

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

Appellate Case No. 2013-002176

Moats Construction Services, LLC. Appellant,

v.

Bobby D. Sanders, Jr.; Staci Y. Sanders; Premier Southern Homes, LLC; Elite Mechanical Services, Inc.; Level Construction, LLC; Love Heating & Air, LLC; Solid Rock Construction Services, LLC; All Carolina Exteriors, LLC; American Concrete and Precast, Inc.; and Harbin Lumber Co., Inc., Defendants,

Of whom Bobby Sanders is the Respondent.

Bobby Sanders, Jr., and Staci Y. Sanders, Third Party Plaintiffs,

Of whom Bobby Sanders, Jr. is the Respondent,

v.

Henry Beal. Third Party Defendant.

RECORD ON APPEAL

RECEIVED
AUG 07 2014
SC Court of Appeals

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Moats Construction Services, LLC,

A TRUE COPY

AUG 12 2013

Richard D. Wiley
CLERK OF COURT
Plaintiff

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
C/A No.: 2008-CP-04-3231

v.

Bobby D. Sanders, Jr.; Staci Y. Sanders;
Premier Southern Homes, LLC; Elite
Mechanical Services, Inc.; Level
Construction, LLC; Love Heating & Air,
LLC; Solid Rock Construction Services,
LLC; All Carolina Exteriors, LLC; American
Concrete and Precast, Inc.; and Harbin
Lumber Co., Inc.,

Defendants

Bobby D. Sanders, Jr., and Staci Y. Sanders,

Third Party Plaintiffs,

v.

Henry Beal,

Third Party Defendant.

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND
AND MOTION FOR A NEW TRIAL**

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ANDERSON SC
2013 AUG 12 P 1:53
COMMON PLEAS AND
GENERAL SESSIONS

THIS MATTER is before the Court upon Plaintiff's Rule 59 (e) Motion to Alter or Amend and Motion for a New Trial, filed on April 23, 2013. Plaintiff is represented by Ronald D. Tate, Jr., Esquire, and the Defendant is represented by D. Ryan McCabe, Jr., Esquire. A hearing on this matter was held on May 23, 2013.

After careful consideration of the able argument and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been

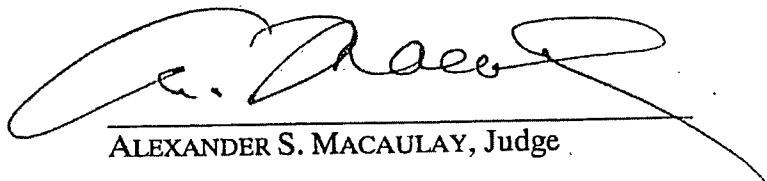
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overlooked or disregarded and further finds no error of law or fact not appropriately considered.

Accordingly, the Plaintiff's Motion, pursuant to Rule 59(e), SCRCP, is DENIED.

AND, IT IS SO ORDERED.



ALEXANDER S. MACAULAY, Judge

Walhalla, South Carolina
August 9, 2013

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COMMON PLEAS AND
GENERAL SESSIONS



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
C/A No.: 2008-CP-04-3231

Moats Construction Services, LLC,

Plaintiff

v.

Bobby D. Sanders, Jr.; Staci Y. Sanders;
Premier Southern Homes, LLC; Elite
Mechanical Services, Inc.; Level
Construction, LLC; Love Heating & Air,
LLC; Solid Rock Construction Services,
LLC; All Carolina Exteriors, LLC;
American Concrete and Precast, Inc.; and
Harbin Lumber Co., Inc.,

Defendants

Bobby D. Sanders, Jr., and Staci Y.
Sanders,

Third Party Plaintiffs,

v.

Henry Beal,

Third Party Defendant.

ORDER OF JUDGMENT

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2013 MAR 28 P 4:09
COMMON PLEAS AND
GENERAL SESSIONS

The above-captioned action was tried before me on March 15, 2012. Plaintiff Moats Construction Services, LLC (hereinafter "Moats") was represented by Steven B. LeFevre. Defendants Bobby D. Sanders and Staci Y. Sanders (hereinafter "Sanders") were represented by Brian C. Gambrell. The remaining defendants, excepting Premier Southern Homes, LLC (hereinafter "Premier") and Third-Party Defendant Henry Beal (hereinafter "Beal"), had asserted

liens on the Sanders' Property, but all of these remaining defendants settled their liens with the Defendants prior to trial. This Court takes judicial notice that Premier and Beal sought and received a Chapter 7 Discharge from the United States Bankruptcy Court for South Carolina on October 22, 2009. Therefore, only Moats and the Sanders remain active parties in the instant action.

FACTUAL BACKGROUND

On or about July 14, 2007, Sanders entered into an agreement with Premier whereby Premier agreed to serve as the general contractor and construct a home for Sanders on the property located at Lot 33 Sunny Lane, Anderson, South Carolina. The agreement (Defendants' Exhibit 2, Construction Contract) was a fixed-fee contract and the total construction price was to be \$236,544.00 with an agreed completion date of February 20, 2009. The contract establishes the scope of work, and one of the items within the scope of work was the installation of a concrete driveway. On or before March 28, 2008, Moats was contacted by Beal, the owner of Premier, to come give an estimate on the installation of the concrete driveway and a sidewalk. Moats testified that he met both Sanders and Beal at the job site. Moats and Sanders testified that they discussed the actual placement of the driveway. Moats testified that Sanders was also involved in a discussion with Beal regarding price. Sanders testified that his only discussion with Moats involved laying out the path of the driveway, and that it was Beal who handled all discussions regarding price since Beal had access to the construction loan to make payments to subcontractors.

Sanders testified that Premier quit performing any work or construction on the subject property or even returning his calls in early May 2008. There is no testimony that any subcontractor returned to the job site after Premier breached the agreement, and there is no

testimony that Sanders actively supervised the work that was being performed. Sanders aver that they have fully paid Premier for all contractual services rendered on their home. Additionally, there have been numerous issues with the construction of the house, and Sanders claim an additional credit as to defective work performed by Premier and other subcontractors. Bobby Sanders testified as to the vast scope of patent defects that have been corrected or that still exist with the property. Sanders submitted numerous photographs which clearly demonstrate the defective work performed by Premier. (Defendants' Exhibit 1: Photographs) Sanders testified that they are currently due a credit from Premier for this work in an amount of \$23,582.74. (Defendants' Exhibit 3: List of Expenses.) On or about, May 27, 2008, Moats filed a Mechanic's Lien on the property owned by Sanders in which Moats claimed it was owed \$5,921.63. Moats filed the instant action on September 19, 2008 alleging Breach of Contract, Foreclosure of Mechanics Lien and Quantum Meruit/Implied Contract and Unjust Enrichment.

STANDARD OF LAW

As this matter is being tried nonjury, this Court makes both findings of fact and conclusions of law. State Farm Mut. Auto. Ins. Co. v. Moorer, 330 S.C. 46, 51, 496 S.E.2d 875, 878 (Ct.App.1998); Noisette v. Ismail, 299 S.C. 243, 384 S.E.2d 310 (Ct.App.1989), rev'd on other grounds, 304 S.C. 56, 403 S.E.2d 122 (1991).

The necessary elements of a contract are: offer, acceptance, and valuable consideration. Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). Valuable consideration may consist of "some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct.App.1998). With certain exceptions, a contract need not be in writing to be enforceable.

Gaskins v. Firemen's Ins. Co. of Newark, N.J., 206 S.C. 213, 216, 33 S.E.2d 498, 499 (1945) (noting that if there is a meeting of the minds with regard to the essential elements of a contract, it is immaterial whether the contract is written or oral). To recover for a breach of contract, the plaintiff must prove: (1) a binding contract; (2) a breach of contract; and (3) damages proximately resulting from the breach. Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). In order for a contract to be binding, there must be a mutual manifestation of assent between the parties as to the terms of the contract. Edens v. Laurel Hill, Inc., 271 S.C. 360, 247 S.E.2d 434 (1978). Certain terms, such as price, time and place, are considered indispensable and must be set out with reasonable certainty. Id. Where a contract does not fix a definite price, there must be a definite method for ascertaining it. Id.

Moats has also asserted a cause of action for a mechanics' lien pursuant to S.C. Code Ann. § 29-5-10, et. seq. However, "in no event shall the aggregate amount of liens set up hereby exceed the amount due by the owner on the contract price of the improvement made." S.C. Code Ann. §29-5-40, Stovall Bldg. Supplies v. Mottet, 305 S.C. 28, 406 S.E.2d 176 (Ct. App. 1990). The final payment on the "amount due" does not have to necessarily be a cash payment as the statute does not specify a manner of payment. It can include a forgiveness of debt. A.V.A. Const. Corp. v. Palmetto Land Clearing, Inc. 308 S.C. 377, 418 S.E.2d 317 (Ct. App. 1992). The "amount due by the owner" also means a subcontractor can only recover under a mechanics' lien to extent of any amount owing to contractor by owner at time contractor abandoned his contract, after determining amount of damages sustained by owner due to breach of contract. Wood v. Hardy, 235 S.C. 131, 110 S.E.2d 157 (1959).

Unjust enrichment is an equitable cause of action. Columbia Wholesale Co., Inc. v. Scudder May N.V., 312 S.C. 259, 440 S.E.2d 129 (1994). To recover under a theory of unjust

enrichment, Moats has to prove (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. *Webb v. First Federal Savings and Loan Ass'n.*, 300 S.C. 507, 388 S.E.2d 823 (Ct.App.1989); *Ellis v. Smith Grading and Paving, Inc.*, 294 S.C. 470, 366 S.E.2d 12 (Ct.App.1988).

BREACH OF CONTRACT

The critical factual determination this Court needs to make is to decide who the contracting parties were. The dispute between the parties can accurately summarized as "Was Moats a subcontractor of Beal or did Moats have a separate contract with Sanders." Moats, as the Plaintiff, bears the burden of proof as to all terms essential to the creation of a contract, including price. *Stanley Smith & Sons v. Limestone College*, 283 S.C. 430, 322 S.E.2d 474 (Ct.App.1984). This Court finds that Moats was a subcontractor, and he did not have a separate contract with Sanders.

This Court arrives at this factual determination by its view of the demeanor of the witnesses and an examination of the documentary evidence that was submitted. This Court finds Sanders' testimony to be credible, and this Court finds Moats lacks credibility. The most important documentary evidence is the construction contract itself. The contract clearly establishes the installation of the driveway as part of the scope of work between Premier and Sanders. Similarly, Sanders submitted other portions of the loan documents which included pricing for installation of a driveway and sidewalk. (Defendants' Exhibit 7: Construction Costs.) Sanders also submitted evidence that it was Premier who had payment authority on the construction loan. (Defendants' Exhibit 5: Disbursement Authorization; Defendants' Exhibit 6: Disbursement Schedule Request.) Sanders testified that was not aware of what the installation of

the driveway should cost, and that is why he had engaged the services of Premier as general contractor. Moats also acknowledged that it was Premier who had contacted him, not Sanders. Moats also testified that Beal was present and involved in the negotiations.

In contrast, Moats did not submit any documentary evidence except for a single invoice that he prepared after he performed the work. This invoice was not acknowledged or signed by Sanders, and the Court finds this piece of evidence has no evidentiary weight. There was no proof offered this invoice was mailed or delivered to Sanders at all. In fact, there was testimony the address listed on the invoice was an old address. Moats testified that he had gotten the address from Beal. Sanders testified the address listed on the invoice was from his old home that he had sold prior to entering into the agreement with Premier. Sanders testified that he and his family were renting an apartment during the interim period, and he would not have given out that old address.

This Court finds that Moats' version of the transaction lacks evidentiary support. Moats testified that he did not trust Beal. Moats also testified that he had viewed work Beal had done for a cousin, and that he thought Premier did "crappy" work. Moats also testified he was concerned because a previous concrete contractor was no longer on the job site. However, Moats acknowledged on cross-examination that he did not share any of those reservations with Sanders. Assuming *arguendo* that Sanders was involved in a discussion of price, this fact is not dispositive of the issue. Moats also acknowledged that Beal was also present during these discussions. Moats did not challenge Sanders assertion that it was Beal, not Sanders, who had authority to make payments to subcontractors. There was no testimony or evidence that Premier and Sanders agreed to modify their written contract to exclude the driveway installation from the

scope of work. Likewise, Moats did not make any showing there was a meeting of minds between Premier and Sanders regarding a reduction in the contract price.

The instant case is the factual opposite of Stoudenmire Heating and Air Conditioning Co., Inc. v. Craig Bldg. Partnership, 308 S.C. 298, 301, 417 S.E.2d 634, 636 - 637 (Ct. App. 1992). There was evidence in Stoudenmire the owner had taken over the job for an insolvent general contractor before the Plaintiff had performed the work. In the instant case, Moats had performed work prior to the breach, and there has been persuasive evidence submitted which proves Sanders had taken over the job only after Moats' work. This case is also factually distinguishable from J.J. Lawter Plumbing v. Wen Chow Intern. Trade and Inv., Inc. 286 S.C. 49, 331 S.E.2d 789 (Ct. App. 1985). In J.J. Lawter, a representative from the Defendant was present on site directing the construction work, and Defendant's representative promised to pay with the subcontractor quit over payment issues.

In both Stoudenmire and J.J. Lawter, the owner engaged in behavior that could rightfully be described as substituting for the general contractor after the general contractor ceased being involved in the project. In the instant case, Moats admits it was Beal (Premier) that contacted him, and Beal (Premier) was present on the job site the whole time Moats performed his work. Moats has only proved that Sanders engaged in making aesthetic choices regarding Moats' performance. This is not the kind of activity that lead to a finding of a direct relationship in Stoudenmire and J.J. Lawter.

I find Moats has failed to prove he had a direct contractual relationship with Sanders.

MECHANICS' LIEN

As this Court has determined the contract was between Premier and Moats, the only remaining issue revolves around the mechanics' lien asserted by Moats. As a subcontractor,

Moats asserts a mechanics' lien under S.C. Code Ann. § 29-5-20 which requires subcontractors to provide a notice of furnishing to the owner of real property. S.C. Code Ann. § 29-5-20(B) sets out what is required in the notice. In relevant portion, it requires the notice to state the following: (2) the name of the person with whom the claimant contracted or by whom was employed; (3) a description of the labor, services or materials furnished and the contract price or value thereof; (5) and the date when the first and the last item of labor or service or materials was actually furnished or scheduled to be furnished.

This Court's review of the notice of the styled "Certificate of Claim of Mechanics Lien and statement of Account" shows it does not meet the statutory test. The notice does not state with whom he contracted. It merely states "materials and supplies" were provided at "the request of Bobby D. Sanders, and Staci D. Sanders, Jr., or *their agent*." (Emphasis added). The notice only states the alleged contract amount. It does not describe "the labor, services or materials furnished." Without such a description it is impossible for the Court to discern whether Defendant's figures include such items which are excluded from a lien such as overhead and profit. Zepa Const., Inc. v. Randazzo, 357 S.C. 32, 38, 591 S.E.2d 29, 32 (Ct. App. 2004). Finally, there is no description of when the first date when services were actually rendered, rather it only indicates the last date in which services were rendered.

The remedy of a mechanics' lien is derogation of the common law, and the statute is to be strictly construed. Butler Contracting, Inc. v. Court Street, LLC, 369 S.C. 121, 127, 631 S.E.2d 252, 256 (2006). The failure to comply with the statute results in the lien being dissolved. Shelley Constr. Co. v. Sea Garden Homes, Inc., 287 S.C. 24, 27, 336 S.E.2d 488, 490 (Ct.App.1985). Therefore, Moats is not entitled to a recovery under a mechanics' lien for his failure to file and serve a proper notice of furnishing.

Further, S.C. Code Ann. § 29-5-40 provides:

Whenever work is done or material is furnished for the improvement of real estate upon the employment of a contractor or some other person than the owner and such laborer, mechanic, contractor or materialman shall in writing notify the owner of the furnishing of such labor or material and the amount or value thereof, the lien given by § 29-5-20 shall attach upon the real estate improved as against the true owner for the amount of the work done or material furnished. But in no event shall the aggregate amount of liens set up hereby exceed the amount due by the owner on the contract price of the improvement made. (Emphasis added.)

There was ample evidence submitted to this Court as to the nature and value of the work performed by Premier as general contractor. Sanders submitted evidence including photographs which show deficient work inside and outside of the house which either has been corrected or needs to be corrected. Moats did not contest the need for additional work and admitted that Premier did "crappy" work. Sanders submitted evidence which proves they have suffered damages in the amount \$46,618.84 as a result of Premier's negligent work in amount, and this amount exceeds the \$23,654.40 that Sanders owed Premier on May 20, 2008.

Therefore, this Court calculates the "amount due by the owner" under S.C. Code Ann. § 29-5-40 to be zero pursuant to Stoudenmire and Wood v. Hardy, 235 S.C. 131, 146, 110 S.E.2d 157, 164 (1959). In Stoudenmire, the Court of Appeals remanded a case for a determination of the amount of the credit due to the owner due the breach of contract by the general contractor. The Supreme Court in Wood, which is directly on point, held a subcontractor could not recover under the mechanics' lien because the amount of owner's damages exceeded the amount due under owner's contract with the general contractor.

UNJUST ENRICHMENT

In light of this Court's finding that the Sanders have suffered damages as a result of Premier's breach, there is no showing of unjust enrichment. A quantum meruit/unjust enrichment theory will not lie if the owner can prove they have fully performed under a contract with the general contractor. Columbia Wholesale, supra. Columbia Wholesale is directly on point with the instant action. The Supreme Court recognized that such conditions do not make it unjust since an owner should have not to pay twice for the same work.

CONCLUSION

For the reasons stated above, this Court finds fully in the favor of Defendants Bobby D. Sanders, Jr. and Staci Y. Sanders. As I have determined Defendants Bobby D. Sanders, Jr. and Staci Y. Sanders are the prevailing party in this action, they are entitled to attorneys' fees pursuant to S.C. Code § 29-5-20(C). This Court is required to consider six factors in awarding attorneys' fees:

- (1) nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained

Hardaway Concrete Co., Inc. v. Hall Contracting Corp., 374 S.C. 216, 230-231, 647 S.E.2d 488, 495 (Ct. App. 2007); Blumberg v. Nealco, Inc., 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993).

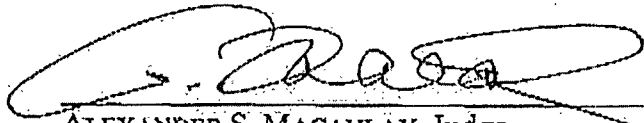
The matter presented before this Court was a sophisticated mechanics' lien case that required a trial that lasted most of one day. Defendants' counsel avers that he, other attorneys with his firm, and staff have spent 44.8 hours on the instant action. Defendants' counsel submitted a detailed proposed order and defended at least one motion for summary judgment. I hereby find the hours spent on the instant action to be reasonable. Defendants' counsel's firm enjoys an excellent reputation, and Defendant's counsel has been active member of the South Carolina Bar since



2000. I find the fee amount for counsel of \$250 per hour to be a reasonable fee for attorneys' with more than ten years of experience, and such fees are the usual and customary for attorneys who practice in and around Columbia area. Finally, I find Defendants' counsel has obtained a beneficial result in the successful defense of a mechanics' lien action by Plaintiff.

