brian Carpenter, Rusty Starr, Terry McCranchan                     | 200.00 | 1.30 | 260.00 |
| * 03/05/2010 DAW | Inter-office conference with Cason employees regarding testimony                                          | 200.00 | 4.00 | 800.00 |
| * 03/06/2010 DAW | Receipt, review and reply to email from opposing attorney regarding stipulations                          | 200.00 | .10  | 20.00  |
| * 03/08/2010 DAW | Telephone conference from Brian Carpenter regarding Rusty Starr                                           | 200.00 | .20  | 40.00  |
| * 03/09/2010 DAW | Receipt and review of Motion for Continuance from opposing attorney; email to client regarding same       | 200.00 | .20  | 40.00  |
| * 03/10/2010 DAW | Telephone conference with Judge Miller's law clerk                                                        | 200.00 | .20  | 40.00  |
| * 03/11/2010 DAW | Receipt and review of Notice of Continuance; email to opposing attorney, expert and client regarding same | 200.00 | .30  | 60.00  |

\* indicates work-in-process

|                  |                                                                                                                                                                                                                                                                   |        |      |        |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 03/22/2010 DAW | Receipt and review of email from Jury Coordinator; email to client regarding new trial date                                                                                                                                                                       | 200.00 | .20  | 40.00  |
| * 05/03/2010 DAW | Receipt and review of email from Jury Coordinator; email to client                                                                                                                                                                                                | 200.00 | .20  | 40.00  |
| * 05/10/2010 DAW | Correspondence to Judge Miller regarding scheduling problems with expert                                                                                                                                                                                          | 200.00 | .30  | 60.00  |
| * 05/10/2010 DAW | Preparation of Direct Testimony of Plaintiffs' witnesses; emails to and from Dee Dee Gould regarding meeting; subpoenas to Terry McCracken and Bryan Carpenter                                                                                                    | 200.00 | 3.20 | 640.00 |
| * 05/11/2010 DAW | Preparation of Trial Notes of Joseph Gorrin & part of Scott Ibbotson                                                                                                                                                                                              | 200.00 | 2.80 | 560.00 |
| * 05/12/2010 MAC | Travel to court to research Gorrin case                                                                                                                                                                                                                           | 70.00  | .50  | 35.00  |
| * 05/12/2010 DAW | Inter-office conference with Cason witnesses and review of proposed testimony                                                                                                                                                                                     | 200.00 | 2.50 | 500.00 |
| * 05/12/2010 DAW | Receipt, review and reply to several emails from law clerk for Judge Miller regarding trial                                                                                                                                                                       | 200.00 | .30  | 60.00  |
| * 05/12/2010 DAW | Research Defendant's criminal history; review order of contempt; telephone conference with opposing attorney regarding same as well as Exhibit lists; correspondence to opposing attorney regarding contempt; preparation of Subpoena for Defendant Joseph Gorrin | 200.00 | 1.00 | 200.00 |
| * 05/13/2010 DAW | Preparation of Direct of Steve Stout                                                                                                                                                                                                                              | 200.00 | .70  | 140.00 |
| * 05/13/2010 DAW | Telephone conference with expert regarding trial schedule and testimony; preparation of notes                                                                                                                                                                     | 200.00 | .40  | 80.00  |
| * 05/13/2010 DAW | Receipt and review of email from client regarding updated ledger; email to client regarding jury selection and jury qualification; email to opposing attorney regarding updated balance                                                                           | 200.00 | .40  | 80.00  |
| * 05/13/2010 DAW | Additional preparation cross of Scott Ibbotson                                                                                                                                                                                                                    | 200.00 | .50  | 100.00 |
| * 05/13/2010 BBC | Continue work on Jury Charges; research regarding legal/equitable issues (Westlaw)                                                                                                                                                                                | 200.00 | 2.40 | 480.00 |
| * 05/13/2010 DAW | Prepare cross examination of Jeff Neaman.                                                                                                                                                                                                                         | 200.00 | .60  | 120.00 |

\* indicates work-in-process

|                  |                                                                                                                                                                                                |        |       |          |
|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|-------|----------|
| * 05/14/2010 DAW | Preparation for trial; telephone conferences with witnesses and clients                                                                                                                        | 200.00 | 5.00  | 1,000.00 |
| * 05/14/2010 BBC | Finalize Jury Charges; legal research (Westlaw)                                                                                                                                                | 200.00 | 1.50  | 300.00   |
| * 05/14/2010 DAW | Initial preparation of cross examination of Sharon Gorrin-Order documents to be enlarged as exhibits.                                                                                          | 200.00 | 1.60  | 320.00   |
| * 05/14/2010 DAW | Several emails with opposing attorney regarding witnesses; order of trial; scheduling, etc. Telephone conference with Terry McCrchan; prepare cross examination of Defendant's expert Truluck. | 200.00 | 2.10  | 420.00   |
| * 05/15/2010 DAW | Preparation for trial                                                                                                                                                                          | 200.00 | 4.00  | 800.00   |
| * 05/15/2010 DAW | Trial preparation                                                                                                                                                                              | 200.00 | 3.10  | 620.00   |
| * 05/16/2010 DAW | Preparation for trial                                                                                                                                                                          | 200.00 | 4.00  | 800.00   |
| * 05/16/2010 DAW | Preparation of trial exhibits and cross examination                                                                                                                                            | 200.00 | 4.00  | 800.00   |
| * 05/17/2010 DAW | Roster mtg; telephone conference with witnesses regarding possible new trial date. Email opposing attorney regarding same.                                                                     | 200.00 | 1.50  | 300.00   |
| * 06/08/2010 DAW | Telephone conference with witness Bryan Carpenter regarding subpoena and time needed for trial.                                                                                                | 200.00 | .20   | 40.00    |
| * 06/12/2010 DAW | Preparation for trial                                                                                                                                                                          | 200.00 | 2.00  | 400.00   |
| * 06/12/2010 DAW | Trial preparation                                                                                                                                                                              | 200.00 | 2.20  | 440.00   |
| * 06/13/2010 DAW | Preparation for trial                                                                                                                                                                          | 200.00 | 1.00  | 200.00   |
| * 06/14/2010 DAW | Trial Day 1                                                                                                                                                                                    | 200.00 | 8.00  | 1,600.00 |
| * 06/15/2010 DAW | Trial Day 2                                                                                                                                                                                    | 200.00 | 8.00  | 1,600.00 |
| * 06/15/2010 DAW | Preparation for Day 3-telephone conference with expert; preparation of directed verdict motion; preparation for cross examination of Sharon Gorrin.                                            | 200.00 | 2.00  | 400.00   |
| * 06/16/2010 DAW | Trial day 3; preparation of closing argument; several telephone conferences with expert.                                                                                                       | 200.00 | 11.80 | 2,360.00 |
| * 06/17/2010 DAW | Trial Day 4                                                                                                                                                                                    | 200.00 | 9.00  | 1,800.00 |
| * 06/23/2010 DAW | Receipt and review bill from expert-reply correspondence.                                                                                                                                      | 200.00 | .30   | 60.00    |
| * 06/24/2010 DAW | Receipt and review Defendant's memorandum in support of Directed Verdict on attorney's fees-Westlaw research-Initial preparation of memorandum in opposition.                                  | 200.00 | 3.50  | 700.00   |

\* indicates work-in-process

|                          |                                                                                                   |        |        |             |
|--------------------------|---------------------------------------------------------------------------------------------------|--------|--------|-------------|
| * 06/25/2010 DAW         | Prepare memorandum in opposition to Defendant's motion for Directed Verdict.                      | 200.00 | 3.50   | 700.00      |
| * 06/25/2010 DAW         | Telephone conference from clients regarding settlement-email to opposing attorney regarding same. | 200.00 | .20    | 40.00       |
| TOTAL SERVICES RENDERED: |                                                                                                   |        | 258.60 | \$51,616.00 |

TIMEKEEPER SUMMARY:

|        |                     |                             |             |
|--------|---------------------|-----------------------------|-------------|
| BBC    | - Bruce B. Campbell | 8.80 HRS @ \$ 200.00/HR =   | 1,760.00    |
| DAW    | - David A. Wilson   | 238.60 HRS @ \$ 200.00/HR = | 47,720.00   |
| JMJ    | - Joseph M. Jenkins | 10.40 HRS @ \$ 200.00/HR =  | 2,080.00    |
| MAC    | - Mary Ann Cartier  | .80 HRS @ \$ 70.00/HR =     | 56.00       |
| Totals |                     | 258.60                      | \$51,616.00 |

COSTS ADVANCED

| DATE         | DESCRIPTION                                                         | AMOUNT   |
|--------------|---------------------------------------------------------------------|----------|
| * 01/24/2007 | Clerk of Court - Filing Fee                                         | 150.00   |
| * 10/01/2007 | Mark Garrison- Title Work                                           | 170.00   |
| * 10/02/2007 | Imaging Technologies                                                | 22.03    |
| * 11/13/2007 | BB&T - Copies pursuant to Subpoena                                  | 120.00   |
| * 02/07/2008 | Copies and postage (Answers to Request for Production of Documents) | 285.00   |
| * 02/19/2008 | Andrew Arnold- Mediation fees                                       | 175.00   |
| * 08/18/2008 | GCR, Inc. - Deposition                                              | 676.40   |
| * 09/04/2008 | Russell Truluck- Deposition                                         | 225.00   |
| * 09/23/2008 | Gallagher Court Reporting- Deposition Transcript                    | 315.70   |
| * 10/03/2008 | Level3 Design Associates, PC (expert fees)                          | 1,380.15 |
| * 12/29/2008 | GCR, Inc.- Deposition Transcript                                    | 250.35   |
| * 01/09/2009 | Ken Cheshier- Witness Fee                                           | 25.00    |
| * 01/14/2009 | Mary Beth's- lunch during deposition                                | 64.00    |
| * 01/19/2009 | Gallagher Court Reporting- Deposition Transcript                    | 1,129.55 |
| * 02/06/2009 | Level3 Design Associates, P.C. (expert fees)                        | 1,156.25 |
| * 02/10/2009 | Imaging Technologies- copies of documents supplied by Gorrins       | 57.11    |
| * 02/19/2009 | GCR- Deposition of Joseph Gorrin                                    | 438.05   |
| * 03/05/2009 | Westlaw Legal Research.                                             | 379.50   |
| * 10/23/2009 | BB&T- Records production fee                                        | 85.00    |
| * 02/01/2010 | Culbertson & Alexander- Copies of documents pursuant to subpoena    | 45.90    |
| * 03/15/2010 | Imaging Technologies- photo enlargement of Gorrin house for trial   | 24.38    |

Cason Companies  
File #: 42092

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\* indicates work-in-process

|                       |                                            |                   |
|-----------------------|--------------------------------------------|-------------------|
| * 05/10/2010          | Witness Fee- Bryan Carpenter               | 25.00             |
| * 05/10/2010          | Witness Fee- Terry McCracken               | 25.00             |
| * 05/10/2010          | Witness Fee - Steve Strout                 | 25.00             |
| * 05/12/2010          | Copies from Family Court                   | 3.75              |
| * 05/13/2010          | Witness and mileage fee- Joseph<br>Gorin   | 46.72             |
| * 05/14/2010          | Imaging Technologies- enlargements         | 11.45             |
| * 06/24/2010          | Level 3 Design Associates (expert<br>fees) | 984.02            |
| TOTAL COSTS ADVANCED: |                                            | <u>\$8,295.31</u> |
| CURRENT CHARGES:      |                                            | 59,911.31         |

|                                  |   |                              |
|----------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA          | ) | IN THE COURT OF COMMON PLEAS |
|                                  | ) | THIRTEENTH CIRCUIT           |
| COUNTY OF GREENVILLE             | ) | C.A. NO.: 2007-CP-23-0582    |
| <br>Cason Companies, Inc.,       | ) |                              |
|                                  | ) |                              |
| Plaintiff,                       | ) |                              |
|                                  | ) |                              |
| v.                               | ) |                              |
|                                  | ) |                              |
| Joseph Gorrin and Sharon Gorrin, | ) |                              |
|                                  | ) |                              |
| Defendants.                      | ) |                              |
|                                  | ) |                              |

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CLERK OF COURT  
GREENVILLE, SC  
2007 SEP 2 PM 3:51

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR  
DIRECTED VERDICT ON ATTORNEYS' FEES

The Defendants, Joseph and Sharon Gorrin, hereby submit their Supplemental Memorandum in Support of their Motion for Directed Verdict, and show as follows:

I. Failure to Plead Affirmative Defense

The Plaintiff has asserted that the statute relied upon, § 37-1-413 should not be applied because it was not pled as an affirmative defense. In so doing, the Plaintiff states that "illegality is an affirmative defense." (Plaintiff's memorandum, p. 1). While this is certainly true under Rule 8, SCRCF, it is certainly not true where a statute renders a contractual provision void *ab initio*. See, *Ward v. West Oil Co.*, 387 S.C. 268 S.C. 268, 692 S.E.2d 516 (2010). Plaintiff's first argument must fail.

Apparently realizing that the argument that illegality should have been pled in this case is futile, the Plaintiff next argues that *Ward* may be distinguished because it involves illegality. The Plaintiff cannot have it both ways. At any rate, the case cited by the Plaintiff, *Armstrong v. Collins*, 367 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005), is

completely inapplicable to the present case. In *Armstrong*, the defendant argued for the first time on appeal that it did not have the ability to enter into the contract in question because such a contract would have violated another party's security interest. The argument had nothing at all to do with the agreement being void *ab initio*. In addition, *Armstrong* does not involve a failure to allege an affirmative defense; rather the Supreme Court held that the defense of inability to enter into a contract was not raised on directed verdict and thereby was not preserved for appeal.

Plaintiff then cites a number of cases for the proposition that an affirmative defense must be pled where the Defendant "relies upon a statute as a shield." All of the cited cases are inapposite. None of the cases cited on Page 3 of the Plaintiff's memorandum involve contractual provisions that are void *ab initio*. Rather, those cases involve statutes that merely limit liability and do not render an agreement unenforceable as a matter of law. For these reasons, Plaintiff's arguments regarding failure to assert the applicable statute as an affirmative defense must fail.

## II. Motion to Amend the Pleadings to Conform to the Evidence

To the extent the Court concludes that an affirmative defense must be asserted as to the applicable statute, Defendants move under Rule 15(b), SCRCP, to amend the pleadings to conform to the evidence. This motion may be made "at any time, even after judgment." Rule 15(b), SCRCP. All issues required to prove the applicability of S.C. Code § 37-2-413 were raised by questions that were not objected to by the Plaintiff. Thus, the issues were tried by implied consent of the parties and should be treated in all respects "as if they had been raised in the pleadings." SCRCP Rule 15 (b).

## III. Inapplicability of § 37-2-413

Plaintiff argues that S.C. Code § 37-2-413 does not apply for several reasons. First, the Plaintiff argues that there is no “consumer credit sale” because the Gorrins “signed the contract so that bricks, mortar, and sand could be delivered to the builder” and that the builder is a corporation—accordingly, the “buyer” was not a “person.” This argument is laughable, considering that the Plaintiff spent the better part of its case in the apparently successful attempt to prove that the contract in question was not between itself and the builder, but with the Gorrins. The contract on its face is between Cason and the Gorrins, and the Gorrins are clearly the “buyer” under the contract.

Plaintiff next argues that the statute should not apply because “transactions which involve materials to be incorporated into a structure are not agreements of sale,” according to one Connecticut court. Again, this argument is absurd in light of the fact that the statute defines on its face what is considered an agreement of sale. A “consumer credit sale” is defined by the statute as “a sale of goods, services, or interest in land” which meets the five statutory factors.

Plaintiff’s next argument is that bricks are not “goods.” In support of this meritless argument, Plaintiff cites S.C. Code Ann. § 36-9-334(a). That statute does not even contain a definition of “goods;” rather, the statute states that “...a security interest does not exist under this chapter in ordinary building materials incorporated into an improvement on land.” S.C. Code § 36-9-334(a). By contrast, the actual statute at issue in this case defines “goods” as follows:

- (1) “Goods” includes goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title, and instruments.

S.C. Code § 37-2-105(1). Bricks are not excluded by this definition, nor are any other building materials. Under the definition of this statute, bricks are clearly "goods." In addition, the fact that one Connecticut court and one District Court in Hawaii have opined on the concept of "goods" has no effect on what the South Carolina legislature has chosen to include as "goods" for purposes of this consumer credit statute.

Plaintiff argues, equally unpersuasively, that the bricks were not purchased for "personal, family, or household purposes." In support of this argument, Plaintiff cites *Interstate Securities Corp. v. Constantino*, 72 B.R. 189 (D.S.C. 1986). *Constantino* involves the definition of "consumer debt" as it relates to nondischargeability in bankruptcy. Accordingly, it has no relevance to the present case whatsoever.

Plaintiff next argues that the statute should not apply because the debt "was not payable in regular installments." The Plaintiff's testimony belies this assertion. Deedee Gould (Plaintiff's representative) was very clear in her assertion under cross-examination that the agreement with the Gorrins allowed them \$5000 per month in credit. Clearly, the record evidence showed that all parties knew that the brick was going to cost more than \$5000 total. Mrs. Gould confirmed that the brick the Gorrins ordered would cost more than this, and that she expected payment of \$5000 each month until all of the brick was paid for. The statute does not require "regular" installments. Rather, it requires only that the arrangement call for "installments." The facts of the present case fit the statutory requirement.

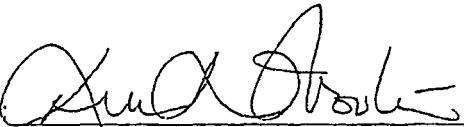
The Plaintiff's last argument is even more feeble. The Plaintiff attempts to argue that the statute "renders unenforceable a provision in a consumer credit sale agreement which provides for payment by the buyer of attorney's fees in excess of 15% to the

unpaid debt after default and referral to an attorney." Plaintiff's Memorandum, p. 7. On the contrary, the statute renders unenforceable any provision which does not provide for a 15% limit on fees after default and referral to an attorney.

In conclusion, all of the Plaintiff's arguments on the applicability and effect of S.C. Code § 37-2-413 must fail. As a result, the Court should grant the Defendants' Motion for Directed Verdict on attorney's fees.

Dated this 2nd day of July, 2010.

Respectfully submitted,

By:   
Kimila L. Wooten (S.C. Bar No. 64516)  
ELMORE & WALL, P.A.  
301 North Main Street, Suite 2000 (29601)  
Post Office Box 1887  
Greenville, South Carolina 29602  
Phone: (864) 255-9500  
Fax: (864) 255-9505  
kim.wooten@elmorewall.com  
Attorneys for Defendants

|                                  |   |                              |
|----------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA          | ) | IN THE COURT OF COMMON PLEAS |
|                                  | ) | THIRTEENTH CIRCUIT           |
| COUNTY OF GREENVILLE             | ) | C.A. NO.: 2007-CP-23-0582    |
| Cason Companies, Inc.,           | ) |                              |
|                                  | ) |                              |
| Plaintiff,                       | ) |                              |
|                                  | ) |                              |
| v.                               | ) |                              |
|                                  | ) |                              |
| Joseph Gorrin and Sharon Gorrin, | ) |                              |
|                                  | ) |                              |
| Defendants.                      | ) |                              |
|                                  | ) |                              |

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CLERK OF COURT  
JUL 16 2007  
GREENVILLE  
SOUTH CAROLINA

# OBJECTIONS TO AFFIDAVIT FOR ATTORNEY'S FEES AND COSTS

The Defendants, Joseph and Sharon Gorrin, hereby submit their objections to the Affidavit for Attorneys' fees and costs submitted by the Plaintiff, and show as follows:

## I. Attorney's Fees

Defendants have moved for directed verdict on attorney's fees pursuant to S.C. Code § 37-2-413; accordingly, the Defendants object to all materials presented on attorney's fees.

Should the Court find entitlement to attorney's fees, Defendants submit that the Court should consider S.C. Code § 37-2-413 and the contract between the parties together to support an award of only \$7,478.47 (15% of the jury verdict).

Thirdly, with all due respect to Mr. Wilson and his firm, the award of over \$51,000 in attorney's fees is excessive for this case. The claim was for \$23,000 in principal. Allowing even for counterclaim defense, the amount of fees is excessive. If the Court somehow allows over 15% of the claim in fees, Defendants would request that the amount of fees be reduced substantially.

## II. Costs

Virtually none of the costs submitted by the Plaintiff are recoverable under South Carolina law. In South Carolina, costs are regarded in the nature of penalties; hence, statutes allowing them are strictly construed, and the party who claims a right to them against another must be able to point to a statute which allows him to do so. *South Carolina Public Service Authority v. Spearwant Liquidating Co.*, 201 S.C. 297, 22 S.E.2d 252 (1942). Rule 54(e) provides for those items which are taxable as "costs." S.C. Code § 15-37-40 also sets forth items which may be taxed as costs.

The costs sought by the Plaintiff are found on the last two pages of the exhibits to its Affidavit. The only items which are recoverable as costs are the clerk filing fee of \$150.00 and the \$25.00 witness fees on the last page. Plaintiff has attempted to charge expert witness fees, which are clearly not recoverable as costs under South Carolina law. *Oliver v. South Carolina Department of Highways and Public Transportation*, 309 S.C. 313, 422 S.E.2d 128 (1992); *Black v. Roche Biomedical Laboratories*, 315 S.C. 233, 433 S.E.2d 21 (Ct. App. 1993). In fact, it is error to award such costs. *Oliver*, supra, at 318, 131. If the Plaintiff wished to recover expert fees, it could have done so properly as a measure of damages to submit to the jury, but not as costs.

In addition, Plaintiff attempts to charge as costs copies of depositions, copies of documents, mediation fees, computer legal research, photo enlargements for trial, copies from family court, and even "lunch during deposition." None of these costs are recoverable under either Rule 54 or S.C. Code § 15-37-40. Again,

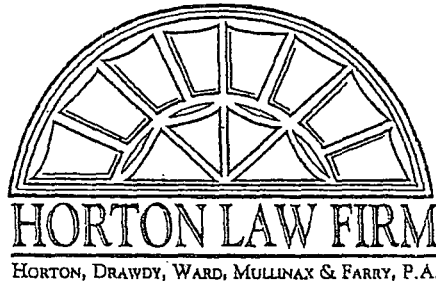
has been determined to be error to award such costs. *Id.* Accordingly, only the \$150 filing fee and \$25 witness fees should be allowed as costs by the Court.

Dated this 2nd day of July, 2010.

Respectfully submitted,

By: 

Kimila L. Wooten (S.C. Bar No. 64516)  
ELMORE & WALL, P.A.  
301 North Main Street, Suite 2000 (29601)  
Post Office Box 1887  
Greenville, South Carolina 29602  
Phone: (864) 255-9500  
Fax: (864) 255-9505  
kim.wooten@elmorewall.com  
Attorneys for Defendants



DAVID B. WARD  
WALLACE A. MULLINAX, JR.  
MICHAEL A. FARRY  
THOMAS R. DUGAS  
DAVID A. WILSON  
BRUCE B. CAMPBELL

VANCE B. DRAWDY  
1928-1997

J. WRIGHT HORTON  
RETIRED

OF COUNSEL  
JOSEPH M. JENKINS, JR.  
RICHARD N. TAPP, P.A.

September 20, 2010

The Honorable D. Garrison Hill  
305 E. North St., Suite 213  
Greenville, South Carolina 29601

Re: Cason Companies, Inc. v. Joseph Gorrin and Sharon Gorrin  
Case No.: 2007-CP-23-0582

Dear Judge Hill:

I received a copy of the Order Denying Defendants' Motion For Directed Verdict On Attorneys' Fees on Friday, September 17, 2010. Please allow this letter to serve as a motion pursuant to Rule 60(a), SCRPC, to correct what I believe to be a clerical error in the Order.

Page 8 of the Order reads as follows:

"The time and labor devoted by Plaintiff's counsel to the case were reasonable and not unnecessarily duplicative. There were numerous complex issues involved and the plaintiff's stubborn denial of the validity of and their responsibility for the debt protracted the litigation. Plaintiff's complaint contained numerous causes of action, forcing defendant to expend considerable time and resources to mount a proper defense. It was also transparently evident that plaintiffs exploited every opportunity to use their litigation as leverage for their ongoing dispute with the builder, who was not a party to their action."

Based upon the procedural posture of this case, it is my understanding that the above-quoted paragraph was intended to read as follows:

"The time and labor devoted by Plaintiff's counsel to the case were reasonable and not unnecessarily duplicative. There were numerous complex issues involved and the Defendants' stubborn denial of the validity of and their responsibility for the debt protracted the litigation. Defendants' Answer and Counterclaim contained numerous causes of

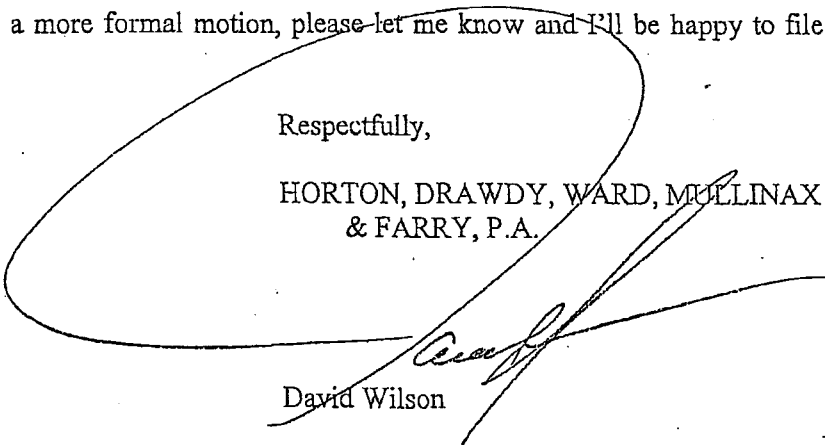
action, forcing the Plaintiff to expend considerable time and resources to mount a proper defense to the counterclaims. It was also transparently evident that the Defendants exploited every opportunity to use their litigation as leverage for their ongoing dispute with the builder, who was not a party to their action."

If the language contained in Page 8 of the Order is not a clerical error, I move pursuant to Rule 59(e), in the alternative, that the above language be amended to be consistent with evidence presented.

If you need a more formal motion, please let me know and I'll be happy to file one.

Respectfully,

HORTON, DRAWDY, WARD, MULLINAX  
& FARRY, P.A.



David Wilson

DAW/lmw  
cc: Kim Wooten  
Chip Gould

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Cason Companies, Inc.,

Plaintiff,

v.

Joseph Gorin and Sharon Gorin,

Defendant.

IN THE COURT OF COMMON PLEAS  
C.A. NO.: 2007-CP-23-0582

**AFFIDAVIT OF ATTORNEY'S FEES  
EXPENSES AND COSTS**

Personally appeared before me David A. Wilson of the law firm Horton, Drawdy, Ward, Mullinax & Farry, P.A. who, first being duly sworn, deposes and says as follows:

1. That he is the attorney for the Plaintiff Cason Companies, Inc.;
2. That David A. Wilson has expended time on behalf of Plaintiff in this action.
3. That David A. Wilson was admitted to the South Carolina Bar in 1992 and is a partner in the law firm of Horton, Drawdy, Ward, Mullinax & Farry, P.A., Greenville, South Carolina.
4. That David A. Wilson has acted as attorney for Plaintiff in the proceedings which have been pending before the Court concerning the disputes of the above parties and this Affidavit is filed in support of a request for attorney's fees and costs.
5. That David A. Wilson incorporates herein the South Carolina Appellate Court Rules, which contain the Rules of Professional Conduct concerning the setting of attorney's fees; that David A. Wilson calls to the attention of the Court the numerous case law decisions by the Supreme Court of South Carolina concerning the factors and criteria which should be considered in setting attorney's fees; that David A. Wilson relies upon the discretion of the Court in the determination of the amount of fees based, among other things, upon the Court's file herein and the Court's knowledge of the litigation between the parties, which reflects the difficulty of the

EXHIBIT

A

tabbles

services rendered, the time necessarily expended, the results accomplished and to be accomplished, the professional standing of counsel, the fees customarily charged in this area for similar legal services, and the necessity for full discovery in this case to avoid surprise, assure full financial disclosure, narrow the issues, clarify the issues in dispute and ultimately shorten the time for trial.

6. That David A. Wilson agreed to his representation on the basis of an hourly rate of Two Hundred and No/100ths (\$200.00) Dollars, plus actual costs incurred.

7. That the undersigned is informed and believes that the time spent in these matters was necessary to protect the client's interest and to make as concise and clear a presentation to the Court of the issues as possible. Such representation by David A. Wilson, includes but is not limited to: Multiple interoffice and telephone conferences with client; preliminary discussion of alternatives; preparation, review and revisions to Complaint; review of documents produced by client and through discovery; preparation, attendance and travel to and from Final Hearing. An itemized statement indicating the work performed and the fees and costs incurred is attached as Exhibit "A".

That the total time expended by David A. Wilson is as follows:

David A. Wilson

|                                                |             |
|------------------------------------------------|-------------|
| 257.8 hours at \$200.00 per hour.....          | \$51,560.00 |
| .80 hours (Paralegal) at \$70.00 per hour..... | \$56.00     |
| Filing, Service Fees, Expenses and Costs.....  | \$8,295.31  |

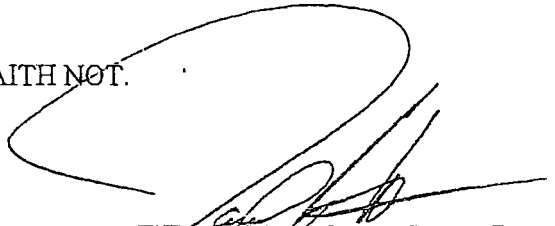
Total Attorney Fee's, Expenses and Costs.....\$59,911.31

8. It being further the information and belief of the undersigned that expenditures should be equitably added into any fees which the Court may hereafter award.

9. That based, not only upon the time necessarily devoted to this case, but also upon the criteria which have been held to be relevant in the setting of attorney's fees, costs and suit

monies, the undersigned requests that this Court review the Affidavit and the case itself, and award judgment in favor of the undersigned's client for attorney's fees, costs and suit monies as the Court may deem appropriate and to require the Defendants Joseph and Sharon Gorrin to pay same in a reasonable time.