Therefore, I order Plaintiff to pay Defendants' attorneys in the amount \$5,921.63 pursuant to S.C. Code § 29-5-20(C) and as shown by Defendants' counsel's affidavit. Pursuant to Rule 54(e), I also award costs in the amount of \$147.60.

AND IT SO ORDERED.


ALEXANDER S. MACAULAY, Judge

Walhalla, South Carolina
March 26, 2013

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ANDERSON SC
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COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON
Moats Construction, LLC,

Plaintiff,

vs.

Bobby D. Sanders, Jr.; Staci Y. Sanders;
Premier Southern Homes, LLC; Elite
Mechanical Services, Inc.; Level
Construction, LLC; Love Heating and Air,
LLC; Solid Rock Construction Services,
LLC; All Carolina Exteriors, LLC;
American Concrete and Precast Inc.; and
Harbin Lumber Co. Inc.,

Defendants.

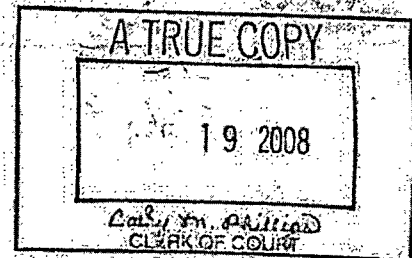
COURT OF COMMON PLEAS

SUMMONS

C/A No. 08-CP-04-

3231

JURY TRIAL DEMANDED

**TO THE DEFENDANT NAMED HEREIN ABOVE:**

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint on the subscriber at their office at 207 E. Calhoun Street, Anderson, South Carolina 29621, within thirty (30) days after the service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for the relief demanded in the Complaint.

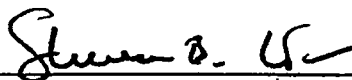
TO INFANT(S) OVER FOURTEEN YEARS OF AGE OR AN IMPRISONED PERSON:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian *ad litem* to represent you in this action within thirty (30) days after the service of this Summons, Notice and Complaint upon you. If you fail to do so, application for such appointment will be made by the Plaintiffs herein.

TO INFANT(S) UNDER FOURTEEN YEARS OF AGE (INCOMPETENT OR INSANE) AND TO THE GENERAL OR TESTAMENTARY GUARDIAN OR PERSONAL REPRESENTATIVE WITH WHOM HE/SHE/THEY RESIDE(S):

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian *ad litem* to represent said infant[s] under 14 years of age or said incompetent or insane person; within thirty (30) days after the service of this Summons, Notice and Complaint upon you. If you fail to do so, application for such appointment will be made by the Plaintiffs herein.

LAW OFFICES OF KRAUSE, MOORHEAD AND DRAISEN, P.A.



Steven B. LeFevre, SC Bar No.: 72822

207 East Calhoun Street

Anderson, South Carolina 29621

(864) 225-4000

Attorney for the Plaintiff

Dated: 2/19/08

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

Moats Construction, LLC,

Plaintiff,

vs.

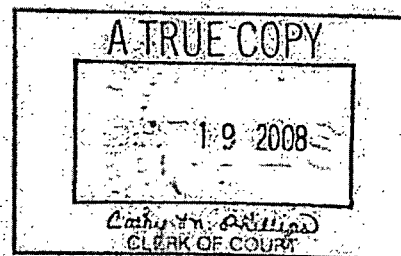
Bobby D. Sanders, Jr.; Staci Y. Sanders;
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Air, LLC; Solid Rock Construction
Services, LLC; All Carolina Exteriors,
LLC; American Concrete and Precast
Inc.; and Harbin Lumber Co. Inc.,

Defendants.

COMPLAINT TO FORECLOSE
MECHANIC'S LIEN

C/A No. 2008-CP-04-

3231



The Plaintiff, complaining of the Defendants would respectfully allege and show unto the Court that:

I.

The Plaintiff is a limited liability company organized and existing pursuant to the laws of the State of South Carolina. As such, it is authorized to conduct and is conducting business in the County of Anderson, State of South Carolina.

II.

The Plaintiff is informed and believes that Defendant, Bobby D. Sanders, is a citizen and resident of Anderson County, South Carolina.

III.

The Plaintiff is informed and believes that Defendant, Staci Y. Sanders, is a citizen and resident of Anderson County, South Carolina.

IV.

The Plaintiff is informed and believes that Defendant, Premier Southern Homes, LLC is a limited liability company organized and existing under the laws of the State of South Carolina. As such, Defendant, Premier Southern Homes, LLC, is authorized to conduct, has conducted, and is currently conducting business in Anderson County, South Carolina.

V.

The Plaintiff is informed and believes that Defendant, Elite Mechanical Services, Inc. is a corporation organized and existing under the laws of the State of South Carolina. As such, Defendant, Elite Mechanical Services, Inc. is authorized to conduct, has conducted, and is currently conducting business in Anderson County, South Carolina.

VI.

The Plaintiff is informed and believes that Defendant, Level Construction, LLC, is a limited liability company organized and existing under the laws of the State of South Carolina. As such, Defendant, Level Construction, LLC, is authorized to conduct, has conducted, and is currently conducting business in Anderson County, South Carolina.

VII.

The Plaintiff is informed and believes that Defendant, Love Heating & Air, LLC, is a limited liability company organized and existing under the laws of the State of South Carolina. As such, Defendant, Love Heating & Air, LLC, is authorized to conduct, has conducted, and is currently conducting business in Anderson County, South Carolina.

VIII.

The Plaintiff is informed and believes that Defendant, All Carolina Exteriors, LLC, is a limited liability company organized and existing under the laws of the State of South Carolina. As such, Defendant, All Carolina Exteriors, LLC, is authorized to conduct, has conducted, and is currently conducting business in Anderson County, South Carolina.

IX.

The Plaintiff is informed and believes that Defendant, American Concrete and Precast Inc., is a corporation organized and existing under the laws of the State of South Carolina. As such, Defendant, American Concrete and Precast Inc., is authorized to conduct, has conducted, and is currently conducting business in Anderson County, South Carolina.

X.

The Plaintiff is informed and believes that Defendant, Harbin Lumber Co. Inc., is a corporation organized and existing under the laws of the State of Georgia and is registered as a foreign corporation in the State of South Carolina. As such, Defendant, Harbin Lumber Co. Inc., is authorized to conduct, has conducted, and is currently conducting business in Anderson County, South Carolina.

XI.

The Plaintiff is informed and believes that Defendant, Solid Rock Construction Services LLC, is a limited liability company organized and existing under the laws of the State of South Carolina. As such, Defendant, Solid Rock Construction Services, LLC is authorized to conduct, has conducted, and is currently conducting business in Anderson County, South Carolina.

XII.

The property which is the subject of this action is located in Anderson County, South Carolina.

XIII.

All parties, matters, and things herein are within the jurisdiction of this Court.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract)

XIV.

The Plaintiff herein repeats and incorporates by reference thereto all the preceding allegations of its Complaint.

XV.

On or before March 28, 2008, the Plaintiff entered into agreement with the Defendant Premier Southern Homes, or its agent, in which the Plaintiff agreed to furnish certain labor, materials and services which were utilized as improvements to said property with the consent of, for the benefit of, and furnished at the request of the Defendant or Defendant's agent on the Defendant's real property as described in Exhibit "A".

XVI.

Pursuant to the terms of the agreement, at the request of Defendant or Defendant's agent, the Plaintiff furnished and/or caused to be furnished certain labor, materials and services to Defendant Premier Southern Homes, LLC for improvements to the real property described in Exhibit "A", the costs of which amounts to Five Thousand Nine Hundred Twenty-One and 63/100 Dollars (\$5,921.63).

XVII.

Of the Five Thousand Nine Hundred Twenty-One and 63/100 Dollars (\$5,921.63) owed pursuant to the agreement, Defendants Premier Southern Homes, Bobby D. Sanders and Staci Y. Sanders have paid zero (\$0.00) on this debt to date leaving a remaining balance of to Five Thousand Nine Hundred Twenty-One and 63/100 Dollars (\$5,921.63) with interest at the legal rate. No part of the \$5,921.63 has been paid even though the Plaintiff has demanded that Defendant or Defendant's agent pay the sums due and owing to it for the labor, materials and services that it has furnished and/or caused to be furnished for the improvements on and to the aforementioned real property.

XVIII.

Defendants have failed and refused, and continues to fail and to refuse, despite repeated demands for payment, to make payments in accordance with the terms of the agreement and is therefore in breach of Contract it entered into with the Plaintiff.

XIX.

As a direct and proximate result of Defendants' breach of Contract, the Plaintiff has been damaged in the amount of Five Thousand Nine Hundred Twenty-One and 63/100 Dollars (\$5,921.63), the total principal balance owed, together with all prejudgment interest accrued thereon to date, all to the Plaintiff's damage in an amount to be determine by the Court at the trial of this case.

FOR A SECOND CAUSE OF ACTION
(Foreclosure of Mechanics Lien)

XX.

The Plaintiff herein repeats and incorporates by reference thereto all the preceding allegations of its Complaint.

XXI.

On May 27, 2008, a Certificate of Claim of Mechanics Lien and Statement of Account was filed for the improvements on the above-described real property and the Plaintiff made demand for payment of the balance owed to it.

XXII.

Of the Five Thousand Nine Hundred Twenty-One and 63/100 Dollars (\$5,921.63) owed pursuant to the contract, Defendants have paid zero Dollars (\$0.00) on this debt to date leaving a remaining balance of Five Thousand Nine Hundred Twenty-One and 63/100 Dollars (\$5,921.63). No part of the \$5,921.63 has been paid even though the Plaintiff has demanded that Defendants pay the sums due and owing them for the labor, services and materials that it has furnished and/or caused to be furnished for the improvements on and to the aforementioned real property.

XXIII.

Pursuant to S.C. Code Ann. § 29-5-10, *et. seq.*, the Plaintiff has filed a Certificate of Claim of a Mechanic's Lien and a Statement of Account on the property described in Exhibit "A" in the Office of the Clerk of Court for the County of Anderson, State of South Carolina on May 27, 2008 in Book Number 36 at Page 64. That, with regard to time restrictions on the filing and notice regarding the mechanic's lien in this case and filing and service of the Summons and Complaint foreclosing the mechanics lien, the Plaintiff is informed and believes that it has complied with the statute.

XXIV.

Defendant Elite Mechanical Services, Inc. is made a party to this action based upon a mechanic's lien filed pursuant to S.C. Code Ann. § 29-5-10, *et. seq.* The Defendant Elite Mechanical Services, Inc. has filed a Certificate of Claim of a Mechanic's Lien and a Statement of

Account on the property described hereinabove in the Office of the Clerk of Court for the County of Anderson, State of South Carolina on March 28, 2008 in Book Number 00035 at Page 00083. Defendant Elite Mechanical Services, Inc., may claim some interest, right, or title to the property subject to the action, but has an inferior lien to that of Plaintiff.

XXV.

Defendant Level Construction Company, LLC is made a party to this action based upon a mechanic's lien filed pursuant to S.C. Code Ann. § 29-5-10, *et. seq.* The Defendant Level Construction Company, LLC has filed a Certificate of Claim of a Mechanic's Lien and a Statement of Account on the property described hereinabove in the Office of the Clerk of Court for the County of Anderson, State of South Carolina on May 21, 2008 in Book Number 00036 at Page 00034. Defendant Level Construction Company, LLC may claim some interest, right, or title to the property subject to the action, but has an inferior lien to that of Plaintiff.

XXVI.

Defendant Love Heating and Air LLC is made a party to this action based upon a mechanic's lien filed pursuant to S.C. Code Ann. § 29-5-10, *et. seq.* The Defendant Love Heating and Air LLC has filed a Certificate of Claim of a Mechanic's Lien and a Statement of Account on the property described hereinabove in the Office of the Clerk of Court for the County of Anderson, State of South Carolina on May 21, 2008 in Book Number 00036 at Page 00040. Defendant Love Heating and Air LLC may claim some interest, right, or title to the property subject to the action, but has an inferior lien to that of Plaintiff.

XXVII.

Defendant Solid Rock Construction Services, LLC is made a party to this action based upon a mechanic's lien filed pursuant to S.C. Code Ann. § 29-5-10, *et. seq.* The Defendant Level

Construction Company, LLC has filed a Certificate of Claim of a Mechanic's Lien and a Statement of Account on the property described hereinabove in the Office of the Clerk of Court for the County of Anderson, State of South Carolina on May 22, 2008 in Book Number 00036 at Page 00046. Defendant Solid Rock Construction Services, LLC may claim some interest, right, or title to the property subject to the action, but has an inferior lien to that of Plaintiff.

XXVIII.

Defendant All Carolina Exteriors, LLC is made a party to this action based upon a mechanic's lien filed pursuant to S.C. Code Ann. § 29-5-10, *et. seq.* The Defendant All Carolina Exteriors, LLC has filed a Certificate of Claim of a Mechanic's Lien and a Statement of Account on the property described hereinabove in the Office of the Clerk of Court for the County of Anderson, State of South Carolina on May 29, 2008 in Book Number 00036 at Page 00096. Defendant All Carolina Exteriors, LLC may claim some interest, right, or title to the property subject to the action, but has an inferior lien to that of Plaintiff.

XXIX.

Defendant American Concrete and Precast, Inc. is made a party to this action based upon a mechanic's lien filed pursuant to S.C. Code Ann. § 29-5-10, *et. seq.* The Defendant American Concrete and Precast, Inc. has filed a Certificate of Claim of a Mechanic's Lien and a Statement of Account on the property described hereinabove in the Office of the Clerk of Court for the County of Anderson, State of South Carolina on June 13, 2008 in Book Number 00036 at Page 00132. Defendant American Concrete and Precast, Inc. may claim some interest, right, or title to the property subject to the action, but has an inferior lien to that of Plaintiff.

XXX.

Defendant Harbin Lumber Company, Inc. is made a party to this action based upon a mechanic's lien filed pursuant to S.C. Code Ann. § 29-5-10, *et. seq.* The Defendant Harbin Lumber Company, Inc. has filed a Certificate of Claim of a Mechanic's Lien and a Statement of Account on the property described hereinabove in the Office of the Clerk of Court for the County of Anderson, State of South Carolina on June 17, 2008 in Book Number 00036 at Page 00152. Defendant Harbin Lumber Company, Inc. may claim some interest, right, or title to the property subject to the action, but has an inferior lien to that of Plaintiff.

XXXI.

As a result of the Defendants' failure and refusal to pay the Plaintiff the sums due to it for the labor, services and materials rendered for the actual improvements on Defendant's property, Defendants are indebted to the Plaintiff in the sum of Five Thousand Nine Hundred Twenty-One and 63/100 Dollars (\$5,921.63), together with accrued interest at the legal rate on this sum, a reasonable amount in attorney's fees, plus the costs of this action, as provided for by the laws of the State of South Carolina.

FOR A THIRD CAUSE OF ACTION

(Quantum Meruit/Implied Contract and Unjust Enrichment)

XXXII.

The Plaintiff herein repeats and incorporates by reference thereto all the preceding allegations of its Complaint.

XXXIII.

At the specific instance and request of the Defendant or Defendant's agent, and for their use and benefit, the Plaintiff furnished material and labor for and to the Defendants, Bobby D. Sanders and Staci Y. Sanders.

XXXIV.

The materials and labor furnished by the Plaintiff to the Defendant or Defendant's agent, and as yet unpaid for, has a reasonable fair market value of at least the sum of Five Thousand Nine Hundred Twenty-One and 63/100 Dollars (\$5,921.63).

XXXV.

Despite the Plaintiff's reasonable expectation to be fully paid by the Defendant or Defendant's agent for the materials and labor, during and since the furnishing and delivery of the materials and labor to the Defendant or Defendant's agent by the Plaintiff, the Defendant or Defendant's agent have failed to pay the Plaintiff for said materials and labor.

XXXVI.

The Defendant or Defendant's agent received the materials and labor with the knowledge or reason to know that the Plaintiff expected to be fully paid for the materials and labor provided to the Defendant or Defendant's agent.

XXXVII.

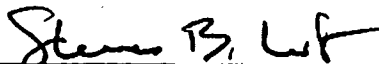
The Plaintiff made demands on the Defendant or Defendant's agent to fully pay the Plaintiff the above-stated sum of Five Thousand Nine Hundred Twenty-One and 63/100 Dollars (\$5,921.63) for the materials and labor, but the Defendants have failed and refused to do so.

XXXVIII.

As a result of the Defendant or Defendant's agent's failure and refusal to pay the Plaintiff the above stated sum for the materials and labor, the Defendant or Defendant's agent have become unjustly enriched in at least the amount of Five Thousand Nine Hundred Twenty-One and 63/100 Dollars (\$5,921.63), at the expense of the Plaintiff.

Respectfully submitted,

LAW OFFICES OF KRAUSE, MOORHEAD AND DRAISEN, P.A.



STEVEN B. LEFEVRE (SC Bar# 72822)

207 East Calhoun Street

Anderson, South Carolina 29621

(864) 225-4000

(864) 964-0788 fax

ATTORNEYS FOR THE PLAINTIFF

Anderson, South Carolina

September 19, 2008.

EXHIBIT A

Property Description:

1.02 Acres, Sunny Lane, Anderson, South Carolina
TMS No.: 069-24-01-020-000

All that certain piece, parcel or lot of land, lying and being situate in the State of South Carolina, County of Anderson, being shown and designated as containing 1.024 acres more or less, being shown and designated on survey for James E. McClain, Sr., and James E. McClain, Jr. prepared by Charles Vaughn, Professional Land Surveying, dated April 09, 2007 and recorded in the Register of Deeds Office for Anderson County, South Carolina in Plat Book 118 at Page 330. For a more complete and accurate description refer to the above referenced plat.

This being the same property conveyed unto Bobby D. Sanders, Jr. and Staci Y. Sanders as Joint Tenants with rights of Survivorship by Deed of James E. McClain, Jr. and James E. McClain, Sr., dated June 1, 2007 and recorded June 25, 2007 in Deed Book 8092 at Page 274 in the Register of Deeds Office for Anderson County, South Carolina.

LAW OFFICES
OF
**KRAUSE,
MOORHEAD
AND
DRAISEN, P.A.**
207 EAST CALHOUN ST.
ANDERSON, SC 29621

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE
CERTIFIED MAIL



7006 2150 0002 0098 7188

*American Concrete
1438 Blackley St.*

Anderson, SC 29625

*NSW
#32*

**VIA CERTIFIED MAIL/RETURN RECEIPT
REQUESTED
TO ADDRESSEE ONLY**

- ☐ A ☐ INSUFFICIENT ADDRESS
☐ C ☐ ATTEMPTED NOT KNOWN
☐ S ☐ NO SUCH NUMBER/STREET
☐ NOT DELIVERABLE AS ADDRESSED
☐ UNABLE TO FORWARD
- ☐ OTHER

RTS
RETURN TO SENDER

UNITED STATES POSTAGE
121 342 PB5449266
28719 10.130 SEP 19 08
4441 MAILED FROM ZIP CODE 79671

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Moats Construction, LLC

Claimant

v.

Bobby D. Sanders, Jr. and Staci Sanders,

Defendants.

CERTIFICATE OF CLAIM OF
MECHANICS LIEN AND STATEMENT
OF ACCOUNT

I.

Russell Moats, as agent of Moats Construction, LLC, hereby certifies that it claims a lien upon the interest of Bobby D. Sanders, Jr., and Staci Sanders on that certain real property described in Exhibit "B" below, which is owned in fee simple by Bobby D. Sanders, Jr., and Staci Sanders. The amount of the lien is Five Thousand Nine Hundred Twenty-One and 63/100 (\$5,921.63) with interest from March 28, 2008 at the legal rate, plus costs and attorneys' fees, which is a just and true account of the amount due Moats Construction, LLC, for labor, services, and materials provided by it for improvement on the aforementioned real property.

II.

The labor, materials, and services provided were furnished as late as March 28, 2008; and therefore, less than 90 days have elapsed since the last materials and labor were furnished.

III.

The Claimant, Moats Construction, LLC, provided and/or caused to be performed certain labor on the property described herein below and furnished and/or caused to be furnished certain materials and supplies which were utilized as improvements to said property with the consent of

and for the benefit of and at the request of Bobby D. Sanders, Jr. and Staci Sanders or an agent thereof.

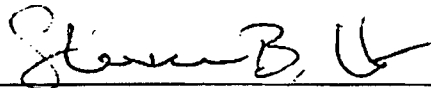
IV.

During the progress of the aforementioned work, the Claimant incurred expenses totaling Five Thousand Nine Hundred Twenty-One and 63/100 Dollars (\$5,921.63). That the Debtors have paid Zero Dollars (\$0.00) to date. The Debtors currently are owing and indebted to the Claimant in the amount of Five Thousand Nine Hundred Twenty-One and 63/100 Dollars (\$5,921.63), with interest from March 28, 2008 at the legal rate, plus costs and attorneys' fees for recording said Mechanics Lien, in order to furnish the labor, supplies and materials pursuant to the Statement of Account attached hereto as Exhibit "A", of which Bobby D. Sanders, Jr. and Staci Sanders have refused to pay the balance due in the amount of is Five Thousand Nine Hundred Twenty-One and 63/100 Dollars (\$5,921.63), with interest from March 28, 2008 at the legal rate, plus costs and attorneys' fees, which are now due and owing to the Claimant.

V.

The property upon which the lien is claimed is described in Exhibit "B"

LAW OFFICES OF KRAUSE, MOORHEAD AND DRAISEN, P.A.



Steven B. LeFevre, Esq.
SC Bar No.: 72822
207 East Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000

Anderson, South Carolina
May 23, 2008

27

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

STATEMENT OF ACCOUNT

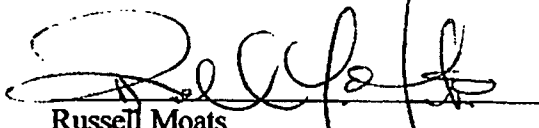
PERSONALLY appeared before me, Russell Moats as agent of Moats Construction, LLC, who first being duly sworn, deposes and says:

1. Moats Construction, LLC, furnished labor and materials for improvements on real property located in Anderson County, South Carolina, and now owned by Bobby D. Sanders, Jr., and Staci Sanders and more particularly described on the attached Certificate of Claim of Mechanic's Lien. The labor and materials were furnished at the request of Bobby D. Sanders, Jr. and Staci Sanders, or their agent, as owners of said property.

2. There is justly due and owing by Bobby D. Sanders, Jr., and Staci Sanders, to Moats Construction, LLC, the sum of is Five Thousand Nine Hundred Twenty-One and 63/100 Dollars (\$5,921.63), with interest from March 28, 2008 at the legal rate, plus costs and attorneys' fees for this action.

3. That Moats Construction, LLC, has received Zero Dollars and No/100 (\$0.00) on said account for which no credit has been given.

4. That I do hereby certify that this is a just and true statement of account.


 Russell Moats
 Agent of Moats Construction, LLC

SWORN to before me this 27th day
 of May, 2008


 NOTARY PUBLIC FOR SOUTH CAROLINA
 My Commission Expires: 10-15-09

0

Exhibit B
Legal Description

ALL that certain piece, parcel or lot of land, lying and being situate in the State of South Carolina, County of Anderson, being shown and designated as containing 1.024 acres, more or less, being shown and designated on a survey for James E. McClain, Sr. and James E. McClain, Jr. prepared by Charles Vaughn, Professional Land Surveying, dated April 09, 2007 and recorded in the Register of Deeds Office for Anderson County in Plat Book 118 at Page 330. For a more complete and accurate description refer to the above referenced plat.

BEING the same property conveyed to Bobby D. Sanders, Jr. and Staci Y. Sanders from James E. McClain, Jr. by Deed dated June 1, 2007 recorded June 25, 2007 in Deed Book 8092, Page 274, in the official records for Anderson County, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

MOATS CONSTRUCTION, LLC,

Claimant (s),

vs.

AFFIDAVIT OF SERVICE

BOBBY D. SANDERS, JR. and
STACI SANDERS,

Defendant (s)

GUY R. JOHNSON, being first duly sworn says that he/she served the:

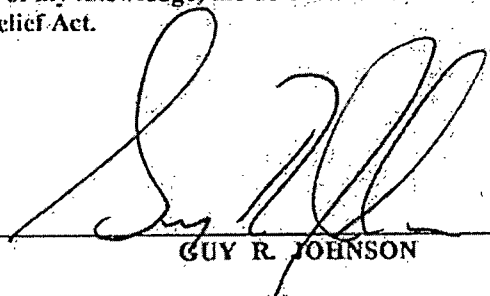
CERTIFICATE OF CLAIM OF MECHANICS LIEN,
STATEMENT OF ACCOUNT

in this action on the Debtor:

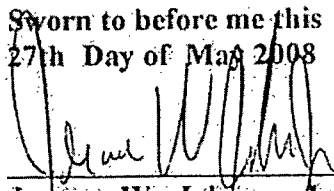
STACI SANDERS

(XX) By delivering to Staci Sanders, personally and leaving with her (1) copy of same at: 311 Sunny Lane Anderson, SC.

At 7:20 PM on the 27th day of May, 2008 and that the deponent is not a party to this action, and has no interest therein or connection therewith and to the best of my knowledge, the defendant is not a member of the Armed Forces pursuant to the Soldiers & Sailors Relief Act.


GUY R. JOHNSON

Sworn to before me this
27th Day of May 2008


Jerome W. Johnson, Jr.
Notary Public for South Carolina
My Commission Expires 8-01-2016

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

MOATS CONSTRUCTION, LLC,

Claimant (s),

vs.

AFFIDAVIT OF SERVICE

BOBBY D. SANDERS, JR. and
STACI SANDERS,

Defendant (s)

GUY R. JOHNSON, being first duly sworn says that he/she served the:

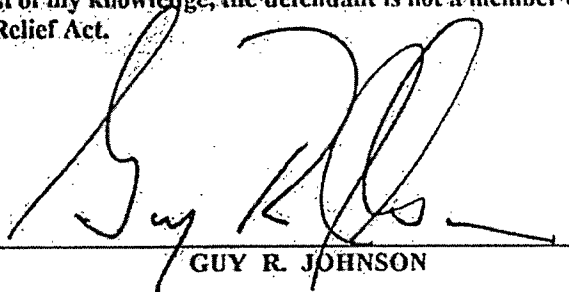
CERTIFICATE OF CLAIM OF MECHANICS LIEN.
STATEMENT OF ACCOUNT

in this action on the defendant:

BOBBIE D. SANDERS, JR.

(XX) By delivering to Staci Sanders, a person of age and discretion living at the residence of Bobbie D. Sanders, Jr. and leaving with her (1) copy of same at: 311 Sunny Lane Anderson, SC.

At 7:20 PM on the 27th day of May, 2008 and that the deponent is not a party to this action, and has no interest therein or connection therewith and to the best of my knowledge, the defendant is not a member of the Armed Forces pursuant to the Soldiers & Sailors Relief Act.



GUY R. JOHNSON

Sworn to before me this
27th Day of May 2008



Jerome W. Johnson, Jr.
Notary Public for South Carolina
My Commission Expires 8-01-2016

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
C/A No.: 2008-CP-04-3231

Moats Construction Services, LLC,

Plaintiff

v.

Bobby D. Sanders, Jr.; Staci Y. Sanders;
Premier Southern Homes, LLC; Elite
Mechanical Services, Inc.; Level
Construction, LLC; Love Heating & Air,
LLC; Solid Rock Construction Services,
LLC; All Carolina Exteriors, LLC; American
Concrete and Precast, Inc.; and Harbin
Lumber Co., Inc.,

Defendants.

**ANSWER, CROSS-CLAIM, AND THIRD-
PARTY COMPLAINT OF DEFENDANTS
BOBBY D. & STACI Y. SANDERS
(Jury Trial Demanded)**

TO: PLAINTIFF AND ITS ATTORNEY STEVEN B. LEFEVRE:

The Defendants Bobby D. and Staci Y. Sanders ("Sanders") by and through their undersigned counsel answer Plaintiff's Complaint as follows:

1. Each and every allegation of the Complaint not specifically admitted herein is denied. To the extent any allegation or part thereof may not be expressly referred to and specifically answered, it is hereby denied and legal proof thereof is demanded.

2. The allegations contained in Paragraph 1 are admitted upon information and belief.

3. The allegations contained in Paragraphs 2 through 4 are admitted upon information and belief.

4. Paragraph 5 is not directed to Sanders, and therefore requires no response. To the extent a response is due, Sanders are without information sufficient to form a belief as to the truth of these allegations and therefore deny the same.

5. Sanders are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraphs 6 and 7, and therefore deny the same. Furthermore, Sanders assert that Love Heating & Air, LLC and Level Construction, LLC have been improperly named as Defendants in this matter.

6. Paragraphs 8 through 11 are not directed to Defendants Sanders, and therefore require no response. To the extent a response is due, Sanders are without information sufficient to form a belief as to the truth of these allegations and therefore deny the same.

7. Sanders admit the allegations contained in Paragraphs 12 and 13.

AS TO THE FIRST CAUSE OF ACTION

8. In response to Paragraph 14, Sanders incorporate their previous paragraphs as if repeated herein verbatim.

9. Sanders are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraphs 15 through 17 and therefore deny the same as well as any liability to Plaintiff. Sanders assert that they have paid Premier Southern Homes, LLC ("Premier") in full for all labor and materials supplied to the subject property, and deny owing any additional money on this project.

10. Sanders are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 18 and therefore deny the same and legal proof thereof. Furthermore, Sanders deny entering into a contract with Plaintiff and that if any such contract exists, such contract was between the Plaintiff and Premier as the general contractor.

11. Sanders are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 19 and therefore deny the same. Furthermore, Sanders reassert that they have paid Premier in full as the general contractor for all labor and or

materials supplied to the subject property.

AS TO THE SECOND CAUSE OF ACTION OF 2A

12. In response to Paragraph 20, Sanders incorporate their previous responses as if repeated herein verbatim.

13. Sanders are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 21 and therefore deny the same.

14. Sanders are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 22 and therefore deny the same. Sanders asserts that all monies due and owing for labor and or materials have been paid in full to Premier as the general contractor on the subject project.

15. Paragraphs 23 through 24 are not directed at Sanders and therefore require no response. To the extent a response is due, Sanders are without information sufficient to form a belief as to the truth of these allegations and therefore deny the same.

16. Sanders deny the allegations contained in Paragraph twenty-five (25), and assert that Level Construction recorded a Mechanics Lien Release with the Anderson County Register of Deeds on October 2, 2008 in Book 38 at page 19.

17. Sanders deny the allegations contained in Paragraph twenty-six (26), and assert that Love Heating and Air, LLC recorded a Mechanics Lien Release with the Anderson County Register of Deeds on September 29, 2008 in Book 37 at page 316.

18. Paragraphs 27 through 30 are not directed at Sanders, and therefore require no response. To the extent a response is due, Defendants Sanders deny the same.

19. Sanders deny the allegations contained in Paragraph 31 and assert that full payment has been made to Premier as the general contractor for all labor and materials supplied

in connection with the subject property.

AS TO THE THIRD CAUSE OF ACTION

20. In response to Paragraph 32, Sanders incorporate their previous responses as if repeated herein verbatim.

21. Sanders are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 33 and therefore deny the same. Defendants Sanders assert that if a contract exists, it is between the Plaintiff and Defendant Premier as the general contractor.

22. Sanders are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraphs 34 through 37 and therefore deny the same.

23. Sanders are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 38, and therefore deny the same. Sanders asserts that they have not been unjustly enriched, and that Premier as the General Contractor has been paid in full for all materials and labor furnished in connection with the subject property.

24. Sanders deny the allegations contained in Paragraph 39 and demand strict proof thereof.

FOR A SECOND DEFENSE

25. Sanders incorporate their previous paragraphs as if repeated herein verbatim.

26. Plaintiff fails to state a claim against Sanders for which relief may be granted.

FOR A THIRD DEFENSE

27. The claims against Sanders are barred or limited by the contributing, concurring, intervening or superseding fault or breach by persons or entities other than Sanders.

FOR A FOURTH DEFENSE

28. Plaintiff lacks sufficient legal privity with Sanders to impose liability upon them.

FOR A FIFTH DEFENSE

29. Plaintiff has not conferred a benefit upon Sanders.

FOR A SIXTH DEFENSE

30. Plaintiff has failed to mitigate its alleged damages as required by law.

FOR A SEVENTH DEFENSE

31. Plaintiff's claims are barred by the doctrines of waiver, estoppel or laches.

FOR AN EIGHTH DEFENSE

32. Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A NINTH DEFENSE

33. Certain of Plaintiff's claims may be barred by applicable statute of frauds.

FOR A TENTH DEFENSE

34. Certain of Plaintiff's claims may be barred, in whole, or in part, by the applicable statutes of limitation or statutes of repose.

FOR AN ELEVENTH DEFENSE

35. Sanders do not owe Plaintiff, as Sanders owe no additional monies for labor/materials provided to the property at issue.

FOR A TWELFTH DEFENSE

36. Sanders assert that the claims against them are barred or limited by the sole negligence, recklessness, willfulness and wantonness, or breach by persons or entities other than Sanders, including Plaintiff. Therefore, the sole acts of third parties are the real and proximate cause of any loss suffered by Plaintiff.

FOR A THIRTEENTH DEFENSE

37. The Compliant may be barred by the doctrine of accord and satisfaction and/or payment and release.

FOR A FOURTEENTH DEFENSE

38. Plaintiff's claims and remedies are limited, restricted, or excluded by the substance of any communication between the parties, including documents and/or oral conversations. Further, Sanders' liability, if any, may be limited, restricted, or excluded by the rights, responsibilities, and liability of Plaintiff and/or third parties, either by contract, statute, or equity.

FOR A FIFTEENTH DEFENSE

39. To the extent that Plaintiff's claims rely upon acts or omissions of others to bind Sanders, Sanders specifically deny any liability for any acts or omissions of others acting without Sanders' express or other legal authority. Sanders object to the Plaintiff's use of the word "Defendants" to allege that it acted in concert with, by, and/or through any other party or entity without sufficient legal proof of such authority.

FOR A SIXTEENTH DEFENSE

40. Defendants Sanders reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

**FOR A SEVENTEENTH DEFENSE BY WAY OF CROSS-CLAIM
AGAINST HARBIN & THIRD-PARTY COMPLAINT AGAINST BEAL
(Civil Conspiracy)**

41. Sanders incorporate their previous paragraphs as if repeated herein verbatim.

42. That Defendant Harbin Lumber Co., Inc. ("Harbin") is, upon information and belief, a South Carolina corporation with offices and agents in the County of Anderson, South Carolina and that Henry Beal ("Beal") is a resident of Anderson, South Carolina.

43. Beal fraudulently used Sanders' names and property address to apply for credit with Harbin.

44. Harbin's representatives knew or should have known that the application was not genuine.

45. This is not the first time that Defendant Beal has fraudulently applied for credit with Harbin using a clients name and address.

46. This is not the first time that Harbin has commenced suit against homeowners who had no knowledge of the open account.

47. Beal and Harbin or its representatives knowingly conspired together to open this credit account without Sanders' authorization.

48. Beal and Harbin are both aware that Sanders are not responsible for the repayment of the above referenced balance.

49. Beal and Harbin's conspiring has caused damage to Sanders' personal credit worthiness, damage to property title and caused Sanders to incur unnecessary attorney's fees and costs.

FOR AN EIGHTEENTH DEFENSE BY WAY OF
CROSS-CLAIM AGAINST HARBIN
(Slander of Title)

50. Sanders incorporate their previous paragraphs as if repeated herein verbatim.

51. Harbin knew or should have known that the credit application completed by Beal was done fraudulently.

52. Harbin knew or should have known that Sanders were not residing at the 108 E Summer Walk Court address, as stated on the credit application, which address does not exist.

53. Harbin knew or should have known that the invoices it allegedly sent were not being received by Sanders at the above-referenced address; therefore keeping Sanders in the dark while the balance steadily increased.

54. Harbin has caused injury to Sanders' property Title by recording a Mechanics Lien against the property for an account fraudulently opened by Beal and Harbin.

FOR AN NINETEENTH DEFENSE BY WAY OF
CROSS-CLAIM AGAINST HARBIN
(Violation of the Unfair Trade Practices Act §39-5-10)

55. Sanders incorporate their previous paragraphs as if repeated herein verbatim.

56. Harbin acted in an unfair, unethical oppressive an deceptive manner by fraudulently causing a credit account to be opened in Sanders' names, slandering their property title, hindering Sanders' ability to complete and close on their property, and trying to enforce payment on an account illegally opened.

57. Such acts constitute unfair and/or deceptive trade practices as contemplated by S.C. Code Ann §39- 5-10 et seq. (the South Carolina Unfair Trade Practices Act).

58. Harbin regularly conducts business in Anderson County and the State of South Carolina.

59. Harbin's professional activities constitute engaging in trade or commerce as contemplated by the terms of SC Code Ann. §39-5-10.