FURTHER YOUR AFFIANT SAITH NOT.

  
David A. Wilson, SC Bar #65273

SWORN to before me this  
12<sup>th</sup> day of April, 2006

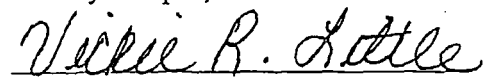
  
Notary Public for South Carolina  
My Commission Expires: 10/28/14

Exhibit "A"

06/28/2010 DAW

HORTON, DRAWDY, WARD & JENKINS, P.A.  
P.O. Box 10167  
Greenville, SC 29603  
(864)233-4351  
Federal ID #57-0522927

Chip Gould  
Cason Companies  
203 W. King Street  
East Flat Rock NC 28726

\* indicates work-in-process  
Client #:  
File #: 42092  
As of Date: 06/28/2010  
Last Billed 04/12/2010

RE: Cason v. Gorrin

| SERVICES RENDERED |      | REGULAR ACCOUNT ACTIVITY                                                                                                                                                                      |        |       |        |
|-------------------|------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|-------|--------|
| DATE              | TKPR | DESCRIPTION OF SERVICES RENDERED                                                                                                                                                              | RATE   | HOURS | AMOUNT |
| * 07/06/2006      | JMJ  | In-depth review of Gorrin documents; telephone call to client; telephone conference with Mike Tinsley; meet with Mike Tinsley and Bryan Carpenter; internal office conference regarding case. | 200.00 | 1.50  | 300.00 |
| * 07/07/2006      | JMJ  | Telephone conference with Mike Tinsley; internal office conference regarding Gorrin case                                                                                                      | 200.00 | 1.00  | 200.00 |
| * 07/13/2006      | JMJ  | Draft letter regarding Gorrin matter; review and revise letter                                                                                                                                | 200.00 | .40   | 80.00  |
| * 07/14/2006      | JMJ  | Final review of correspondence regarding Gorrin matter; have same delivered; review notes regarding other miscellaneous matters and email to client regarding same                            | 200.00 | .40   | 80.00  |
| * 08/04/2006      | JMJ  | Review files and letters to client and Kim Wooten regarding same                                                                                                                              | 200.00 | .80   | 160.00 |
| * 08/14/2006      | JMJ  | Review file materials regarding Gorrin matter                                                                                                                                                 | 200.00 | .60   | 120.00 |
| * 08/15/2006      | JMJ  | Review file; respond to client's email; note to Kim Wooten                                                                                                                                    | 200.00 | .80   | 160.00 |
| * 08/16/2006      | JMJ  | Telephone conference with Kim Wooten                                                                                                                                                          | 200.00 | .20   | 40.00  |
| * 08/17/2006      | JMJ  | Receipt, review and reply to Kim Wooten's letter regarding Gorrin matter with email to client regarding same                                                                                  | 200.00 | .40   | 80.00  |
| * 08/18/2006      | JMJ  | Brief review and revision of letter drafted previous day                                                                                                                                      | 200.00 | .20   | 40.00  |

\* indicates work-in-process

|                  |                                                                                                                                     |        |      |        |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 09/12/2006 DAW | Receipt and review of correspondence from JMJ; telephone conference with opposing attorney                                          | 200.00 | .30  | 60.00  |
| * 09/12/2006 JMJ | In-depth review of Gorrin file with telephone call to client regarding same; brief internal office conference; letter to Kim Wooten | 200.00 | 1.40 | 280.00 |
| * 09/14/2006 JMJ | Brief inter-office conference regarding Gorrin matter                                                                               | 200.00 | .30  | 60.00  |
| * 09/17/2006 JMJ | Brief inter-office conference; telephone conference with client with note to client regarding Gorrin matter                         | 200.00 | .80  | 160.00 |
| * 09/26/2006 JMJ | Brief inter-office conference concerning ding Gorrin claim                                                                          | 200.00 | .20  | 40.00  |
| * 10/02/2006 DAW | Review file materials for meeting with client                                                                                       | 200.00 | .50  | 100.00 |
| * 10/05/2006 DAW | Inter-office conference with Chip Gould and Mike Tinsley                                                                            | 200.00 | 1.50 | 300.00 |
| * 10/10/2006 DAW | Correspondence to opposing attorney regarding status of case                                                                        | 200.00 | 3.00 | 600.00 |
| * 10/17/2006 DAW | Final preparation of settlement proposal with exhibits                                                                              | 200.00 | 1.20 | 240.00 |
| * 10/25/2006 DAW | Receipt and review of email from client regarding revisions to letter; revisions thereto                                            | 200.00 | .30  | 60.00  |
| * 11/02/2006 DAW | Receipt and review of correspondence from the Clerk of Court; reply to same                                                         | 200.00 | .30  | 60.00  |
| * 11/03/2006 DAW | Telephone conference with John Campbell from Willow Creek HOA                                                                       | 200.00 | .20  | 40.00  |
| * 11/07/2006 DAW | Correspondence to client regarding status of cases                                                                                  | 200.00 | .30  | 60.00  |
| * 11/15/2006 DAW | Receipt and review of correspondence from opposing attorney; correspondence to client regarding same                                | 200.00 | .30  | 60.00  |
| * 01/09/2007 DAW | Preparation of Complaint and Statement of Account; correspondence to client                                                         | 200.00 | 1.00 | 200.00 |
| * 01/11/2007 DAW | Receipt and review of correspondence from client; update Complaint & Statement; correspondence to client                            | 200.00 | .40  | 80.00  |
| * 01/24/2007 DAW | Execution of Complaint; filing and service of same                                                                                  | 200.00 | .20  | 40.00  |
| * 01/30/2007 DAW | Receipt and review of Acceptance of Service                                                                                         | 200.00 | .20  | 40.00  |

\* indicates work-in-process

|                  |                                                                                                                                        |        |      |        |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 02/15/2007 DAW | Receipt, review and reply to<br>correspondence from opposing attorney                                                                  | 200.00 | .20  | 40.00  |
| * 04/09/2007 DAW | Receipt and review of Answer and<br>Counterclaim; correspondence to<br>client regarding same                                           | 200.00 | .30  | 60.00  |
| * 04/10/2007 DAW | Receipt and review of correspondence<br>from opposing attorney                                                                         | 200.00 | .20  | 40.00  |
| * 04/16/2007 JMJ | Receipt and review of audit letter<br>and assemble information for response<br>to same                                                 | 200.00 | .30  | 60.00  |
| * 04/24/2007 JMJ | Assemble additional information to<br>reply to CPA audit letter and respond<br>to same                                                 | 200.00 | .80  | 160.00 |
| * 04/28/2007 DAW | Receipt and review of correspondence<br>from opposing attorney regarding<br>subpoena                                                   | 200.00 | .20  | 40.00  |
| * 05/01/2007 DAW | Inter-office conference with client<br>regarding Answer and Counterclaim                                                               | 200.00 | 1.00 | 200.00 |
| * 05/07/2007 DAW | Telephone conference with opposing<br>attorney confirming extension                                                                    | 200.00 | .30  | 60.00  |
| * 05/21/2007 DAW | Initial preparation of Reply to<br>Counterclaim                                                                                        | 200.00 | .60  | 120.00 |
| * 05/22/2007 DAW | Reply to Counterclaim; filing and<br>service of same                                                                                   | 200.00 | 1.50 | 300.00 |
| * 08/13/2007 DAW | Receipt and review of correspondence<br>from opposing attorney                                                                         | 200.00 | .20  | 40.00  |
| * 08/30/2007 DAW | Email to opposing attorney regarding<br>discovery; preparation of Motion to<br>Compel                                                  | 200.00 | .70  | 140.00 |
| * 08/31/2007 DAW | Receipt, review and reply to email<br>from opposing attorney regarding<br>discovery                                                    | 200.00 | .20  | 40.00  |
| * 09/05/2007 DAW | Receipt and review of ADR, Notice;<br>correspondence to opposing attorney<br>regarding same                                            | 200.00 | .30  | 60.00  |
| * 09/06/2007 DAW | Receipt, review and reply to several<br>emails from opposing attorney<br>regarding mediation                                           | 200.00 | .40  | 80.00  |
| * 09/11/2007 DAW | Receipt and review of discovery<br>responses; email to opposing attorney<br>regarding same; correspondence to<br>client regarding same | 200.00 | .60  | 120.00 |
| * 09/20/2007 DAW | Receipt and review of documents<br>pursuant to Request for Production of<br>Documents; subpoena to GMAC, BB&T,<br>Willow Creek etc.    | 200.00 | 1.00 | 200.00 |
| * 09/28/2007 DAW | Receipt and review of Title Notes;<br>subpoena for additional mortgage and<br>supplemental subpoena to Willow Creek                    | 200.00 | .70  | 140.00 |

\* indicates work-in-process

|                  |                                                                                                                                             |        |     |       |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------|--------|-----|-------|
| * 09/29/2007 DAW | Receipt and review of houseplan; correspondence to client regarding same                                                                    | 200.00 | .30 | 60.00 |
| * 10/02/2007 DAW | Receipt and review of Discovery requests from opposing attorney; correspondence to client regarding same                                    | 200.00 | .30 | 60.00 |
| * 10/02/2007 DAW | Receipt and review of correspondence from opposing attorney                                                                                 | 200.00 | .30 | 60.00 |
| * 10/03/2007 DAW | Receipt and review of documents received from Hartman Law Firm pursuant to Subpoena; correspondence to opposing attorney regarding same     | 200.00 | .40 | 80.00 |
| * 10/08/2007 DAW | Receipt and review of documents pursuant to subpoena to Homeowners Mortgage Enterprises; correspondence to opposing attorney regarding same | 200.00 | .30 | 60.00 |
| * 10/09/2007 DAW | Receipt and review of correspondence from opposing attorney                                                                                 | 200.00 | .20 | 40.00 |
| * 10/12/2007 DAW | Receipt and review of correspondence from attorney for Coastal Mortgage; correspondence serving subpoena by Certified mail                  | 200.00 | .30 | 60.00 |
| * 10/19/2007 DAW | Telephone conference from attorney for Willow Creek                                                                                         | 200.00 | .10 | 20.00 |
| * 10/23/2007 DAW | Correspondence to opposing attorney                                                                                                         | 200.00 | .30 | 60.00 |
| * 10/29/2007 DAW | Receipt and review of documents from BB&T pursuant to Subpoena; correspondence to opposing attorney regarding same                          | 200.00 | .30 | 60.00 |
| * 11/05/2007 DAW | Receipt and review of two letters from opposing attorney; reply correspondence regarding subpoena                                           | 200.00 | .30 | 60.00 |
| * 11/07/2007 DAW | Telephone conference from client regarding subpoena from Hanson Brick                                                                       | 200.00 | .20 | 40.00 |
| * 11/07/2007 DAW | Receipt and review of Request for Production of Documents; correspondence to client regarding same                                          | 200.00 | .30 | 60.00 |
| * 11/15/2007 DAW | Receipt and review of correspondence from opposing attorney to Chief Administrative Judge                                                   | 200.00 | .20 | 40.00 |
| * 12/03/2007 DAW | Receipt, review and reply to correspondence from opposing attorney                                                                          | 200.00 | .30 | 60.00 |
| * 12/18/2007 DAW | Telephone conference from opposing attorney regarding discovery                                                                             | 200.00 | .20 | 40.00 |
| * 01/24/2008 DAW | Receipt and review of Notice of Pretrial Hearing                                                                                            | 200.00 | .20 | 40.00 |

\* indicates work-in-process

|                  |                                                                                                                                                                                              |        |      |        |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 01/24/2008 DAW | Receipt and review of correspondence from court regarding status conference; receipt, review and reply to email from opposing attorney regarding mediation, status conference and trial date | 200.00 | .20  | 40.00  |
| * 01/25/2008 DAW | Preparation of Interrogatories and Request for Production of Documents                                                                                                                       | 200.00 | 1.00 | 200.00 |
| * 01/30/2008 DAW | Receipt and review of several emails from opposing attorney scheduling mediation                                                                                                             | 200.00 | .30  | 60.00  |
| * 01/30/2008 DAW | Telephone conference from mediator; email to opposing attorney regarding mediation                                                                                                           | 200.00 | .20  | 40.00  |
| * 02/01/2008 DAW | Receipt and review of correspondence from mediator                                                                                                                                           | 200.00 | .20  | 40.00  |
| * 02/06/2008 DAW | Inter-office conference with client regarding mediation and discovery                                                                                                                        | 200.00 | .50  | 100.00 |
| * 02/07/2008 DAW | Telephone conference from Mike Tinsley regarding names of experts                                                                                                                            | 200.00 | .20  | 40.00  |
| * 02/07/2008 DAW | Preparation of Answers to Requests for Production; telephone conference from Hanson representative; correspondence to Hansen representative regarding "downgrade"                            | 200.00 | 1.70 | 340.00 |
| * 02/11/2008 DAW | Telephone conference from masonry expert                                                                                                                                                     | 200.00 | .20  | 40.00  |
| * 02/11/2008 DAW | Telephone conference from Hansen Brick representative Chester Leweis regarding "downgrade issue"                                                                                             | 200.00 | .20  | 40.00  |
| * 02/12/2008 DAW | Telephone conference from estimator                                                                                                                                                          | 200.00 | .20  | 40.00  |
| * 02/13/2008 DAW | Preparation for mediation                                                                                                                                                                    | 200.00 | .80  | 160.00 |
| * 02/14/2008 DAW | Inter-office conference with clients; attendance at mediation                                                                                                                                | 200.00 | 2.50 | 500.00 |
| * 02/15/2008 DAW | Receipt and review of email from opposing attorney regarding jury coordinator                                                                                                                | 200.00 | .10  | 20.00  |
| * 02/19/2008 DAW | Receipt and review of correspondence from mediator; reply correspondence                                                                                                                     | 200.00 | .30  | 60.00  |
| * 02/20/2008 DAW | Receipt and review of Proof of ADR Exemption                                                                                                                                                 | 200.00 | .20  | 40.00  |
| * 02/26/2008 DAW | Receipt and review of correspondence from opposing attorney to Judge Few                                                                                                                     | 200.00 | .10  | 20.00  |
| * 03/20/2008 DAW | Receipt, review and reply to email from opposing attorney                                                                                                                                    | 200.00 | .20  | 40.00  |
| * 03/24/2008 DAW | Receipt and review of Affidavit of Scott Ibbotson                                                                                                                                            | 200.00 | .20  | 40.00  |

\* indicates work-in-process

|                  |                                                                                                               |        |      |        |
|------------------|---------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 04/02/2008 DAW | Receipt and review of additional responses to discovery; correspondence to client regarding same              | 200.00 | .30  | 60.00  |
| * 04/14/2008 DAW | Receipt, review and reply to several emails from opposing attorney regarding experts and continuance          | 200.00 | .30  | 60.00  |
| * 04/14/2008 DAW | Receipt and review of supplemental answers to Interrogatories; correspondence to client                       | 200.00 | .20  | 40.00  |
| * 04/16/2008 DAW | Telephone conference from Chip Gould regarding new documents                                                  | 200.00 | .20  | 40.00  |
| * 04/22/2008 DAW | Review file regarding discovery to be completed and expert to be disposed; lengthy email to opposing attorney | 200.00 | .70  | 140.00 |
| * 04/23/2008 DAW | Receipt and review of email from opposing attorney regarding discovery                                        | 200.00 | .20  | 40.00  |
| * 04/23/2008 DAW | Receipt, review and reply to email from opposing attorney                                                     | 200.00 | .20  | 40.00  |
| * 04/23/2008 DAW | Email to jury-coordinator regarding continuance                                                               | 200.00 | .20  | 40.00  |
| * 04/29/2008 DAW | Receipt and review of order granting motion for continuance                                                   | 200.00 | .20  | 40.00  |
| * 05/16/2008 DAW | Inter-office conference with client to discuss Answers to Interrogatories                                     | 200.00 | .60  | 120.00 |
| * 05/16/2008 MAC | Inter-office conference with client regarding Discovery                                                       | 70.00  | .30  | 21.00  |
| * 06/05/2008 DAW | Final preparation of Answer to Interrogatories; service of same                                               | 200.00 | 1.20 | 240.00 |
| * 06/10/2008 DAW | Receipt, review and reply to email from opposing attorney                                                     | 200.00 | .20  | 40.00  |
| * 06/11/2008 DAW | Telephone conference from client regarding expert                                                             | 200.00 | .10  | 20.00  |
| * 06/13/2008 DAW | Receipt and review of correspondence from opposing attorney to Judge Few                                      | 200.00 | .20  | 40.00  |
| * 06/17/2008 DAW | Telephone conference from expert                                                                              | 200.00 | .20  | 40.00  |
| * 07/01/2008 DAW | Receipt, review and reply to several emails from opposing attorney regarding continuance and depositions      | 200.00 | .30  | 60.00  |
| * 07/07/2008 DAW | Email to opposing attorney regarding scheduling inspection of home                                            | 200.00 | .10  | 20.00  |
| * 07/09/2008 DAW | Receipt, review and reply to email from opposing attorney (short email)                                       | 200.00 | .10  | 20.00  |
| * 07/10/2008 DAW | Receipt and review of email from expert; email to opposing attorney                                           | 200.00 | .20  | 40.00  |
| * 07/10/2008 DAW | Email to expert regarding home inspection                                                                     | 200.00 | .10  | 20.00  |

\* indicates work-in-process

|                  |                                                                                                                                                                           |        |      |        |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 07/29/2008 DAW | Receipt, review and reply to several emails form opposing attorney regarding deposition of Scott Ibbotson and home inspector                                              | 200.00 | .20  | 40.00  |
| * 08/04/2008 DAW | Preparation of Supplemental Interrogatories                                                                                                                               | 200.00 | .30  | 60.00  |
| * 08/04/2008 DAW | Telephone conference from client; email to expert regarding home inspection                                                                                               | 200.00 | .20  | 40.00  |
| * 08/04/2008 DAW | Receipt, review and reply to email from expert; email to opposing attorney                                                                                                | 200.00 | .20  | 40.00  |
| * 08/06/2008 DAW | Receipt and review of fee agreement from expert; reply correspondence                                                                                                     | 200.00 | .30  | 60.00  |
| * 08/06/2008 DAW | Email to expert regarding reports of other experts; Brief research regarding efflorescence                                                                                | 200.00 | .60  | 120.00 |
| * 08/06/2008 DAW | Receipt, review and reply to email from expert                                                                                                                            | 200.00 | .20  | 40.00  |
| * 08/07/2008 DAW | Preparation for deposition of Defendant's experts Newman & Truluck                                                                                                        | 200.00 | 2.50 | 500.00 |
| * 08/07/2008 DAW | Telephone conference with expert regarding areas of inquiry for depositions of opposing party's experts                                                                   | 200.00 | .50  | 100.00 |
| * 08/08/2008 DAW | Attendance at depositoin of the Defendant's expert                                                                                                                        | 200.00 | 4.00 | 800.00 |
| * 08/14/2008 DAW | Telephone conference with Mike Tinsley                                                                                                                                    | 200.00 | .20  | 40.00  |
| * 08/19/2008 DAW | Telephone conference with client regarding scheduling email regarding expert depositions                                                                                  | 200.00 | .20  | 40.00  |
| * 08/20/2008 DAW | Supplementary Discovery responses; several emails to and from opposing attorney regarding same; correspondence to client regarding same                                   | 200.00 | 1.50 | 300.00 |
| * 08/22/2008 DAW | Receipt, review and reply to email from opposing attorney                                                                                                                 | 200.00 | .20  | 40.00  |
| * 08/26/2008 DAW | Receipt, review and reply to email from opposing attorney regarding home inspection; depositions of Plaintiffs, expert fees; email to my expert regarding home inspection | 200.00 | .30  | 60.00  |
| * 08/26/2008 DAW | Numerous emails to and from opposing attorney, to and from client and to and from expert regarding scheduling issues                                                      | 200.00 | .50  | 100.00 |

\* indicates work-in-process

|                  |                                                                                                                                                                                                                              |        |      |        |
|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 08/27/2008 DAW | Telephone conference from Mike Tinsley                                                                                                                                                                                       | 200.00 | .20  | 40.00  |
| * 08/27/2008 DAW | Preparation for deposition of Ibbotson                                                                                                                                                                                       | 200.00 | 2.00 | 400.00 |
| * 08/28/2008 DAW | Attendance at 1st half of Deposition with Scott Ibbotson; inter-office conference with client                                                                                                                                | 200.00 | 2.10 | 420.00 |
| * 08/28/2008 DAW | Additional preparation for deposition of Ibbotson                                                                                                                                                                            | 200.00 | .60  | 120.00 |
| * 09/04/2008 DAW | Receipt and review of correspondence from opposing attorney                                                                                                                                                                  | 200.00 | .20  | 40.00  |
| * 09/05/2008 DAW | Home inspection with expert                                                                                                                                                                                                  | 200.00 | 3.00 | 600.00 |
| * 09/08/2008 DAW | Receipt and review of several emails from expert                                                                                                                                                                             | 200.00 | .20  | 40.00  |
| * 09/08/2008 DAW | Receipt, review and reply to email from client                                                                                                                                                                               | 200.00 | .20  | 40.00  |
| * 09/08/2008 DAW | Receipt and review of drawings from client and Lab Test results from Hanson; forward to expert and client; email to client regarding brick estimate ; preparation of supplemental interrogatories and request for production | 200.00 | .90  | 180.00 |
| * 09/08/2008 DAW | Email to client regarding discovery                                                                                                                                                                                          | 200.00 | .20  | 40.00  |
| * 09/09/2008 DAW | Email to experts regarding potential trial date; receipt, review and reply to email                                                                                                                                          | 200.00 | .20  | 40.00  |
| * 09/10/2008 DAW | Preparation of Motion for Continuance                                                                                                                                                                                        | 200.00 | 1.00 | 200.00 |
| * 09/10/2008 DAW | Telephone conference from Mike Tinsley regarding Brian Carpenter and Defendant's new brick expert                                                                                                                            | 200.00 | .20  | 40.00  |
| * 09/10/2008 DAW | Serving opposing attorney with Supplemental Discovery requests                                                                                                                                                               | 200.00 | .30  | 60.00  |
| * 09/10/2008 DAW | Receipt, review and reply to emails from opposing attorney regarding depositions of Defendants and expert                                                                                                                    | 200.00 | .20  | 40.00  |
| * 09/11/2008 DAW | Email to client regarding deposition of Defendants                                                                                                                                                                           | 200.00 | .10  | 20.00  |
| * 09/12/2008 DAW | Receipt and review of information from client; revise discovery responses; serve on opposing attorney                                                                                                                        | 200.00 | .50  | 100.00 |
| * 09/15/2008 DAW | Several emails to and from opposing attorney and docket coordinator                                                                                                                                                          | 200.00 | .30  | 60.00  |
| * 09/15/2008 DAW | Inter-office conference with Mike Tinsley & Bryan Carpenter                                                                                                                                                                  | 200.00 | 1.40 | 280.00 |
| * 09/16/2008 DAW | Receipt, review and reply to email from expert                                                                                                                                                                               | 200.00 | .20  | 40.00  |

\* indicates work-in-process

|                  |                                                                                                                                                                                        |        |      |        |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 09/30/2008 DAW | Receipt, review and reply to email from opposing attorney regarding Ibbotson's deposition                                                                                              | 200.00 | .20  | 40.00  |
| * 10/02/2008 DAW | Receipt, review and reply to another email from opposing attorney regarding deposition of Ibbotson                                                                                     | 200.00 | .20  | 40.00  |
| * 10/15/2008 DAW | Receipt and review of Defendant's Responses to Second Set of Interrogatories; correspondence to client regarding same                                                                  | 200.00 | .30  | 60.00  |
| * 10/27/2008 DAW | Telephone conference from Mike Tinsley regarding Ibbotson                                                                                                                              | 200.00 | .20  | 40.00  |
| * 11/05/2008 DAW | Receipt and review of documents from Five Star Builders; reply correspondence; correspondence to client                                                                                | 200.00 | .40  | 80.00  |
| * 11/21/2008 DAW | Review of Day 1 of Ibbotson's deposition; telephone conference from client regarding Day 3 of Ibbotson's deposition; receipt and review of fax from client; preparation for deposition | 200.00 | 1.90 | 380.00 |
| * 11/21/2008 DAW | Receipt, review and reply to email from opposing attorney regarding deposition                                                                                                         | 200.00 | .20  | 40.00  |
| * 12/01/2008 DAW | Receipt, review and reply to email from opposing attorney regarding deposition of Ibbotson and Defendants; receipt and review of answers to Third Set of Interrogatories               | 200.00 | .20  | 40.00  |
| * 12/17/2008 DAW | Attendance at Day 2 of Ibbotson's deposition                                                                                                                                           | 200.00 | 1.70 | 340.00 |
| * 12/17/2008 DAW | Numerous emails with opposing attorney attempting to schedule deposition of Defendants.                                                                                                | 200.00 | .20  | 40.00  |
| * 12/17/2008 DAW | Receipt and review responses to Second Request for Production                                                                                                                          | 200.00 | .20  | 40.00  |
| * 12/19/2008 DAW | Subpoena to Defendant and Scott Ibbotson; supplemental requests for production                                                                                                         | 200.00 | .50  | 100.00 |
| * 12/19/2008 DAW | Receipt, review and reply to email regarding depositions of Defendants; email regarding document production                                                                            | 200.00 | .20  | 40.00  |
| * 01/05/2009 DAW | Email to expert                                                                                                                                                                        | 200.00 | .20  | 40.00  |
| * 01/05/2009 DAW | Receipt, review and reply to several emails from opposing attorney; forward to client regarding emails between Defendant and Ibbotson                                                  | 200.00 | .30  | 60.00  |

\* indicates work-in-process

|                  |                                                                                                                                                                             |        |      |          |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|----------|
| * 01/06/2009 DAW | Telephone conference with Mike Tinsley regarding builder                                                                                                                    | 200.00 | .10  | 20.00    |
| * 01/07/2009 DAW | Telephone conference from Mike Tinsley regarding witness interview                                                                                                          | 200.00 | .20  | 40.00    |
| * 01/09/2009 DAW | Interview with witness                                                                                                                                                      | 200.00 | 1.50 | 300.00   |
| * 01/11/2009 DAW | Review file and ensure all discovery completed; preparation of supplemental responses to request for production                                                             | 200.00 | 1.00 | 200.00   |
| * 01/12/2009 DAW | Initial preparation for deposition of Defendants                                                                                                                            | 200.00 | .70  | 140.00   |
| * 01/12/2009 DAW | Telephone conference with client regarding narrowing witnesses for trial                                                                                                    | 200.00 | .20  | 40.00    |
| * 01/12/2009 DAW | Two telephone conferences with opposing attorney regarding rescheduling depositions                                                                                         | 200.00 | .30  | 60.00    |
| * 01/12/2009 BBC | Preparation of Jury Charges                                                                                                                                                 | 200.00 | 2.10 | 420.00   |
| * 01/13/2009 DAW | Preparation for Deposition of Sharon Gorrin                                                                                                                                 | 200.00 | 4.30 | 860.00   |
| * 01/13/2009 BBC | Preparation of Jury Charges                                                                                                                                                 | 200.00 | 2.00 | 400.00   |
| * 01/14/2009 DAW | Telephone conference with opposing attorney regarding discovery; preparation for deposition of Sharon Gorrin; Deposition of Sharon Gorrin; email to expert regarding report | 200.00 | 6.50 | 1,300.00 |
| * 01/15/2009 DAW | Telephone conference from Chester Lewis at Hanson regarding Hanson's attorney                                                                                               | 200.00 | .20  | 40.00    |
| * 01/15/2009 DAW | Telephone conference from Builder regarding recollection of events                                                                                                          | 200.00 | .20  | 40.00    |
| * 01/15/2009 DAW | Telephone conference with Mike Tinsley regarding issues with Hanson's witnesses                                                                                             | 200.00 | .20  | 40.00    |
| * 01/15/2009 DAW | Numerous emails to and from opposing attorney regarding request for continuance; telephone conference with expert (message to Hanson's rep.)                                | 200.00 | .40  | 80.00    |
| * 01/15/2009 BBC | Continue work on Jury Charges                                                                                                                                               | 200.00 | .80  | 160.00   |
| * 01/16/2009 DAW | Email to opposing attorney regarding deposition of Mr. Gorrin; review of Mrs. Gorrin's files                                                                                | 200.00 | .10  | 20.00    |
| * 01/19/2009 DAW | Receipt and review of preliminary report from expert; reply email; email to client                                                                                          | 200.00 | 1.20 | 240.00   |
| * 01/19/2009 DAW | Receipt and review of email from expert regarding lab test report from Hanson; email to client regarding same; reply email to expert                                        | 200.00 | .20  | 40.00    |