60. Harbin has accepted several fraudulent credit applications.

61. Such practices as described above may continue against other unsuspecting homeowners.

62. As a result of Harbin's violation of the South Carolina Unfair Trade Practices Act, Sanders have suffered an ascertainable loss of money.

63. Sanders believe that they are entitled to treble damages as well as other statutory remedies provided by the Unfair Trade Practices Act, including attorney's fees and costs.

FOR A TWENTIETH DEFENSE AND BY WAY OF
CROSS-CLAIM AGAINST PREMIER AND
THIRD-PARTY COMPLAINT AGAINST BEAL
(Fraud)

64. Sanders incorporate their previous paragraphs as if repeated herein verbatim.

65. Defendants Beal & Premier ("Beal") fraudulently forged Bobby Sanders' signature on a Credit Application for Harbin Lumber ("Harbin").

66. Defendant Beal fraudulently informed Harbin's representatives that Bobby Sanders executed the Credit Application and gave Beal authority to purchase goods for which Sanders would be held responsible.

67. Harbin alleges that there is a sum due and owing on this account to Harbin in the amount of \$17,491.66.

68. Defendant Beal made fraudulent statements to Harbin Lumber for which Sanders' have been damaged.

69. Sanders have had to expend unnecessary attorney fees defending the title of its property.

70. Sanders believe that they are entitled to actual and consequential damages.

**FOR A TWENTY-FIRST DEFENSE BY WAY OF
CROSS-CLAIM AGAINST PREMIER AND
THIRD-PARTY COMPLAINT AGAINST BEAL**
(Negligence)

71. Sanders incorporate their previous paragraphs as if repeated herein verbatim.

72. Beal negligently opened a credit account with Harbin using Bobby Sanders' name and personal information.

73. Beal neglected to make payments for the items received by Harbin or to inform Sanders that an account had been opened.

74. Beal acted in reckless and negligent disregard for Sanders by causing damage to Sanders' personal credit worthiness, damage to property title, and causing Sanders to incur unnecessary attorney fees and costs.

75. Sanders believe that they are entitled to actual and punitive damages.

**FOR A TWENTY-SECOND DEFENSE BY WAY OF
THIRD-PARTY COMPLAINT AGAINST BEAL**
(Indemnification)

76. Sanders incorporate their previous paragraphs as if repeated herein verbatim.

77. Sanders are now incurring attorney fees and other expenses in an amount yet to be determined due to Beal's actions and fraudulent statements. Beal should be liable for reimbursement of these expenses.

78. To the extent that Sanders suffer any damages due to Harbin's lawsuit as a result of Beal's fraudulent actions, Sanders should be indemnified, in addition to costs and fees, including attorneys' fees incurred by Sanders.

WHEREFORE, the Defendants Bobby Sanders and Staci Sanders, having fully responded to Plaintiff's Complaint, pray that This Honorable Court dismiss all claims against Defendants Bobby Sanders and Staci Sanders and tax all costs thereof to the Plaintiff, for

indemnification against Beal, and for such other and further relief as This Court may deem just and proper


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ATTORNEYS FOR DEFENDANTS
BOBBY D. SANDERS, JR. & STACI Y. SANDERS

Columbia, South Carolina
November 21, 2008

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Moats Construction, LLC,

Plaintiff,

vs.

Bobby D. Sanders, Jr.; Staci Y. Sanders;
Premier Southern Homes, LLC; Elite
Mechanical Services, Inc.; Level
Construction, LLC; Love Heating & Air,
LLC; Solid Rock Construction Services,
LLC; All Carolina Exteriors, LLC; American
Concrete and Precast, Inc.; and Harbin
Limber Co., Inc.,

Defendant,

Bobby D. Sanders, Jr., and Staci Y. Sanders,

Third-Party Plaintiffs,

vs.

Henry Beal,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

CA No.: 2009-CP-04-3231

PLAINTIFF'S MOTION TO ALTER
OR AMEND AND FOR NEW TRIAL

TO: BRIAN C. GAMBRELL, ATTORNEY FOR DEFENDANTS BOBBY D.
SANDERS, JR., AND STACI Y. SANDERS

Please take notice that Plaintiff, Moats Construction Services, LLC, by counsel, will move, at such date and time as may be set by the Court, pursuant to Rule 59(a) and (e), SCRCP, for a new trial, and to reconsider, alter or amend the Order of this Court filed March 28, 2013 and received by Plaintiff on April 1, 2013. Specifically, Plaintiff requests the following relief:

1. For an Order reconsidering the court's Order of Judgment to the extent it finds the Plaintiff failed to establish the existence of a separate contract with Sanders;

2. For an Order reconsidering the court's Order of Judgment finding that Plaintiff had no claims under the mechanic's lien act because no amounts were due by the owner on the contract price of the house at the time of the mechanic's lien. Specifically, Plaintiff asks for reconsideration of the court's finding that Sanders suffered damages in the amount of \$46,618.84, which is contrary to the evidence presented in the case. This sum included items of alleged damage that were unsupported by the evidence, and included damages that would be characterized as warranty repairs rather than sums properly deducted from the contract price. This sum also included items for attorneys' fees and litigation expenses that are not properly considered in determining the amount due by the owner on the contract price;

3. For an Order reconsidering the Order of Judgment determining that Plaintiff was not entitled to relief for unjust enrichment finding that the owner should not pay twice for the same work when Sanders did not pay any sums for the driveway in issue;

4. For an Order reconsidering the Order of Judgment because the Order of Judgment made findings of fact that were based on the demeanor and credibility of witnesses and the weight of evidence after more than one year had passed between the trial date (March 15, 2012) and the issuance of the court's Order on March 26, 2013;

5. For an Order reconsidering the legal conclusions relating to the sufficiency of the certificate of claim of mechanic's lien and statement of account, as the Order imposes requirements on mechanic's lien claimants greater than the requirements of the statute; and

6. Plaintiff requests a new trial, in the alternative, based upon the issues raised hereinabove and the court's errors in the admission of evidence relating to damages sustained by Sanders which reduced the amount due by the owner on the contract price of the improvements.

This motion is based on the evidence and testimony presented to the court at the trial of the matter, the South Carolina Rules of Civil Procedure, the South Carolina Rules of Evidence and applicable common and statutory law.



Ronald G. Tate, Jr. (S.C. Bar No. 5475)
GALLIVAN, WHITE & BOYD, P.A.
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Greenville, SC 29603
(864) 271-9580
(864) 271-7502 FAX

Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Moats Construction, LLC,

Plaintiff,

vs.

Bobby D. Sanders, Jr.; Staci Y. Sanders;
Premier Southern Homes, LLC; Elite
Mechanical Services, Inc.; Level
Construction, LLC; Love Heating & Air,
LLC; Solid Rock Construction Services,
LLC; All Carolina Exteriors, LLC; American
Concrete and Precast, Inc.; and Harbin
Limber Co., Inc.,

Defendant,

Bobby D. Sanders, Jr., and Staci Y. Sanders,

Third-Party Plaintiffs,

vs.

Henry Beal,

Third-Party Defendant.

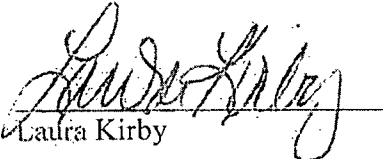
IN THE COURT OF COMMON PLEAS

CA No.: 2009-CP-04-3231

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 10, 2013, she served a copy of Plaintiff's Motion to Alter or Amend and For New Trial by placing a copy in the United States Mail, with due and proper postage affixed thereto and addressed as follows:

Brian C. Gambrell, Esq.
Rogers Townsend & Thomas, PC
PO Box 100200
Columbia, SC 29202-3200


Laura Kirby

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

COURT OF COMMON PLEAS

MOATS CONSTRUCTION, LLC,))
Plaintiff,))
v.))
BOBBY D. SANDERS, ET AL.,))
Defendant)

ORIGINAL

Case No.
2008-CP-04-03231

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on May 23, 2013, before The Honorable Alexander S. Macaulay in the Anderson County Courthouse, 100 South Main Street, Anderson, SC 29622; attended by counsel as follows:

APPEARANCES:

Ronald G. Tate, Jr., Esq.,
Appearing for the Plaintiff.

Donald Ryan McCabe, Jr., Esq.,
Appearing for the Defendant.

Vivian H. Cross
Circuit Court Reporter – 10th Judicial Circuit
P O Box 704
Belton, South Carolina 29627
vcross@sccourts.org

Case No. 2013-CP-04-03231
Hearing of May 23, 2013
Before The Honorable Alexander S. Macaulay

I-N-D-E-X

MAY 23, 2013
(MOATS CONSTRUCTION, LLC v. BOBBY D. SANDERS, ET AL.)
(MOTION HEARING)
(2008-CP-04-03231)

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	<u>IDENTIFICATION</u>	<u>ENTERED</u>
<u>PLAINTIFF' S:</u>		
1 - Summary of Offsets And Description Sheet		12

P R O C E E D I N G S

(10:40 A.M.)

THE COURT: All right, let's see; what's the next one I've got?

(WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE, OFF THE RECORD.)

(WHEREUPON, PROCEEDINGS CONTINUED.)

THE COURT: All right, the next matter is *Moats Construction, LLC versus Bobby D. Sanders, Junior, et al.*, 2008-CP-04-3231 and I think we're here on a Rule 59 motion?

MR. TATE: That's correct, Your Honor.

THE COURT: And, uh, for the Plaintiff?

MR. TATE: For the Plaintiff is Ronald Tate, Your Honor.

THE COURT: And the Defendant?

MR. MCCABE: Ryan McCabe.

THE COURT: McCabe?

MR. MCCABE: Yes, sir.

THE COURT: Very good; thank you.

MR. MCCABE: Thank you, sir.

THE COURT: All right, I think it is the Plaintiff's motion?

MR. TATE: Yes, sir.

THE COURT: All right.

1 **MR. TATE:** If it please The Court, again I'm Ron
2 Tate for the Plaintiff in this case. Rather unique
3 circumstances, Your Honor, this is a -- a Rule 59 motion
4 in which neither counsel appearing before you today have
5 anything to do with the trial.

6 **THE COURT:** I was looking; that's why I -- I
7 appreciate your advising, uh, your representation.

8 **MR. TATE:** Mr. -- Mr. McCabe, uh -- uh, represented
9 the Defendant for a while as I understand it. Uh -- he
10 did not try the case before Your Honor. And I have been
11 retained as of, I believe, April the first to, uh,
12 essentially take this matter over, uh, to, uh -- LeFevre,
13 uh, tried it. Uh -- tried it for a half a day, Your
14 Honor, back in, uh -- on March the 15th of 2012.

15 Uh -- it is a mechanic's lien action, of course; uh,
16 there was a -- a disputed fact as to who, uh, asked Moats
17 Construction to install the driveway at a -- a residence.
18 And, uh, The Court issued a ruling and order, uh --
19 presumably the order, uh, that was proposed by the, uh,
20 the Defendant, uh, which, uh, held that the mechanic's
21 lien that, uh, Moats Construction had filed was not valid
22 for various reasons and finding, uh, based on the
23 evidence presented, that, uh, there was in fact no
24 contract. There were no relationship between Moats
25 Construction and the Defendant Sanders, the homeowner.

1 Uh -- one other unique thing about this case is
2 that, uh, The Court signed the order, uh, in question on,
3 uh, March the 28th of this year, uh, about a year after
4 the, uh -- the trial.

5 Uh -- we were retained to file a Rule 59 motion and
6 we did that. We're asking The Court today to reconsider
7 The Court's rulings, to reconsider some of the findings
8 that were made in The Court's order, um, and alter or
9 amend the judgment. Or frankly, Your Honor, ask for a
10 new trial for -- for various, uh -- for various reasons.

11 We, of course, recognize the difficult burden that
12 a -- a party in our situation has to overturn factual
13 findings made by The Court in a non-jury action. But, we
14 do ask The Court to consider a couple of things.

15 One is the passage of time that took place between,
16 uh, the trial and signing of the order. And here, The
17 Court made factual findings that were, uh, in large part
18 based on -- or at least in some part based on -- findings
19 of credibility and believability of the witnesses, uh, on
20 a, uh, a disputed fact over how -- why Moats Construction
21 was doing the work and for whom.

22 Uh -- and over the course of that year, uh, that
23 passed, uh, some of those, uh -- uh -- some of those
24 notions about believability and credibility may be a
25 little, uh, clouded by the passage of time.

1 Uh -- and we would ask The Court to reconsider some
2 of the -- those findings, uh, especially where we
3 believe, when looking at the transcript, uh, they are
4 inconsistent with the evidence or appear, uh, largely
5 contradicted by circumstantial evidence.

6 And, Your Honor, finally we have taken issue with
7 some of the legal conclusions applying the offset rule,
8 uh, which ultimately resulted in The Court finding that
9 the, uh, the general contractor, the home builder, uh,
10 was not owed any money, uh, by the Sanders on their
11 contract.

12 And I will -- I will, uh, address those -- those
13 issues, uh, in just a moment if I may.

14 And finally, in determining that the, uh, mechanic's
15 lien notice and certificate that was filed by Moats
16 Construction, uh, way back in '08 was defective as a
17 matter of form. I believe there are about three issues
18 that I wanted to address on that.

19 But if I may first, uh, talk about the -- the
20 factual, uh, findings of The Court, uh, circumstantial
21 evidence, of course, uh, is -- played a large part --
22 from reading the transcript, played a large part in, uh,
23 the trial. And let me just refresh The Court's, uh --
24 uh, recollection on some of those circumstantial, uh,
25 evidentiary issues. Because, it is undisputed that, uh,

1 on or about March the 28th of 2008 the, uh -- uh,
2 homeowners, Sanders, the builder, a fella named Beal,
3 and, uh, my client, uh, Russell Moats, met at the house
4 site, um, and to discuss the layout of the driveway.
5 There's no dispute that Mr. Sanders was building -- was
6 present at the time. Mr. Sanders conceded that he told,
7 uh, Mr. Moats where he wanted the driveway laid out --
8 that's in the record, that's in the testimony.

9 And at the time, Your Honor, uh, the evidence is
10 pretty clear from the testimony that the relationship
11 between Mr. Beal, that home builder, and the, uh, the
12 Defendant, Mr. Sanders, was deteriorating. In fact, I
13 believe Mr. Sanders testified that either that day that
14 they met to lay out the driveway or the next day was the
15 very last time Mr. Beal personally had anything to do
16 with the -- with the house. And ultimately, uh --
17 ultimately, Mr. Beal was terminated.

18 Uh -- as well as, uh, a lien having already been
19 filed on the property, Your Honor. The lien was filed in
20 March by, uh, another, uh, subcontractor of Beal. And,
21 uh, that, uh, Mr., uh, Sanders testified did, uh, have
22 some impact on their relationship.

23 And, uh, Mr. Moats himself testified that the --
24 that he had some concerns about working for Mr. Beal; did
25 not want to do that, all of which lead to him --

1 according to his testimony, Mr. Moats said that he had
2 those concerns and he did not want to do business with
3 Mr. Beal and so he believed he had an agreement with the
4 homeowner to pay for the driveway.

5 Further, circumstantial evidence supporting the
6 direct contract is the fact that there was an assurance
7 given by Mr. Sanders to Mr. Moats -- and there's no -- no
8 dispute about the fact that there was an assurance given.
9 Uh -- there -- there is a dis- -- there is really no
10 dispute that this conversation took place. Uh -- even if
11 you believe Mr. Sanders' account of that conversation,
12 there can be no doubt Mr. Moats was assured by
13 Mr. Sanders that he would be paid. Uh -- Mr. Moats, uh,
14 said that while the work was going on he talked about
15 payment with Mr. Sanders and was assured he would be
16 paid. He was assured that there would be money available
17 in this escrow account he testified about that, uh,
18 Mr. Sanders had. That money would be available to pay
19 this bill. And that is a key fact.

20 Uh -- Sand- -- Mr. Sanders admitted this discussion
21 took place where Moats was assured that there would be
22 money to pay him in the escrow, uh, account. And that
23 was during the performance of the work.

24 And, this establishes at least, if not a contract,
25 then at least promissory estoppel. And that was for

1 either the contract claim or the alternative claim that,
2 uh, Mr. Moats made at trial quantum meruit for it. And
3 we would urge The Court to reconsider finding there was
4 no contract and no entitlement to quantum meruit.

5 And then factually, uh, this is -- it was important
6 to note that, um, at -- at the time that this work was
7 done in, uh, in March of 2008, there was some twenty-
8 three thousand dollars that remained in the escrow, uh,
9 account.

10 Uh -- after the work was done, Mr., uh, Sanders
11 chose to take the money out of the escrow account and,
12 uh, we do not know what, uh, happened to it but he says
13 he spent it on -- on various things, including, uh,
14 paying, uh -- basically paying himself liquidated damages
15 for delay. But the -- and the Defendant, Mr. Sanders,
16 admitted making numerous payment, uh -- uh, for the,
17 uh -- uh, work -- for the construction of the work after,
18 uh, the Moats' lien was filed.

19 The Moats' lien was filed on May the 28th of 2008,
20 and there were four payments made in June, about three
21 thousand dollars, and the Defendant admitted that even
22 after making those payments about twenty gran- --
23 thousand dollars in contract money remained available.
24 And the Defendant admitted, on page fifty-three of
25 this -- of this -- of the trial transcript, that until

1 December of 2008 he had sufficient money in the escrow
2 account to pay the lien. And this is critically
3 important to the legal issues and the offset issues here.
4 This was the account from which the construction funds
5 were to be taken, and those were funds set aside for
6 payments to the -- the homebuilder, uh, Beal, under the
7 construction loan. And instead of paying this lien and
8 paying other, uh -- uh, expenses of completion, the
9 Defendant here just chose to remove the money from the
10 account for his own benefit.

11 Further, Your Honor, the Defendant admitted in his
12 testimony that he had no complaints with the work that
13 Moats had done and that Moats had been paid nothing for
14 the installation of this -- of this concrete work.

15 Uh -- and further, the -- frankly, the best evidence
16 of -- of -- the best, uh, circumstantial evidence of the
17 existence of a direct contra- -- contract is the bill
18 that Mr., uh, Moats, uh, prepared and sent to, uh -- or,
19 tried to send to Mr. Sanders on the very day that the
20 work was complete. And that, of course, is in the
21 record.

22 Now if I may, I'd like to, uh, briefly address the
23 legal issues and the offset, uh, issue and the form
24 issue.

25 Uh -- first, Your Honor, we, uh, have asserted that

1 the credits that were given as an offset to the contract
2 price -- as an offset to the remaining contract funds --
3 uh, were, uh, in excess of those that were contemplated
4 or allowed by the Mechanic's Lien Statute. The statute
5 provides, of course, that there is a limit on the amount
6 of a -- of recovery given to a mechanic's lien claim.
7 And what this involves is the -- the statutory provision
8 basically that protects an owner from having to pay twice
9 for the same work.

10 Um -- and what, uh, the -- the Defendant asserted at
11 trial was that he was entitled to get credit for a lot of
12 different types of -- of -- a lot of different types of,
13 uh, of damages. That he was entitled to offset the
14 amount of contract funds that were made available, uh --
15 uh, against, uh, contract damages he had, delay damages
16 he had, warranty work and warranty repairs that he had to
17 have made. And -- and also to deduct from those
18 remaining contract funds the, uh -- uh, the incomplete
19 work.

20 And I have prepared a -- a little summary that I
21 have, uh, provided to Mr. McCabe today and I would like
22 to hand up to The Court if I may just by way of a -- a
23 summary and by way of hopefully shedding some light on
24 our position.

25 **THE COURT:** Any objection?

1 **MR. MCCABE:** No objection, Your Honor.

2 **THE COURT:** Very good. Is this gonna be a -- a
3 Defendant's exhibit, or...

4 **MR. TATE:** If I may introduce it as an exhibit.

5 **THE COURT:** Well, very good then, let's have it
6 marked.

7 **MR. TATE:** If I may also, Your Honor, uh, provide
8 you a copy of Defendant's exhibit three to -- which was
9 introduced at trial? Just---

10 **THE COURT:** Very well.

11 **MR. TATE:** ---thank you.

12 **COURT REPORTER:** Defendant's or Plaintiff's?

13 **MR. TATE:** This will be Plaintiff -- Plaintiff's
14 exhibit for today.

15 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 1 WAS
16 INTRODUCED INTO EVIDENCE.)

17 **MR. TATE:** If I may?

18 **THE COURT:** Certainly.

19 **MR. TATE:** Thank you.

20 **THE COURT:** This is Plaintiff's number one?

21 **MR. TATE:** Yes, Your Honor.

22 **THE COURT:** And would the Defense number three from
23 trial be a -- an attachment, or?

24 **MR. TATE:** Uh -- Your Honor, you can, uh, consider
25 that, uh, any way that you want.

1 **THE COURT:** Well, it's not how you -- I want to
2 consider it.

3 **MR. TATE:** Yes, sir.

4 **THE COURT:** I want to know how you want it
5 considered.

6 **MR. TATE:** I -- it -- it goes along with the summary.

7 **THE COURT:** Very good.

8 **MR. TATE:** Because what I've done---

9 **THE COURT:** That's what I asked; very good. Thank
10 you.

11 **MR. TATE:** Thank you. Uh -- as I -- as I said, the
12 statute provides that certainly, uh, a -- a homeowner is
13 not, uh, obligated to a mechanic's lien claim if -- if
14 he's already paid for the work. There's no doubt about
15 that; the statute so provides.

16 But a homeowner, uh, may not, we think, uh -- uh,
17 provide, uh, probably twenty-five different categories
18 of -- of damages here as an offset, particularly where
19 those damages do not relate to the contract price for the
20 improvements. And that's what the statute says. The
21 statute is quoted here on my summary. In no event shall
22 the aggregate amount of the liens exceed the amount due by
23 the owner on the contract price.

24 But here, Your Honor, the, uh -- the, uh, order, uh,
25 provided credit for things like, uh, landscaping in excess

1 of the contract. For a water bill that was paid. For
2 delayed closing fees of four thousand, four hundred
3 dollars given to the bank, and for liquidated damages for
4 late performance. And that's twenty-three hundred and
5 sixty dollars.

6 Um -- so those damages are basically consequential or
7 incidental contract damages that we do not believe
8 properly offset the contract price. The amount owed and
9 the amount owed at the time of the lien -- at the time of
10 the lien in, uh -- in May of, uh, 2008. So, we think that
11 those damages were -- were not, uh, properly before The
12 Court and not considered.

13 *Wood versus Hardy*, the case that, uh, has been
14 bantered about a -- a -- a good bit in this -- in -- in
15 this case, uh, does say that the time for determining, uh,
16 how much money is due by the owner on the contract price
17 is the time that the lien is filed. And so, we would have
18 to look to that, uh, May timeframe. And of course, I also
19 remember -- remind The Court of the -- of the testimony
20 that in December -- or at least as of December of 2008
21 there still remained twenty thousand dollars in that
22 escrow account.

23 So, Your Honor, we believe that there is more than
24 adequate money to pay the lien; that those offsets should
25 not be considered, and that, uh, some of the offsets,

1 particularly those that concerned warranty work -- and
2 that's the biggest part of it -- the -- there's twenty-
3 seven thousand dollars by my calculation that I would say,
4 uh, represents warranty work that was -- that should not
5 be properly deducted from the contract price. That the
6 builder would be obligated to come back and take care of
7 these matters. Uh -- but that's not what happened here.
8 And certainly, that warranty obligation did not arise at
9 the time the lien was filed. So, that makes these
10 warranty claims somewhat speculative.

11 I'll, uh -- uh, move on, uh, and also say that one
12 category of -- of, uh, damages that The Court considered
13 by way of offset was the attorney's fees and other
14 litigation costs. We think that's a little bit of double
15 counting, uh, since of course The Court awarded attorney's
16 fees in favor of the Defendant in this case, uh, as a
17 prevailing party under the Mechanic's Lien Statute. So,
18 it was kind of a double whammy hit against Mr. Moats here
19 when, uh, the, uh, calculation of the damages and the
20 offset included the attorney's fees and costs. And then,
21 of course, he got a judgment against Mr. Moats -- against
22 Moats Construction -- uh, for those same attorney's fees
23 and costs.

24 So, uh, properly deducted from the contract price
25 were a few items and -- and that little twenty-seven

1 hundred, eighty-nine dollars, that's reflected in the
2 summary, so I won't -- I won't, uh, beat that dead horse.

3 I do want to address very briefly four issues. The
4 Court's order found, uh, there were, uh, like three
5 issues, uh, with the form of the notice and certificate of
6 lien.

7 Uh -- one is that the, uh, Court's order, uh, said
8 that the, uh, labor and materials were not properly
9 described. Uh -- the notice though does say that the
10 labor, services, and materials were provided by, uh, Moats
11 Construction for the improvement of the real estate. The
12 statute does not require anything more specific than that.
13 In fact, I think the language of the -- of the certificate
14 seems to mimic the language of the statute. Uh -- and no
15 one appeared to speak that this work was not done. I
16 think everybody understands what the work was based on
17 that it was driveway work -- flat work for the -- for the,
18 uh -- uh, for this house. And nobody really disputes the
19 contract price. Uh -- and so, that, uh, concern about
20 the -- the form of the lien notice would not seem to be,
21 uh -- uh, warranted and would not -- would seem to im- --
22 impose a -- a higher standard on mechanic's lien claimed.

23 And likewise, The Court held in the order that the
24 date of -- uh, the date when the service was provided
25 needed to be, uh, specified in the mechanic's lien

1 certificate. The, uh, order noted that the, uh -- noted
2 the last date of the work. It did not, of course, say
3 when the work began, but there's no statutory requirement
4 that it do so. And there's no -- even -- not even a
5 statutory requirement that it say the specific date of
6 last work. It just has to say that it was within ninety
7 days of the filing of the -- or, the service of the -- of
8 the lien notice.

9 And so, Your Honor, uh, all of those, uh, things we
10 would ask The Court consider. Um -- I mean, frankly, I
11 would, uh, hope this Court would consider, uh, granting a
12 new trial, uh, and allow, uh, us to go back before you
13 and, uh, and present, uh, present the evidence, uh, to you
14 again and, uh, maybe -- maybe, uh, shed a little bit more
15 light on -- on some of those issues.

16 **THE COURT:** All right. Mr. McCabe?

17 **MR. MCCABE:** May it please The Court? Judge, I'm
18 gonna jump around a little bit and -- and tackle the
19 various issues that he raised.

20 Uh -- first, on the facts, it's absolutely -- and it
21 was vigorously disputed between the parties -- as to
22 whether or not at the meeting, uh, my client entered into
23 any type of contractual arrangement. And in the order --
24 at the trial, Mr. -- and -- and I would remind The Court
25 that the Plaintiff, in his Complaint and throughout this

1 case, took the position that he had a contract with
2 Mr. Beal. It wasn't until after the bankruptcy discharge
3 in the first day of trial that he took the position that
4 then he had a contract with my client.

5 The Court heard all this evidence, The Court
6 considered the fact that Mr. Sanders disputed that there
7 was a contract, The Court heard that Mr. Moats said, yeah,
8 he -- he did say he'd pay him, The Court considered all
9 that. It was a -- a matter -- a factual issue that The
10 Court made the decision after hearing the testimony of all
11 the parties.

12 On this issue of warranty, um, this is a -- a new
13 argument; this has never been raised before. Essentially,
14 what happened at the end is the Sanders were out forty-six
15 thousand dollars. And -- and we keep referring to an
16 escrow account. I think, to put it in a little better
17 context, this was a construction loan, and there was
18 approximately, I think, twenty-three thousand dollars left
19 that could be drawn on that based on the original contract
20 price.

21 At the time -- the testimony was that at the time
22 these liens became known to Mr. Sanders -- Mr. and Mrs.
23 Sanders -- that they immediately stopped payment. But
24 Mr. Beal, the builder, had overdrawn because he had a
25 right to go draw the money off the construction loan as he

1 did the work. So, he had overdrawn, before they had any
2 notice of any of these problems, before they had notice of
3 the mechanic's liens. They immed- -- the testimony was
4 that they immediately stopped. They made no payments.

5 Now, I think it can't be the warranty work because
6 the testimony was that after the money was frozen and the
7 mechanic's liens started coming, Mr. Beal left; he
8 abandoned this project. It wasn't complete. The
9 testimony was that the work was incomplete and defective.

10 So, I don't think we even have to get into this issue
11 about the forty-six thousand dollars. I just looked at
12 this exhibit one and you go to line number three. It
13 says, twenty-seven thousand dollars -- twenty-seven
14 thousand, sixty dollars and thirty-one cents for warranty
15 work. That's for work incomplete or defective. That
16 exceeded the amount remaining under the contract at that
17 time by seven thousand dollars. That's before you even
18 get into this argument about the attorney's fees and about
19 liquidated damages and all these other offsets that were
20 included in the contract -- at least as far as the, uh,
21 the twenty dollars a day. And the testimony was that the
22 Sanders had to pay rent while the house was being
23 constructed. They had ran over months, and so they were
24 entitled to twenty dollars a day. It wasn't a penalty; it
25 was tied to the amount of rental that they had to pay

1 while this house was under construction.

2 On this issue about the length of time, there were
3 two orders that were entered by The Court by my
4 recollection, granting additional time because the lawyers
5 asked for additional time of The Court and The Court
6 graciously gave the parties additional time to brief the
7 issue.

8 **THE COURT:** Well, that -- that's important to me. I
9 think you're probably right, and I'm sorry you, uh, didn't
10 realize that, uh, that trial was on March the 15th 2012.
11 And the order was ready on, uh, September the 12th of 2012.
12 And that The Court did require further, uh, information to
13 be sure that, um, particularly the, uh, attorney fees or
14 at least the costs were going to be if, uh, appropriate
15 when it was properly substantiated.

16 **MR. MCCABE:** Your Honor, I -- I'm---

17 **THE COURT:** That I -- so I hope you don't, uh,
18 attribute it all to The Court's---

19 **MR. MCCABE:** No, sir, I -- I -- I don't---

20 **THE COURT:** ---uh, neglect that---

21 **MR. MCCABE:** ---I don't attribute---

22 **THE COURT:** ---that---

23 **MR. MCCABE:** ---that in any way. And I have not---

24 **THE COURT:** Any time you're finished, I'll be glad to
25 finish my sentence.

1 **MR. MCCABE:** I'm sorry, Your Honor.

2 **THE COURT:** Okay. I just hope that you understand
3 that I do try to be as, um -- uh, responsible as I can.
4 And in this case -- and I understand attorneys have other
5 demands too -- they took, uh, from September to March
6 before, uh, I was satisfied with the information that was
7 there.

8 All right, you may proceed.

9 **MR. MCCABE:** Yes, sir. And, uh, I take the service
10 on a large part of that delay. Mr. Gambrell is no longer
11 in my firm; I picked up after the hearing had---

12 **THE COURT:** As I say, I understand those sort -- sort
13 of things. Uh -- admittedly, my memory is not as good as
14 it used to be, if it was ever good at all, and I feel
15 like -- well, I say -- all right.

16 **MR. MCCABE:** Additionally, for the record, I would
17 point out that a transcript was circulated to The Court
18 that brought that benefit of a transcript, uh, shortly
19 after pre- -- preparing these orders and the proposed
20 orders and the briefs that were submitted after the
21 hearing.

22 Um -- so, I mean, I -- I just dispute, based on this
23 transcript, that there was any agreement about, uh,
24 setoffs or anything of that nature. And -- and
25 Mr. Sanders vehemently denied that he ever entered into

1 agreement. And -- and there's tons of -- in the order,
2 tons of findings by The Court where The Court went through
3 and said -- went through each piece of testimony that was
4 offered. There's a whole paragraph in there where we went
5 through and analyzed the testimony of parties and The
6 Court found that Mr. Sanders' testimony, uh, was more
7 credible.

8 Now, on this, um, issue of unjust enrichment, even by
9 his exhibit one, shows that the Sanders were out, uh, this
10 forty -- over forty thousand dollars. They ended up
11 moving into the house -- it's very difficult to argue that
12 they were unjustly enriched under this arrangement.

13 Um -- so when you come back on this mechanic's lien,
14 by their own admission -- and -- and for the record,
15 Judge, during the trial there was no testimony refuting.
16 As a matter of fact, uh, the Plaintiff agreed that the
17 workmanship of the builder was very poor. He acknowledged
18 that the quality and the reputation was poor. He
19 acknowledged -- uh, I think he was shown some photos; he
20 agreed that it was, uh, some bad work. Uh -- he testified
21 that his cousin had a bad experience and he knew about it
22 before he went out there. Uh -- no doubt, when you throw
23 those -- do the -- just the simple math in this, that
24 there was twenty thousand dollars, there was no testimony,
25 no evidence, no one refuted that the Sanders were out

1 twenty-seven thousand dollars at a minimum for bad
2 workmanship. And it can't be warranty work if the
3 contractor abandoned before the project was complete. It
4 would be defective work and work that needed to be
5 completed. And at the time they were served with notice
6 of a mechanic's lien, the testimony was that this work
7 was incomplete on the day they received notice, and that
8 is found in the transcript on page fifty-nine, uh, line
9 seventeen.

10 And, if The Court will indulge me while I check my
11 notes here and make sure I touched on -- on all the issues
12 that he's raised?

13 (After pause) On the issue of the mechanic's lien, I
14 believe there's a -- I really think there's a
15 misunderstanding. At trial, I believe there was this
16 issue about when this aggregate amount by -- in the -- in
17 the orders and the hearing. And under 29-5-20, under B it
18 says -- it doesn't say anything about having to double
19 pay. The language says, in no event shall the aggregate
20 amount of liens filed by subcontractors hired exceed the
21 amount due by the contract.

22 The mechanic's liens -- there were eight of 'em --
23 they exceeded the amount, uh, that was left owing on this
24 contract. And what was interesting about this was there
25 is an exception. It says, unless you provide a notice of

1 furnishing. And there was this issue at trial of whether,
2 he sent notice, and The Court found that he didn't. The
3 only testimony was that he sent an invoice that was
4 produced at trial, uh, I believe -- my recollection is, it
5 was the first time, it wasn't in discovery -- where he
6 produced a document and he said, I sent this invoice to
7 the Sanders. The problem with that invoice is, it had an
8 address for the Sanders two residences ago and the
9 testimony was that they didn't even live at that place at
10 the time the work was performed by Mr. Moats. And The
11 Court looked at that document.

12 Even if we just take out the dispute about whether
13 the document was valid and whether it was really sent, if
14 we just look at the document on itself, his testimony was
15 that he sent it to their old address. So, it -- it --
16 there could not have been a notice of furnishing even
17 under their best case scenario, which, uh, was disputed.

18 So, under 29-5-20, sub B, it didn't meet any of the
19 elements for a notice of furnishing. And had he met that,
20 he might be able to argue that the full amount of money
21 wasn't expended on the line item for the driveway.

22 However, taking the testimony undisputed that was
23 presented to The Court, what was left on the contract when
24 the mechanic's liens started flowing in and the Moats
25 withheld money was the retainage -- the ten percent

1 retainage that was left on the contract.

2 Well, whatever the retainage was, it was roughly ten
3 percent. So the most, even under that argument, that
4 would have been available would have been ten percent of
5 the driveway, which would have been about five hundred and
6 ninety bucks.

7 Then still, the Moats still had to climb up this
8 forty-six thousand dollar problem. And if you give them
9 credit for all the attorney's fees that were spent dealing
10 with all the legal issues of eight mechanic's liens, all
11 the other problems, they still have to overcome the
12 twenty-seven thousand dollars which is more than was left
13 from this contract for the defective and incomplete work.
14 And that wasn't challenged at trial.

15 Today it's being called warranty work, but I don't
16 think that was ever raised at trial, and that's a new
17 distinction. But the bottom line is, whether you call it
18 warranty work or defective work or incomplete work, it was
19 a problem and the testimony, undisputed, was that it
20 existed on the day the Sanders learned that they had a
21 problem with subs' liens.

22 And, uh, Judge, I think I've addressed all of the
23 issues raised in the Motion to Reconsider. Thank you.

24 **MR. TATE:** If I -- may I briefly, Your Honor?

25 **THE COURT:** Certainly; I think -- no, take your time.

1 **MR. TATE:** Uh -- to address the -- the issue that
2 this was a new matter, uh, I do want to point to The
3 Court, beginning on page a-hundred-and-two of the
4 transcript, Mr. LeFever, uh, did cross-examine, uh, the
5 Defendant on a number of these issues, uh, and brought out
6 the fact that many of these, uh, iss- -- issues did not
7 relate to the original work. Uh -- also -- and -- and
8 this is really in the nature of the work that needed to be
9 corrected -- complete work. It was -- it was complete; it
10 was installed and in place. And in fact, on May the 15th,
11 a certificate of occupancy was issued. So, the work was
12 all done by then. And then only later did, uh,
13 Mr. Sanders decide he was dissatisfied and needed to,
14 uh -- uh, do some additional work to -- to make some
15 repairs. I mean, nine thousand dollars of this is to
16 re- -- repair or replace the carpet because he was not
17 satisfied with how it was laid and stretched out he said
18 in the trial.

19 Um -- you know, the carpet is there and the
20 contractor would be entitled to be paid for that carpet
21 and a certificate of occupancy was iss- -- was issued.
22 Uh -- and then later on these problems arise. That's---

23 **THE COURT:** Well let me ask you -- and again, uh --
24 as -- as -- as you say, I -- my memory is not satisfactory
25 knowing everything, but, uh...