\* indicates work-in-process

|                  |                                                                                                                                                                              |        |      |        |
|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 01/19/2009 DAW | Receipt, review and reply to email from opposing attorney regarding documents review                                                                                         | 200.00 | .20  | 40.00  |
| * 01/20/2009 DAW | Receipt, review and reply to email from opposing attorney regarding Defendant's document production; telephone conference from client regarding summary of damages (message) | 200.00 | .20  | 40.00  |
| * 01/20/2009 DAW | Telephone conference from client regarding finance charges; preparation of Supplemental Responses to Discovery                                                               | 200.00 | .30  | 60.00  |
| * 01/20/2009 DAW | Receipt, review and reply to email from client with expert's report for review                                                                                               | 200.00 | .20  | 40.00  |
| * 01/21/2009 DAW | Receipt, review and reply to email from opposing attorney regarding motion to consolidate                                                                                    | 200.00 | .20  | 40.00  |
| * 01/23/2009 DAW | Receipt and review of additional documents pursuant to discovery                                                                                                             | 200.00 | .20  | 40.00  |
| * 01/27/2009 DAW | Telephone conference with attorney for builder                                                                                                                               | 200.00 | .30  | 60.00  |
| * 01/27/2009 DAW | Preparation of Deposition Notice of Joseph Gorrin; correspondence to opposing attorney regarding same                                                                        | 200.00 | .30  | 60.00  |
| * 01/28/2009 DAW | Receipt and review of box of additional documents from Gorrins                                                                                                               | 200.00 | 1.00 | 200.00 |
| * 01/28/2009 DAW | Receipt and review of Motion to Consolidate; reply email                                                                                                                     | 200.00 | .30  | 60.00  |
| * 01/29/2009 DAW | Preparation and service of numerous subpoenas to vendors and suppliers for Gorrin residence                                                                                  | 200.00 | 1.20 | 240.00 |
| * 01/30/2009 DAW | Preparation of six additional subpoenas                                                                                                                                      | 200.00 | 1.20 | 240.00 |
| * 01/30/2009 DAW | Preparation of two more subpoenas                                                                                                                                            | 200.00 | .40  | 80.00  |
| * 02/03/2009 DAW | Receipt, review and reply to email from opposing attorney regarding deposition of Mr. Gorrin                                                                                 | 200.00 | .20  | 40.00  |
| * 02/04/2009 DAW | Telephone conference with Bob Connor regarding Subpoena                                                                                                                      | 200.00 | .20  | 40.00  |
| * 02/05/2009 DAW | Receipt and review of correspondence from BB&T                                                                                                                               | 200.00 | .20  | 40.00  |
| * 02/05/2009 DAW | Receipt and review of additional documents from opposing attorney                                                                                                            | 200.00 | .20  | 40.00  |
| * 02/05/2009 DAW | Receipt and review of email from opposing attorney regarding request for consent to amend Answer and Counterclaim                                                            | 200.00 | .20  | 40.00  |

\* indicates work-in-process

|                  |                                                                                                                                                                                                                                                         |        |      |        |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 02/06/2009 DAW | Receipt, review and reply to email from expert                                                                                                                                                                                                          | 200.00 | .20  | 40.00  |
| * 02/09/2009 DAW | Receipt and review of additional documents from opposing attorney                                                                                                                                                                                       | 200.00 | .30  | 60.00  |
| * 02/09/2009 DAW | Receipt, review and reply to several emails regarding subpoenas and Motion to Quash                                                                                                                                                                     | 200.00 | .20  | 40.00  |
| * 02/10/2009 DAW | Receipt and review of Motion to Quash subpoena to BB&T                                                                                                                                                                                                  | 200.00 | .20  | 40.00  |
| * 02/10/2009 DAW | Status update email to client                                                                                                                                                                                                                           | 200.00 | .20  | 40.00  |
| * 02/11/2009 DAW | Receipt and review of Motion to Amend Answer and Counterclaim; telephone conference with client regarding Motion to Consolidate; email to expert regarding A/V equipment; telephone conference with attorney for builder; email to Defendant's attorney | 200.00 | 1.00 | 200.00 |
| * 02/11/2009 DAW | Preparation for Deposition of Joseph Gorrin                                                                                                                                                                                                             | 200.00 | 1.50 | 300.00 |
| * 02/11/2009 DAW | Preparation for Motion to Consolidate                                                                                                                                                                                                                   | 200.00 | .40  | 80.00  |
| * 02/12/2009 DAW | Inter-office conference with client; Deposition of Joseph Gorrin                                                                                                                                                                                        | 200.00 | 2.90 | 580.00 |
| * 02/12/2009 DAW | Attendance at Motion to Consolidate                                                                                                                                                                                                                     | 200.00 | 1.20 | 240.00 |
| * 02/13/2009 DAW | Receipt and review of hearing notice on Motion to Quash                                                                                                                                                                                                 | 200.00 | .20  | 40.00  |
| * 02/13/2009 DAW | Receipt and review of supplemental discovery responses; correspondence to client regarding same                                                                                                                                                         | 200.00 | .30  | 60.00  |
| * 02/17/2009 DAW | Receipt and review of subpoenaed documents from Best Distributing                                                                                                                                                                                       | 200.00 | .20  | 40.00  |
| * 02/17/2009 DAW | Receipt and review of subpoenaed documents from Tile With Style                                                                                                                                                                                         | 200.00 | .30  | 60.00  |
| * 02/18/2009 DAW | Receipt and review of subpoenaed documents from Carolina Stoneworks                                                                                                                                                                                     | 200.00 | .30  | 60.00  |
| * 02/18/2009 DAW | Receipt, review and reply to email from opposing attorney regarding transfer of venue and consolidation                                                                                                                                                 | 200.00 | .20  | 40.00  |
| * 02/18/2009 DAW | Receipt and review of form order from Judge Patterson continuing case; receipt and review of Order Granting Motion to Amend Counterclaim; correspondence to client regarding same                                                                       | 200.00 | .30  | 60.00  |
| * 03/01/2009 DAW | Inter-office conference with David Wilson to brainstorm amended pleadings; review same.                                                                                                                                                                 | 200.00 | .50  | 100.00 |

\* indicates work-in-process

|                  |                                                                                                                                             |        |      |        |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 03/05/2009 DAW | Preparation of Reply to Amended Answer.                                                                                                     | 200.00 | 1.00 | 200.00 |
| * 03/05/2009 DAW | Preparation of Amended Complaint (Westlaw) regarding 3rd party beneficiary, constructive trust and equitable estoppel                       | 200.00 | 2.00 | 400.00 |
| * 03/06/2009 DAW | Additional preparation of Reply and Amended Answer and Complaint; filed Amended Complaint; correspondence to Clerk of Court regarding same. | 200.00 | 2.50 | 500.00 |
| * 03/09/2009 DAW | Receipt and review of 2 emails from opposing counsel regarding Amended Complaint.                                                           | 200.00 | .30  | 60.00  |
| * 03/09/2009 JMJ | Review of Reply to Amended Complaint.                                                                                                       | 200.00 | .30  | 60.00  |
| * 03/09/2009 DAW | Filing and service of Reply and Amended Complaint.                                                                                          | 200.00 | .40  | 80.00  |
| * 03/23/2009 DAW | Receipt and review of Errata Sheet without notary; reply correspondence to Court Reporter.                                                  | 200.00 | .30  | 60.00  |
| * 03/24/2009 DAW | Receipt and review Amended Answer and Counterclaim.                                                                                         | 200.00 | .20  | 40.00  |
| * 03/27/2009 DAW | Telephone call from builder regarding money owed to Mr. Cordas.                                                                             | 200.00 | .20  | 40.00  |
| * 03/27/2009 DAW | Receipt and review of email from court reporter and opposing attorney regarding errata sheet.                                               | 200.00 | .20  | 40.00  |
| * 04/01/2009 DAW | Telephone conference with painting contractor regarding money owed to him from Gorrins                                                      | 200.00 | .20  | 40.00  |
| * 04/13/2009 DAW | Receipt, review and reply to email from opposing attorney regarding Answer to 1st Amended Complaint                                         | 200.00 | .20  | 40.00  |
| * 04/16/2009 DAW | Preparation for Motion to Quash                                                                                                             | 200.00 | 1.50 | 300.00 |
| * 04/17/2009 DAW | Preparation of Exhibits for Motion to Quash hearing                                                                                         | 200.00 | .50  | 100.00 |
| * 04/20/2009 DAW | Receipt and review of email from opposing attorney withdrawing Motion to Quash; correspondence to BB&T regarding same                       | 200.00 | .30  | 60.00  |
| * 04/27/2009 DAW | Receipt, review and reply to several emails from opposing attorney regarding Motion to Quash                                                | 200.00 | .30  | 60.00  |
| * 04/27/2009 DAW | Receipt and review of Notice of Hearing on Motion to Quash                                                                                  | 200.00 | .20  | 40.00  |
| * 05/04/2009 DAW | Receipt and review of hearing notice regarding Motion to Quash                                                                              | 200.00 | .20  | 40.00  |
| * 05/12/2009 DAW | Receipt, review and reply to email from opposing attorney                                                                                   | 200.00 | .20  | 40.00  |

\* indicates work-in-process

|                  |                                                                                                            |        |      |        |
|------------------|------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 06/16/2009 DAW | Receipt and review of rescheduling notice                                                                  | 200.00 | .10  | 20.00  |
| * 07/06/2009 DAW | Receipt and review of correspondence and motion from attorney for Five Star Builders                       | 200.00 | .20  | 40.00  |
| * 07/10/2009 DAW | Receipt, review and reply to email from expert                                                             | 200.00 | .20  | 40.00  |
| * 07/18/2009 DAW | Receipt, review and reply to several emails from opposing attorney                                         | 200.00 | .30  | 60.00  |
| * 07/20/2009 DAW | Preparation for Motion to Quash hearing                                                                    | 200.00 | .80  | 160.00 |
| * 08/24/2009 DAW | Receipt and review of hearing notice from Non-Jury Coordinator                                             | 200.00 | .20  | 40.00  |
| * 08/26/2009 DAW | Receipt, review and reply to email from client regarding status                                            | 200.00 | .20  | 40.00  |
| * 08/27/2009 DAW | Receipt and review of hearing notice from opposing attorney                                                | 200.00 | .20  | 40.00  |
| * 09/02/2009 DAW | Receipt and review of correspondence and summary of documents produced by Defendants; reply correspondence | 200.00 | .40  | 80.00  |
| * 09/02/2009 DAW | Receipt and review (and calendar) pretrial conference notice                                               | 200.00 | .20  | 40.00  |
| * 09/02/2009 DAW | Receipt, review and reply to email from opposing attorney regarding pretrial conference                    | 200.00 | .20  | 40.00  |
| * 09/08/2009 DAW | Receipt, review and reply to email from opposing attorney regarding BB&T records                           | 200.00 | .20  | 40.00  |
| * 09/10/2009 DAW | Initial preparation of Memorandum in Opposition to Motion to Quash Subpoena                                | 200.00 | .80  | 160.00 |
| * 09/10/2009 DAW | Email to client regarding Motion to Compel and potential trial dates                                       | 200.00 | .10  | 20.00  |
| * 09/12/2009 DAW | Additional preparation of Memorandum in Opposition to Motion to Quash Subpoena                             | 200.00 | .80  | 160.00 |
| * 09/14/2009 DAW | Final preparation of Memorandum in Opposition to Motion to Quash; service of same                          | 200.00 | 1.50 | 300.00 |
| * 09/14/2009 DAW | Preparation of Affidavit of Attorney's Fees for Motion to Quash hearing                                    | 200.00 | .50  | 100.00 |
| * 09/14/2009 DAW | Preparation of notes for Motion to Quash hearing                                                           | 200.00 | .50  | 100.00 |
| * 09/15/2009 DAW | Preparation for and attendance at Motion to Quash hearing (estimated)                                      | 200.00 | 2.00 | 400.00 |
| * 09/15/2009 DAW | Preparation for and attendance at Motion to Quash Subpoena hearing                                         | 200.00 | .90  | 180.00 |

\* indicates work-in-process

|                  |                                                                                                                                                                                           |        |      |        |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 09/17/2009 DAW | Brief email to opposing attorney requesting proposed language for protective order                                                                                                        | 200.00 | .10  | 20.00  |
| * 09/22/2009 DAW | Initial preparation of Order Denying Motion to Quash Subpoena                                                                                                                             | 200.00 | .50  | 100.00 |
| * 09/28/2009 DAW | Additional preparation of Order Denying Motion to Quash Subpoena; email to opposing attorney regarding same                                                                               | 200.00 | .40  | 80.00  |
| * 09/28/2009 DAW | Review docket; email to opposing attorney regarding possible trial dates                                                                                                                  | 200.00 | .20  | 40.00  |
| * 09/29/2009 DAW | Email to opposing attorney asking for comments about proposed Order Denying Motion to Quash                                                                                               | 200.00 | .10  | 20.00  |
| * 09/29/2009 DAW | Preparation of Trial Week Selection Form                                                                                                                                                  | 200.00 | .30  | 60.00  |
| * 09/30/2009 DAW | Inter-office conference with client regarding fraudulent conveyance                                                                                                                       | 200.00 | .30  | 60.00  |
| * 09/30/2009 DAW | Telephone conference from closing attorney; research regarding attachment, fraudulent conveyances, several emails with opposing attorney; telephone conference with client regarding same | 200.00 | .80  | 160.00 |
| * 10/02/2009 DAW | Revisions to Order Denying Motion to Quash; email to Judge regarding same                                                                                                                 | 200.00 | .30  | 60.00  |
| * 10/07/2009 DAW | Receipt and review of Order Denying Motion to Quash; correspondence to BB&T regarding same                                                                                                | 200.00 | .30  | 60.00  |
| * 10/12/2009 DAW | Preparation of Subpoena to closing attorney; service of same                                                                                                                              | 200.00 | .30  | 60.00  |
| * 10/16/2009 DAW | Receipt, review and reply to email from opposing attorney regarding her client not selling house                                                                                          | 200.00 | .20  | 40.00  |
| * 10/19/2009 DAW | Receipt and review of supplemental answers to Interrogatories from opposing attorney; reply correspondence                                                                                | 200.00 | .20  | 40.00  |
| * 10/21/2009 DAW | Receipt and review of documents subpoenaed from BB&T; correspondence to opposing attorney regarding same; correspondence to client regarding same                                         | 200.00 | 1.00 | 200.00 |
| * 10/30/2009 DAW | Preparation of Second Subpoena to BB&T                                                                                                                                                    | 200.00 | .30  | 60.00  |
| * 11/18/2009 DAW | Telephone conference from Chip Gould                                                                                                                                                      | 200.00 | .20  | 40.00  |

\* indicates work-in-process

|                  |                                                                                                           |        |      |        |
|------------------|-----------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 12/16/2009 DAW | Telephone conference with Dee Dee Gould regarding status                                                  | 200.00 | .20  | 40.00  |
| * 02/01/2010 DAW | Correspondence to opposing attorney regarding documents received related to closing                       | 200.00 | .30  | 60.00  |
| * 02/16/2010 DAW | Email to expert regarding trial date                                                                      | 200.00 | .10  | 20.00  |
| * 02/24/2010 DAW | Check Jury Trial Roster; email to client and expert regarding same                                        | 200.00 | .20  | 40.00  |
| * 02/28/2010 DAW | Preparation of Deposition Summary and trial notes for Scott Ibbotson, Newman and Truluck                  | 200.00 | 3.70 | 740.00 |
| * 03/01/2010 DAW | Telephone conference with Chip Gould regarding meeting with witnesses                                     | 200.00 | .20  | 40.00  |
| * 03/02/2010 DAW | Email to expert regarding photos taken of house                                                           | 200.00 | .10  | 20.00  |
| * 03/02/2010 DAW | Summary of Joseph Gorrin Deposition                                                                       | 200.00 | 1.00 | 200.00 |
| * 03/02/2010 DAW | Preparation of Summary of Sharon Gorrin's deposition                                                      | 200.00 | 3.00 | 600.00 |
| * 03/02/2010 DAW | Receipt and review of photos from expert; supplemental discovery responses to opposing attorney           | 200.00 | .40  | 80.00  |
| * 03/02/2010 DAW | Email to expert regarding photos he intends to rely upon at trial                                         | 200.00 | .10  | 20.00  |
| * 03/04/2010 DAW | Inter-office conference with builder and his attorney                                                     | 200.00 | 1.00 | 200.00 |
| * 03/05/2010 DAW | Telephone conference from Mike Tinsley regarding my conversation with Rusty Starr                         | 200.00 | .20  | 40.00  |
| * 03/05/2010 DAW | Telephone conference with Steve Stout, Brian Carpenter, Rusty Starr, Terry McCrchan                       | 200.00 | 1.30 | 260.00 |
| * 03/05/2010 DAW | Inter-office conference with Cason employees regarding testimony                                          | 200.00 | 4.00 | 800.00 |
| * 03/06/2010 DAW | Receipt, review and reply to email from opposing attorney regarding stipulations                          | 200.00 | .10  | 20.00  |
| * 03/08/2010 DAW | Telephone conference from Brian Carpenter regarding Rusty Starr                                           | 200.00 | .20  | 40.00  |
| * 03/09/2010 DAW | Receipt and review of Motion for Continuance from opposing attorney; email to client regarding same       | 200.00 | .20  | 40.00  |
| * 03/10/2010 DAW | Telephone conference with Judge Miller's law clerk                                                        | 200.00 | .20  | 40.00  |
| * 03/11/2010 DAW | Receipt and review of Notice of Continuance; email to opposing attorney, expert and client regarding same | 200.00 | .30  | 60.00  |

\* indicates work-in-process

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|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------|--------|
| * 03/22/2010 DAW | Receipt and review of email from Jury Coordinator; email to client regarding new trial date                                                                                                                                                                       | 200.00 | .20  | 40.00  |
| * 05/03/2010 DAW | Receipt and review of email from Jury Coordinator; email to client                                                                                                                                                                                                | 200.00 | .20  | 40.00  |
| * 05/10/2010 DAW | Correspondence to Judge Miller regarding scheduling problems with expert                                                                                                                                                                                          | 200.00 | .30  | 60.00  |
| * 05/10/2010 DAW | Preparation of Direct Testimony of Plaintiffs' witnesses; emails to and from Dee Dee Gould regarding meeting; subpoenas to Terry McCracken and Bryan Carpenter                                                                                                    | 200.00 | 3.20 | 640.00 |
| * 05/11/2010 DAW | Preparation of Trial Notes of Joseph Gorrin & part of Scott Ibbotson                                                                                                                                                                                              | 200.00 | 2.80 | 560.00 |
| * 05/12/2010 MAC | Travel to court to research Gorrin case                                                                                                                                                                                                                           | 70.00  | .50  | 35.00  |
| * 05/12/2010 DAW | Inter-office conference with Cason witnesses and review of proposed testimony                                                                                                                                                                                     | 200.00 | 2.50 | 500.00 |
| * 05/12/2010 DAW | Receipt, review and reply to several emails from law clerk for Judge Miller regarding trial                                                                                                                                                                       | 200.00 | .30  | 60.00  |
| * 05/12/2010 DAW | Research Defendant's criminal history; review order of contempt; telephone conference with opposing attorney regarding same as well as Exhibit lists; correspondence to opposing attorney regarding contempt; preparation of Subpoena for Defendant Joseph Gorrin | 200.00 | 1.00 | 200.00 |
| * 05/13/2010 DAW | Preparation of Direct of Steve Stout                                                                                                                                                                                                                              | 200.00 | .70  | 140.00 |
| * 05/13/2010 DAW | Telephone conference with expert regarding trial schedule and testimony; preparation of notes                                                                                                                                                                     | 200.00 | .40  | 80.00  |
| * 05/13/2010 DAW | Receipt and review of email from client regarding updated ledger; email to client regarding jury selection and jury qualification; email to opposing attorney regarding updated balance                                                                           | 200.00 | .40  | 80.00  |
| * 05/13/2010 DAW | Additional preparation cross of Scott Ibbotson                                                                                                                                                                                                                    | 200.00 | .50  | 100.00 |
| * 05/13/2010 BBC | Continue work on Jury Charges; research regarding legal/equitable issues (Westlaw)                                                                                                                                                                                | 200.00 | 2.40 | 480.00 |
| * 05/13/2010 DAW | Prepare cross examination of Jeff Neaman.                                                                                                                                                                                                                         | 200.00 | .60  | 120.00 |

\* indicates work-in-process

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|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|-------|----------|
| * 05/14/2010 DAW | Preparation for trial; telephone conferences with witnesses and clients                                                                                                                        | 200.00 | 5.00  | 1,000.00 |
| * 05/14/2010 BBC | Finalize Jury Charges; legal research (Westlaw)                                                                                                                                                | 200.00 | 1.50  | 300.00   |
| * 05/14/2010 DAW | Initial preparation of cross examination of Sharon Gorrin-Order documents to be enlarged as exhibits.                                                                                          | 200.00 | 1.60  | 320.00   |
| * 05/14/2010 DAW | Several emails with opposing attorney regarding witnesses; order of trial; scheduling, etc. Telephone conference with Terry McCrchan; prepare cross examination of Defendant's expert Truluck. | 200.00 | 2.10  | 420.00   |
| * 05/15/2010 DAW | Preparation for trial                                                                                                                                                                          | 200.00 | 4.00  | 800.00   |
| * 05/15/2010 DAW | Trial preparation                                                                                                                                                                              | 200.00 | 3.10  | 620.00   |
| * 05/16/2010 DAW | Preparation for trial                                                                                                                                                                          | 200.00 | 4.00  | 800.00   |
| * 05/16/2010 DAW | Preparation of trial exhibits and cross examination                                                                                                                                            | 200.00 | 4.00  | 800.00   |
| * 05/17/2010 DAW | Roster mtg; telephone conference with witnesses regarding possible new trial date. Email opposing attorney regarding same.                                                                     | 200.00 | 1.50  | 300.00   |
| * 06/08/2010 DAW | Telephone conference with witness Bryan Carpenter regarding subpoena and time needed for trial.                                                                                                | 200.00 | .20   | 40.00    |
| * 06/12/2010 DAW | Preparation for trial                                                                                                                                                                          | 200.00 | 2.00  | 400.00   |
| * 06/12/2010 DAW | Trial preparation                                                                                                                                                                              | 200.00 | 2.20  | 440.00   |
| * 06/13/2010 DAW | Preparation for trial                                                                                                                                                                          | 200.00 | 1.00  | 200.00   |
| * 06/14/2010 DAW | Trial Day 1                                                                                                                                                                                    | 200.00 | 8.00  | 1,600.00 |
| * 06/15/2010 DAW | Trial Day 2                                                                                                                                                                                    | 200.00 | 8.00  | 1,600.00 |
| * 06/15/2010 DAW | Preparation for Day 3-telephone conference with expert; preparation of directed verdict motion; preparation for cross examination of Sharon Gorrin.                                            | 200.00 | 2.00  | 400.00   |
| * 06/16/2010 DAW | Trial day 3; preparation of closing argument; several telephone conferences with expert.                                                                                                       | 200.00 | 11.80 | 2,360.00 |
| * 06/17/2010 DAW | Trial Day 4                                                                                                                                                                                    | 200.00 | 9.00  | 1,800.00 |
| * 06/23/2010 DAW | Receipt and review bill from expert-reply correspondence.                                                                                                                                      | 200.00 | .30   | 60.00    |
| * 06/24/2010 DAW | Receipt and review Defendant's memorandum in support of Directed Verdict on attorney's fees-Westlaw research-Initial preparation of memorandum in opposition.                                  | 200.00 | 3.50  | 700.00   |

\* indicates work-in-process

|                          |                                                                                                   |        |      |             |
|--------------------------|---------------------------------------------------------------------------------------------------|--------|------|-------------|
| * 06/25/2010 DAW         | Prepare memorandum in opposition to Defendant's motion for Directed Verdict.                      | 200.00 | 3.50 | 700.00      |
| * 06/25/2010 DAW         | Telephone conference from clients regarding settlement-email to opposing attorney regarding same. | 200.00 | .20  | 40.00       |
| TOTAL SERVICES RENDERED: |                                                                                                   | 258.60 |      | \$51,616.00 |

TIMEKEEPER SUMMARY:

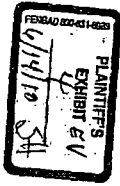
|        |                     |                             |             |
|--------|---------------------|-----------------------------|-------------|
| BBC    | - Bruce B. Campbell | 8.80 HRS @ \$ 200.00/HR =   | 1,760.00    |
| DAW    | - David A. Wilson   | 238.60 HRS @ \$ 200.00/HR = | 47,720.00   |
| JMJ    | - Joseph M. Jenkins | 10.40 HRS @ \$ 200.00/HR =  | 2,080.00    |
| MAC    | - Mary Ann Cartier  | .80 HRS @ \$ 70.00/HR =     | 56.00       |
| Totals |                     | 258.60                      | \$51,616.00 |

COSTS ADVANCED

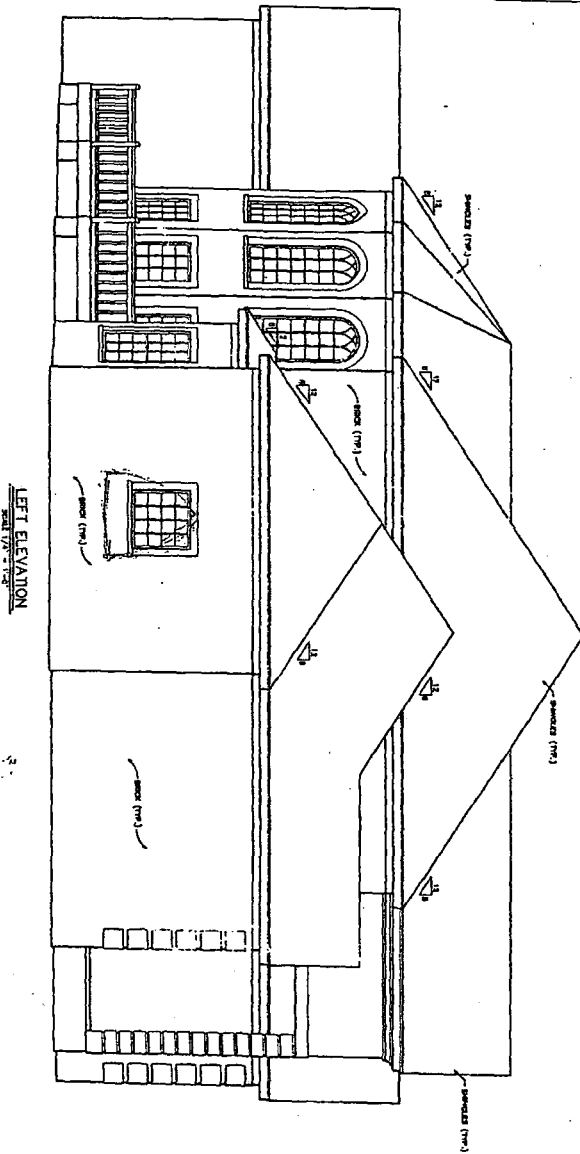
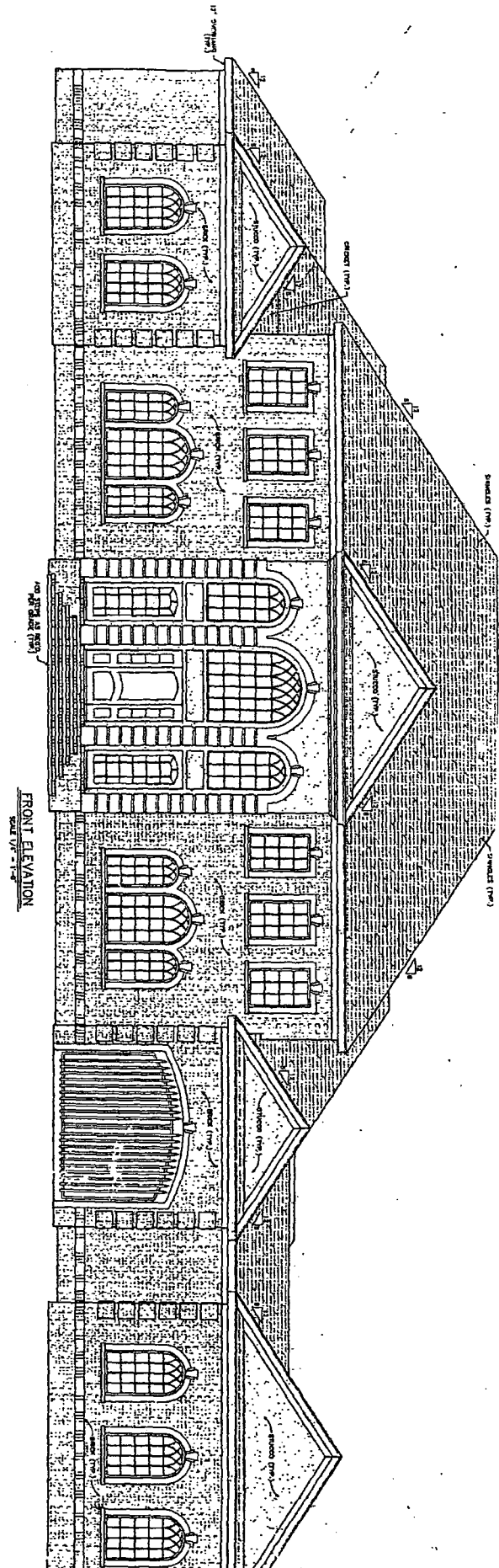
| DATE         | DESCRIPTION                                                         | AMOUNT   |
|--------------|---------------------------------------------------------------------|----------|
| * 01/24/2007 | Clerk of Court - Filing Fee                                         | 150.00   |
| * 10/01/2007 | Mark Garrison- Title Work                                           | 170.00   |
| * 10/02/2007 | Imaging Technologies                                                | 22.03    |
| * 11/13/2007 | BB&T - Copies pursuant to Subpoena                                  | 120.00   |
| * 02/07/2008 | Copies and postage (Answers to Request for Production of Documents) | 285.00   |
| * 02/19/2008 | Andrew Arnold- Mediation fees                                       | 175.00   |
| * 08/18/2008 | GCR, Inc. - Deposition                                              | 676.40   |
| * 09/04/2008 | Russell Truluck- Deposition                                         | 225.00   |
| * 09/23/2008 | Gallagher Court Reporting- Deposition Transcript                    | 315.70   |
| * 10/03/2008 | Level3 Design Associates, PC (expert fees)                          | 1,380.15 |
| * 12/29/2008 | GCR, Inc.- Deposition Transcript                                    | 250.35   |
| * 01/09/2009 | Ken Cheshier- Witness Fee                                           | 25.00    |
| * 01/14/2009 | Mary Beth's- lunch during deposition                                | 64.00    |
| * 01/19/2009 | Gallagher Court Reporting- Deposition Transcript                    | 1,129.55 |
| * 02/06/2009 | Level3 Design Associates, P.C. (expert fees)                        | 1,156.25 |
| * 02/10/2009 | Imaging Technologies- copies of documents supplied by Gorrins       | 57.11    |
| * 02/19/2009 | GCR- Deposition of Joseph Gorrin                                    | 438.05   |
| * 03/05/2009 | Westlaw Legal Research.                                             | 379.50   |
| * 10/23/2009 | BB&T- Records production fee                                        | 85.00    |
| * 02/01/2010 | Culbertson & Alexander- Copies of documents pursuant to subpoena    | 45.90    |
| * 03/15/2010 | Imaging Technologies- photo enlargement of Gorrin house for trial   | 24.38    |