1 All right, did they, uh -- uh, occupy the house under
2 the certificate?

3 **MR. McCABE:** I don't know that that's in the record,
4 Your Honor. I---

5 **THE COURT:** Well, I mean, I don't know, I---

6 **MR. McCABE:** ---I don't know the answer.

7 **THE COURT:** ---well, I was just curious.

8 **MR. TATE:** I presume so.

9 **THE COURT:** When did they -- I -- I thought you were
10 telling me, uh, at the beginning -- I haven't seen the
11 transcript in some time -- uh, that, uh -- is there
12 anything in there that, uh, he actually went into, uh,
13 occupy of the, uh, residence? I'm just curious; um, I---

14 **MR. MCCABE:** I don't remember in the evidence. I
15 know separately that it extended out -- I can't remember,
16 six or seven months they -- or something like that -- they
17 lived outside.

18 **THE COURT:** That's what I -- I though too, but I
19 just -- I didn't know, and I -- you -- you talk about
20 something as simple as, what is it, um, the carpet needs
21 to be stretched or something like that. Sometimes people
22 find that some -- somewhat, uh, inconvenient.

23 **MR. TATE:** I'll, uh -- I will point out that maybe
24 the answer lies in the Defendant's exhibit three, uh,
25 where the claim for the per diem, which is basically the

1 delay damage, extended from 5/27/08 to 7/15/08. And, uh,
2 that was for a thousand dollars. So that's the kind of
3 thing that they're---

4 **THE COURT:** Well, so 5/27/08 to, um---

5 **MR. TATE:** To 7/15, Your Honor.

6 **THE COURT:** And the certif- -- certificate of
7 occupancy was on the 15th?

8 **MR. TATE:** The certificate of occupancy was on May
9 the 15th.

10 **THE COURT:** Uh-huh.

11 **MR. TATE:** Again, the house was done, there's
12 warranty problems, there's punch-list things; every house
13 has -- has the same -- the same, uh -- uh, thing.

14 **THE COURT:** Every what is the problem?

15 **MR. TATE:** Every house has the same sort of sequence.
16 You get -- you get completion, you get a certificate---

17 **THE COURT:** Well I---

18 **MR. TATE:** ---of occupancy.

19 **THE COURT:** ---well I see.

20 **MR. TATE:** You have a punch list; you have warranty
21 problems that come up. But, none of this had anything to
22 do with Mr. -- with Mr., uh, Moats.

23 Uh -- again, at the time of the lien -- the case law
24 is very clear that you judge the amount due under that
25 contract at the time of lien. And as I said, there's at

1 least twenty thousand dollars that's still there and
2 available according to the testimony.

3 Thank you, Your Honor.

4 **THE COURT:** Thank you. All right; yes, sir---

5 **MR. MCCABE:** Yes, sir. They only had it on paper.

6 **THE COURT:** ---rebuttal?

7 **MR. MCCABE:** I'm sorry.

8 **THE COURT:** That's okay, I'm just thinking about
9 pleadings or whatever. All right, after we have, um --
10 uh, reply, then we have rebuttal. So you go ahead.

11 **MR. MCCABE:** Thank you, Judge. Page one-o-two
12 doesn't deal with the warranty. Again, I'm -- I'm
13 confident that the warrant -- this -- this is a new
14 theory, um, of -- of a way to deal with the same bad
15 facts. And that is, the work wasn't complete. When they
16 found out about it, yes there was twenty thousand
17 remaining under the contract. But, there were forty-six
18 thousand dollars in problems and there were twenty-seven
19 thousand by their own admission in construction problems.

20 And, at that time, the testimony -- Mr., um, Sanders
21 testified that he didn't spend all that money and make all
22 those repairs because he only had twenty thousand dollars
23 left on his loan. He took out the mortgage -- he was
24 stuck with the house, he had to move in it.

25 Um -- so the testimony was that, uh, he could not

1 afford to make the repairs, he had twenty thousand dollars
2 and eight people asking for it in -- in a project that was
3 not finished.

4 And his testimony was also that, uh, he was sorry
5 that Mr. Moats didn't get paid and he was sorry that the
6 other folks didn't get paid and he was sorry that he was
7 out forty-six thousand dollars.

8 **THE COURT:** All right.

9 **MR. MCCABE:** Thank you, Judge.

10 **THE COURT:** Surrebuttal?

11 **MR. TATE:** No, Your Honor.

12 **THE COURT:** Okay; thank you very much. All right,
13 um, (after pause) I'm almost hesitant to, uh, to suggest
14 that The Court wants some time to look at a file this old
15 and all of that. But I don't -- I think I best.

16 I might note, I, um -- as I say, The Court had made
17 its determination back in, uh, September, uh, which was
18 six months, but that's not bad when you consider you got
19 a -- a -- vacation time and all that. And I was depending
20 on the attorneys to provide, uh, further briefs and more
21 information.

22 But, uh, I -- let me ask you this. I'm not sure if I
23 have a copy of the transcript any longer, but, um -- but I
24 would like one. Do you have an extra one by any chance?
25 And I don't care if it's highlighted 'cause it really

1 doesn't make any difference to me.

2 **MR. MCCABE:** I do. I think I have an electronic
3 version as well as my copy.

4 **MR. TATE:** Uh -- I likewise have it, uh,
5 electronically. Uh -- this is not marked up; I'm happy
6 for you to take it.

7 **THE COURT:** All right, well let me take the unmarked
8 one then---

9 **MR. TATE:** Yes, sir.

10 **THE COURT:** ---that's the... And, uh, I'm also sort
11 of reluctant to give you any timeframe. Uh -- it -- it
12 looks like we're back in that same, what is it, uh, period
13 of the year and, uh, we're looking at, uh, something else
14 and, um, business in front of us.

15 And families have demands and questions about what
16 we're gonna do this summer. So, I'll try to get it to you
17 as soon as possible.

18 As I understand, your motion is to, uh, alter or
19 amend, uh, the judgment or this, uh -- the order. All
20 right, and if -- if The Court finds it is necessary and
21 deems appropriate or to grant a new trial in the
22 alternative. Um -- or, deny the motion. So those are the
23 three, uh, things that were put before The Court today; is
24 that correct?

25 **MR. TATE:** Yes, sir.

1 **THE COURT:** All right. And is that what you
2 understand, uh, Mr. McCabe?

3 **MR. MCCABE:** Yes, sir.

4 **THE COURT:** All right. Uh -- let -- let's do, um --
5 one of the things, if I remember the case, uh, somewhat,
6 because as I say I, uh, was a little concerned about the
7 itemized, uh, costs of what I was originally submitted and
8 I think, uh, it was some, what, forty thousand dollars on
9 the, uh, Defense graph and I think I reduced it to what,
10 uh, The Court deemed proper as, uh, the mechanic's lien,
11 which was some four thousand dollars.

12 **MR. MCCABE:** I think The Court basically said zero.
13 That -- that's the way I read the order. It said, there's
14 twenty-three thousand, there's forty-six thousand, I'm
15 zeroing it out under this language of the statute.

16 **THE COURT:** Uh-huh; that's right, very well. All
17 right, very good.

18 Um -- now I am gonna do this. Uh -- uh, inasmuch as,
19 um, time or carry is of the essence in this particular
20 matter, I am going to require the attorneys, if they
21 would, or their -- someone in their office, to contact my,
22 um, law clerk as soon as they feel any anxiety.

23 **MR. MCCABE:** Yes, Your Honor.

24 **MR. TATE:** There will not be any, Your Honor.

25 **THE COURT:** No, I'm serious. I know, 'cause, uh,

1 sometimes, you know, we do have to have a little nudge,
2 what I would say. Well I -- and -- and I -- I do not
3 object to -- I'm not -- I don't take offense. In fact,
4 I'd rather get something out of the way so I can, you
5 know, not have to think about it anymore.

6 **MR. MCCABE:** Yes, Your Honor.

7 **THE COURT:** So, but -- so -- no, really, I -- after
8 what you deem appropriate, if I haven't responded, um,
9 don't hesitate to contact my law clerk.

10 **MR. MCCABE:** Thank you.

11 **THE COURT:** Not me; don't -- you don't come see me or
12 anything like that, but I -- if you would, tell me that
13 you -- you are concerned. Give me -- if I needed anything
14 else, I think that's the polite way to do it.

15 **MR. TATE:** Yes, Your Honor.

16 **MR. MCCABE:** Thank you, Your Honor.

17 **THE COURT:** And if I do need some further, um -- uh,
18 briefing or whatever, I will request it.

19 **MR. TATE:** Yes, Your Honor. We're also happy to
20 provide The Court whatever information that they need.

21 **THE COURT:** Very good.

22 **MR. TATE:** Thank you.

23 **THE COURT:** All right, thank you very much.

24 (WHEREUPON, HEARING ENDED AT 11:24 A.M.)

25 *****END OF REQUESTED TRANSCRIPT*****

1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE OF REPORTER

3 COUNTY OF ANDERSON)

4

5 I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT
6 REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF
7 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
8 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE
9 PROCEEDINGS REQUESTED AND EVIDENCE INTRODUCED IN THE TRIAL
10 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
11 COMMON PLEAS FOR ANDERSON COUNTY, SOUTH CAROLINA, ON THE
12 23rd DAY OF MAY 2013.

13 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
14 COUNSEL NOR INTEREST TO ANY PARTY HERETO.

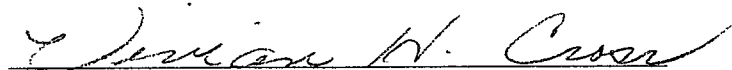
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VIVIAN H. CROSS, COURT REPORTER

21

TENTH CIRCUIT AT LARGE

22

FEBRUARY 9, 2013

1 STATE OF SOUTH) IN THE COURT OF COMMON PLEAS
 2 CAROLINA) TENTH JUDICIAL CIRCUIT
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COUNTY OF ANDERSON) CASE NO: 2008-CP-04-3231

MOATS CONSTRUCTION,)
 LLC,)
 PLAINTIFF,) TRANSCRIPT OF RECORD
 TRIAL

- vs -)

BOBBY D. SANDERS,)
 JR.; STACI Y.)
 SANDERS, et al,)
 DEFENDANTS.

MARCH 15, 2012
 ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE.

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

STEVEN B. LeFEVRE, ESQ.
 ATTORNEY FOR THE PLAINTIFF

BRIAN C. GAMBRELL, ESQ.
 ATTORNEY FOR THE DEFENDANT

ROBIN SUE HILD, FCRR, RPR
 CIRCUIT COURT REPORTER
 POST OFFICE BOX 9
 WALHALLA, SC 29691

ORIGINAL TRANSCRIPT PROVIDED FOR STEVEN LeFEVRE, ESQ.

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID/EV</u>
P-1,	Moats Construction Invoice Dated March 28, 2008	5/7
P-2,	Wells Fargo Transaction Report Dated May 20, 2008	20/20
P-3,	Property Record Detail	27/
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D-6,	Inspection Draw Release	98/99
D-7,	Premier Southern Homes Draw	98/99

1 ** START OF REQUESTED CERTIFIED TRANSCRIPT OF RECORD **

2

3 THE COURT: The next action is Moats Construction
4 versus Bobby Sanders and Staci Sanders, et al. My
5 understanding, though, that this action will be, is on a
6 mechanic's lien quantum meruit cause of action.

7 MR. LEFEVRE: Breach of contract Yes, Your Honor.

8 THE COURT: It's a breach of contract, too?

9 MR. LEFEVRE: Yes, Your Honor.

10 THE COURT: All right. '08-3231. The Court has
11 met with the counsel in chambers to find out a little
12 bit about, at least find out a little bit about what the
13 case is about, and also it's my understanding that the
14 exhibits have been marked; is that correct?

15 MR. GAMBRELL: A few of them, Your Honor.

16 THE COURT: There will be others?

17 MR. GAMBRELL: Yes.

18 THE COURT: Are there any that you can agree on
19 already so we can go ahead and have them admitted so we
20 don't have to have concern?

21 (Whereupon, counsel confer.)

22 MR. GAMBRELL: The copy of the contract will be, I
23 guess, Defendant's Exhibit Number 2.

24 THE COURT: All right.

25 MR. GAMBRELL: And then ---

1 THE COURT: Is that the only one that's been agreed
2 to as yet?

3 MR. GAMBRELL: No. The only one that's been agreed
4 to is I guess I'm gonna put this in, which is the list
5 of -- do you agree?

6 MR. LEFEVRE: Yeah.

7 MR. GAMBRELL: Do you have any objection?

8 MR. LEFEVRE: No. Plaintiff's Number 1 is good.

9 THE COURT: So Plaintiff's 1 and 2?

10 MR. GAMBRELL: It's Plaintiff 1, Your Honor.

11 THE COURT: Plaintiff's 1 and Defense?

12 MR. GAMBRELL: 1, 2 and this will be Plaintiff's 3
13 -- Defendant's 3, excuse me.

14 COURT REPORTER: Do you have the exhibits
15 somewhere?

16 MR. GAMBRELL: Those are in evidence now.

17 (Whereupon, Plaintiff's Exhibit No. 1, Moats
18 Construction Invoice, was marked for identification.)

19 (Whereupon, Defendant's Exhibit Number 1, 1A-12
20 Photographs and 1.1-1.26 Photographs, was marked for
21 identification.)

22 (Whereupon, Defendant's Exhibit Number 2, Contract
23 with General Contractor, were marked for
24 identification.)

25 (Whereupon, Defendant's Exhibit 3, List of offsets

1 and overages, was marked for identification.)

2 MR. GAMBRELL: By stipulation.

3 MR. LEFEVRE: Yes.

4 THE COURT: Let's see. That's Plaintiff's Exhibit
5 Number 1, which I understand is several photographs.

6 MR. LEFEVRE: Plaintiff's Exhibit 1 is just an
7 invoice.

8 THE COURT: Plaintiff's 1 is an invoice, okay. And
9 then defense exhibit?

10 MR. GAMBRELL: One is, I think, through the letter
11 A-1 all the way to Number 26, it's a series of
12 photographs. And Exhibit Number 2 is the contract with
13 the general contractor, and Exhibit Number 3 is the list
14 of overages and offsets.

15 THE COURT: All right. For the record, Plaintiff's
16 Exhibit Number 1 is admitted without objection; Defense
17 Exhibits Number 1 of the 26 photographs are admitted
18 without objection; Defendant's Exhibit Number 2 and
19 Defendant's Exhibit Number 3 are placed in ---

20 MR. GAMBRELL: 52 photographs.

21 THE COURT: 52?

22 MR. GAMBRELL: Yes, sir.

23 COURT REPORTER: Yes, sir. I went A through Z and
24 when I got to Z I started putting numbers on it and
25 there's 26 numbers.

1 MR. GAMBRELL: I looked at it 26 times 2, so I do
2 think I should get some sort of ---

3 THE COURT: So that would be helpful. All right.
4 So that would be 52 photographs in Defendant's Exhibit
5 Number 1. A through Z in addition to 1 through 26 being
6 Exhibit 1. All right. Anything else as far as the
7 exhibits from the Plaintiff?

8 MR. LEFEVRE: No, Your Honor.

9 THE COURT: From the Defendant?

10 MR. GAMBRELL: No, Your Honor.

11 (Whereupon, Plaintiff's Exhibit No. 1 was entered
12 into the record.)

13 (Whereupon, Defendant's Exhibit Nos. 1, 2 and 3
14 were entered into the record.)

15 THE COURT: All right. You can call your first
16 witness.

17 MR. GAMBRELL: I do have a pending motion. I had
18 filed a motion for summary judgment, but in thinking
19 about it I think it would be actually faster to put the
20 witnesses up and have the witnesses testify.

21 THE COURT: All right. I understand there is an
22 affidavit. Now, is this your affidavit in response to
23 the motion?

24 MR. LEFEVRE: Yes, sir, Your Honor.

25 THE COURT: And your summary judgment is based on?

1 Is there anything that would not be presented in the
2 trial?

3 MR. GAMBRELL: No, Your Honor, I think it will be
4 presented in trial.

5 THE COURT: All right. Very good. I'll consider
6 it at the directed verdict stage.

7 All right.

8 MR. LEFEVRE: Thank you, Your Honor. The Plaintiff
9 calls Bobby Sanders.

10 MADAM CLERK: Mr. Sanders, please step forward and
11 place your left hand on the Bible and raise your right
12 hand. (Witness complies.)

13 Do you solemnly swear or affirm the testimony you
14 will give the Court today will be the truth, the whole
15 truth, and nothing but the truth?

16 THE WITNESS: Yes.

17 MADAM CLERK: Okay. Thank you. You may have a
18 seat in the witness stand. (Witness complies.)

19 Please state your name and spell your last name for
20 the record.

21 THE WITNESS: My name is Bobby Dean Sanders, Jr.,
22 S-a-n-d-e-r-s.

23 MADAM CLERK: Thank you, sir.

24 BOBBY DEAN SANDERS, JR.,

25 having been duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 MR. LEFEVRE:

3 Q. Mr. Sanders good morning.

4 A. Good morning.

5 Q. Are you the owner or one of the owners of 311 Sunny
6 Lane here in Anderson County?

7 A. Yes, I am.

8 Q. South Carolina?

9 Okay. Did you build that home?

10 A. We had the home built.

11 Q. Okay. In other words, you didn't buy an existing
12 home, you had a home built, correct?

13 A. Correct.

14 Q. Okay. And when did you begin that process?

15 A. Um, I'm not really sure on my dates. Without
16 looking at the contract, I'm not positive on the date
17 when we started.

18 (Whereupon, counsel confer.)

19 BY MR. LEFEVRE:

20 Q. I'll just represent to you it looks like it was
21 signed on July 14, 2011. Is that accurate?

22 A. That sounds correct.

23 Q. Okay.

24 THE COURT: And that's Exhibit what?

25 MR. LEFEVRE: That's Defense Exhibit Number 2, Your

1 Honor.

2 THE COURT: All right, very good.

3 MR. LEFEVRE: And, Your Honor, can I just hand him
4 a copy of this?

5 THE COURT: Certainly. I think it would be better
6 if you did so he can identify for the record what the
7 exhibit is.

8 BY MR. LEFEVRE:

9 Q. Mr. Sanders, I've handed you up a copy of what's
10 been marked and committed as Defense Number 2. Is that
11 the contract between yourself, your wife and Premier
12 Southern Homes?

13 A. That is correct.

14 Q. And on the second to last page there's a line --
15 well, I'm sorry. The third to the last page is at the
16 bottom, it says owner's signature and it looks like your
17 name is signed down there at the bottom. Is that your
18 signature?

19 A. That is correct.

20 Q. And below that, is that your wife's signature?

21 A. Yes, it is.

22 Q. Okay. And then the next page there is an addendum
23 to the contract, also looks like, looks to be your
24 signature.