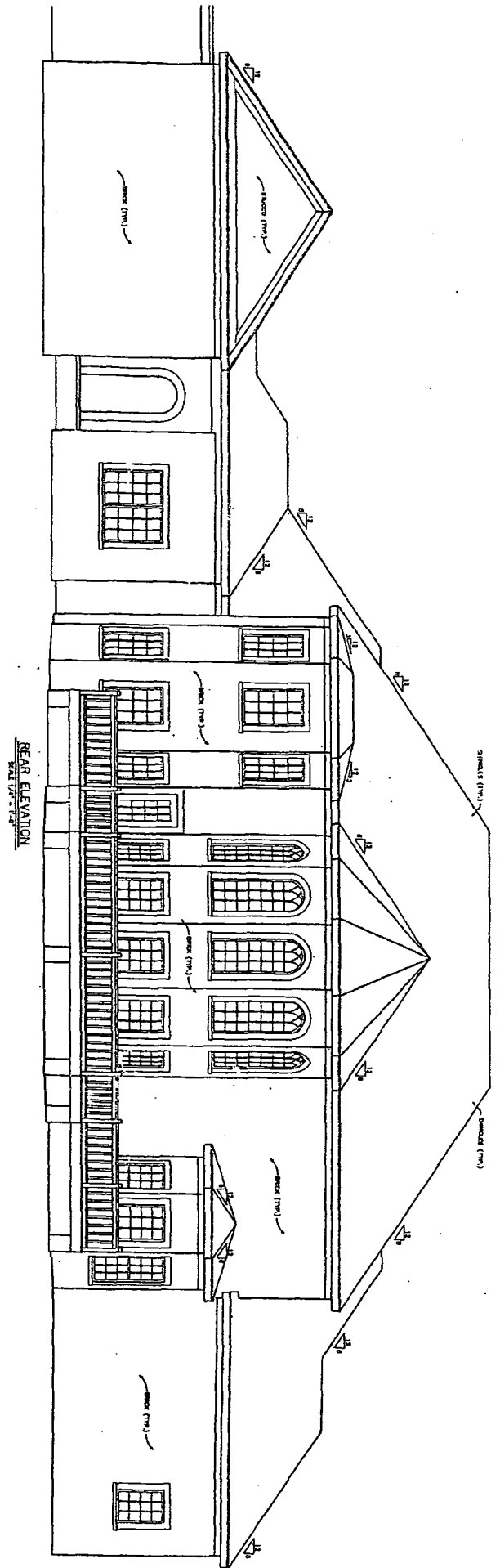
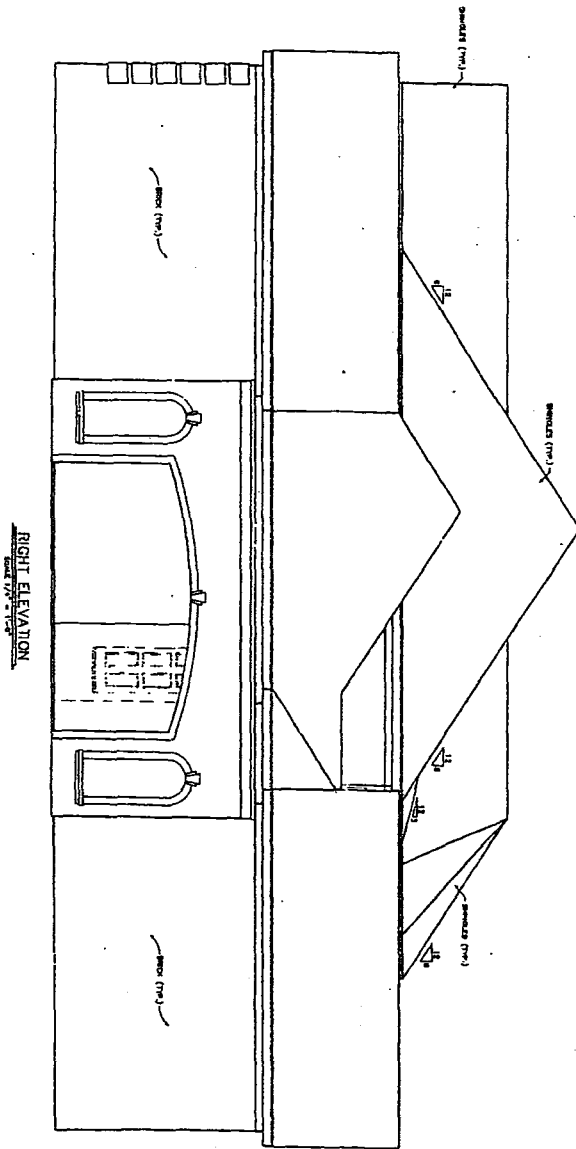
\* indicates work-in-process

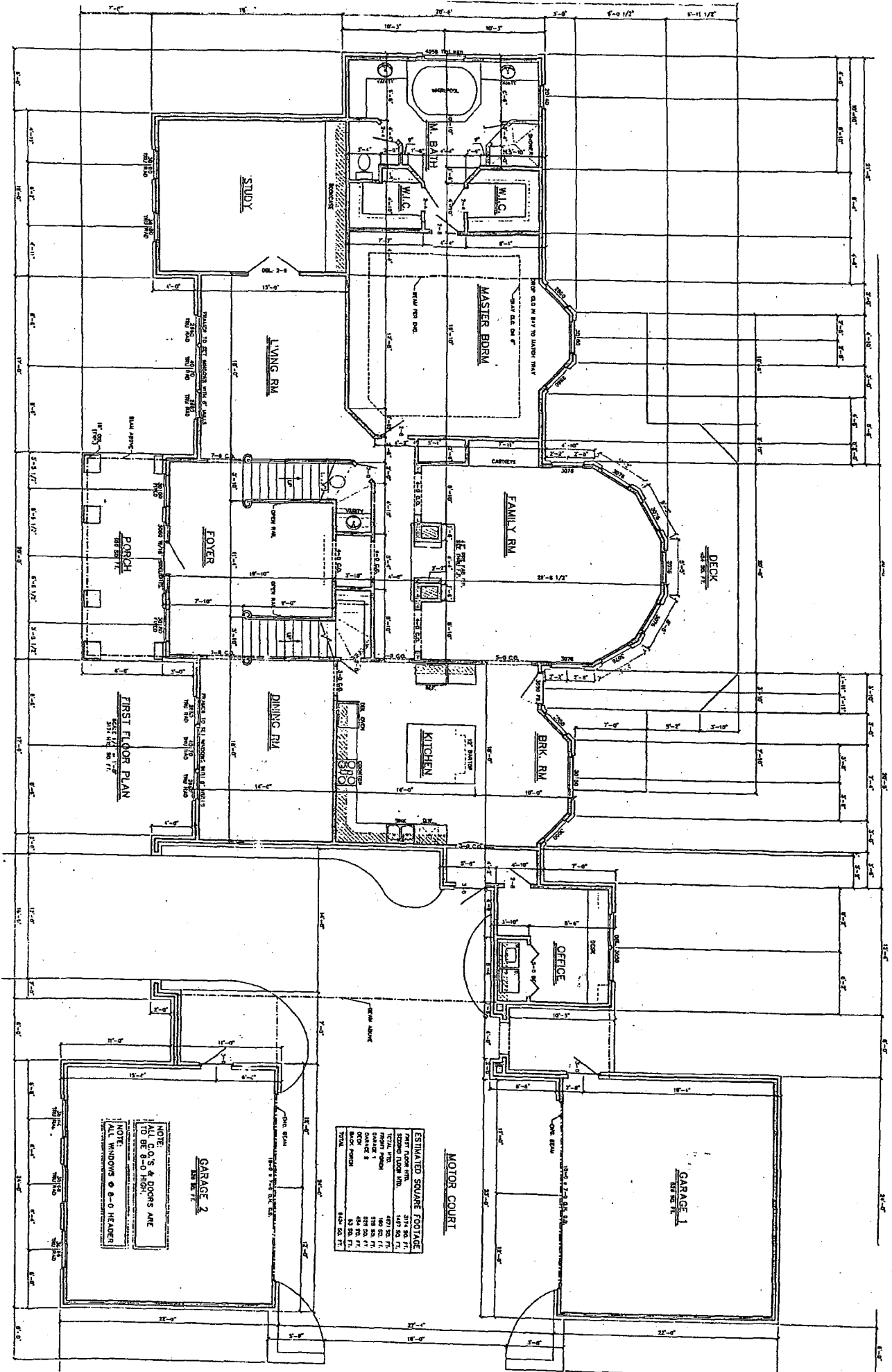
|                       |                                            |                  |
|-----------------------|--------------------------------------------|------------------|
| * 05/10/2010          | Witness Fee- Bryan Carpenter               | 25.00            |
| * 05/10/2010          | Witness Fee- Terry McCracken               | 25.00            |
| * 05/10/2010          | Witness Fee - Steve Strout                 | 25.00            |
| * 05/12/2010          | Copies from Family Court                   | 3.75             |
| * 05/13/2010          | Witness and mileage fee- Joseph<br>Gorin   | 46.72            |
| * 05/14/2010          | Imaging Technologies- enlargements         | 11.45            |
| * 06/24/2010          | Level 3 Design Associates (expert<br>fees) | 984.02           |
| TOTAL COSTS ADVANCED: |                                            | <hr/> \$8,295.31 |
| CURRENT CHARGES:      |                                            | 59,911.31        |

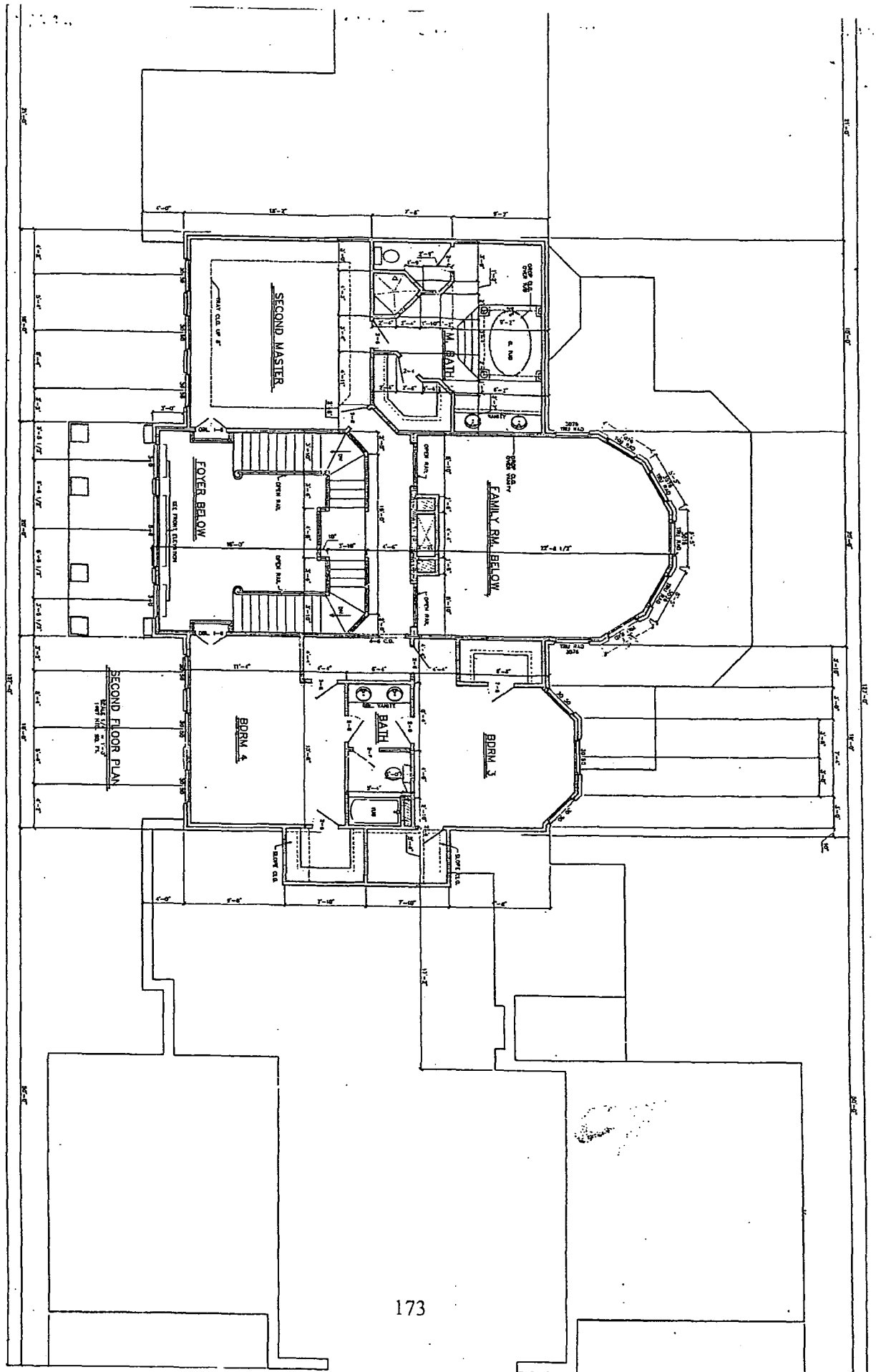


THIS DRAWING WAS PREPARED BY THE ARCHITECTURAL FIRM OF [REDACTED] AND IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE ARCHITECTURAL FIRM OF [REDACTED].









# Five Star Builders Inc



## CASON BUILDERS SUPPLY

A Division of Cason Companies, Inc.  
www.casonbuildersupply.com



P.O.Box 1520  
Hendersonville, NC 28793  
(828) 692-5716  
FAX (828) 697-7327

2800 Woodruff Road  
Simpsonville, SC 29681  
(864) 675-9519  
FAX (864) 458-9537

P.O. Box 785, Ecusta Rd.  
Pisgah Forest, NC 28768  
(828) 883-2711  
FAX (828) 883-3806

June 13, 2005

Five Star Builders, Inc.  
Attn: Ken M. Cheshier

Denied

Dear Mr. Cheshier:

We regret that we are unable to approve your credit application at this time for the purchase of masonry products from Cason Builders Supply. We would be happy to sell to you on a cash basis.

You may resubmit a credit application in six months, or when your credit history reflects no past due or collection activity.

If you have any questions, please feel free to give me a call.

Sincerely,

*Dee Dee Gould*

Dee Dee Gould  
Vice President

ESG/m

cc: Ron Miller  
Bryan Carpenter  
File

bcc: Scott

\* This is Not Five Star Construction of Mauldin Dale McLees

## Commercial Score - FIVE STAR

Subcode: 322580

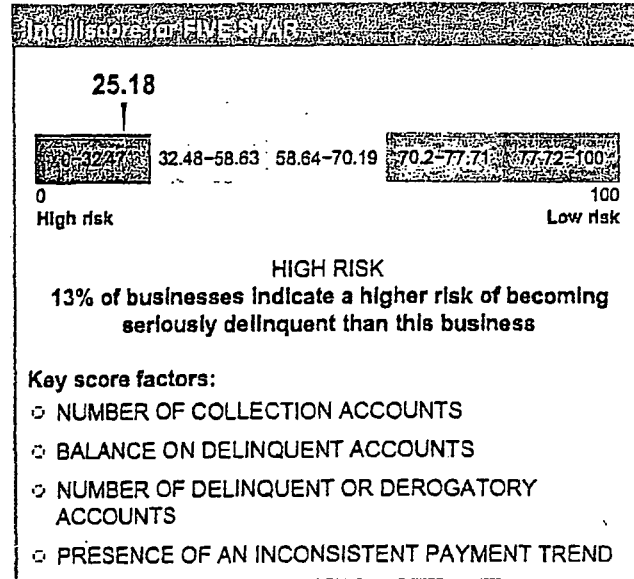
Ordered: 06/08/2005 16:46:39

Search Inquiry: Five Star Builders, Inc. / 100 Terra Lake Drive / Greer / SC / 29650 / 864-505-5909 / 570993764

experian

### Company Information

|                  |                                                           |
|------------------|-----------------------------------------------------------|
| <b>FIVE STAR</b> | <b>Experian File Number:</b>                              |
| SC 29650-3754    | <b>Full Report Number:</b>                                |
| (864) 292-9222   | <b>Experian File Established:</b> 03/2001                 |
|                  | <b>SIC code:</b> SINGLE-FAMILY HOUSING CONTRACTORS - 1521 |



### Legal Filings and Collections

|                                   |     |
|-----------------------------------|-----|
| Bankruptcy filings:               | 0   |
| Tax lien filings:                 | 0   |
| Judgment filings:                 | 0   |
| Total collections: (PLACED 10/04) | 1   |
| Sum of legal filings:             | \$0 |
| UCC filings:                      | 0   |
| Cautionary UCC filings present?   | No  |

### Trade Information

|                                      |                    |
|--------------------------------------|--------------------|
| Current Days Beyond Terms (DBT):     | 3                  |
| Monthly average DBT:                 | 10                 |
| Highest DBT previous 6 months:       | 21                 |
| Highest DBT previous 5 quarters:     | 21                 |
| Total continuous trades:             | 8                  |
| Current continuous trade balance:    | \$3,800            |
| Trade balance of all trades (14):    | \$15,100           |
| Average balance previous 5 quarters: | \$21,460           |
| Highest credit amount extended:      | \$37,500           |
| 6 month balance range:               | \$3,800 - \$39,600 |

CREDIT LIMIT: \_\_\_\_\_

TERMS: \_\_\_\_\_

COMMENTS: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

*Experian prides itself on the depth and accuracy of the data maintained on our Databases. Reporting your customers payment behavior to Experian will further strengthen and enhance the power of the information available for making sound credit decisions.... Give credit where credit is due. Call 1-800-478-0650 for more information.*

End of report

1 of 1 reports

*The information herein is furnished in confidence for your exclusive use for legitimate business purposes and shall not be reproduced. Neither Experian Information Solutions, Inc., nor their sources or distributors warrant such information nor shall they be liable for your use or reliance upon it.*

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ATTN: DEB DEE

4 PGS

Cason Companies, Inc.  
and Cason Builders Supply  
 Hereinafter referred to as "Cason"

BRYAN CARPENTER

Credit denied  
 dde/  
 6-10-05

**SOUTH CAROLINA**  
**COMMERCIAL CREDIT APPLICATION**

(Please fill out completely - type or print legibly - return to Cason by mail or in person)

This Credit Application and Agreement (herein referred to as "AGREEMENT") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between "CASON" and the following applicant (herein referred to as "PURCHASER")

Five Star Builders, Inc (864) 585-5909 (864) 268-9917  
 Company Name Telephone Number Fax Number

Greer S.C. 29650  
 Mailing Address City State Zip Code

311  
 Full Street Address (If different than mailing address)

Ken M. Cheshier  
 Authorized Purchasers Amount of Credit Requested

15 yrs SC 010502 residential  
 How Long in Business? Federal Tax I. D. No. Contractor License No. Limitations

Type of Company or Organization (Please check appropriate boxes):

- ( ) Commercial Builder ( ) Personal Home Construction ( ) Mason Contractor ( ) Partnership  
 (x) Residential Builder ( ) Government or Municipality - List Dept. Superior Below ( ) Other  
 ( ) Limited Partnership - Indicate the extent of each Partner's liability below ( ) Sole Proprietorship  
 ( ) Corporation S.C.

State of Incorporation

Ken M. Cheshier  
 Name and Address of Registered Agent

List all other names in which conducting business

P.O. 702, Taylors SC 29687  
 Previous Business Address

Owners' Names and Addresses:

1. Ken M Cheshier President  
Greer 268-4326 505-5909  
 Residential Address Position/Title Soc. Sec. No. Telephone Number Cell Phone Number

2. Kim C Cheshier Vice Pres  
same same 444-8533  
 Name Position/Title Soc. Sec. No. Telephone Number Cell Phone Number  
 Residential Address

(Please place additional information on back of sheet)

**CREDIT INFORMATION**

List at least three credit references (currently extending credit to you):

1. PH Lumber Daniel 288-8468  
Name Contact Telephone Number

Mauldin, S.C.  
Address

net 30  
Type of Credit/Loan Approx. Balance

2. Lighting Center - 268-4822  
Name Contact Telephone Number

Taylors S.C.  
Address

net 30  
Type of Credit/Loan Approx. Balance

3. United Electric - 235-0253  
Name Contact Telephone Number

Greenville S.C.  
Address

net 30  
Type of Credit/Loan Approx. Balance

BB&T  
Bank Name and Address Account No.

Old Spartanburg Rd. Greer S.C.  
Bank Name and Address Account No.

Has applicant ever filed for bankruptcy or been a party to a lawsuit? No

PLEASE MAIL OR DELIVER THE COMPLETED APPLICATION TO THE CASON OFFICE WITH WHICH YOU WISH TO HAVE AN ACCOUNT. FAXED COPIES WILL BE ACCEPTED FOR CREDIT APPROVAL PURPOSES ONLY; HOWEVER, CREDIT WILL NOT BE EXTENDED UNTIL THE ORIGINAL COMPLETED AND SIGNED CREDIT APPLICATION IS RECEIVED.

**CASON BUILDERS SUPPLY**

P. O. Box 1520 (28793)  
1880 Spartanburg Hwy.  
Hendersonville, NC 28792  
(828) 692-5716  
FAX (828) 697-6751

**CASON BUILDERS SUPPLY**

2800 Woodruff Road  
Simpsonville, SC 29681  
(864) 675-9519  
FAX (864) 458-9537

**CASON BUILDERS SUPPLY**

P. O. Box 785  
1405 Ecusta Road  
Pisgah Forest, NC 28768  
(828) 883-2711  
FAX (828) 883-3806

Purchaser hereby applies for credit with Cason and understands and agrees that this Agreement does not become effective unless and until Cason approves this Credit Application, which is incorporated into, and becomes part of, the Agreement. Purchaser further understands that nothing herein obligates Cason to approve this Credit Application, and that if the Credit Application is approved Cason has the right not to extend credit to Purchaser at any time, particularly if the account is not paid in full each month.

Purchaser hereby authorizes Cason at any time to make or have made whatever credit investigation it feels is proper to evaluate the credit and personal or financial standing of Purchaser, including but not limited to contacting credit references, and obtaining credit information from credit bureaus or credit reporting agencies. Purchaser also authorizes Cason to share its credit experience with credit bureaus, credit reporting agencies, creditors and others.

Purchaser certifies and declares that all the information in this Credit Application is correct to the best of his/her knowledge. By signing below, the undersigned states that he/she has received a copy of this Agreement and agrees to all terms and conditions contained herein.

Purchaser hereby agrees and promises to pay Cason for all services and materials purchased from Cason, now or in the future, on this account. Purchaser understands that payments are due in full within thirty (30) days of the date of Cason's invoice. Should payments not be made within thirty (30) days, the account will be considered past due and in default, and shall accrue finance charges of 18% per annum from the first day the account is past due, until payment is made in full. Purchaser agrees to pay these finance charges. Purchaser also agrees to pay Cason's reasonable attorneys fees up to 15% of the outstanding balance due on the account in the event that it is necessary for Cason to engage an attorney or attorneys in the collection of sums owed by Purchaser. Each of the undersigned agrees to pay court costs and all other costs of collection allowed by law.

If it is necessary for Cason to commence proceedings to collect any amounts Purchaser owes under this Agreement, Purchaser consents to be subject to the jurisdiction of the courts of the State of South Carolina, and further agrees to venue being situated in Greenville County, or any other county in which venue would be proper.

This Agreement is governed by law of the State of South Carolina. Any modifications to this Agreement must be in writing and signed by both parties.

This the 8th day of June, 2005.

Five Star Builders, Inc.  
Purchaser (Print Company Name)

Ken M. Cheshier Pres  
By: Name and Title

Ken M. Cheshier  
(Signature)

### PERSONAL GUARANTY

To induce Cason to extend credit to Five Star Builders (Purchaser), the undersigned individual or individuals each hereby contract and guarantee payment of any indebtedness, presently existing or hereafter arising of Purchaser to Cason, when due, including finance charges which accrue at the rate of 13 1/2 per annum. The undersigned guarantor or guarantors each hereby expressly waive all notice of acceptance of this guaranty, notice of extension of credit to Purchaser, presentment, and demand for payment on Purchaser, protest and notice to undersigned guarantor or guarantors of dishonor or default by Purchaser or extension of time of payment to Purchaser, acceptance of partial payment or partial compromise, demand for payment under this guaranty, or any other notice to which the undersigned guarantor or guarantors might otherwise be entitled. With or without notice to the undersigned, and without affecting the liability of the undersigned, Cason may alter, compromise, accelerate, extend or change the time or a manner of payment of any indebtedness, increase or reduce the rate of interest thereon, or add or release any one or more of the undersigned guarantors.

This is a continuing guaranty and shall remain in full force until the undersigned delivers to Cason a written notice revoking such guaranty. Such revocation shall not affect any of the undersigned's obligations hereunder with respect to indebtedness theretofore incurred by the Purchaser.

In the event his account is placed in the hands of an attorney for collection, the undersigned each agree and promise to pay all Cason's attorneys' fees, costs and expenses. The maximum liability of the undersigned on this guaranty shall not exceed the amount of credit extended, together with finance charges of 10% per annum, legal fees (if placed for collection), court costs and all other costs of collection allowed by law which each of the undersigned agrees to pay.

If it is necessary for Cason to commence proceedings to collect any amounts the undersigned guarantor or guarantors owe under this Agreement, each of the guarantors consents to be subject to the jurisdiction of the courts of the State of South Carolina and further agrees to venue being situation in Greenville County, in addition to any other county in which venue would be proper.

This Agreement is governed by law of the State of South Carolina. This guaranty constitutes the entire agreement and may only be altered by written agreement signed by Cason.

#### FEDERAL TRADE COMMISSION NOTICE REGARDING PERSONAL GUARANTY

Notice: You are being asked to guarantee the debt incurred on this account. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility. You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collections costs which increase this amount. The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record. This notice is not the contract that makes you liable for the debt.

This the 8th day of June, 2005.

Name Ken M. Cherrier (print)

Date 6-8-05

Signature Ken M. Cherrier

Witness \_\_\_\_\_

Name \_\_\_\_\_ (print)

Date \_\_\_\_\_

Signature \_\_\_\_\_

Witness \_\_\_\_\_

Name \_\_\_\_\_ (print)

Date \_\_\_\_\_

Signature \_\_\_\_\_

Witness \_\_\_\_\_

Re: "Pending Credit Appltn"

Cason Companies, Inc.

P.O.Box 2030  
1880 Spartanburg Hwy.  
Hendersonville, North Carolina 28793

Builders Supply (828) 692-5716  
Oil Division (828) 693-0246  
FAX (828) 697-6751



**FAXED**

Bryan -

I can NOT get thru to EquiFax this  
p.m. The Experian Report is "high risk".  
So I must check further on his references.  
Keep this info Confidential, please. No  
decision yet . . . . .

6-8-05  
ddg

ATTN: DEE DEE

4 PGS

Cason Companies, Inc.  
and Cason Builders Supply  
 Hereinafter referred to as "Cason"

BRYAN CARPES

**SOUTH CAROLINA**  
**COMMERCIAL CREDIT APPLICATION**

(Please fill out completely - type or print legibly - return to Cason by mail or in person)

This Credit Application and Agreement (herein referred to as "AGREEMENT") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between "CASON" and the following applicant (herein referred to as "PURCHASER")

Five Star Builders, Inc (864) 585-5909 (864) 268-9917  
 Company Name Telephone Number Fax Number

Greer S.C. 29650  
 Mailing Address City State Zip Code

5th  
 Full Street Address (If different than mailing address)

Ken M. Cheshier  
 Authorized Purchasers

15 yrs. SC 010502 residential  
 How Long in Business? Federal Tax I. D. No. Contractor License No. Limitations

Type of Company or Organization (Please check appropriate boxes):

- ☐ Commercial Builder ☐ Personal Home Construction ☐ Mason Contractor ☐ Partnership  
☒ Residential Builder ☐ Government or Municipality - List Dept. Superior Below ☐ Other  
☐ Limited Partnership - Indicate the extent of each Partner's liability below ☐ Sole Proprietorship  
☐ Corporation S.C.

State of Incorporation

Ken M. Cheshier  
 Name and Address of Registered Agent

List all other names in which conducting business

P.O. 702, Taylors SC 29687  
 Previous Business Address

Owners' Names and Addresses:

Ken M. Cheshier President  
Greer 268-4326 505-5909  
 Residential Address Position/Title Telephone Number Cell Phone Number

Kim C Cheshier Vice Pres  
same same 444-9583  
 Residential Address Position/Title Telephone Number Cell Phone Number

### CREDIT INFORMATION

List at least three credit references (currently extending credit to you):

|                     |               |                  |
|---------------------|---------------|------------------|
| 1. <u>SH Lumber</u> | <u>Daniel</u> | <u>288-8468</u>  |
| Name                | Contact       | Telephone Number |

|                      |  |  |
|----------------------|--|--|
| <u>Wauldin, S.C.</u> |  |  |
| Address              |  |  |

|                     |                 |  |
|---------------------|-----------------|--|
| <u>net 30</u>       |                 |  |
| Type of Credit/Loan | Approx. Balance |  |

|                           |          |                  |
|---------------------------|----------|------------------|
| 2. <u>Lighting Center</u> | <u>-</u> | <u>268-4822</u>  |
| Name                      | Contact  | Telephone Number |

|                    |  |  |
|--------------------|--|--|
| <u>Taylor S.C.</u> |  |  |
| Address            |  |  |

|                     |                 |  |
|---------------------|-----------------|--|
| <u>net 30</u>       |                 |  |
| Type of Credit/Loan | Approx. Balance |  |

|                           |          |                  |
|---------------------------|----------|------------------|
| 3. <u>United Electric</u> | <u>-</u> | <u>235-0233</u>  |
| Name                      | Contact  | Telephone Number |

|                        |  |  |
|------------------------|--|--|
| <u>Greenville S.C.</u> |  |  |
| Address                |  |  |

|                     |                 |  |
|---------------------|-----------------|--|
| <u>net 30</u>       |                 |  |
| Type of Credit/Loan | Approx. Balance |  |

|                       |             |  |
|-----------------------|-------------|--|
| <u>BBT</u>            |             |  |
| Bank Name and Address | Account No. |  |

|                                       |             |  |
|---------------------------------------|-------------|--|
| <u>Old Spartanburg Rd. Greer S.C.</u> |             |  |
| Bank Name and Address                 | Account No. |  |

Has applicant ever filed for bankruptcy or been a party to a lawsuit? No

EASE MAIL OR DELIVER THE COMPLETED APPLICATION TO THE CASON OFFICE WITH WHICH YOU WISH TO HAVE AN ACCOUNT. EXCESS COPIES WILL BE ACCEPTED FOR CREDIT APPROVAL PURPOSES ONLY; HOWEVER, CREDIT WILL NOT BE EXTENDED UNTIL THE ORIGINAL COMPLETED AND SIGNED CREDIT APPLICATION IS RECEIVED.