25 A. That is correct.

1 Q. And signed July 14th, 2007?

2 A. Yes, sir.

3 Q. Okay. And then there's the last page is a, looks
4 to be a Real Estate Commission addendum with your
5 signature on it.

6 A. That's correct.

7 Q. Okay. And that was also signed July 14th, 2007?

8 A. Yes, sir.

9 Q. Okay. How did you come in contact or how did you
10 find Premier Southern Homes?

11 A. When my wife and I started looking at building a
12 house we were getting several estimates from several
13 contractors and a guy at work had built a house with
14 Premier Southern Homes and he referred me to Mr. Beal
15 with Premier Southern Homes and that's how that started.

16 Q. How many estimates did you get?

17 A. We got three different estimates.

18 Q. From three different homebuilders?

19 A. From three different contractors, yes.

20 Q. Do you remember if Mr. Beal's was the highest? The
21 lowest? The middle?

22 A. It was the middle range. We didn't go the highest,
23 we didn't go the cheapest. We strictly went off of the
24 fact that a co-worker had used him, had no problems, did
25 a good job, so that helped us make our mind up.

1 Q. Okay. You mentioned a co-worker. You worked at
2 UPS?

3 A. I work at UPS.

4 Q. You still work there?

5 A. Yes, I do.

6 Q. Do you recall the co-worker's name that gave you
7 Mr. Beal's name?

8 A. Benny Clark.

9 Q. And you testified, I believe, that you said that
10 Mr. Clark told you that he had no problems with
11 Mr. Beal?

12 A. The only issues that he had was he was a little bit
13 slow and you had to stay on top of him as far as getting
14 the jobs done.

15 Q. Did Mr. Clark ever tell you about any problems that
16 he had with quality of construction from Mr. Beal?

17 A. No.

18 Q. Did Mr. Clark ever tell you about subcontractors
19 not being paid on the job?

20 A. No.

21 Q. Did you do any other research as far as looking
22 into Premier Southern Homes or Mr. Beal?

23 A. Just the fact that Mr. Beal was doing spec houses
24 for Terry Epstein Real Estate, and he was also doing
25 several homes for the employees there at Terry Epstein

1 Real Estate, which is a representative outfit, and we
2 figured if going on that line if they were using it to
3 do their spec houses that he was a reputable builder.

4 Q. Okay. So you started building the house sometime
5 in July or thereabouts in 2007; is that accurate?

6 A. They actually broke ground in August.

7 Q. Okay. When was the house completed?

8 A. Um, I'm not sure of the dates. End of May, first
9 of April we were supposed to go to closing, but the
10 house was never completed before Beal walked off the
11 job.

12 Q. Okay. So, the house, as complete as it was, I
13 understand you are saying it wasn't completed, but as
14 complete as it was, that was about April or May of 2008?

15 A. It was the end of April, first of May.

16 Q. Okay.

17 A. We were close at the end of May but we couldn't
18 because of the mechanic's lien issue.

19 Q. Do you recall when Mr. Moats came to your house to
20 do the work to put in the driveway?

21 A. Yes.

22 Q. When was that?

23 A. Oh, I don't recall the date. It was -- it had to
24 be right there towards the end of May, in May. I'm not
25 positive.

1 Q. Okay. Right, right at the end of the process; is
2 that accurate? Is that what you are saying?

3 A. Yes.

4 Q. So sometime either in April, May, sometime in that
5 range, 2008?

6 A. I'm not sure on the dates. I don't think it was
7 that late into it because it should have, you know, it
8 should been done before we had our closing date, which
9 was towards the end of May.

10 Q. Was the driveway one of the last things that was
11 done on your house?

12 A. It was one of the last completed jobs that was
13 done, but there's still a lot of uncompleted that's not
14 done. I'm thinking it was the end of March because we
15 went for an Easter weekend trip, and that just,
16 somewhere around there is when all this, as far as I can
17 remember, but I'm not positive on the dates.

18 Q. I'm just trying to get your recollection of the
19 timeframe. Sometime, end of March to May, somewhere in
20 that range?

21 A. Yes.

22 Q. Okay. How did you learn of Mr. Moats?

23 A. I didn't learn anything of Mr. Moats. The general
24 contractor hired Mr. Moats. I had no input on hiring
25 any of the subcontractors. Everything was put in the

1 general contractor's plate and he did it all from day
2 one.

3 Q. Isn't Mr. Clark that you mentioned Mr. Moats'
4 cousin?

5 A. Yes, he is.

6 Q. You didn't know that at the time?

7 A. I didn't know that until right there towards the
8 end.

9 Q. During the construction of the home, were you
10 involved daily in the -- were you out there daily
11 watching Mr. Beal build your home?

12 A. No. I would drop in on occasions. With my job and
13 the amount of hours that I worked, I wasn't able to be
14 there daily. But as a general contractor -- and the
15 reason for me hiring one is because I couldn't be there
16 daily.

17 Q. I understand. Was your wife there daily?

18 A. Not at all.

19 Q. Your wife wasn't there?

20 A. I was more involved in going out and looking over
21 things than she was, and maybe on the weekends we would
22 ride out together and see the progress.

23 Q. So in general Mrs. Sanders wouldn't go out there
24 except if you were out there just to kind of see the
25 progress. Is that accurate?

1 A. She may have went out once or twice, you know, a
2 time or two by herself but more than likely most times
3 we would go out together. It was our dream house you
4 know.

5 Q. I understand. Isn't it true, though, Mr. Sanders
6 that you instructed Mr. Moats exactly how to build that
7 driveway, exactly how you wanted it to?

8 A. I was up there the day that they were laying it
9 out. Maybe two weeks before that there was a different
10 concrete guy and he had laid it out in a way that we
11 didn't like it. And evidently Mr. Beal wouldn't pay him
12 or something happened and he walked off the job because
13 he left some of his materials out there. And I was
14 there the day we laid it out and I did have input on how
15 we laid out my own personal driveway.

16 Q. And you told them exactly how you wanted it to
17 meander up to your house?

18 A. Well just, you know, a standard driveway. It, you
19 know, it had to go up to the garage and we had to have
20 walkways to the front door and the back door. And in
21 all actuality, the turn around is built too close to the
22 house and we've had more concrete poured to this date so
23 we don't back out on the grass, we back out on the
24 concrete and go up the hill.

25 Q. Okay. When did you ever mention that ever in this

1 case before today?

2 A. Never. It didn't pertain to this case.

3 Q. Are you saying that Mr. Moats did something wrong
4 in the construction of the driveway?

5 A. No. I'm saying Mr. Moats poured a standard
6 driveway and because we had bigger vehicles we couldn't
7 back out because of the grass. I'm not saying that he
8 did anything wrong.

9 Q. Okay. I just wanted to make sure. And do you have
10 any problems with the construction of the driveway done
11 by Mr. Moats?

12 A. Other than no rear line across it, I don't think
13 should have been there within a year of the job, no.
14 And those are in the exhibit, the first Exhibit 1 for
15 the Defendant's case.

16 Q. Did you ever ask Mr. Moats to come back out and fix
17 those?

18 A. Not allowed to.

19 Q. What do you mean you're not allowed to?

20 A. I didn't hire Mr. Moats.

21 Q. Okay. But you never asked him to come back out and
22 fix those cracks?

23 A. No, I did not.

24 Q. I want to show you what's been marked and admitted
25 as Plaintiff's Exhibit Number 1. (Handing document.)

1 Do you recognize that?

2 A. Never seen it before.

3 Q. In the top left it says billed to Bobby Sanders 103
4 McLain Lake Drive, Anderson South, Carolina 29625. Is
5 that accurate? Did I read that write?

6 A. That is my name. That was my former address. I
7 wasn't living there when this was done, but I never seen
8 this and never got a copy of it because I didn't hire
9 Mr. Moats. I don't know why the bill was billed to me.
10 It should have been billed to Mr. Bill who hired him.

11 Q. The top right. Can you read what it says? Look in
12 the top right.

13 A. Do you want the date or the invoice number?

14 Q. Yeah. Just tell me what it says on there.

15 A. 3-28-2008 is the date and the invoice is 43390.

16 Q. Okay. So this invoice was sent to you March 28th,
17 2008?

18 A. No. This invoice was never sent to me. I've never
19 seen this until today.

20 Q. Okay.

21 A. And it might be because we didn't live at 103
22 McLain Lane. We were renting an apartment.

23 Q. What was 103 McLain Lane?

24 A. It was a residence we sold before we started
25 building this house.

1 Q. I just want to make sure. I may have already asked
2 this and you may have already answered it if I have.
3 Mr. Clark, Benny Clark, gave you the name of Henry Beal;
4 correct?

5 A. That's correct.

6 Q. And you testified earlier that he never said
7 anything about workmanship or the quality of the house
8 that Benny built with Henry Beal?

9 A. No.

10 Q. Never mentioned anything?

11 A. No.

12 Q. Sometime around May of 2008 there was to be a final
13 draw on the contract; is that accurate?

14 A. From what we have seen on our paper, yes that's
15 accurate.

16 Q. And it's my understanding that the number's about
17 \$23,000. Is that your understanding?

18 A. That is my understanding. That is supposedly the
19 retainage fee for the contractor.

20 Q. About \$23,654.40?

21 A. Off the top of my head that sounds right.

22 Q. Okay.

23 MR. LEFEVRE: Your Honor, if I can mark this
24 Plaintiff's Exhibit Number 2, and I don't believe there
25 is an objection to it.

1 MR. GAMBRELL: No.

2 THE COURT: Any objection to Plaintiff's Exhibit
3 Number 2?

4 MR. GAMBRELL: No, Your Honor.

5 THE COURT: All right. Without objection. Now
6 let's go off the record so she can do that.

7 (Whereupon, went off-the-record.)

8 (Whereupon, Plaintiff's Exhibit Number 2, Wells
9 Fargo Transaction Dated May 20, 2008, was marked for
10 identification.)

11 (Whereupon, Plaintiff's Exhibit Number was entered
12 into the record.)

13 THE COURT: You may proceed.

14 MR. LEFEVRE: Thank you, Your Honor.

15 BY MR. LEFEVRE:

16 Q. Mr. Sanders, I'm just going to show you what's been
17 marked as Plaintiff's Exhibit Number 2. And I don't
18 know if you will be able to identify that or not. Can
19 you?

20 A. It looks to be a draw layout where Mr. Beal made
21 the draws on the property.

22 Q. Okay. Look on the second page. There's a date I
23 believe of May 20th, 2008.

24 A. Okay.

25 Q. Do you see that line?

1 A. I do.

2 Q. And can you tell me what happened on that date
3 according to that report?

4 A. On this day there was a draw Number 11 that was
5 made. It was \$23,654.40.

6 Q. Now, it's my understanding that that draw was never
7 made because you, the homeowner, put a freeze on the
8 account because you were having problems with Mr. Beal;
9 is that correct?

10 A. That's correct. The draw was locked due to the
11 non-finishing of the property and that was the retainage
12 fee, the last 10 percent.

13 Q. So there's 23 -- in excess of \$23,000 left in the
14 account in May?

15 A. Yes, sir.

16 Q. Okay. Didn't you promise Mr. Moats that he would
17 be paid for his work?

18 A. No.

19 Q. You never promised ---

20 A. There was a conversation between Mr. Moats and I in
21 the front yard while they were doing work. He
22 approached me and said he was worried about not getting
23 paid by Mr. Beal. And I at that time I assured him that
24 Mr. Beal had all access and all control of the monies
25 and the money should be there.

1 Q. When did this conversation take place?

2 A. While he was pouring my driveway. I don't know the
3 date.

4 Q. While he was pouring the driveway?

5 A. At the time he was doing the driveway. So he
6 already accepted and took the job through Premier
7 Southern Homes, not through me.

8 Q. Okay. But you never promised him that he would be
9 paid out of that money?

10 A. I can't promise when I had no control. Mr. Beal
11 had access and control of the monies. We didn't sign
12 for any draws and we had no control of the draws. It
13 was all on Mr. Beal.

14 Q. But you discussed that you put a freeze on that
15 last \$23,000. So you had some control, right?

16 A. That was the only time that we were ever involved
17 in the draws.

18 Q. Right. Did you ever withdraw that \$23,000?

19 A. The money was put into an account and the money
20 was, has been used over the period of the last three
21 years preparing items that were not done right and that
22 were not finished and not completed.

23 Q. Did you withdraw the money?

24 A. No, I didn't withdraw the money.

25 Q. Well, who put it into another account?

1 A. Wells Fargo.

2 Q. Did you instruct them to do that? How did the
3 monies -- strike my first question.

4 How did the money get from that account to the
5 other account you were talking about?

6 A. I honestly am not sure. We put a freeze on the
7 money because it was the last 10 percent which was
8 supposed to be on his whatever fee, and then that money
9 was put into an account so that we could complete the
10 house.

11 Q. Okay. So when these fixes were being done, how
12 were they paid?

13 A. Out of that account.

14 Q. Who paid them?

15 A. We made paid them.

16 Q. You?

17 A. And if I hired Mr. Moats, I would have paid him.

18 Q. You had the driveway at the time, didn't you?

19 A. We did.

20 Q. You've had the driveway for two months at that
21 time?

22 A. We had the driveway, but we didn't know the
23 driveway was not paid until all this came about in May.
24 If the driveway was done in March, then why did Mr. Beal
25 not pay him from March to May?

1 Q. When did you get a certificate of occupancy for the
2 house?

3 A. The certificate of occupancy was -- Mr. Beal tried
4 to make a draw on, I think, the 15th, and they were not
5 allowed to make a draw because he did not have a
6 certificate of occupancy.

7 Q. The 15th of what month?

8 A. Of May.

9 Q. Okay.

10 A. The certificate of occupancy was signed off on the
11 15th of May and faxed to Mr. Beal's house on the 20th of
12 May.

13 Q. Didn't you tell Mr. Moats that you needed this
14 driveway built quickly to get the certificate of
15 occupancy?

16 A. No, I did not. I did not know anything about the
17 steps and the procedures in building this house. And I
18 did not know about any of this, these issues until it
19 was too far into the process. I mean, having the
20 driveway put in was not the last item on the house that
21 needed to be done. There were so many other issues that
22 was unresolved and not even touched that having the
23 driveway is not the last thing that allowed them to give
24 a certificate of occupancy.

25 Q. So you got -- you essentially took control of these

1 monies in May of 2008, \$23,000?

2 A. Yes. It was put into the account.

3 Q. Okay. And Mr. Moats filed his lien in May of 2008,
4 correct?

5 A. Yes. He had filed his lien after the real estate
6 attorney, who was representing us, called. Once they
7 found out about the mechanics' liens, she started
8 calling all the subcontractors to see if they could
9 take, make a cutoff of each portion of the bills so that
10 the bills could be paid because there was not enough
11 money left to pay. You can't pay \$59,000 worth of liens
12 with \$23,000. So we were told not to pay anybody, that
13 the money needed to fix the house so we could finish the
14 house and move into the house.

15 Q. So you received the benefit of having the driveway
16 in your house, and you knowingly didn't pay Mr. Moats
17 for his work?

18 A. That is incorrect. I didn't hire Mr. Moats, and I
19 did not know that Mr. Moats was not paid until all this
20 happened in May.

21 Q. Right. You took control of the final \$23,000 in
22 May. Mr. Moats filed his lien in May 28 of 2008, so you
23 knew that Mr. Moats hadn't been paid when you took
24 control of the money.

25 A. I think Mr. Moats filed his lien on May the 27th or

1 22nd or something after the real estate attorney or the,
2 the realtor called to see if he would drop his charges.
3 Until that date, he hadn't filed a lien and neither had
4 six or seven of the others.

5 Q. I understand. But you took control of the money
6 May 20th. And I'll represent to you that it was filed,
7 his mechanic's lien was filed on May 27th, and that's in
8 the records.

9 A. I did not know that Mr. Moats was not paid before
10 this money was frozen. That's what I'm sitting here
11 trying to tell you. Him and Beal had a contract with
12 Mr. Moats. We did not know who Henry Beal was paying
13 and not paying until it was so far along the line there
14 was nothing we could do. So I did not know that
15 Mr. Moats wasn't paid, just as well as I didn't know
16 that six or seven other guys wasn't paid because I
17 didn't have a contract with Mr. Moats.

18 Q. So you didn't have a conversation about a week
19 after the driveway was built with Mr. Moats wondering
20 when he was gonna be paid?

21 A. I don't recall that conversation, no.

22 Q. You don't recall it, in that it could have
23 happened?

24 A. I don't recall it, and I don't think it took place
25 because it shouldn't have even been approached to me

1 because I didn't hire him. He should have been
2 approaching Mr. Beal.

3 Q. Okay. But you just don't recall that conversation.
4 It's possible that that conversation occurred?

5 A. Not to my recollection, so I'm saying no.

6 Q. Your tax records indicate that the market value and
7 tax value of your property is \$260,620. Is that
8 accurate?

9 A. That's what the market value on paper was before
10 construction. It is now worth 215, because a month or
11 so ago we looked into refinancing because the interest
12 rates are two-and-a-half percent less than what we're
13 paying. So our property value is now 215.

14 (Whereupon, counsel confer.)

15 MR. LEFEVRE: I'm gonna mark this as Plaintiff's
16 Exhibit Number 3 as a ---

17 THE COURT: For identification?

18 MR. LEFEVRE: For identification.

19 MR. GAMBRELL: Okay.

20 (Whereupon, Plaintiff's Exhibit Number 3, Property
21 Record Detail, was marked for identification.)

22 BY MR. LEFEVRE:

23 Q. Mr. Sanders, I'm gonna show you what's been marked
24 as Plaintiff's Exhibit Number 3. Have you ever seen one
25 of those before?

1 A. Yes, I have.

2 Q. What is that?

3 A. It is a -- this is an Anderson County website that
4 you can go to to pull up and see the mechanics' liens
5 and the liens on your properties.

6 Q. Okay. And this particular page that you have in
7 front of you, can you look at the bottom right of it and
8 tell me what date is on there? The very bottom.

9 A. 3-15 of 2012.

10 Q. Okay. And it says the owner is Bobby and Staci
11 Sanders, 311 Sunny Lane in Anderson, South Carolina. Is
12 that your house?

13 A. Yes, it is.

14 Q. And in the property information section it lists
15 the market value of \$260,620. Is that accurate?

16 A. Yes. That's what it shows on there.

17 Q. And the tax value is also \$260,620. Is that
18 accurate?

19 A. Yes. That's what it shows.

20 Q. Okay. Have you contested the value of your house?

21 A. No. I don't even know how to go about doing that.
22 I just know that Wells Fargo, when I spoke with Wells
23 Fargo, the house's value was only 215.

24 Q. You said that you've paid some, either to have
25 things fixed on the house or to finish the house

1 basically out of that money and then you are saying
2 additional money, correct?