#### CASON BUILDERS SUPPLY

P.O. Box 1520 (28793)  
80 Spartanburg Hwy.  
Andersonville, NC 28792  
(813) 692-5716  
FAX (828) 697-6751

#### CASON BUILDERS SUPPLY

2800 Woodruff Road  
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Purchaser hereby authorizes Cason at any time to make or have made whatever credit investigation it feels is proper to evaluate the credit and personal or financial standing of Purchaser, including but not limited to contacting credit references, and obtaining credit information from credit bureaus or credit reporting agencies. Purchaser also authorizes Cason to share its credit experience with credit bureaus, credit reporting agencies, creditors and others.

Purchaser certifies and declares that all the information in this Credit Application is correct to the best of his/her knowledge. By signing below, the undersigned states that he/she has received a copy of this Agreement and agrees to all terms and conditions contained herein.

Purchaser hereby agrees and promises to pay Cason for all services and materials purchased from Cason, now or in the future, on his account. Purchaser understands that payments are due in full within thirty (30) days of the date of Cason's invoice. Should payments not be made within thirty (30) days, the account will be considered past due and in default, and shall accrue finance charges of 18% per annum from the first day the account is past due, until payment is made in full. Purchaser agrees to pay these finance charges. Purchaser also agrees to pay Cason's reasonable attorneys fees up to 15% of the outstanding balance due on the account in the event that it is necessary for Cason to engage an attorney or attorneys in the collection of sums owed by Purchaser. Each of the undersigned agrees to pay court costs and all other costs of collection allowed by law.

If it is necessary for Cason to commence proceedings to collect any amounts Purchaser owes under this Agreement, Purchaser consents to be subject to the jurisdiction of the courts of the State of South Carolina, and further agrees to venue being situated in Greenville County, or any other county in which venue would be proper.

This Agreement is governed by law of the State of South Carolina. Any modifications to this Agreement must be in writing and signed by both parties.

his the 8th day of June, 2005.

Five Star Builders, Inc.  
Purchaser (Print Company Name)

Ken M. Cheshier Pres  
By: Name and Title

Ken M. Cheshier  
(Signature)

## PERSONAL GUARANTY

To induce Cason to extend credit to Five Star Builders (Purchaser), the undersigned individual or individuals each hereby contract and guarantee payment of any indebtedness, presently existing or hereafter arising of Purchaser to Cason, when due, including finance charges which accrue at the rate of 18% per annum. The undersigned guarantor or guarantors each hereby expressly waive all notice of acceptance of this guaranty, notice of extension of credit to Purchaser, presentment, and demand for payment on Purchaser, protest and notice to undersigned guarantor or guarantors of dishonor or default by Purchaser or extension of time of payment to Purchaser, acceptance of partial payment or partial compromise, demand for payment under this guaranty, or any other notice to which the undersigned guarantor or guarantors might otherwise be entitled. With or without notice to the undersigned, and without affecting the liability of the undersigned, Cason may alter, compromise, accelerate, extend or change the time or a manner of payment of any indebtedness, increase or reduce the rate of interest thereon, or add or release any one or more of the undersigned guarantors.

This is a continuing guaranty and shall remain in full force until the undersigned delivers to Cason a written notice revoking such guaranty. Such revocation shall not affect any of the undersigned's obligations hereunder with respect to indebtedness theretofore incurred by the Purchaser.

In the event his account is placed in the hands of an attorney for collection, the undersigned each agree and promise to pay all Cason's attorneys' fees, costs and expenses. The maximum liability of the undersigned on this guaranty shall not exceed the amount of credit extended, together with finance charges of 18% per annum, legal fees (if placed for collection), court costs and all other costs of collection allowed by law which each of the undersigned agrees to pay.

If it is necessary for Cason to commence proceedings to collect any amounts the undersigned guarantor or guarantors owe under this Agreement, each of the guarantors consents to be subject to the jurisdiction of the courts of the State of South Carolina and further agrees to venue being situation in Greenville County, in addition to any other county in which venue would be proper.

This Agreement is governed by law of the State of South Carolina. This guaranty constitutes the entire agreement and may only be altered by written agreement signed by Cason.

### FEDERAL TRADE COMMISSION NOTICE REGARDING PERSONAL GUARANTY

Notice: You are being asked to guarantee the debt incurred on this account. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility. You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collections costs which increase this amount. The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record. This notice is not the contract that makes you liable for the debt.

This the 8th day of June, 2005.

Name Ken M. Chesher (print)

Date 6-8-05

Signature Ken M. Chesher

Witness \_\_\_\_\_

Name \_\_\_\_\_ (print)

Date \_\_\_\_\_

Signature \_\_\_\_\_

Witness \_\_\_\_\_

Name \_\_\_\_\_ (print)

Date \_\_\_\_\_

Signature \_\_\_\_\_

Witness \_\_\_\_\_

11/04-11/30/06 K  
SHARON H GORRIN

405300050000769  
CASON COMPANIES  
SIMPSONVILLE SC

EXPIRATION

☐ DATE  
CHECKED

| QTY        | CLASS | DESCRIPTION   | PRICE | AMOUNT        |
|------------|-------|---------------|-------|---------------|
|            |       | G 33074       |       |               |
|            |       |               |       |               |
|            |       |               |       |               |
| DATE       |       | AUTHORIZATION |       | SUB TOTAL     |
| 6-21-05    |       | AP177321      |       |               |
| REG./DEPT. |       | CLERK         | TAX   |               |
| REF 0399   |       |               | TIP   |               |
|            |       |               | MISC. |               |
| 5863630    |       |               |       | TOTAL 2700.37 |

SALES SLIP

SIGN HERE

X

*Sharon Gorri*

The issuer of the card identified on this item is authorized to pay the amount shown as TOTAL upon proper presentation. I promise to pay such TOTAL (together with any other charges due thereon) subject to and in accordance with the agreement governing the use of such card.

CUSTOMER: RETAIN THIS COPY FOR YOUR RECORDS







$m/c$ 

DATE

CHECKED

11/06

SIGN HERE

X

Attn: JN

The issuer of the card identified on this item is authorized to pay the amount shown as TOTAL upon proper presentation. I promise to pay such TOTAL (together with any other charges due thereon) subject to and in accordance with the agreement governing the use of such card.

| QTY.     | CLASS   | DESCRIPTION   | PRICE     | AMOUNT  |
|----------|---------|---------------|-----------|---------|
| 225      |         | MULTAR        |           | 3825 00 |
|          |         |               |           |         |
|          |         |               |           |         |
|          |         | DISC.         |           | -114 75 |
| DATE     | 6/23/05 | AUTHORIZATION | SUB TOTAL | 3710 75 |
|          |         | AP 177341     | TAX       | 185 51  |
|          |         | REG/DEPT.     | TIP       |         |
|          |         | CLERK         | MISC.     |         |
| REF 0407 |         |               |           |         |
| 5863637  |         |               | TOTAL     | 3895 76 |

SALES SLIP  
COPY

**CUSTOMER: RETAIN THIS COPY FOR YOUR RECORDS**

PENGAD 800-631-6889  
PLAINTIFF'S  
EXHIBIT EV  
11  
6/14/10 SH



Cason Builders Supply

Brick, Block, Rock, Cultured Stone, Landscaping Supplies

File  
864-235-4327

II FAYO Tubs Bill

To Sharon Gornis As

Her Request

Made

Hendersonville, NC  
(828) 692-5716

Pisgah Forest, NC  
(828) 883-2711

Simpsonville, SC  
(864) 675-9519

# CASON BUILDERS SUPPLY STATEMENT

A Division of Cason Companies, Inc.

P.O. BOX 1520

HENDERSONVILLE, NORTH CAROLINA 28793

PHONE (828) 692-5716

FAX (828) 697-7327

STATEMENT DATE

2/25/06

ACCOUNT NUMBER

GORRIN, JOSEPH & SHARON  
JOSEPH GORRIN

USA

CODES: I = INVOICE D = DEBIT MEMO C = CREDIT MEMO B = BALANCE FORWARD  
P = PAYMENT A = DISCOUNT ALLOWED F = FINANCE CHARGE

| DATE     | CODE | REFERENCE | CHARGES AND CREDITS | BALANCE   |
|----------|------|-----------|---------------------|-----------|
| 8/31/05  | B    | Bal. Fwd. | .00                 | .00       |
| 8/31/05  | I    | 757361    | 1,850.84            | 1,850.84  |
| 9/06/05  | I    | 757530    | 15.23               | 1,866.07  |
| 9/07/05  | I    | 757639    | 1,735.37            | 3,601.44  |
| 9/07/05  | I    | 757640    | 1,765.76            | 5,367.20  |
| 9/13/05  | I    | 757918    | 209.48              | 5,576.68  |
| 9/16/05  | I    | 758092    | 27.93               | 5,604.61  |
| 9/16/05  | I    | 758150    | 1,890.88            | 7,495.49  |
| 9/19/05  | I    | 758287    | 1,787.21            | 9,282.70  |
| 9/20/05  | I    | 758305    | 463.67              | 9,746.37  |
| 9/21/05  | I    | 758437    | 211.47              | 9,957.84  |
| 10/07/05 | I    | 759268    | 184.80              | 10,142.64 |
| 10/25/05 | P    | 49713     | 2,000.00c           | 8,142.64  |
| 10/25/05 | F    | 20051025  | 119.37              | 8,262.01  |
| 10/31/05 | I    | 760694    | 3,213.00            | 11,475.01 |
| 11/10/05 | I    | 761235    | 24.15               | 11,499.16 |
| 11/14/05 | I    | 761556    | 2,429.23            | 13,928.39 |
| 11/18/05 | F    | 20051118  | 123.93              | 14,052.32 |
| 12/07/05 | C    | 762533    | 243.30c             | 13,809.02 |
| 1/17/06  | C    | 763635    | 123.93c             | 13,685.09 |
| 1/17/06  | I    | 763671    | 518.67              | 14,203.76 |
| 1/17/06  | I    | 764145    | 2,521.18            | 16,724.94 |
| 1/19/06  | I    | 764169    | 2,521.18            | 19,246.12 |

PLEASE PAY

# CASON BUILDERS SUPPLY STATEMENT

A Division of Cason Companies, Inc.

P.O. BOX 1520

HENDERSONVILLE, NORTH CAROLINA 28793

PHONE (828) 692-5716

FAX (828) 697-7327

STATEMENT DATE

2/25/06

ACCOUNT NUMBER

GORRIN, JOSEPH & SHARON  
JOSEPH GORRIN

USA

CODES: I = INVOICE D = DEBIT MEMO C = CREDIT MEMO B = BALANCE FORWARD  
P = PAYMENT A = DISCOUNT ALLOWED F = FINANCE CHARGE

| DATE    | CODE | REFERENCE | CHARGES AND CREDITS | BALANCE   |
|---------|------|-----------|---------------------|-----------|
| 2/07/06 | I    | 765074    | 794.33              | 20,040.45 |
| 2/07/06 | I    | 765084    | 35.70               | 20,076.15 |
| 2/13/06 | I    | 765376    | 1,642.20            | 21,718.35 |
| 2/14/06 | I    | 765515    | 35.70               | 21,754.05 |
| 2/16/06 | I    | 765579    | 263.53              | 22,017.58 |
| 2/16/06 | I    | 765650    | 1,763.22            | 23,780.80 |

AST DUE BALANCES ARE SUBJECT  
3 18% APR INTEREST CHARGE. (F)

PLEASE PAY

23,780.80

CURRENT

4,534.68

OVER 30

PAST DUE

5,561.03

OVER 60

PAST DUE

.00

90 AND OVER

PAST DUE

13,685.09

*3,000*

*20700.80*



A Division of Cason Companies, Inc. - [www.casonbuildersupply.com](http://www.casonbuildersupply.com)

PO Box 1520  
Hendersonville, NC 28793  
(828) 692-5716  
FAX (828) 697-7327

2800 Woodruff Road  
Simpsonville, SC 29681  
(804) 675-9519  
FAX (804) 458-9537

PO Box 785, Ecusta Rd  
Pisgah Forest, NC 28768  
(828) 883-2711  
FAX (828) 883-3806



**CERTIFIED MAIL**

April 11, 2006

Joseph and Sharon Gorin

Reference: Cason Builders Supply Account

Dear Mr. and Mrs. Gorin:

The purpose of this correspondence is to notify you that a considerable period of time has gone by since anything has been paid on your account. At least sixty days have expired without clearing your account, and our agreement with you was you would keep your charges current in order to continue the open account.

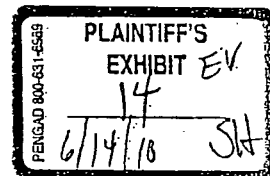
I trust that you understand that this matter demands your immediate attention, and I look forward to hearing from you within the next ten days to make payment arrangements.

Sincerely,

Dee Dee Gould  
Vice President

/scw

cc: Regular Mail  
L. Scronce  
M. Tinsley



Gorin, Joseph & Sharon  
 Balance thru 5/19/10  
 Acct

|            |        |            |
|------------|--------|------------|
| 8/31/2005  | 757361 | 1,850.84   |
| 9/6/2005   | 757530 | 15.23      |
| 9/7/2005   | 757639 | 1,735.37   |
| 9/7/2005   | 757640 | 1,765.76   |
| 9/13/2005  | 757918 | 209.48     |
| 9/16/2005  | 758092 | 27.93      |
| 9/16/2005  | 758150 | 1,890.88   |
| 9/19/2005  | 758287 | 1,787.21   |
| 9/20/2005  | 758305 | 463.67     |
| 9/21/2005  | 758437 | 211.47     |
| 10/7/2005  | 759268 | 184.80     |
| 10/25/2005 | 49713  | (2,000.00) |
| 10/31/2005 | 760694 | 3,213.00   |
| 11/10/2005 | 761235 | 24.15      |
| 11/14/2005 | 761556 | 2,429.23   |
| 12/7/2005  | 762533 | (243.30)   |
| 1/17/2006  | 763671 | 518.67     |
| 1/17/2006  | 764145 | 2,521.18   |
| 1/19/2006  | 764169 | 2,521.18   |
| 2/7/2006   | 765074 | 794.33     |
| 2/7/2006   | 765084 | 35.70      |
| 2/13/2006  | 765376 | 1,642.20   |
| 2/14/2006  | 765515 | 35.70      |
| 2/16/2006  | 765579 | 263.53     |
| 2/16/2006  | 765650 | 1,763.22   |
| 2/24/2006  | 766195 | 154.22     |
| 2/28/2006  | 766326 | 22.05      |

---

Subtotal 23,837.70

Finance Charges 26,018.76 \$23,837.70 for 49.5 months at 18%/year  
 compound interest calculator

Balance 49,856.46

U.S. DEPARTMENT OF HOUSING &amp; URBAN DEVELOPMENT

## SETTLEMENT STATEMENT

## B. TYPE OF LOAN:

1. ☐ FHA 2. ☐ FmHA 3. ☒ CONV. UNINS. 4. ☐ VA 5. ☐ CONV. INS.

6. FILE NUMBER:

7. LOAN NUMBER:

8. MORTGAGE INS CASE NUMBER:

NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "[POC]" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

1.0 3/98 (08-03-R-GORRIN.PFD/06-03-R-GORRIN/38)

NAME AND ADDRESS OF BORROWER:

Joseph O. Gorrin, Jr. and  
Sharon H. Gorrin

E. NAME AND ADDRESS OF SELLER:

F. NAME AND ADDRESS OF LENDER:

Coastal Mortgage Services, Inc  
11230 Carmel Commons Blvd  
Charlotte, NC 28226

PROPERTY LOCATION:

Marlboro County, South Carolina  
104  
Creek  
3-00 155.00

H. SETTLEMENT AGENT:

The Hartman Law Firm

PLACE OF SETTLEMENT

1314 East Washington Street  
Greenville, SC 29607

I. SETTLEMENT DATE:

March 20, 2006

Disburse: 03/24/06

## J. SUMMARY OF BORROWER'S TRANSACTION

## GROSS AMOUNT DUE FROM BORROWER:

|                                                    |            |
|----------------------------------------------------|------------|
| Contract Sales Price                               |            |
| Personal Property                                  |            |
| Settlement Charges to Borrower (Line 1400)         | 19,272.05  |
| Payoff first mortgage to Homeowners Mtg. Enterpris | 340,585.30 |

## Adjustments For Items Paid By Seller in advance

|                 |    |  |
|-----------------|----|--|
| City/Town Taxes | to |  |
| County Taxes    | to |  |
| Assessments     | to |  |

GROSS AMOUNT DUE FROM BORROWER 359,857.35

## AMOUNTS PAID BY OR IN BEHALF OF BORROWER:

|                                   |            |
|-----------------------------------|------------|
| Deposit or earnest money          |            |
| Principal Amount of New Loan(s)   | 417,000.00 |
| Existing loan(s) taken subject to |            |

Initial Draw

## Adjustments For Items Unpaid By Seller

|                 |    |  |
|-----------------|----|--|
| City/Town Taxes | to |  |
| County Taxes    | to |  |
| Assessments     | to |  |

TOTAL PAID BY/FOR BORROWER 417,000.00

## CASH AT SETTLEMENT FROM/TO BORROWER:

|                                             |               |
|---------------------------------------------|---------------|
| Gross Amount Due From Borrower (Line 120)   | 359,857.35    |
| Less Amount Paid By/For Borrower (Line 220) | ( 417,000.00) |

CASH ( FROM ) ( X TO ) BORROWER 57,142.65

## K. SUMMARY OF SELLER'S TRANSACTION

## 400. GROSS AMOUNT DUE TO SELLER:

|                           |  |
|---------------------------|--|
| 401. Contract Sales Price |  |
| 402. Personal Property    |  |
| 403.                      |  |
| 404.                      |  |
| 405.                      |  |

## Adjustments For Items Paid By Seller in advance

|                      |    |  |
|----------------------|----|--|
| 406. City/Town Taxes | to |  |
| 407. County Taxes    | to |  |
| 408. Assessments     | to |  |
| 409.                 |    |  |
| 410.                 |    |  |
| 411.                 |    |  |
| 412.                 |    |  |

420. GROSS AMOUNT DUE TO SELLER

## 500. REDUCTIONS IN AMOUNT DUE TO SELLER:

|                                               |  |
|-----------------------------------------------|--|
| 501. Excess Deposit (See Instructions)        |  |
| 502. Settlement Charges to Seller (Line 1400) |  |
| 503. Existing loan(s) taken subject to        |  |
| 504. Payoff of first Mortgage                 |  |
| 505. Payoff of second Mortgage                |  |
| 506.                                          |  |
| 507.                                          |  |
| 508.                                          |  |
| 509.                                          |  |

## Adjustments For Items Unpaid By Seller

|                      |    |  |
|----------------------|----|--|
| 510. City/Town Taxes | to |  |
| 511. County Taxes    | to |  |
| 512. Assessments     | to |  |
| 513.                 |    |  |
| 514.                 |    |  |
| 515.                 |    |  |
| 516.                 |    |  |
| 517.                 |    |  |
| 518.                 |    |  |
| 519.                 |    |  |

520. TOTAL REDUCTION AMOUNT DUE SELLER

## 600. CASH AT SETTLEMENT TO/FROM SELLER:

|                                            |   |
|--------------------------------------------|---|
| 601. Gross Amount Due To Seller (Line 420) |   |
| 602. Less Reductions Due Seller (Line 520) | ( |

603. CASH ( TO ) ( FROM ) SELLER 0.00

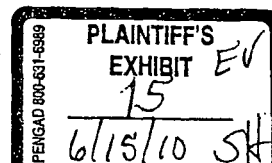
undersigned hereby acknowledge receipt of a completed copy of pages 1&amp;2 of this statement &amp; any attachments referred to herein.

Borrower

Joseph O. Gorrin, Jr.

Seller

Sharon H. Gorrin



## L. SETTLEMENT CHARGES

| 06. TOTAL COMMISSION Based on Price \$ @ %                                  |                                                       |                                           | PAID FROM<br>BORROWER'S<br>FUNDS AT<br>SETTLEMENT | PAID FROM<br>SELLER'S<br>FUNDS AT<br>SETTLEMENT |
|-----------------------------------------------------------------------------|-------------------------------------------------------|-------------------------------------------|---------------------------------------------------|-------------------------------------------------|
| Division of Commission (line 700) as Follows:                               |                                                       |                                           |                                                   |                                                 |
| 01. \$                                                                      | to                                                    |                                           |                                                   |                                                 |
| 02. \$                                                                      | to                                                    |                                           |                                                   |                                                 |
| 03. Commission Paid at Settlement                                           |                                                       |                                           |                                                   |                                                 |
| 04.                                                                         | to                                                    |                                           |                                                   |                                                 |
| 07. ITEMS PAYABLE IN CONNECTION WITH LOAN                                   |                                                       |                                           |                                                   |                                                 |
| 01. Loan Origination Fee                                                    | 0.5000 %                                              | to Financial Strategies of the South, INC | 2,085.00                                          |                                                 |
| 02. Loan Discount                                                           | 0.0000 %                                              | to                                        |                                                   |                                                 |
| 03. Appraisal Fee                                                           |                                                       | to Styles Realty & Appraisals, Inc.       | 500.00                                            |                                                 |
| 04. Commitment Fee                                                          |                                                       | to Coastal Mortgage Services, Inc         | 517.00                                            |                                                 |
| 05. MERS Registration Fee                                                   |                                                       | to MERS                                   | 3.95                                              |                                                 |
| 06. Flood Certification Fee                                                 |                                                       | to First American Flood Data              | 18.00                                             |                                                 |
| 07. Processing Fee                                                          |                                                       | to Financial Strategies of the South, INC | 450.00                                            |                                                 |
| 08. Broker Compensation by CMS                                              |                                                       | to Financial Strategies of the South, INC | POC \$1,583.75L                                   |                                                 |
| 09.                                                                         |                                                       |                                           |                                                   |                                                 |
| 10.                                                                         |                                                       |                                           |                                                   |                                                 |
| 11.                                                                         |                                                       |                                           |                                                   |                                                 |
| 08. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE                          |                                                       |                                           |                                                   |                                                 |
| 01. Interest From                                                           | 03/24/06 to 04/01/06 @ \$ 65.691800/day ( 8 days %)   |                                           | 525.53                                            |                                                 |
| 02. Mortgage Insurance Premium for                                          | months to                                             |                                           |                                                   |                                                 |
| 03. Hazard Insurance Premium for                                            | 1.0 years to Travelers Insurance Company              |                                           | 1,046.00                                          |                                                 |
| 04.                                                                         |                                                       |                                           |                                                   |                                                 |
| 05.                                                                         |                                                       |                                           |                                                   |                                                 |
| 09. RESERVES DEPOSITED WITH LENDER                                          |                                                       |                                           |                                                   |                                                 |
| 01. Hazard Insurance                                                        | 3.000 months @ \$ 64.79 per month                     |                                           | 194.37                                            |                                                 |
| 02. Mortgage Insurance                                                      | months @ \$ per month                                 |                                           |                                                   |                                                 |
| 03. City/Town Taxes                                                         | months @ \$ per month                                 |                                           |                                                   |                                                 |
| 04. County Taxes                                                            | 6.000 months @ \$ 87.17 per month                     |                                           | 523.02                                            |                                                 |
| 05. Assessments                                                             | months @ \$ per month                                 |                                           |                                                   |                                                 |
| 06.                                                                         | months @ \$ per month                                 |                                           |                                                   |                                                 |
| 07.                                                                         | months @ \$ per month                                 |                                           |                                                   |                                                 |
| 08. Aggregate Adjustment                                                    | months @ \$ per month                                 |                                           | -261.52                                           |                                                 |
| 10. TITLE CHARGES                                                           |                                                       |                                           |                                                   |                                                 |
| 01. Settlement or Closing Fee                                               | to                                                    |                                           |                                                   |                                                 |
| 02. Abstract or Title Search                                                | to LDO Title Research, Inc.                           |                                           | 94.00                                             |                                                 |
| 03. Title Examination                                                       | to                                                    |                                           |                                                   |                                                 |
| 04. Title Insurance Binder                                                  | to The Hartman Law Firm                               |                                           | 100.00                                            |                                                 |
| 05. Document Preparation                                                    | to The Hartman Law Firm                               |                                           | 150.00                                            |                                                 |
| 06. Notary Fees                                                             | to                                                    |                                           |                                                   |                                                 |
| 07. Attorney's Fees                                                         | to The Hartman Law Firm                               |                                           | 100.00                                            |                                                 |
| (includes above item numbers:                                               |                                                       |                                           | )                                                 |                                                 |
| 08. Title Insurance                                                         | to Chicago Title Insurance Company/Vanessa L. Hartman | SC2687                                    | 1,070.70                                          |                                                 |
| (includes above item numbers:                                               |                                                       |                                           | )                                                 |                                                 |
| 09. Lender's Coverage                                                       | \$ 417,000.00                                         | 995.70                                    |                                                   |                                                 |
| 10. Owner's Coverage                                                        | \$ 417,000.00                                         | 75.00                                     |                                                   |                                                 |
| 01. Satisfaction Processing Fee                                             | to The Hartman Law Firm                               |                                           | 5.00                                              |                                                 |
| 02. Fax/Copy/Postage Fees                                                   | to The Hartman Law Firm                               |                                           | 45.00                                             |                                                 |
| 03. Update Title and Record                                                 | to The Hartman Law Firm                               |                                           | 25.00                                             |                                                 |
| 11. GOVERNMENT RECORDING AND TRANSFER CHARGES                               |                                                       |                                           |                                                   |                                                 |
| 01. Recording Fees: Deed \$ ; Mortgage \$ 21.00; Releases \$                |                                                       |                                           | 21.00                                             |                                                 |
| 02. City/County Tax/Stamps: Deed ; Mortgage                                 |                                                       |                                           |                                                   |                                                 |
| 03. State Tax/Stamps: Deed Stamps ; Mortgage                                |                                                       |                                           |                                                   |                                                 |
| 04.                                                                         |                                                       |                                           |                                                   |                                                 |
| 05.                                                                         |                                                       |                                           |                                                   |                                                 |
| 12. ADDITIONAL SETTLEMENT CHARGES                                           |                                                       |                                           |                                                   |                                                 |
| 01. Survey                                                                  | to                                                    |                                           |                                                   |                                                 |
| 02. Pest Inspection                                                         | to                                                    |                                           |                                                   |                                                 |
| 03. Overnight Fees                                                          | to DHL                                                |                                           | 40.00                                             |                                                 |
| 04. Wire Fees                                                               | to CCB                                                |                                           | 20.00                                             |                                                 |
| 05. Landscape Escrow Amount                                                 | to Hartman Law Firm for Joseph and Sharon Gorrin      |                                           | 12,000.00                                         |                                                 |
| TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K) |                                                       |                                           | 19,272.05                                         |                                                 |

signing page 1 of this statement, the signatories acknowledge receipt of a completed copy of page 2 of this two page statement.

Vanessa L. Hartman  
Settlement Agent



FORM 3049--C.T.I. CO. STANDARD FORM AFFIDAVIT TO BE SIGNED BY SELLER OR MORTGAGOR IN CONNECTION WITH TITLE INSURANCE POLICY TO BE ISSUED

## CHICAGO TITLE INSURANCE COMPANY

### AFFIDAVIT TO BE SIGNED BY SELLER OR MORTGAGOR IN CONNECTION WITH TITLE INSURANCE POLICY TO BE ISSUED BY CHICAGO TITLE INSURANCE COMPANY

State of South Carolina )

County of Spartanburg )

The undersigned, being first duly sworn, deposes and says that:

I am a citizen of the United States, of legal age and have never been known by any other name than that set out below; except (If none, state 'none.' If known by another name, give name and dates known as same):

I have owned the property described as follows:

See Exhibit A herein.

and now being sold or mortgaged by me continuously for 1 <sup>less than</sup> years last past, and my enjoyment thereof has been peaceable and undisturbed and the title to said property has never been disputed or questioned to my knowledge, nor do I know of any facts by reason of which the title to, or possession of, said property might be disputed or questioned, or by reason of which any claim to any of said property might be asserted adversely to me;

Delete if ) Said property is vacant, unimproved, and unoccupied, and my right to possession of said  
premises ) property has never been challenged.  
are )  
improved )

No proceedings in bankruptcy have ever been instituted by, or against me, and I have never made an assignment for the benefit of creditors;

I know of no action or proceeding relating to said property which is now pending in any state or federal court in the United States, nor do I know of any state or federal judgment or any federal lien of any kind or nature whatever which now constitutes a lien or charge upon the above-described real property;

Delete ) There are no tenancies, leases, or other occupancies except (if none, state 'none');  
if )  
premises )  
are )  
vacant )  
 ) There are no unpaid bills or claims for labor or services performed or material furnished or  
 ) delivered during the last twelve months for alterations, repair work or new construction on  
 ) the above-described property, except (if none, state 'none');  
 )  
 ) The building was completed more than \_\_\_ years ago;  
 )  
 ) There are no chattel mortgages, conditional sales contracts, security agreements, financing  
 ) statements, retention of title agreements, or personal property leases affecting any materials;

) fixtures, appliances, furnishings, or equipment placed upon or installed in or upon the said  
) real property or the improvements thereon, and all plumbing, heating, lighting, refrigerating,  
) and other equipment is fully paid for, including all bills for the repair thereof, except as  
) follows (if none, state 'none'):

I know of no contract for the making of repairs or improvements on said premises except as follows (if none, state 'none'):

I have not been divorced except as follows (if none, state 'none'):

My business and home addresses during the past ten years have been as follows:  
Business addresses:

Home addresses:

The undersigned hereby consents to the audit of the closing attorney's escrow accounts as well as the review of the closing file by Chicago Title Insurance Company.

This affidavit is given to induce Chicago Title Insurance Company to issue its title insurance policy or policies. In the event of the falsity of any of these statements which leads to a title objection or in the event of a title objection arising from the date of the title commitment through the recording date, I agree to promptly defend, remove, bond or otherwise dispose of such title objection and to hold harmless and indemnify Chicago Title Insurance Company and its agent against all expenses, costs and attorneys fees which may arise therefrom. My obligations hereunder shall be in addition to and not in limitation of any warranty given to a purchaser or lender.

GIVEN under our hand and seal this 20 day of March, 2004

Joseph O. Gorin, Jr. (SEAL)  
Joseph O. Gorin, Jr.  
Sharon H. Gorin (SEAL)  
Sharon H. Gorin

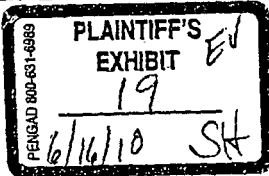
SUBSCRIBED and sworn to before me this  
20 day of March, 2004

[Signature] (SEAL)  
Notary Public for South Carolina  
My Commission Expires: 8/18/13

#### EXHIBIT A

ALL that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot 104 on a survey of Willow Creek Subdivision, Master Plan, Phase I and II, Section A, Phase I, prepared by Newby-Proctor & Associates, Land Surveyors, for Piedmont Land Development, Inc., dated February 27, 1994, recorded in Plat Book 125 at Page 775 in the ROD Office for Spartanburg County, South Carolina.

This is the same property conveyed to Joseph O. Gorin and Sharon H. Gorin by deed of Patsy F. Peterson recorded on June 16, 2004 in Deed Book 80-P at Page 107 in the ROD Office for Spartanburg County, State of South Carolina.



Cason Companies, Inc.  
and Cason Builders Supply  
Hereinafter referred to as "Cason"

BRYAN CARPENTER  
ATTN: DEE DEE  
PG. 1 OF 3

SOUTH CAROLINA  
PERSONAL CREDIT APPLICATION

(Please fill out completely - type or print legibly - return to Cason by mail or in person)

This Credit Application and Agreement (herein referred to as "AGREEMENT") is entered into this 30 day of AUG, 200 5, by and between "CASON" and the following applicant (herein referred to as "PURCHASER")

Joseph / Sharon GORRIN 864 967 7562 906-8600 235-432-  
Applicant Name Telephone Number Cell Number Fax Number  
Mailing Address Simpsonville SC 29681  
City State Zip Code

Full Street Address (If different than mailing address)

Social Security Number NO. Date of Birth self Amount of Credit Requested 5,000<sup>00</sup>  
NA

Do you Rent Property? yes Landlord Name and Address 11 East Park Ave, G'ville SC 29601 15yr Landlord Telephone Number  
Do you Own Property? Location Simpsonville SC 29681 18yr How Long? 1yr

100,000<sup>00</sup> 150,000<sup>00</sup> EMPLOYMENT INFORMATION Greer SC 1yr  
Applicants Present Net \$ Income Per yr No. of Dependents 1 Their Ages 9 yrs.

GORRIN'S CLINIC 11 East Ave, G'ville SC 29601  
Employer Name and Address

30 yrs. President/CEO self 233-2270  
Date Employed Position Supervisor Telephone Number

Rental Property 10,000<sup>00</sup> yr  
Other Income Source \$ Amount Per

Sharon Gorrin  
Spouse's Full Name Social Security No. Date of Birth

GORRIN'S CLINIC  
Employer Name and Address

6 yrs VP 233 2270  
Date Employed Position Supervisor Telephone Number

**CREDIT INFORMATION**

List at least three credit references (currently extending credit to you):

1. ~~BBT~~ BBT Kathy McKay 864-282-3552  
Name Contact Telephone Number

Address Greenville SC

Type of Credit/Loan Home Equity Approx. Balance 110,000<sup>00</sup>

2. ~~BBT~~ Palmetto Bank Chad Wilson 864-255-4710  
Name Contact Telephone Number

Address Greenville SC

Type of Credit/Loan Business Loan on Clinic \$ 65,000<sup>00</sup> (Approx).  
Approx. Balance

3. American Express 1-800-297-6200  
Name Contact Telephone Number

Address

Type of Credit/Loan Credit Card for Business 6,000  
Approx. Balance

Regions 864 271-1413 - Local  
800-392-5669

Bank Name and Address Account Number

Bank Name and Address BBT, Greenville SC → ~~BBT~~  
2 ACCT'S Account Number

Has applicant ever filed for bankruptcy or been a party to a lawsuit? NO

PLEASE MAIL OR DELIVER THE COMPLETED APPLICATION TO THE CASON OFFICE WITH WHICH YOU WISH TO HAVE AN ACCOUNT.  
FAXED COPIES WILL BE ACCEPTED FOR CREDIT APPROVAL PURPOSES ONLY; HOWEVER, CREDIT WILL NOT BE EXTENDED UNTIL THE  
ORIGINAL COMPLETED AND SIGNED CREDIT APPLICATION IS RECEIVED.

**CASON BUILDERS SUPPLY**

P. O. Box 1520 (28793)  
1880 Spartanburg Hwy.  
Hendersonville, NC 28792  
(828) 692-5716  
FAX (828) 697-6751

**CASON BUILDERS SUPPLY**

2800 Woodruff Road  
Simpsonville, SC 29681  
(864) 675-9159  
FAX (864) 458-9537

**CASON BUILDERS SUPPLY**

P. O. Box 785  
1405 Ecusta Rd.  
Pisgah Forest, NC 28768  
(828) 883-2711  
FAX (828) 883-3806

Purchaser hereby applies for credit with Cason and understands and agrees that this Agreement does not become effective unless and until Cason approves this Credit Application, which is incorporated into, and becomes part of, the Agreement. Purchaser further understands that nothing herein obligates Cason to approve this Credit Application, and that if the Credit Application is approved Cason has the right not to extend credit to Purchaser at any time, particularly if the account is not paid in full each month.

Purchaser hereby authorizes Cason at any time to make or have made whatever credit investigation it feels is proper to evaluate the credit and personal or financial standing of Purchaser, including but not limited to contacting credit references, and obtaining credit information from credit bureaus or credit reporting agencies. Purchaser also authorizes Cason to share its credit experience with credit bureaus, credit reporting agencies, creditors and others.

Purchaser certifies and declares that all the information in this Credit Application is correct to the best of his/her knowledge. By signing below, the undersigned states that he/she has received a copy of this Agreement and agrees to all terms and conditions contained herein.

Purchaser hereby agrees and promises to pay Cason for all services and materials purchased from Cason, now or in the future, on this account. Purchaser understands that payments are due in full within thirty (30) days of the date of Cason's invoice. Should payments not be made within thirty (30) days, the account will be considered past due and in default, and shall accrue finance charges of 18% per annum from the first day the account is past due, until payment is made in full. Purchaser agrees to pay these finance charges. Purchaser also agrees to pay all Cason's attorneys fees, costs and expenses. Each of the undersigned agrees to pay court costs, and all other costs of collection allowed by law.

If it is necessary for Cason to commence proceedings to collect any amounts Purchaser owes under this Agreement, Purchaser consents to be subject to the jurisdiction of the courts of the State of South Carolina, and further agrees to venue being situated in Greenville County, or any other county in which venue would be proper.

This Agreement is governed by law of the State of South Carolina. Any modifications to this Agreement must be in writing and signed by both parties.

This the 30 day of AUG, 2005.

Joseph Gorrin

Applicant (Print name)

Joseph Gorrin  
(Signature)

Sharon Gorrin

Spouse (Print name)

Sharon Gorrin  
(Signature)

### GUARANTY AGREEMENT

In consideration of credit being extended by Cason to the above named applicant for merchandise to be purchased, whether applicant be an individual or individuals, the undersigned guarantor or guarantors each hereby contract and guarantee to Cason the faithful payment, when due, of all accounts of said applicant for purchases made within five years next after the date of this application. The undersigned guarantor or guarantors each hereby expressly waive all notice of acceptance of this guaranty notice of extension of credit to applicant, presentment, and demand for payment on applicant, protest and notice to undersigned guarantor or guarantors of dishonor or default by applicant or with respect to any security held by Cason, extension of time of payment of applicant, acceptance of partial payment or partial compromise, all other notices to which the undersigned guarantor or guarantors might otherwise be entitled and demand for payment under this guaranty. Any revocation of this guaranty shall be in writing and delivered to Cason.

In the event this account is placed in the hands of an attorney or attorneys for collection or suit instituted to collect same or any portion thereof, I, and/or we agree and promise to pay all Cason's attorneys' fees, costs and expenses.

Purchases and/or deliveries are herewith authorized to be made without signature.

Joseph Gorrin 8/30/05  
Applicant Date

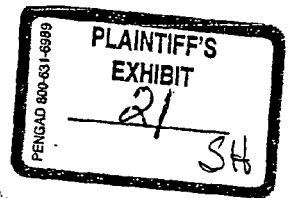
Witness Date

Sharon Gorrin 8/30/05  
Spouse Date

Witness Date

January 19, 2009

Mr. David Wilson, Esq.  
Horton, Drawdy, Ward & Jenkins, PA  
PO Box 10167  
Greenville, SC 29603



Subject: **Partial Site Evaluation  
Gorrin Residence**

Mr. Wilson:

In accordance with your request we have visited the property located at  
and offer the following information for your review:

in Greer, SC

**Description**

The structure is a custom-built home built by Five Star Builders, Inc. from April 2005 to March 10, 2006, located approximately 11 miles SE of Greer in the Cashville area. The home is a two-story "Georgian" style with two side one-story wings consisting of living quarters on the West and a two-car garage on the East, and a one-story, detached two car garage to the rear of the east wing. The majority of the structure is covered by a brick veneer with the exception of the gable elevations. In addition to the main structure and the detached garage, there is a large masonry chimney, a front portico, a vehicle porte cochere, and a free-standing brick masonry arch. According to the homeowner, the mason responsible for installing the brick was named "Eloy." The brick installed on the home is called "Medium Palomino Wirecut #737" as manufactured by Hanson Brick, Columbia, SC and sold by Cason Builders Supply.

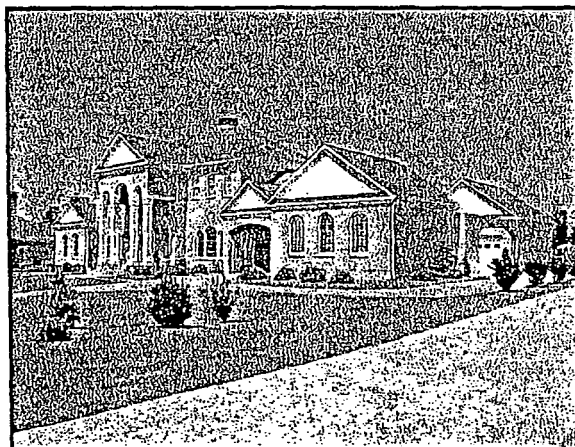


Photo G1

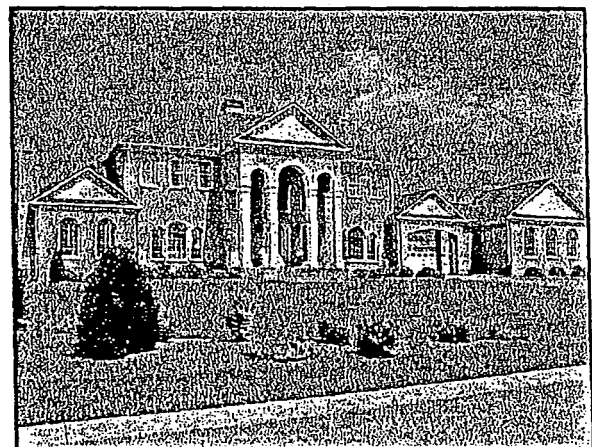


Photo G2

Level3 Design Associates, PC  
Professional Structural Engineers  
210 Laurel Court Hildebran, NC 28637  
828-397-6080 www.level3da.com

### Investigation

The initial investigation was performed on September 5<sup>th</sup>, 2008 beginning at 10:15 am. Present during the site visit were several representatives of Cason Builders Supply, attorney David Wilson, and the homeowner, Ms. Gorin. Permission to evaluate the structure was granted by Ms. Gorin and her attorney, Ms. Kimila Wooten. A detailed review of the brick masonry was performed including the walls, window sills, foundation areas and arches. The findings that follow are based on a visual inspection and minor destructive testing.

### Site Findings

1. General lack of masonry craftsmanship and quality.

*A review of the brick exterior discovered numerous indications of poor quality issues including over-sized mortar joints, insufficiently filled mortar joints, brick out of alignment and out of level, mason string lines protruding from the joints, significant mortar waste clinging to brick, and mortar smears on the brick faces.*

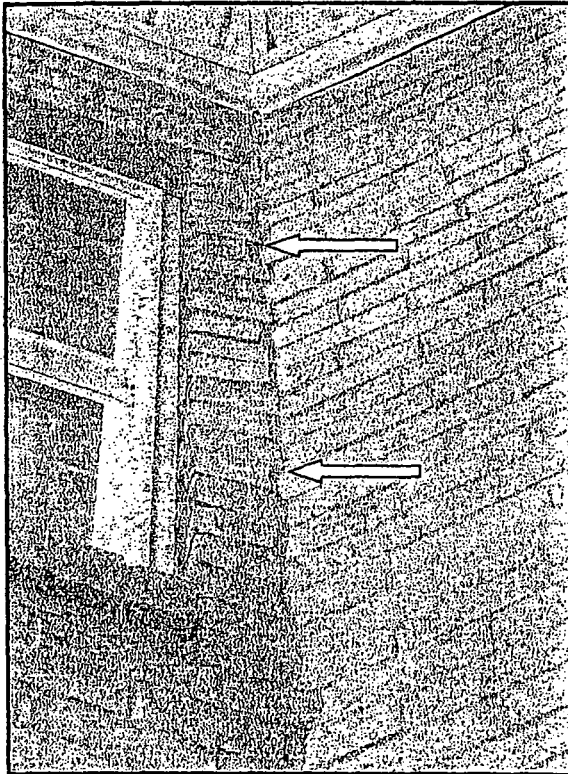


Photo G3

Poor Quality

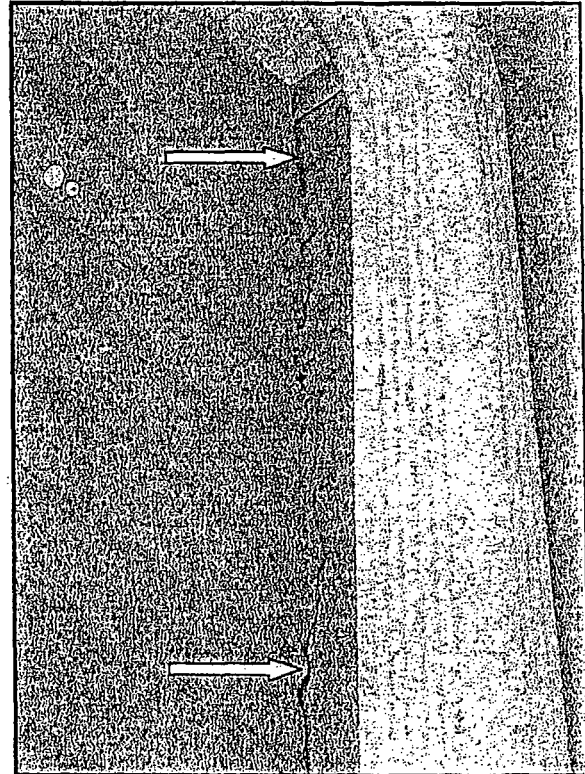


Photo G4

Poor Quality

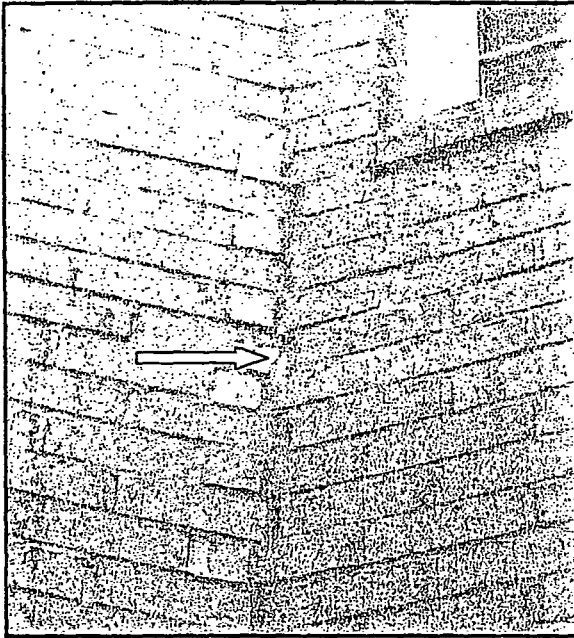


Photo G5

Poor Quality

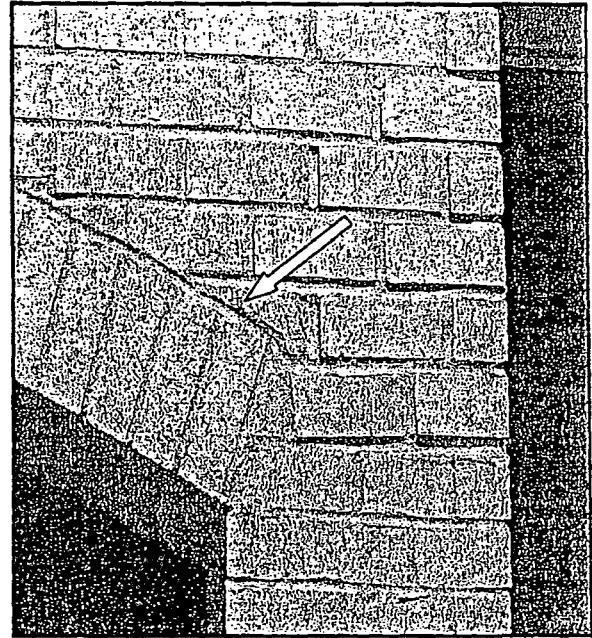


Photo G6

Poor Quality

2. Evidence of efflorescence. Several suspect areas were found exhibiting signs of efflorescence including below the window sills, under the archways, near the top of the chimney, and along the portico foundation walls.

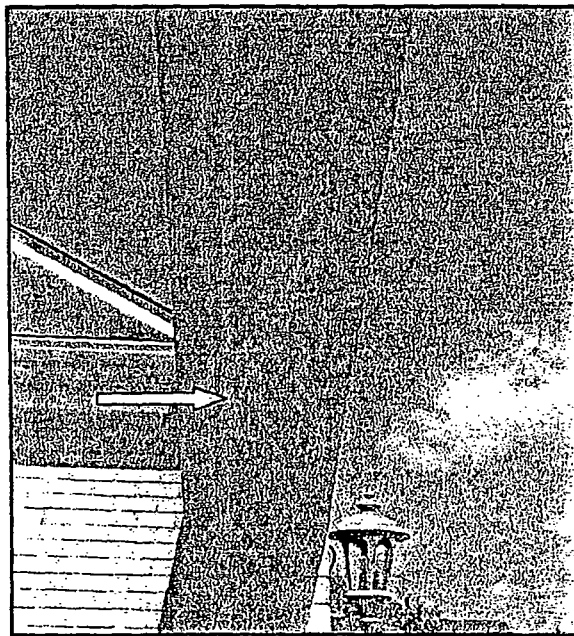


Photo G7

Efflorescence

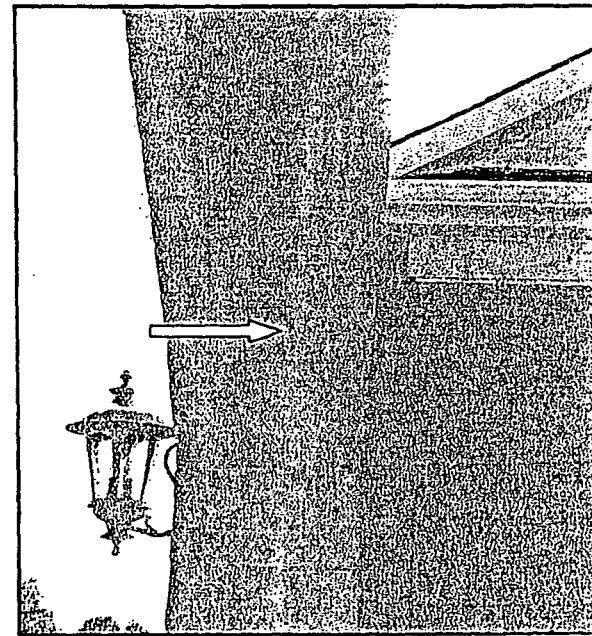


Photo G8

Efflorescence

3. Improper installation and materials for the window sills. Window sill units should be solid units (without cores) and should be pitched to provide positive drainage for water runoff. The Gorrin structure contains numerous window sill units that are cored and are installed either flat, or with the slope such that water drains to the window instead of away. There are also indications of missing or inadequately filled mortar joints.

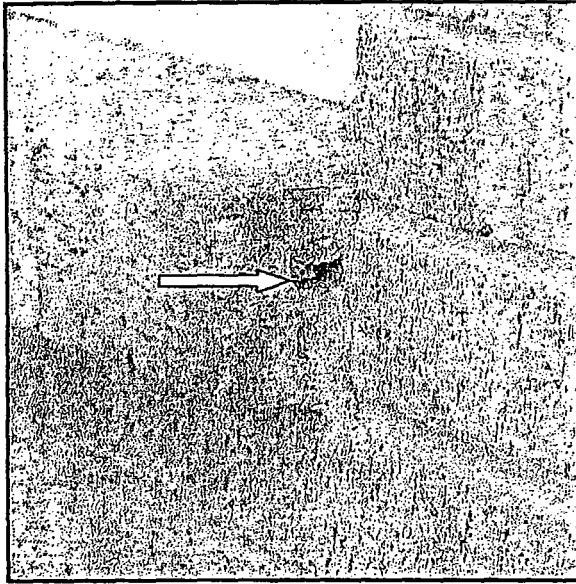


Photo G9

Improper Sill

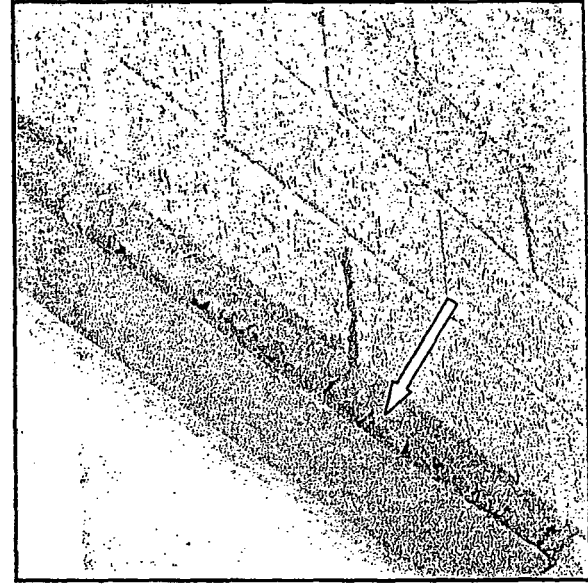


Photo G10

Lack of Flashing

4. Lack of clean cavity, flashing, and weeps. Examination of the cavity between the back of the brick and the face of the wall revealed numerous areas filled with mortar that should be clean. In addition, no flashing or weeps were found at the base of the body of the wall, under the window sills, above the window or door openings, on top of the arches, or under the portico deck surface.
5. Lack of adequate or correct cleaning. Visual evidence revealed a lack of proper cleaning techniques indicated by remaining mortar globs and smears as well as brick damage due to improper cleaning with chemicals.

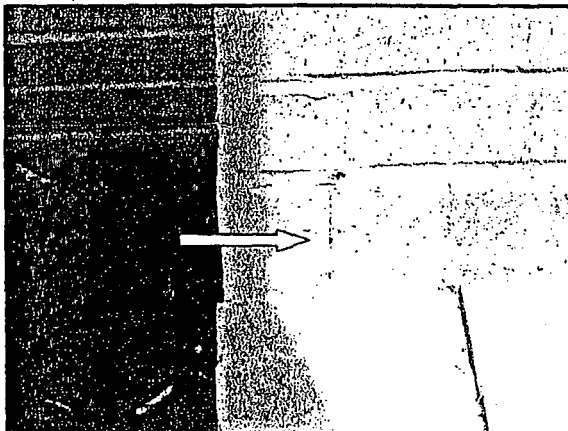


Photo G11

Improper Cleaning

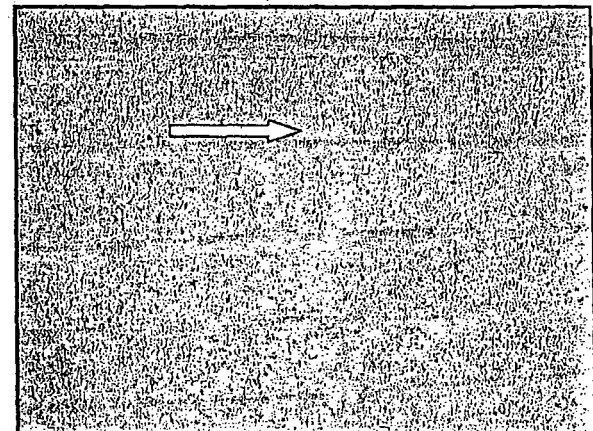


Photo G12

Improper Cleaning

5. Lack of adequate or correct cleaning. (cont.)



Photo G13

Improper Chemical Use

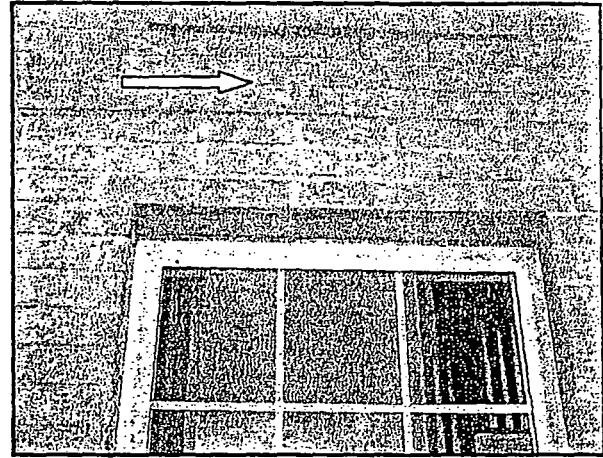


Photo G14

Improper Chemical Use

6. Excessive moisture in brick veneer. Testing of the brick masonry revealed high moisture contents in numerous areas including under windows and at the base of most of the walls.

7. Improper patching of mortar cracks. Many mortar joints were found that indicated repairs had been attempted to cover cracks or holes and exhibited incorrect mortar, improper color, and improper placement.

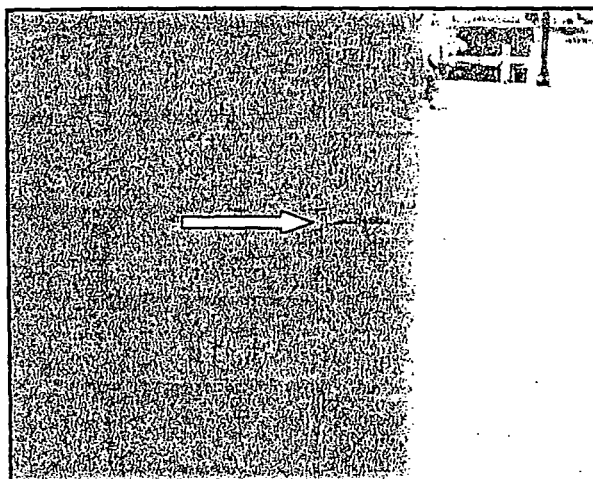


Photo G15

Improper Joint Patching

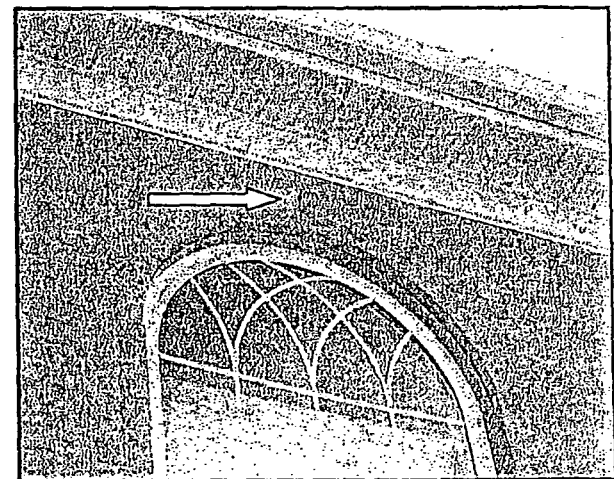


Photo G16

Improper Joint Patching

8. Evidence of frozen masonry work. Several areas of the structure exhibited signs of mortar that had frozen during the construction process.

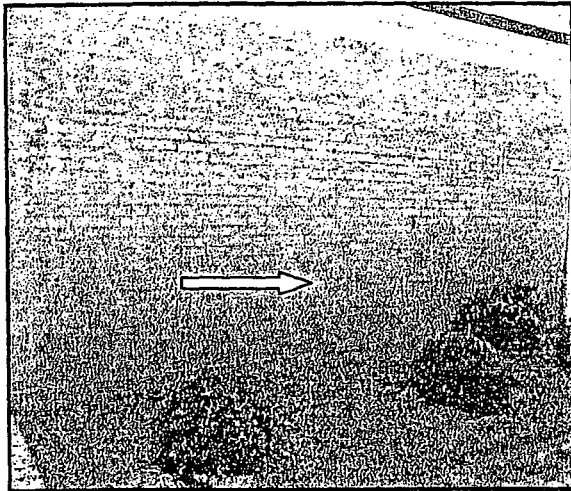


Photo G17

Frozen Mortar

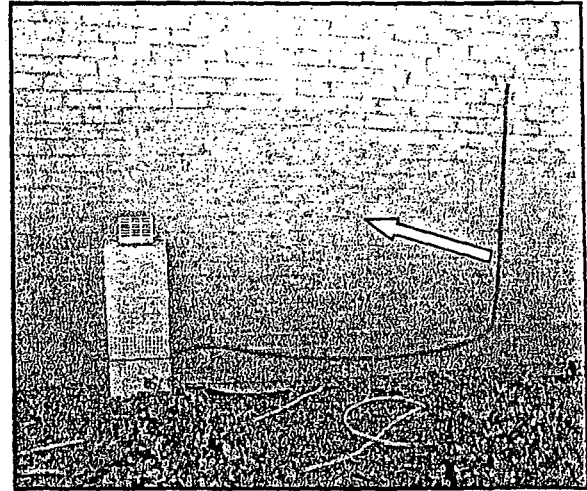


Photo G18

Frozen Mortar

9. Improper location of final grade. Crawl space ventilation registers were found to be installed below the exterior grade creating easy access for site rainfall runoff.

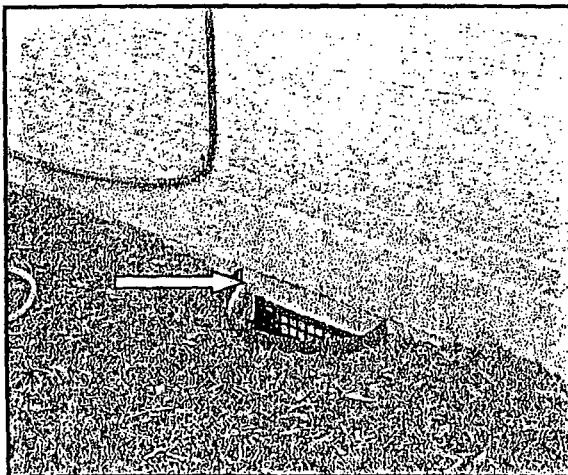


Photo G19

Vents Below Grade

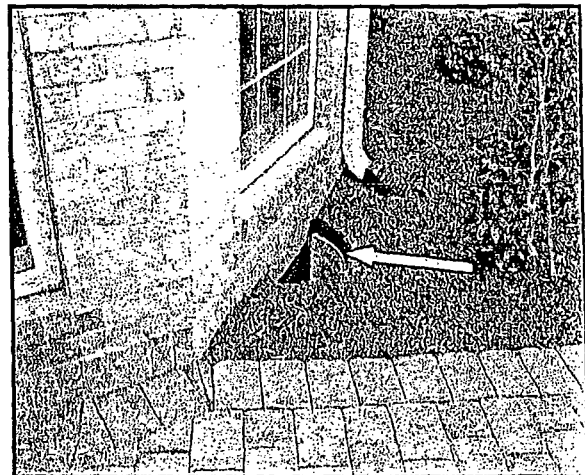


Photo G20

Vents Below Grade

10. Sprinkler system heads located adjacent to brickwork. Numerous lawn sprinkler heads were found to be staining the brick with water due to their location adjacent to the walls.

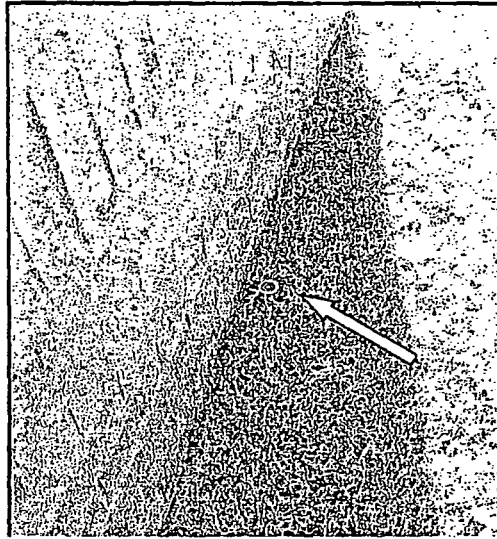


Photo G21      Sprinklers Adjacent to Masonry

11. Improper design and construction of masonry arches. The arches are improperly constructed lacking proper support and protection from the elements.

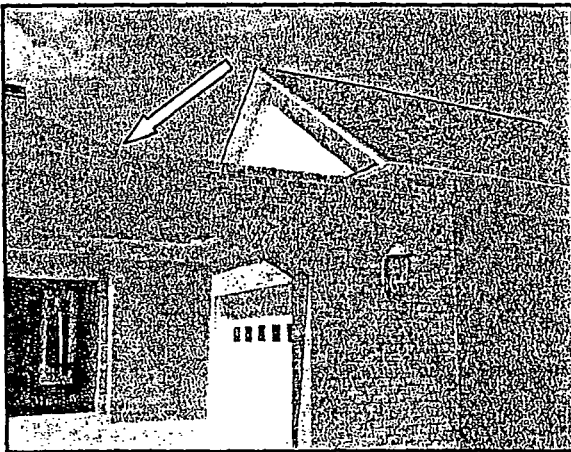


Photo G22

Incorrect Construction of Arch

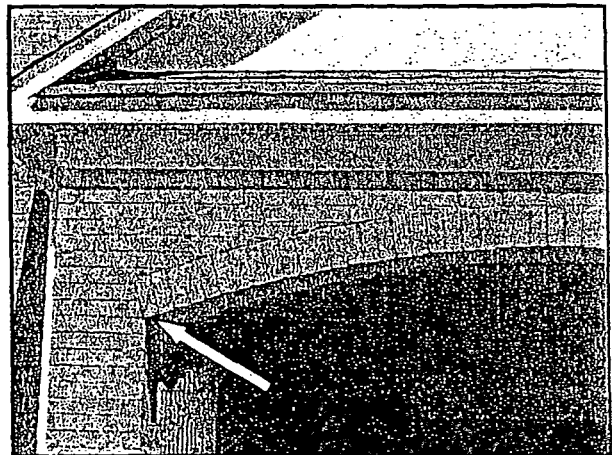


Photo G23

Incorrect Construction of Arch

12. Improper blending of masonry units. The lack of blending units from different packages of bricks resulted in several areas of spotty color.

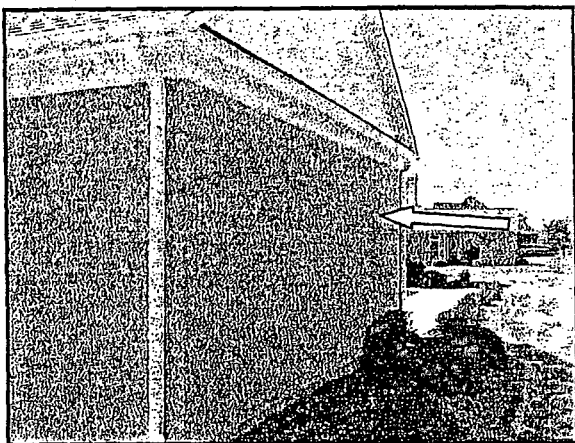


Photo G24

Incorrect Blending

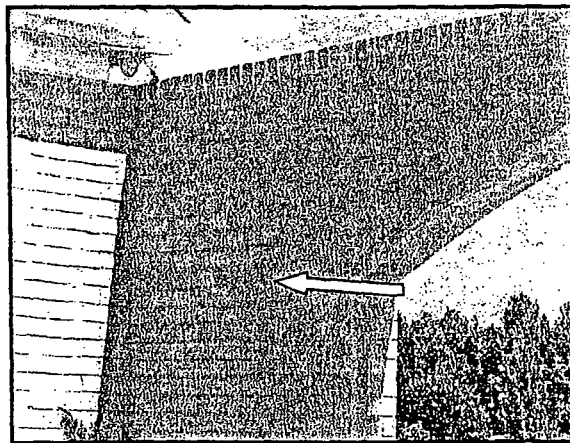


Photo G25

Incorrect Blending

### Discussion

1. General lack of masonry craftsmanship and quality.<sup>(1)</sup>

At the time of construction for the Gorrin residence the 2003 International Residential Code was in effect in Spartanburg County. As such, all contractors involved in the project were required by South Carolina law to comply with the Code requirements for the construction process. In the case of masonry, the Code provides specific direction as to the steps a mason must take for proper installation.

The poor masonry quality throughout the Gorrin structure is a clear indication that the Contractor failed to follow the Code. The size of mortar joints, the construction of the joints, and the alignment of masonry units in the wall are all specifically addressed and controlled by regulations of the Code.

2. Evidence of efflorescence.<sup>(2)</sup>

Efflorescence is the visible deposit of soluble salts on the face of masonry as a result of the presence of water. Soluble salts can be found in all masonry products. The majority of such salt is found in the sand, cement, and lime used to make the mortar. It can also be found in the water used to mix the mortar ingredients and in the ground where units may be stored. In the case of clay brick units, soluble salts are present but on average less than 0.1% of the total clay body makeup. Regardless, efflorescence does not appear unless water is present in sufficient quantity and duration of time to dissolve the salts and bring them to the surface through evaporation. Its appearance is a direct indicator of sub-standard construction.

3. Improper installation and materials for the window sills.<sup>(3)</sup>

Proper window sill construction is imperative to a well performing masonry project. Not only are sills directly exposed to the weather they also shed water away from the wall that runs down the window glazing. The building code requires window sills to be sloped away from the window and the sills include flashing below to assist in directing water away from the structure. It is also recommended that sills be solid instead of typical cored units so as not to "hold" excess water in the core holes. At a minimum, the end units should be solid for weather resistance but for aesthetics as well.

The Gorrin structure has numerous windows with sills, none of which contain flashing or a correct slope away from the wall. In addition all of the sill units contain core holes and several of the end units are directly open to water infiltration.

4. Lack of clean cavity, flashing, and weeps.<sup>(4)</sup>

Brick veneer is a very good product for resisting the effects of weather. However, due to the very nature of mortar and the amount of joints present, a brick wall is not "waterproof." As such, the building code requires steps be taken to control any water that may reach the back of the brick from wind-driven rain. There are three very important features required for a properly designed and installed veneer; a clean cavity to allow water to be prevented from reaching the structure, flashing to collect any water that may infiltrate, and weeps (or holes) that provide an exit for the collected water. A lack of any of the three features will lead to long term water issues, including foundation problems, wood framing degradation, or continuing efflorescence.

Permission was granted by Ms. Gorrin and her attorney to perform minor destructive testing. The testing consisted of drilling a small hole through the several mortar joints in selected areas into the cavity behind the brick. Once the hole was established, a flexible fiber scope was inserted into the hole to provide observation of the cavity and to determine if flashing was present. Test results revealed the lack of flashing or weeps, partially filled cavities, and the limited use of wall ties.

5. Lack of adequate or correct cleaning.<sup>(5)</sup>

Mortar is a primary and very important part of any masonry project. During the installation of masonry units it is nearly impossible to keep mortar from getting onto the exposed face of the brick. This is common and is expected. However, it is imperative the mason takes steps to clean the mortar from the brick in a timely manner. The timing is tenuous at best. Cleaning too soon may damage the mortar joints. Cleaning too late may allow the mortar to cure and harden making removal difficult. Generally masons remove the large "gobs" of mortar soon after their work is accomplished for the day and then provide a thorough cleaning at the end of the project to remove any remaining stains and such. However, cleaning is a building code requirement and the decision to clean or not to clean is not left to the discretion of the mason.

Clay brick units are available in a wide variety of colors and textures, some of which are sensitive to certain types of cleaning processes. As such, manufacturers must convey specific cleaning instructions to the user. This information is most commonly provided through a "package card" attached to each package of brick delivered. The card contains specific instructions regarding the use or prohibition of such common cleaning methods as high-pressure washing, special chemical agents, and/or the use of acid. It is imperative the instruction be followed or otherwise brick damage, sometimes irreversible, may occur.

The Gorrin brick work was not cleaned correctly. There are areas that indicate the large mortar "globs" were never removed, there are mortar smears on numerous brick faces, and there is direct evidence visible both on the brick faces and on the mortar joints indicating chemical solutions and/or cleaning acid was incorrectly used.

6. Excessive moisture in brick veneer.<sup>(6)</sup>

The amount of moisture present in a brick unit is based on several factors including the brick absorption rate and the amount of water present in the wall. The manufacturer performs tests on each type of unit being made to establish the absorption. The absorption rate is required to meet certain criteria as defined by national standards before the units are allowed to be sold.

The brick units used for the Gorrin project were tested by the manufacturer and were determined to have an average absorption of 6% to 8% and complied with the national standard. Using a non-destructive moisture detection device tests were conducted on several wall areas resulting in moisture percentages ranging from a low of 20% to a high of 100% indicating saturated conditions and significant amounts of water present in the walls.

Additional tests were conducted utilizing a "RILEM" apparatus. The tests involve the placement of a 6" high plastic tube to the face of the brick, filling with water, and measuring the time it takes for the water to absorb into the brick. Simultaneously an identical tube is attached to the wall over an adjacent mortar joint, filled with water, and the time again measured to empty. The brick tests indicated that after the initial small absorption had occurred, additional water infiltration virtually ceased. However, the same cannot be said for the mortar joint tests. The infiltration of water through the joint was so rapid that the tube could not be filled completely to allow time to be measured accurately. The results clearly indicate the moisture present in the walls is due to insufficient joint material and construction.

7. Improper patching of mortar cracks.<sup>(7)</sup>

Patching or "tuck-pointing" of mortar joints is sometime required to cover small cracks or other minor blemishes that may appear in a masonry wall after construction is complete. Mortar for this work must be mixed properly and the surface of the patch area must be properly prepared. When completed, the patch should not be visibly evident.

The Gorrin brickwork has numerous indications of incorrect patching and attempts at patching. Incorrect mortar compounds were utilized, incorrect methodology was employed, and wrong colors were used making the final results very unsatisfactory.

8. Evidence of frozen masonry work.<sup>(8)</sup>

Mortar requires liquid water to properly cure and harden. If the water in the mortar mix is allowed to freeze, the curing of the mortar is prohibited and the strength of the mortar is decreased significantly. The building code contains specific requirements for cold-weather masonry construction as well as protection of completed masonry work from the weather.

The Gorrin project contains several areas where the masonry was insufficiently protected and mortar was subjected to freezing temperatures.

9. Improper location of final grade.<sup>(9)</sup>

The building code requires the final grade surrounding a residence be sloped in such a manner to route surface water away from the foundation. Openings (vents) in a foundation crawl space wall should allow air to enter and circulate and be located at an appropriate height to prevent water infiltration.

Several areas of the grade around the Gorrin residence do not meet the requirements of the Code.

10. Sprinkler system heads located adjacent to brickwork.<sup>(10)</sup>

Water from a sprinkler system can cause staining on brickwork. Most of the stains are a result of soluble salts and/or mineral compounds in the water itself. When the brick is wet repeatedly and allowed to dry, the salts and minerals in the water are deposited through evaporation and show on the masonry.

The Gorrin residence includes several areas where the sprinkler coverage is not controlled allowing staining to occur on the masonry.

11. Improper design and construction of masonry arches.<sup>(11)</sup>

*Masonry arches make bold design statements and are desired by many to enhance the look of a structure. Two types of masonry arches are normally utilized; self-supporting and support assisted. Self-supporting arches are designed to take advantage of the inherent properties of masonry in a running-bond pattern. Such arches have specific requirements as to the number of brick courses above the opening as well as the size of the end columns or walls. Support assisted arches rely on an independent hidden structure, generally of steel, to support the weight of the brick and keep the arch from collapsing. Unless the specific requirements are met for proper arch design, danger from failure is a possibility.*

*The Gorrin residence contains several arches, none of which appear to be properly designed for adequate support. In addition, the top of the free-standing arch on the north side is not protected from the elements.*

12. Blending of masonry units.<sup>(12)</sup>

*One common characteristic of most modern manufactured brick is a reasonable degree of color uniformity. However, since brick is made from natural materials, color uniformity is not perfect. As such, manufacturers recommend to the mason that brick packages be opened and brick be staged for the project using a blend of units from each. Though color may vary slightly from unit to unit the overall appearance will be uniform.*

*The Gorrin project contains several areas where brick were not blended resulting in patches of different color.*

**Conclusion**

Based on the site findings and associated research, it is our opinion the problems noted on the Gorrin residence with the masonry is a direct result of the mason contractor failing to:

1. *Follow the specific requirements of the building code in place at the time of masonry construction.*
2. *Apply ordinary standard of care to the installation process including weather protection and cleaning.*
3. *Follow industry standards for workmanship and craftsmanship.*

As such, the masonry work is deemed sub-standard and not what should be expected by the homeowner.

There is no indication the problems noted with the masonry work are related in any manner to the manufacturing or distribution of the brick product.

Closing

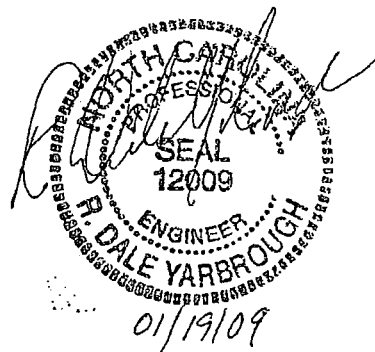
This document was prepared for the use of David Wilson and authorized agent(s); the sole intended beneficiaries of this work. No other party should rely on the information contained herein without the prior written consent of David Wilson, his assigned agent(s), or the reporting Engineer.

Thank you for allowing us to be of service to you. Should you have any questions or desire to discuss any issue please feel free to contact our offices at your convenience.

Sincerely  
Level3 Design Associates, PC



R.D. Yarbrough, PE  
Principal



Cc: File

RDY/ddw

## References

1. Reference 1
  - A. South Carolina Code of Regulations, Chapters 8 & 29, South Carolina State Legislature, 1976 Code of Laws of South Carolina, as amended.
  - B. 2003 International Residential Code and included references, as adopted and amended by Office of Building and Fire Codes, Spartanburg County, SC.
  - C. Builder Notes Issue 2, Brick Industry Association, Reston, VA.
  - D. Water Penetration Resistance – Construction and Workmanship, Technical Note 7B, Brick Industry Association, Reston, VA, December 2005.
2. Reference 2
  - A. Efflorescence – Causes and Prevention, Technical Note 23A, Brick Industry Association, Reston, VA, June 2006.
  - B. Specifications for and Classification of Brick, Technical Note 9A, Brick Industry Association, Reston, VA, October 2007.
3. Reference 3
  - A. 2003 International Residential Code and included references, as adopted and amended by Office of Building and Fire Codes, Spartanburg County, SC.
  - B. Builder Notes Issue 1, Brick Industry Association, Reston, VA.
4. Reference 4
  - A. 2003 International Residential Code and included references, as adopted and amended by Office of Building and Fire Codes, Spartanburg County, SC.
  - B. Water Penetration Resistance – Construction and Workmanship, Technical Note 7B, Brick Industry Association, Reston, VA, December 2005.
  - C. Builder Notes Issue 3, Brick Industry Association, Reston, VA.
5. Reference 5
  - A. Cleaning Brickwork, Technical Note 20, Brick Industry Association, Reston, VA, June 2006.
  - B. 2003 International Residential Code and included references, as adopted and amended by Office of Building and Fire Codes, Spartanburg County, SC.
  - C. Ten Tips For Cleaning New Masonry Construction, Prosoco, Lawrence, KS.
6. Reference 6
  - A. ASTM C216 - 07a Standard Specification for Facing Brick (Solid Masonry Units Made from Clay or Shale), ASTM International, West Conshohocken, PA, 2007.
7. Reference 7
  - A. Maintenance of Brick Masonry, Technical Note 46, Brick Industry Association, Reston, VA, December 2005.
  - B. Repointing Brick Masonry, Masonry Advisory Council, Park Ridge, IL, 2008.
  - C. Brick Brief – Repointing Brick Masonry, Brick Industry Association, Reston, VA, July 2005.
8. Reference 8
  - A. 2003 International Residential Code and included references, as adopted and amended by Office of Building and Fire Codes, Spartanburg County, SC.
  - B. Cold Weather Masonry, Masonry Advisory Council, Park Ridge, IL, 2008
  - C. Cold and Hot Weather Construction, Technical Note 1, Brick Industry Association, Reston, VA, June 2006.

9. Reference 9

- A. 2003 International Residential Code and included references, as adopted and amended by Office of Building and Fire Codes, Spartanburg County, SC.

10. Reference 10

- A. Stains – Identification and Prevention, Technical Note 23, Brick Industry Association, Reston, VA, June 2006.

11. Reference 11

- A. Brick Masonry Arches, Technical Note 31, Brick Industry Association, Reston, VA, January, 1995.
- B. 2003 International Residential Code and included references, as adopted and amended by Office of Building and Fire Codes, Spartanburg County, SC.

12. Reference 12

- A. Brick Industry Association, Reston, VA.



FIVE STAR BUILDERS, Inc.

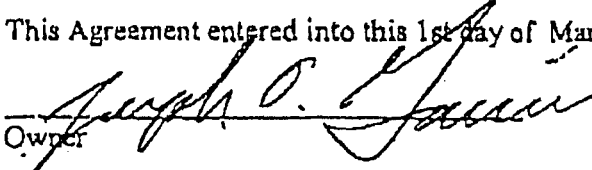
Agreement between the Owner: Joseph and Sharon Gorrin

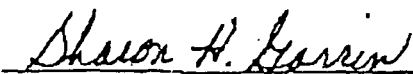
And the Contractor: Five Star Builders, Inc.

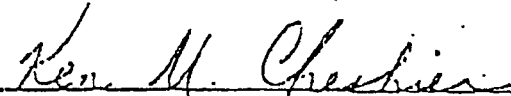
1. **General Project Description:** Approximately 4,607 heated square ft new home construction with 4-car garage on owner's property at Willow Creek Subdivision.
2. The specific work of the agreement shall consist of: All materials and labor necessary for construction of home, and shall be in accordance with the specifications, drawings, and amendments or as reasonably inferable from either or both, and other contract documents.
3. The work shall begin no later than April 1, 2005 and be completed no later than December 31, 2005 subject to adjustments as from time to time provided or unless Delays occur which are unrelated to any fault of Contractor or unless illness, death, or Acts of God prevent timely completion of project.
4. The Owner shall pay the Contractor the sum of four hundred fifty thousand dollars & no/100 (\$450,000) for the work under this Agreement, subject to additions and deductions as stipulated in written Change Orders.
5. The Owner shall make payments to the Contractor according to the following schedule: A down payment of \$45,000 with the remainder paid in a series of draws based on % of work completion as determined by the lending institution inspections. Final draw shall be payment in full and shall be delivered to the Contractor before occupancy by Owner.
6. The Owner shall pay all closing costs, if any.

7. The construction documents may include, but are not limited to the following:
- a. The Construction Agreement is this executed agreement between the Owner and Contractor.
  - b. The Specifications dated: March 1, 2005.
  - c. The Drawings with changes noted on the Specifications sheet. Project #4607 by Southern Home Designs Ltd.

This Agreement entered into this 1st day of March, 2005.

  
Owner

  
Owner

  
Contractor

Five Star Builders, Inc.  
License #010502  
SC Residential Home Builder



FIVE STAR BUILDERS, Inc.

## RESIDENTIAL SPECIFICATIONS FOR CONSTRUCTION

DATE: March 1, 2005

LOCATION: Willow Creek

HOMEOWNER(S): Joseph and Sharon Gorrin

.....

### A. FOUNDATION

FOOTERS: Depth - 8" concrete 3,000 P.S.I. minimum

BASEMENT: NA

WALLS: Cement Block w/ brick veneer

### B. BASEMENT - NA

### C. FRAMING

#### JOISTS:

1<sup>st</sup> Floor: Engineered "I Joists" 16" on center

2<sup>nd</sup> Floor: Engineered "I Joists" 16" on center

Ceiling: 2" X 6", 16" on center

MUD SILLS: Pressure Treated, 2" X 8"

BEAMS: Built up Yellow Pine; Engineered LVL; and gluelam

SUBFLOORING: plywood - T & G ¼ " "Advantec" - nailed and glued

STUDWALLS: 2" X 4", 16" on center with "housewrap"

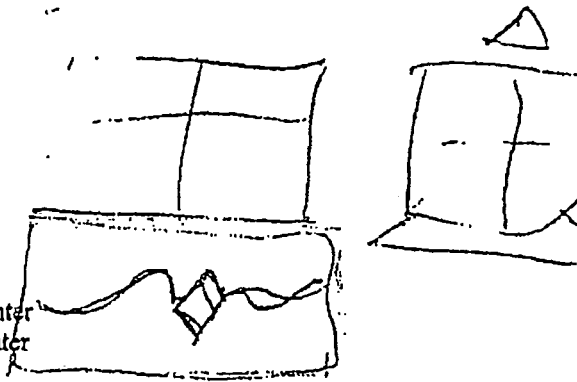
RAFTERS: 2" X 6", 16" on center

TRUSSES: NA

SHEATHING: Walls: Plywood; OSB ½"

Roof: Plywood; OSB ½ "

Gables: OSB ½ " and ½ " foam board



### D. ROOFING 30 year fiberglass architectural shingles

### E. FIREPLACE total # of fireplaces = 2

HEARTH MATERIAL: Marble

MANTEL MATERIAL: Custom by Bree's - \$350 allowance per fireplace

FIREPLACE MATERIAL: Prefab w/ ventless gas logs - 42"

### F. STAIRS Oak treads and handrail; paint-grade balusters, skirtboards, and risers - \$8,000 allowance

### G. EXTERIOR

BRICK VENEER: Brick per General Shale

BOXING: Wood - \$250 allowance per thousand

SHUTTERS: None per plan

DOORS: All doors sized per plans - "Jeld-Wen" or equivalent

Material: Fiberglass; steel where required by code

WINDOWS: M & W Vinyl with grids per drawing

#### H. INTERIOR FINISH

WALLS: drywall ½"  
CEILING: drywall ¼ " "slick finish"  
FLOORS: Kitchen Hardwood  
Dining Room Hardwood  
Breakfast Room Hardwood  
Family Room Hardwood  
Living Room Hardwood  
Bonus Room NA  
Media/Lower Level Berber  
Master BR carpet  
Bedroom #2(Master 2) carpet  
Bedroom #3 carpet  
Bedroom #4 carpet  
Bathroom #1(Master) Ceramic Tile  
Bathroom #2(Master 2) Ceramic Tile  
Bathroom #3 Ceramic Tile  
Powder Room Hardwood  
Foyer Marble  
Laundry Ceramic  
Office Hardwood  
Halls Hardwood  
\*Hardwood-#1 Common, Carpet-\$20 per sq. yd (Prosource Flooring).  
Ceramic-\$2.50 per sq. ft (material only)  
TRIM: Interior Doors Masonite "hollow core" smooth  
Base 5 ¼" MDF paint grade  
Door & Window Casing "RB3" MDF paint grade  
Crown 5 ¼" MDF paint grade - Total linear feet = ~320  
Cabinets Total Allowance = \$25,000  
Kitchen Counter Tops: Granite or equivalent  
Bath Counter Tops: Granite or equivalent

#### I. PAINTING

EXTERIOR: Primer and 2 coats

INTERIOR: Primer and 2 coats, trim, walls, & ceiling - 1 trim color - 6 wall colors  
(additional wall colors and dark colors - \$150 per room)

#### J. ELECTRICAL

SERVICE: 200 amp

UTILITIES: Pre-wired for telephone & TV cable connections

LIGHTING FIXTURE ALLOWANCE: \$4,500

#### K. HVAC

FIRST FLOOR: "Gas split" system - minimum 12 seer

SECOND FLOOR: "Gas split"- minimum 12 seer

#### L. INSULATION

OVERHEAD: R-30 blown foam

WALLS: R-13 blown foam

FLOORS: R-19 blown foam

GARAGE: NA

**M. PLUMBING**

FIXTURES: Per plans - \$8,000 allowance  
WATER HEATER: Two 50-gallon gas  
SEWAGE DISPOSAL: "EZ Flow" system  
TUBS: Acrylic  
SHOWERS: 2 - Ceramic; 1 - Fiberglass

**N. PORCHES & DECKS**

FRONT PORCH: Tile or pavers  
FRONT STEPS: Brick  
REAR DECK: Pressure treated wood and composite decking

**O. GARAGE OR CARPORT**

GARAGE: Triple Bay  
GARAGE DOOR: 3 single, 9ft. steel, non-insulated  
DOOR OPENERS: 3 openers with remotes

**P. DRIVEWAY**

DRIVE: Concrete turnaround and drive  
WALK: Concrete

**Q. LANDSCAPING**

YARD PREP: Entire Lot  
TYPE SEED: Sod in front and side areas  
SHRUBBERY: \$1,000 allowance  
IRRIGATION: Sprinkler system

**R. APPLIANCES**

ALLOWANCE: \$4,000 allowance

**S. MISCELLANEOUS**

Central Vacuum, Beam or equivalent  
Central Intercom System  
Closets - Custom "California Style" system  
Hardware - Locksets - Schlage or equivalent

Ken M. Cheshire  
Contractor

Skaron H. Givon  
Buyer

\_\_\_\_\_  
Buyer

3/08/05  
Date

3/01/05  
Date

\_\_\_\_\_  
Date

personal home construction  
New Contractor was denied credit  
from CBS earlier this yr, per Bryan.

BRYAN CARPENTER

Cason Companies, Inc.  
and Cason Builders Supply  
Hereinafter referred to as "Cason"

ATTN: DEE DEE

PG. 1.083

# SOUTH CAROLINA PERSONAL CREDIT APPLICATION

(Please fill out completely - type or print legibly - return to Cason by mail or in person)

This Credit Application and Agreement (herein referred to as "AGREEMENT") is entered into this 30 day of AUG, 2005, by and between "CASON" and the following applicant (herein referred to as "PURCHASER")

Applicant Name Joseph / Sharon GORRIN Telephone Number 864 967 7562 Cell Number 906-8600 Fax Number 235-432  
Mailing Address Simpsonville SC City SC State SC Zip Code 29601

Full Street Address (If different than mailing address)

Social Security Number

Date of Birth

Amount of Credit Requested

NO

self

NA

Do you Rent Property?

Landlord Name and Address

Landlord Telephone Number

yes

11 East Park Ave, Greenville SC 29601  
Simpsonville SC

18 yr

Do you Own Property?

Location

w Long?

100,000<sup>00</sup>150,000<sup>00</sup>

## EMPLOYMENT INFORMATION

Greenville SC

19 yr

9 yrs.

Applicant's Present Net \$ Income

Per

No. of Dependents

Their Ages

GORRIN'S CLINIC 11 East Ave, Greenville SC 29601

Employer Name and Address

30 yrs. President/CEO self 233-2270

Date Employed

Position

Supervisor

Telephone Number

Rental Property

10,000<sup>00</sup>

4 yr

Other Income Source

\$ Amount

Per

Sharon Gorrin

Spouse's Full Name

Social Security No.

Date of Birth

GORRIN'S CLINIC

Employer Name and Address

6 yrs VP

233-2270

Date Employed

Position

Supervisor

Telephone Number

DEPOSIT  
EXHIBIT

GORE

make "artificial  
ell-paints  
& installs  
stints" per

This SS# not provided.

Advised Bryan 8-30-05 of 2 negative  
actions on Dr. Gorrin's report.

CREDIT INFORMATION

*See attached*

List at least three credit references (currently extending credit to you):

1. ~~BBT~~ BBT Kathy McKay 864-282-3552  
Name Contact Telephone Number

Gville SC  
Address

Home Equity 110,000<sup>10</sup>  
Type of Credit/Loan Approx. Balance

2. ~~BBT~~ Palmetto Bank Chad Wilson 864-255-4710  
Name Contact Telephone Number

Greenville SC  
Address

Business Loan on Clinic \$ 65,000<sup>0</sup> (Approx.)  
Type of Credit/Loan Approx. Balance

3. American Express 1-800-297-6280  
Name Contact Telephone Number

Credit Card for Business 6,000  
Type of Credit/Loan Approx. Balance

Regions 864-271-1413 - Local  
800-392-5669

Bank Name and Address Account Number

BBT, Gville SC 2 Accts  
Bank Name and Address Account Number

Has applicant ever filed for bankruptcy or been a party to a lawsuit? No

PLEASE MAIL OR DELIVER THE COMPLETED APPLICATION TO THE CASON OFFICE WITH WHICH YOU WISH TO HAVE AN ACCOUNT. FAXED COPIES WILL BE ACCEPTED FOR CREDIT APPROVAL PURPOSES ONLY; HOWEVER, CREDIT WILL NOT BE EXTENDED UNTIL THE ORIGINAL COMPLETED AND SIGNED CREDIT APPLICATION IS RECEIVED.

**CASON BUILDERS SUPPLY**

P. O. Box 1520 (28793)  
1830 Spartanburg Hwy.  
Hendersonville, NC 28792  
(828) 692-5716  
FAX (828) 697-6751

**CASON BUILDERS SUPPLY**

2300 Woodruff Road  
Simpsonville, SC 29681  
(864) 675-9159  
FAX (864) 458-9537

**CASON BUILDERS SUPPLY**

P. O. Box 785  
1405 Ecusta Rd.  
Pisgah Forest, NC 28768  
(828) 833-2711  
FAX (828) 833-3806

Purchaser hereby applies for credit with Cason and understands and agrees that this Agreement does not become effective unless and until Cason approves this Credit Application, which is incorporated into, and becomes part of, the Agreement. Purchaser further understands that nothing herein obligates Cason to approve this Credit Application, and that if the Credit Application is approved Cason has the right not to extend credit to Purchaser at any time, particularly if the account is not paid in full each month.

Purchaser hereby authorizes Cason at any time to make or have made whatever credit investigation it feels is proper to evaluate the credit and personal or financial standing of Purchaser, including but not limited to contacting credit references, and obtaining credit information from credit bureaus or credit reporting agencies. Purchaser also authorizes Cason to share its credit experience with credit bureaus, credit reporting agencies, creditors and others.

Purchaser certifies and declares that all the information in this Credit Application is correct to the best of his/her knowledge. By signing below, the undersigned states that he/she has received a copy of this Agreement and agrees to all terms and conditions contained herein.

Purchaser hereby agrees and promises to pay Cason for all services and materials purchased from Cason, now or in the future, on this account. Purchaser understands that payments are due in full within thirty (30) days of the date of Cason's invoice. Should payments not be made within thirty (30) days, the account will be considered past due and in default, and shall accrue finance charges of 18% per annum from the first day the account is past due, until payment is made in full. Purchaser agrees to pay these finance charges. Purchaser also agrees to pay all Cason's attorneys fees, costs and expenses. Each of the undersigned agrees to pay court costs, and all other costs of collection allowed by law.

If it is necessary for Cason to commence proceedings to collect any amounts Purchaser owes under this Agreement, Purchaser consents to be subject to the jurisdiction of the courts of the State of South Carolina, and further agrees to venue being situated in Greenville County, or any other county in which venue would be proper.

This Agreement is governed by law of the State of South Carolina. Any modifications to this Agreement must be in writing and signed by both parties.

This the 30 day of AUG, 2005.

Joseph Gorrin

Applicant (Print name)

Sharon Gorrin

Spouse (Print name)

(Signature)

(Signature)

### GUARANTY AGREEMENT ✓

In consideration of credit being extended by Cason to the above named applicant for merchandise to be purchased, whether applicant be an individual or individuals, the undersigned guarantor or guarantors each hereby contract and guarantee to Cason the faithful payment, when due, of all accounts of said applicant for purchases made within five years next after the date of this application. The undersigned guarantor or guarantors each hereby expressly waive all notice of acceptance of this guaranty notice of extension of credit to applicant, presentment, and demand for payment on applicant, protest and notice to undersigned guarantor or guarantors of dishonor or default by applicant or with respect to any security held by Cason, extension of time of payment of applicant, acceptance of partial payment or partial compromise, all other notices to which the undersigned guarantor or guarantors might otherwise be entitled and demand for payment under this guaranty. Any revocation of this guaranty shall be in writing and delivered to Cason.

In the event this account is placed in the hands of an attorney or attorneys for collection or suit instituted to collect same or any portion thereof, I, and/or we agree and promise to pay all Cason's attorneys' fees, costs and expenses.

Purchases and/or deliveries are herewith authorized to be made without signature.

Applicant

Date

Witness

Date

Spouse

Date

Witness

Date

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

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Case No. 2007-CP-23-0582

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Cason Companies, Inc., .....Respondent,

v.

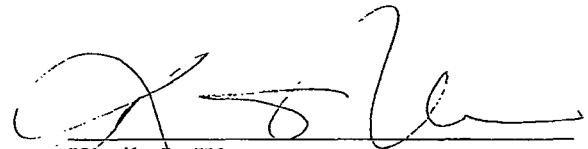
Joseph Gorrin and Sharon Gorrin, ..... Appellants.

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CERTIFICATE OF COUNSEL

---

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Kimila L. Wooten  
ELMORE & WALL, P.A.  
Post Office Box 1887  
Greenville, South Carolina 29602  
(864) 255-9500-Telephone  
(864) 255-9505-Facsimile  
Attorney for Appellants

May 12, 2011

**THE STATE OF SOUTH CAROLINA**  
**In The Court of Appeals**

Cason Companies, Inc., Respondent,

v.

Joseph Gorrin and Sharon Gorrin, Appellants.

Appellate Case No. 2010-175306

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Appeal From Greenville County  
D. Garrison Hill, Circuit Court Judge

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Opinion 4986

Heard April 11, 2012 – Filed June 13, 2012

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**AFFIRMED**

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Kimila L. Wooten, of Elmore Goldsmith, P.A., of  
Greenville, for Appellants.

David Alan Wilson, of Horton, Drawdy, Ward, Mullinax,  
& Farry, P.A., of Greenville, for Respondent.

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**GEATHERS, J.:** Appellants Joseph and Sharon Gorrin (Purchasers) contend the circuit court erred in denying their motion for a directed verdict, pursuant to section 37-2-413 of the South Carolina Code (2002), and, thereafter, in awarding attorney's fees, costs, and expenses of \$59,855.31 to Respondent Cason Companies, Inc. (Seller). We affirm.

RECEIVED JUN 15 2012

## FACTS

Purchasers ordered 35,000 bricks from Seller to use in the construction of their new home. Thereafter, Seller denied credit to Purchasers' general contractor. As a result, Purchasers executed a Personal Credit Application Form and requested credit of \$5,000 for the purpose of buying bricks, mortar, and sand from Seller.

Seller's Personal Credit Application Form stated that if Seller approved Purchasers' Credit Application, Seller retained "the right not to extend credit to Purchaser at any time, particularly if the account is not paid in full each month." Regarding Purchasers' payment obligations and Seller's collection rights upon Purchasers' default, the Credit Application specified that [1] payment was due in full within thirty days of Seller's invoice; [2] should payment in full not be made within thirty days, the account would be in default and would accrue finance charges; and [3] if Seller was required to exercise collection efforts, Purchasers were responsible for paying all of Seller's attorney's fees, costs, and expenses. The Credit Application stated:

[1] Purchaser hereby agrees and promises to pay [Seller] for all services and materials purchased from [Seller], now or in the future, on this account. Purchaser understands that payments are due in full within thirty (30) days of the date of [Seller's] invoice. [2] Should payments not be made within thirty (30) days, the account will be considered past-due and in default, and shall accrue finance charges of 18% per annum from the first day the account is past due, until payment is made in full. Purchaser agrees to pay these finance charges. [3] Purchaser also agrees to pay all [Seller's] attorney[']s fees, costs[,] and expenses. Each of the undersigned [Purchasers] agrees to pay court costs, and all other costs of collection allowed by law.

Purchasers also signed a "Guaranty Agreement," in which they agreed: "In the event this account is placed in the hands of an attorney or attorneys for collection or suit instituted to collect some or any portion thereof, I, and/or we agree and promise to pay all [Seller's] attorneys' fees, costs[,] and expenses."

Seller approved Purchasers' Credit Application and extended a \$5,000 "line of credit" to Purchasers. From August 2005 through February 2006, Seller delivered bricks, sand, and mortar to Purchasers' construction site. Seller sent Purchasers an

invoice following each delivery; however, Purchasers failed to make payment. On February 25, 2006, Seller sent Purchasers an invoice showing a balance due of \$23,780.80, of which \$13,685.09 was more than ninety days past due. Purchasers told Seller that they would pay their account in full at closing.

On March 20, 2006, Purchasers closed on the loan for their new home; however, they made no payment to Seller. Moreover, Purchasers attested on their title insurance application: "There are no unpaid bills or claims for labor or services performed or material furnished or delivered during the last twelve months for alterations, repair work, or new construction on the above-described property."

On January 25, 2007, Seller filed an action seeking payment of Purchasers' account, plus interest, attorney's fees, costs, and expenses. In June 2010, following a four-day trial, the jury awarded Seller actual damages of \$49,856.46, which included the balance due on Purchasers' account and finance charges. Seller then moved for attorney's fees, costs, and expenses, pursuant to the terms of Purchasers' Credit Application. Seller additionally filed an affidavit of attorney's fees, expenses, and costs. Purchasers moved for a directed verdict on the issue of attorney's fees, claiming their agreement with Seller established a consumer credit sale, pursuant to section 37-2-104 of the South Carolina Code (2002). As a result, Purchasers contended the attorney's fees provisions of the Credit Application and Guaranty Agreement were void *ab initio*, pursuant to section 37-2-413(1) of the South Carolina Code (2002), which limits attorney's fees with respect to consumer credit sales and consumer leases.

On September 15, 2010, the circuit court issued an order denying Purchasers' motion for a directed verdict and awarded Seller attorney's fees of \$51,560, and expenses and costs of \$8,295.31, for a total award of \$59,855.31. This appeal followed.

### LAW/ANALYSIS

First, Purchasers contend that each of their transactions is properly classified as a "consumer credit sale," as defined in section 37-2-104 of the South Carolina Code (2002). Next, because section 37-2-413(1) of the South Carolina Code (2002) limits attorney's fees related to consumer credit sales and consumer leases, Purchasers maintain the provisions regarding attorney's fees in the Credit Application and Guaranty Agreement were "void *ab initio*." The circuit court concluded that the Credit Application did not establish a consumer credit sale, and, therefore, section 37-2-413 did not apply. We agree.

A "consumer credit sale" is defined as:

[A] sale of goods, services, or an interest in land in which

(a) Credit is granted by a person who regularly engages as a seller in credit transactions of the same kind,

(b) The buyer is a person other than an organization,

(c) The goods, services, or interest in land are purchased primarily for a personal, family or household purpose,

(d) Either the debt is payable in installments or a credit service charge is made, and

(e) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars.

S.C. Code Ann. § 37-2-104(1) (2002).

"The court should give words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation." *Auto Owners Ins. Co. v. Rollison*, 378 S.C. 600, 609, 663 S.E.2d 484, 488 (2008). Purchasers' argument for establishing a consumer credit sale transaction fails with the analysis of § 37-2-104(1)(d) — payment of debt. In a consumer credit sale, "either the debt is payable [1] in installments or [2] a credit service charge is made." S.C. Code Ann. § 37-2-104(1)(d) (2002). Seller asserts that its Credit Application authorized neither method of debt payment. The circuit court found that the "credit service charge," as defined in section 37-2-104(1)(d), was not equivalent to the payment of finance charges precipitated by default, as required by the Credit Application. Furthermore, because the outstanding debt was required to be paid *in full* within thirty days of Seller's invoice, the circuit court found the debt was not eligible to be paid "in installments."

We compared the definition of a "credit service charge," under the South Carolina Consumer Protection Code, with the express terms of the Credit Application. We agree with the circuit court's determination that the parties' transactions cannot be classified as consumer credit sales, as contemplated by section 37-2-104 of the South Carolina Code (2002). The Consumer Protection Code defines a "credit service charge" as follows:

"Credit service charge" means the sum of (1) *all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller as an incident to the extension of credit*, including any of the following types of charges which are applicable: time price differential, service, carrying or other charge, however denominated, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss; and, except as otherwise provided in this section, (2) charges incurred for investigating the collateral or creditworthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the seller had no notice of the charges when the credit was granted. *The term does not include charges as a result of default, additional charges (§ 37-2-202), delinquency charges (§ 37-2-203), deferral charges (§ 37-2-204), or in a consumer credit sale which is secured in whole or in part by a first or junior lien or real estate, charges incurred for appraising the real estate that is collateral for the credit sale, if not paid to the creditor or a person related to the creditor.*

S.C. Ann. Code § 37-2-109 (2002) (emphases added).

The applicable provision of the Credit Application states:

Purchaser hereby agrees and promises to pay [Seller] for all services and materials purchased from [Seller], now or in the future, on this account. *Purchaser understands that payments are due in full within thirty (30) days of the date of [Seller's] invoice.* Should payments not be made within thirty (30) days, *the account shall be considered past due and in default*, and shall accrue finance charges of 18% per annum from the first day the account is past due until payment is made in full.

(emphases added).

Based upon the comparison between the language of section 37-2-109, defining a credit service charge, and the Credit Application, which provides for additional

charges upon Purchasers' default, we find that the finance charges imposed by the Credit Application do not constitute a credit service charge. In conclusion, the Credit Application did not establish a method of payment of debt that involved either installment payments or credit service charges; rather, upon Purchasers' default, the Credit Application provided for the accrual of finance charges. *See Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994) (citation omitted) ("When the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect."). Here, the plain language of the Credit Application and Guaranty Agreement requires Purchasers to pay Seller's attorney's fees, costs, and expenses. Accordingly, we affirm the circuit court's determination that the parties' agreement did not meet the test of a consumer credit sale, and Purchasers are bound by the terms of the agreements they executed.<sup>1</sup>

### CONCLUSION

For the foregoing reasons, the circuit court's order is

**AFFIRMED.**

**PIEPER and KONDUROS, JJ., concur.**

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<sup>1</sup> On appeal, Purchasers contend "there was no evidence that the [attorney's] fees were incurred." Seller contends this issue was raised for the first time in Purchasers' brief to the Court of Appeals, and, therefore, it is not preserved for appellate review. We agree. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (citation omitted) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM GREENVILLE COUNTY  
COURT OF COMMON PLEAS  
D. GARRISON HILL, CIRCUIT COURT JUDGE

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CASE NO.: 07-CP-23-00582  
APPELLATE CASE NO.: 2010-175306

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Cason Companies, Inc., .....Respondent.

v.

Joseph Gorrin and Sharon Gorrin ..... Appellants.

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**RESPONDENT'S PETITION FOR REHEARING**

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The Respondent, Cason Companies, Inc., respectfully petitions this court to rehear and reconsider its decision in the above-captioned matter issued on June 13, 2012 in Opinion No. 4986. The grounds for this petition are as follows:

1. The court overlooked or misapprehended the fact that the Appellants Joseph Gorrin and Sharon Gorrin failed to plead S.C. Code Ann. §37-2-413 as an affirmative defense and; therefore, this defense should not even be considered by the appellate court. A statute which purports to prohibit or limit the enforcement of a contract is an affirmative defense. Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 703 S.E.2d 221 (2010). The failure to plead an affirmative defense is deemed a waiver of the right to assert it. Madren v. Bradford, 378 S.C. 187, 193, 661 S.E.2d 390, 393 (Ct. App. 2008).

The invocation of §37-2-413 to bar or limit Cason's claim for attorney fees is an affirmative defense. The Gorrins waived their right to rely upon this affirmative defense when they failed to assert it in its Answer and Counterclaim, Amended Answer and Counterclaim or Answer to First Amended Complaint and Counterclaim and sat on it for the three years after the filing of this lawsuit. Just like the appellants in Earthscapes Unlimited and Madren, the Gorrins "cannot benefit from an affirmative defense that was never pled." Earthscapes Unlimited, 390 S.C. at 614, 703 S.E.2d at 225; Madren, 378 S.C. at 193, 661 S.E.2d at 393. The Respondent respectfully requests that the court rule expressly on this argument raised by the Respondent.

2. The Court of Appeals overlooked or misapprehended the fact that the transaction between Appellants and Respondent did not qualify as a "consumer credit sale" for reasons other than simply S.C. Code Ann. §37-2-104(1)(d). The original buyer was the contractor. See S.C. Code Ann. §37-2-413(1)(b). The records do not support a finding that the Respondent qualifies as a person who regularly engages as a seller in credit transactions of the same kind as with the Gorrins. See S.C. Code Ann. §37-2-413(1)(a). The goods purchased were not primarily for a personal, family or household purpose. See S.C. Code Ann. §37-2-413(1)(c). The credit application was only for \$5,000.00 which is far less than \$25,000.00. See S.C. Code Ann. §37-2-413(1)(e). Bricks, mortar and sand do not qualify as "goods" as they are not severable from the realty. See e.g. S.C. Code Ann. §36-9-334(a).

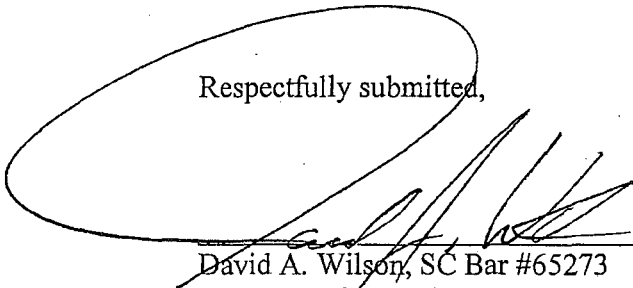
The sale of brick, mortar and sand was not a consumer credit sale. The brick contract and the Guaranty signed by the Gorrins were not subject to S.C. Code Ann. §37-2-413. The transaction between the parties in the present case is simply not the type of

arrangement covered by the Consumer Protection Code.

3. The Court of Appeals overlooked or misapprehended the fact that the Guaranty signed by the Appellants is a separate contract not governed by the Consumer Protection Code.

BASED UPON THE FOREGOING, the Respondent, Cason Companies, Inc., respectfully requests that the court rehear and modify Opinion No. 4986 filed June 13, 2012 to expressly rule on all the arguments raised by the Respondent in the event of an appeal to the Supreme Court of South Carolina.

Respectfully submitted,

A large, stylized handwritten signature in black ink, which appears to read "David A. Wilson". The signature is written over a horizontal line and is partially enclosed by a large, hand-drawn oval.

David A. Wilson, SC Bar #65273  
The Law Offices of David A. Wilson, LLC  
200 Whitsett Street, Suite B  
Greenville, SC 29601  
(864) 232-2329  
ATTORNEY FOR APPELLANT

June 27, 2012

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

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Case No. 2007-CP-23-0582

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**RECEIVED**

JUN 28 2012

SC Court of Appeals

Cason Companies, Inc., .....Respondent,

v.

Joseph Gorrin and Sharon Gorrin, ..... Appellants.

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**PETITION FOR REHEARING**

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Kimila L. Wooten  
ELMORE GOLDSMITH, PA  
Post Office Box 1887  
Greenville, South Carolina 29602  
(864) 255-9500-Telephone  
(864) 255-9505-Facsimile  
Counsel for Appellants

Appellants move this Court to stay remittitur of this matter and to grant to Appellants a rehearing as to the issue of whether the credit agreement containing the attorneys' fees provision in this case is a document evidencing a "consumer credit sale." The Appellants seek a rehearing on the grounds that this Court's opinion overlooked and misapprehended certain issues. Specifically, this Court's opinion states that there is no "consumer credit sale" because the agreement in question contains no "credit service charge." In addition, the Court's opinion fails to address the argument that the amount to costs and expenses awarded was erroneous because these costs and expenses are not allowed under South Carolina law. These findings are in error.

With regard to the issue of whether the agreement in question contains a "credit service charge," § 37-2-201 provides that a credit service charge up to "18% per year on the unpaid balances of the amount financed may be charged." The Credit Agreement provides: "Should payments not be made within thirty (30) days, the account will be considered past due and in default, and shall accrue finance charges of 18% per annum from the first day the account is past due, until payment is made in full." (See, Trial Exhibit 2, Credit Agreement, R. p. 223). This language is virtually identical to the example given in §37-2-201. Accordingly, the provision fits within the intent of § 37-2-201 to protect consumers from insidious credit agreements. At best, the language of § 37-2-201 conflicts with that of § 37-2-109, cited by the Court in its opinion, regarding whether the Agreement in this case contains a "credit service charge."

The next error in the Court's opinion is the failure to consider the argument that the lower court erroneously awarded most of the costs and expenses of the Plaintiff. On Pages 19 and 20 of the Appellee's Affidavit of Attorney's Fees, Costs, and Expenses, there is a list of costs sought to be recovered. (See, Affidavit of Attorney's Fees, R. pp. 147-169). When this Affidavit was submitted, Appellants, although not required to do so, submitted a detailed objection to the costs sought. Despite the fact that virtually none of the costs submitted by the Plaintiff are recoverable under South Carolina law, the lower court allowed every dime of the costs requested.

In South Carolina, "costs and expenses" of proceedings are regarded in the nature of penalties, and therefore, a party who claims the right to tax costs against another must point to some statute which allows him to do so. Oliver v. S.C. Dep't of Highways & Pub. Transp., 309 S.C. 313, 422 S.E.2d 128 (1992); S.C. Pub. Serv. Auth. v. Spearwant Liquidating Co., 201 S.C. 297, 22 S.E.2d 252 (1942). First, the Appellee in this case points to no such statute, and the lower court did not reference a statute under which costs and expenses were being allowed. These facts alone render the Amended Order reversible on the issue of costs and expenses.

In addition, the applicable statutes do not allow for the type of costs and expenses sought by the Appellees in this case. Rule 54(e) provides for those items which are taxable as "costs." That Rule provides that "taxable costs" shall include:

- (1) *Costs Authorized by Statute and Sanctions Imposed in Favor of Prevailing Party.* All sanctions including reasonable attorneys fees, if ordered, imposed upon another party and in favor of the prevailing party under any statute or Rule of Civil Procedure are taxable;

- (2) *Fees of the Clerk.* All filing and recording fees charged by the clerk of the court in which the action was pending, or fees or costs taxed under Rule 222, SCACR, are taxable;
- (3) *Fees of the Sheriff.* All fees and costs chargeable by the sheriff for service of summons and complaint, or subpoenas for trial witnesses who testified at trial or for the production of documents and materials actually used at trial, and all costs actually incurred by the sheriff in serving other process necessarily required in the case, including costs incurred attaching property, in caring for property attached, or in conducting the sale of attached property, including any bond, guarantee, sales commissions or insurance premiums, if required, are taxable;
- (4) *Fees Incurred in Service of Process.* All fees and costs incurred in the service of summons and complaint, or subpoenas for the witnesses who testified at trial, or for the production of documents and materials actually used at trial, in an amount not to exceed that which may be charged by the sheriff for comparable services, are taxable;
- (5) *Witnesses' Fees.* All witness fees and mileage actually traveled as specified in Rule 45(b)(1), paid to persons who were subpoenaed and testified at trial, are taxable;
- (6) *Fees for Exemplification and Copies of Papers Necessarily Obtained for Trial.* The costs of one copy of a document introduced in evidence in lieu of the original; the fees of officials for certification of proof of the non-existence of documents; the cost of securing translation if the document translated is taxable or the translation is necessary for exemplification of matters before the court; the cost of maps and one copy of a photograph introduced into evidence, are taxable.

S.C. Code § 15-37-40 also sets forth items which may be taxed as costs.

Those items are: the fees of "officers allowed by law," the fees of witnesses, the reasonable compensation of commissioners in taking depositions, the fees of referees and the expense of printing the papers for any hearing when required by a rule of the court. S. C. Code Ann. § 15-37-40.

The only items sought be Appellee that are recoverable as costs and expenses of litigation are the clerk filing fee of \$150.00 and the \$25.00 witness fees on the last

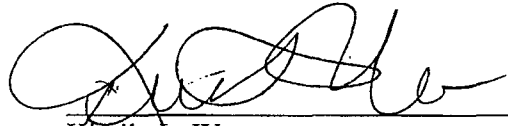
page of the list. (See, Affidavit of Attorney's Fees, R. pp. 147-169). Plaintiff has attempted to charge expert witness fees, which are clearly not recoverable as costs under South Carolina law. Oliver v. S.C. Dep't of Highways & Pub. Transp., 309 S.C. 313, 422 S.E.2d 128 (1992); Black v. Roche Biomedical Laboratories, 315 S.C. 233, 433 S.E.2d 21 (Ct. App. 1993). In fact, it is error to award such costs. Oliver, supra, at 318, 131.

In its Affidavit, Plaintiff charged as costs such items as: copies of depositions, copies of evidentiary documents, mediation fees, computer legal research, photo enlargements for trial, copies of irrelevant documents obtained from family court, and, incredibly, "lunch during deposition." None of these items is allowable under either Rule 54(e) or S.C. Code Ann. § 15-37-40. Moreover, it has been specifically held by South Carolina courts that transcripts, copies of evidence, trial exhibits, meals, and mailings are not taxable as costs. Oliver v. S.C. Dep't of Highways & Pub. Transp., 309 S.C. 313, 422 S.E.2d 128 (1992); S.C. Pub. Serv. Auth. v. Spearwant Liquidating Co., 201 S.C. 297, 22 S.E.2d 252 (1942).

In derogation of the clear rule of law, the lower court found that "[t]he Cason/Gorin Contract signed by the Defendants obligates them to pay 'costs and expenses.' The Plaintiff is therefore entitled to an award of \$8,295.31 in costs and expenses as shown by the Affidavit of Attorney's Fees, Costs, and Expenses submitted by the Plaintiff." (See, Amended Order, R. pp. 11-20). Nowhere does the lower court find, or even consider, that no statute allows the recovery of such costs and expenses. Neither did the lower court consider that not one item other than the Appellee's filing fee and a \$25.00 witnesses fee sought as "costs and expenses" in this case are allowed in this State as reimbursable costs.

WHEREFORE, Appellant submits that this Court should grant its Petition for Rehearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kimila L. Wooten', written over a horizontal line.

June 27, 2012

Kimila L. Wooten  
ELMORE GOLDSMITH, PA  
Post Office Box 1887  
Greenville, South Carolina 29602  
(864) 255-9500-Telephone  
(864) 255-9505-Facsimile  
Counsel for Appellants

# The South Carolina Court of Appeals

Cason Companies Inc., Respondent,  
v.  
Joseph Gorrin and Sharon Gorrin, Appellants.

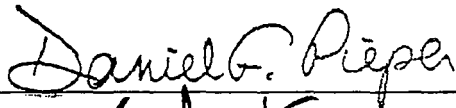
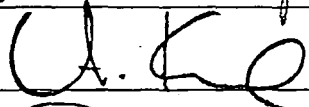
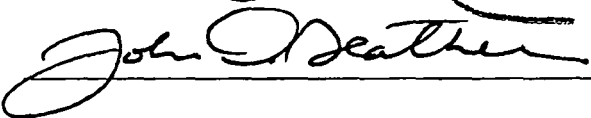
Appellate Case No. 2010-175306

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## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

|                                                                                      |    |
|--------------------------------------------------------------------------------------|----|
|  | J. |
|  | J. |
|  | J. |

Columbia, South Carolina

cc:  
David Alan Wilson  
Kimila Lynn Wooten

**FILED**  
July 19, 2012

RECEIVED JUL 23 2012

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

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Case No. 2007-CP-23-0582

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Petitioners.

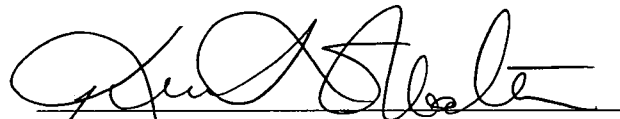
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**PROOF OF SERVICE**

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I certify that I have served the Appendix on Cason Companies, Inc. by depositing a copy of it in the United States Mail, postage prepaid, addressed to its attorney of record as follows:

David A. Wilson, Esquire  
David A. Wilson, LLC  
200 Whitsett Street, Suite B  
Greenville, South Carolina 29601



Kimila L. Wooten  
ELMORE GOLDSMITH, PA  
Post Office Box 1887  
Greenville, South Carolina 29602  
(864) 255-9500-Telephone  
(864) 255-9505-Facsimile  
kwooten@elmoregoldsmith.com  
Counsel for Petitioners

August 20, 2012