3 A. There's no additional money.

4 Q. Well, I understand. You're saying that you put
5 extra money in excess of the contract amount?

6 A. Way above the contract.

7 Q. Did you do any upgrades that weren't in the
8 original contract?

9 A. No.

10 Q. So everything that you've done was in that original
11 contract?

12 A. Right. And if I changed something, like the, for
13 instance on there it's gonna show a patio that was
14 poured, we were allotted 1230, 1250 or something to pour
15 a patio. The patio sank and cracked and it was gonna
16 cost double that to have someone plow it out, tear it
17 out and re-pour it, so we built a deck but we only used
18 the exact same amount of money.

19 Q. And that contract I was referring to was
20 Defendant's Exhibit Number 2.

21 MR. LEFEVRE: That's all the questions I have.

22 THE COURT: Cross-examine?

23 MR. GAMBRELL: Might be the easiest ---

24 CROSS-EXAMINATION

25 BY MR. GAMBRELL:

1 Q. Bob, let me have the contract.

2 A. (Handing document to counsel.)

3 Q. In this contract there is a specification addendum
4 that's contained in it. (Handing.) Do you see that?

5 THE COURT: Which exhibit is that?

6 MR. GAMBRELL: Defendant's 2.

7 THE COURT: Very good.

8 THE WITNESS: This page I'm looking at, specific
9 addendum to the contract?

10 BY MR. GAMBRELL:

11 Q. Yes.

12 A. Yes.

13 Q. And what's the -- as far as Mr. Moats is concerned,
14 is there a, is there an item on that contract that
15 applied to Mr. Moats' scope of work?

16 A. Driveway.

17 Q. Did you ever make an agreement with Mr. Moats
18 outside of that contract?

19 A. No.

20 Q. Did you, did you ever bring Mr. Moats to the job
21 site?

22 A. No, I did not.

23 Q. Who did that?

24 A. Mr. Beal did.

25 Q. Okay. Now, I'm gonna show you what's been

1 premarked, what is admitted as Plaintiff's Exhibit
2 Number 3, and I ask for you to explain to the Judge what
3 that list is.

4 A. This is a -- it's a list of work that has been done
5 and it's also an estimates towards the bottom of work
6 that needs to be done that we didn't have the money and
7 don't have the money to complete at this time. It shows
8 the starting balance of 23,654.40. And by the time we
9 get down to the bottom line we're at a negative
10 22,503.24.

11 Q. And the drive, what's one of the highest priced
12 items listed on that list?

13 A. The estimate, estimates were replacing the carpet
14 and pulling apart the seams and baseboards. It's
15 9,258.92.

16 Q. Describe for the Court what the condition of the
17 carpet is in the house.

18 A. You can see every seam of the carpet. There are
19 spots that are wrinkled and there's frays all along the
20 baseboards throughout the house.

21 Q. And is there any way to fix that carpet or what
22 will you need to do?

23 A. We eventually brought Anderson Flooring Center out,
24 and his suggestion was the carpet was laid in, it was
25 never properly put in. They did not stretch the carpet.

1 And the suggestion was to rip it all out and go back
2 new.

3 Q. I'm also gonna show you some photos of -- these
4 photos that I'm getting ready to put up to you, do they
5 all relate to items that are on the list?

6 A. Yes, they do.

7 Q. Defendant's Exhibit 1-F, what is that
8 representative of?

9 A. That just shows one of the areas of the carpet
10 where it's three pieces of carpet that are connected and
11 you can see the seam going to the left and you can see
12 the seam going to the top right.

13 Q. Okay. I'm gonna start to show you, too,
14 Defendant's Exhibit 1-Y and ask if you can explain what
15 the meaning of that photograph is.

16 A. This is, we have to, we had to run the water lines,
17 it's 586 feet from the main road. And Mr. Beal had
18 installed three-quarter inch piping from the road to the
19 house, so you had no water pressure. You turn two
20 spigots on and one would trickle. So all that had to be
21 torn out and reinstalled with a two-inch piping with a
22 inducer at the house or water pressure inducer at the
23 house.

24 And the gentleman at West Anderson Water told me
25 that he was out the day that Mr. Beal was installing

1 that pipe. And he told Mr. Beal that was the incorrect
2 piping to be putting in that much of a distance, but he
3 did it anyway.

4 Q. I'm gonna show you Defendant's Exhibit Number 1.9,
5 10, 11 and 12 and ask if that shows the progress of the
6 work that was done on that.

7 A. This shows as the work is being done. The pipe,
8 the picture 1.9, actually shows the three-quarter inch
9 waterline laid in the trench as it was being dug out to
10 be replaced.

11 Q. Did you also incur some landscaping costs as a
12 result of ripping up your yard in order to repair that
13 pipe?

14 A. We didn't get landscaping anyway, so the
15 landscaping was done done after this point.

16 Q. Okay.

17 A. We were supposed to by contract have landscaping
18 installed. That's on the Exhibit Number 2 on the
19 specification addendum to the contract. We were
20 supposed to have seed and straw, 10 one-gallon, five
21 3-gallon shrubs, and 30 yards of mulch. None of that.

22 Q. I gonna show you what's been marked Defendant's 1.
23 2, 3 and 4 and ask you to tell the Court what those
24 photos represent.

25 Let me add to your list Defendant's 1-Z and 1.1 and

1 2.

2 THE COURT: Which ones are those?

3 MR. GAMBRELL: Z through 1 ---

4 THE WITNESS: It's 1.1, 1.2 and 1.3.

5 BY MR. GAMBRELL:

6 Q. Okay.

7 A. And 1.4 and 1.5. 1.1, 1.2 and 1.3 shows the front
8 porches. We had concrete poured porches, and the corner
9 broke off on the porches and they sank towards the back
10 wall. Exhibit 1.3 we actually have a level showing how
11 far it had dropped. So all of that had to be
12 jackhammered out.

13 And once we jackhammered it out, we found out that
14 there was another problem that was a hidden problem,
15 there was no flashing between the wood of the house and
16 the concrete that was poured. So a gentleman come out,
17 redone the flashing. And then we had the crew come back
18 and re-pour them. Exhibit 1.4 and Exhibit 1.2 is an
19 example of the porches after they were re-poured.

20 Q. And you had to pay for that?

21 A. Yes. It was part of the Exhibit Number 3 here.
22 Let me find it. Okay. On 7-10, Freeman Enterprise did
23 fix the flashing on both porches. On then on 7-10 TM
24 Pageant fixed the crack that's in the front porch. It
25 was a \$4,000 dollar ticket.

1 Q. I'm gonna show you what's been marked as
2 Plaintiff's Exhibit 1-A -- I mean Defendant's Exhibit
3 1-A, 1-B, 1-C, and also 1.13, and ask if you can review
4 those photos and tell the Court what those photos
5 represent.

6 A. These, these are pictures of the drywall issues
7 throughout the porch of the home. Exhibit 1 is a shot
8 of the ceilings. We were supposed to have smooth
9 ceilings throughout the house and you can see every seam
10 line, every joint, every off the tape is cracking and
11 peeling.

12 Exhibit 1-A shows more of the same along the wall,
13 1-B, the same tape coming loose, tapes seam in the
14 wall.

15 1-C, I guess it is, same issue. That's a corner
16 where the ceiling meets the drywall and you can see the
17 seams and the corner where the mud is still packed in
18 there. It's not even sanded smooth.

19 And then 1.13 is just a, it's a fracture crack
20 going all the way down the wall in the kitchen.

21 Q. All right. On the list of overages on Defendant's
22 Exhibit, I guess, 2, that exhibit we've been working on,
23 what's the estimate that you have to repair all the
24 drywall in the house?

25 A. There's two estimates involved. On 3-17 we had an

1 estimate to repair drywall issues, seams falling apart
2 and tape peeling, and that doesn't even include
3 smoothing the ceilings. It was 2,306. And then on 3-21
4 we had an estimate for repainting after all the drywall
5 repairs were completed, \$6,250.

6 Q. I'm gonna show you Defendant's Exhibit 1.5 and ask
7 if you can tell the Court what's wrong with the house in
8 that one.

9 A. On the, on the very back of the house between two
10 windows the vinyl was just bowed out. It had a bad bow
11 in the vinyl. And had a gentleman come out, he had to
12 remove the vinyl off it. And it was about a two-foot
13 section or two joist spans of the section of the
14 sheeting that's on the house that there was no nails on
15 the house, so we re-nailed and it re-screwed it to the
16 house and reinstalled the siding. It also came out of
17 Exhibit 2.

18 Q. And how much did you have to pay for that?

19 A. Uh. Okay. On 10-23, back window leak and it was
20 the window that was directly below this. It was a back
21 little leak and the OSB board too. That was fixed and
22 it was 175. Scott Sutton contractor.

23 Q. I'm gonna show you 20 -- 1.20, 1.21, 1.22 and 1.23
24 and ask if you can explain to the Court what that is.
25 Is that more drywall issues?

1 A. Just some more drywall issues with tape seams
2 coming completely loose from the wall and cracks.
3 Exhibit 1.22 is a smooth ceiling that looks like a
4 textured wall. And 1.23, of course, is more drywall
5 issues coming loose.

6 Q. I'm gonna -- these are kind of related issues.
7 1.14, 1-D, and 1-E, what are those photos?

8 A. Is that 1-D?

9 Q. Yeah, I think so.

10 A. Okay. 1-D and 1.14, the kitchen area has -- and
11 the kitchen and bathrooms have recessed candle lighting
12 that fits into a can type deal that just kept falling
13 out, they were just falling out hanging by wires. And
14 they were supposed to have had springs that would fasten
15 from the, from the outside cover and it sort of sprung
16 and pulled it up to the ceiling to keep them tight.
17 That wasn't even installed in the house. They were on
18 none of them.

19 Q. And did you pay to fix that too?

20 A. We did. We -- it's on here. No, I'm not seeing it
21 on here but we have fixed them. Oh, here it is.
22 11-20-09, replace all recess lights, springs bad and
23 kept falling from the ceiling, 470.04.

24 And on the Exhibit 1-E, that is a -- both bathrooms
25 have an exhaust fan to pull all the moisture out. The

1 hole was cut much larger than the fan, so we just took
2 flat molding trim and trimmed that and put the fan
3 against the molding.

4 Q. And I believe you testified earlier about the back
5 patio, 1.6, 1.7 and 1.8. Do they represent that back
6 patio?

7 A. Yes. It shows the patio was cracking and sinking
8 where it's orange in the middle, it was sank in, so
9 there would be a pool up on the patio. And then Exhibit
10 1.8 shows the deck. I used the money that it cost to
11 pull the slab to build a deck and we built the deck the
12 entire distance, so we could build it with the funds
13 that was allocated to the patio.

14 Q. And that was cheaper than jackhammering it and
15 redoing it?

16 A. It all had to be tore out and started over and it
17 was cheaper than to pay to tear it all up and re-pour
18 it.

19 Q. I'm going to show you another set of photos which
20 is 1-G through I think -- just read off the letters for
21 the court reporter and then we'll -- these photos all
22 represent issues with baseboards throughout the house?

23 A. Yes. Throughout the house.

24 Q. Yeah, read the list so she gets it.

25 A. 1-G, it just shows the poor workmanship of the

1 baseboards poured around the seams doesn't meet, no
2 caulk.

3 1-H, that is a, that's supposed to be a drop-in
4 bathtub that he just shoved in the corner and took the
5 bee board and enclosed the front of it, and that just
6 goes to show the pour around -- the shoddy craftsmanship
7 of the pour around the base of the tub.

8 Q. Are you going to have to replace the tub?

9 A. There are two options. You can take the tub out
10 and frame out the way it's supposed to be framed for a
11 drop tub to sit in, or scrap that idea and just get a
12 cheaper tub and just put a standard tub in. We'll
13 probably just go with a standard tub when we do it.

14 Q. And it's not on your list, but ---

15 A. I had an estimate on that, but it's not on there.

16 Q. But have you priced what the tub would cost?

17 A. Um, freestanding fiberglass tub the cheapest I
18 found it was 1141, but now that's not on this list.

19 Q. Just read off the letters.

20 A. 1-I, 1-J, 1-K, 1-Q, 1-P, 1-O, 1-L, 1-M, those all
21 show just poor craftsmanship of the installation of the
22 baseboard and the core around. And 1-N is the tiling,
23 tile in the laundry room. It was unfinished and just
24 left a big old gaping gap there in between that and the
25 vent.

1 Q. Finally the last series of photos we're going to
2 look at is 1.15, 1.16 and 1.18. If you could explain to
3 the Court what's going on with that.

4 A. 1.15, 1.16, and 1.18. The crawl space was put on
5 the lower end of the house. And actually in 1.15 it
6 shows that water runs under the house and puddles
7 underneath the house. As a temporary solution, as you
8 can see in 1.16 and 1.18, I just dug out, I dug the
9 ground out to where it's below the door so the water
10 won't run under the house.

11 I had a guy come out and give an estimate on taking
12 that door out, closing that brickwork in, and moving the
13 door to the front of the house where it's above ground,
14 above water level, and the estimate to repair excess
15 door on the house is \$400.

16 Q. How much, according to your list as of today, and
17 explain to the Court this doesn't even scratch the
18 surface of the problems in your house, does it? But how
19 much are you in the hole today?

20 A. Today we're at nearly 23,582.74, and that's
21 including estimates.

22 Q. And that, the money that Mr. LeFevre talked about
23 earlier about the \$20,000 you received that was locked
24 out, what's the status of that money?

25 A. That money is gone. It's been used to do this

1 punch list.

2 THE COURT: How much did he say was in the hole?

3 THE WITNESS: \$23,582.74.

4 BY MR. GAMBRELL:

5 Q. So in actuality you are going to spend
6 approximately \$43,000 to finish the house; is that
7 correct?

8 A. Yes.

9 Q. I mean, the list, there are items on the list that
10 you haven't even tackled because of the expense?

11 A. Oh, yeah.

12 Q. Like the painting and drywall hasn't been done?

13 A. No, it has not been done. All these estimates have
14 not been worked on. You know, we don't have the money
15 living on week-to-week to tackle this all at one time.
16 We're just doing it biting it a little bit at a time.

17 Q. And some of this stuff you've even to a certain
18 extent what small items are on the list you've done
19 yourself, correct?

20 A. Yes, I do what I can.

21 Q. And those aren't even calculated into your costs
22 and expenses, haven't even been calculated into the
23 damage list?

24 A. No, sir.

25 Q. Mr. -- counsel showed you what was marked for

1 identification only as Plaintiff's Exhibit Number 3,
2 which is the list of what the home value is, and I think
3 you started to explain. Explain what the current value
4 of the house is.

5 A. About a month ago I called Wells Fargo about doing
6 a refie. The reason I did that is we are paying 6.125
7 and now they got 3.85, 4 percent interest rates. The
8 lady told me that the house appraisal is 215. And I
9 argued with her that our house appraised at 260 when we
10 had it built three years ago. Why is it now only
11 appraising that low, or that high. They do an appraisal
12 off your blueprints only.

13 That's where the 260,622 number came in. According
14 to the blueprints the house should have appraised from
15 that. From day one it hasn't looked like the plans that
16 it should have been. But because of current market
17 values, because of foreclosures, because of whatever,
18 our house is now worth 215 and some change.

19 Q. And that doesn't even include the fact of what you
20 would have to disclose to a potential buyer regarding
21 the defects that exist.

22 A. Yeah. There's issues that the house never should
23 have done a CO and this house should have never passed
24 inspection. Most was built not to code. The actual
25 door on the house was not built to code. So all of this

1 is gonna have to be explained if and when we ever try to
2 sell this house.

3 Q. And did you get estimates on taking the steps to
4 make it to code?

5 A. No, I couldn't. They would have to tear the steps
6 down and rebuild them.

7 Q. So in actuality you are in the hole for a lot more
8 than even 26,000.

9 A. Oh, eventually yes we will be.

10 Q. Okay. Why did -- what -- wait a minute. Excuse
11 me.

12 What precipitated freezing Mr. Beal's account?

13 A. We were at a soccer game and my neighbor, who lives
14 at 315 Sunny Lane, approached me and my wife at a soccer
15 game and he said I think I have something that belongs
16 to you guys. And he actually, they filed a lien against
17 his property in his name that was supposed to have been
18 a lien filed on our property. And I approached Mr. Beal
19 with that lien in hand and asked him what was going on.
20 And the answer that I got was things like this happen.
21 A lot of the contractors, I'll hold back from them so
22 that they will come back and finish the jobs so don't
23 worry about them. So that was the answer I had and I
24 trusted the guy.

25 MR. GAMBRELL: I'm gonna have mark this marked for

1 identification. I don't know if I'll put it in.

2 (Whereupon, Defendant's 4, List of Mechanic's
3 Liens, was marked for identification.)

4 BY MR. GAMBRELL:

5 Q. I'm gonna put what's been marked for identification
6 as Defendant's Exhibit Number 4 and ask that you
7 identify that and explain to the Court what it is.

8 A. This was a list of the mechanic's liens on the
9 property.

10 Q. Of?

11 A. Do you want me to go through it?

12 Q. No. The one you were given on the soccer field,
13 which lien was that? The was the first lien, correct?

14 A. That was the Lead Mechanical. They had the initial
15 wiring and heating installed,

16 Q. And when were you served with that?

17 A. The date the lien was filed was 3-28, but we did
18 not get it until the first or second week in April
19 because it was filed at a neighbor's house. He didn't
20 know what it was. He went to his attorney and his
21 attorney said it was the wrong property. They had 315
22 Sunny Lane on our property and that was his address. So
23 then by the time he got his lawyers to figure out what
24 it was, where it was going, and got it to us it was
25 probably a week or a week-and-a-half later after this

1 date passed I think.

2 Q. Okay. So that would have been about the first time
3 y'all would have found out there was some problem
4 involving Mr. Beal?

5 A. That is when I took that lien to Mr. Beal and said
6 what is this and what's going on? At that point in time
7 he said, I don't pay all my subs all their money up
8 front because they may not come back and finish the job.

9 Q. And this conversation you were having with Mr. Beal
10 about this lien, did it occur before or after the
11 contract driveway had been poured?

12 A. It was after.

13 Q. And then what did you find out about Mr. Beal --
14 well, describe how the relationship with Mr. Beal then
15 changed.

16 A. Well, from that point on he didn't return any of my
17 calls. I just couldn't get in touch with the guy. So
18 that's when we went to Ava Chappelle who was our real
19 estate or Realtor and she got involved with it and
20 started making phone calls to try to resolve the issue.

21 Q. And did you find out that Mr. Beal had tried to
22 take that last draw?

23 A. Honestly, I didn't know about it until we seen it
24 on our Wells Fargo copy that they sent us; that he, he
25 had tried to take the draw on the 15th. And I remember

1 that because his statement was you could not have the
2 final draw until the CO is administered. Well, the CO
3 was signed off on the 15th, but he did not receive it
4 until the 20th. So if he could have got the CO on the
5 15th he would have withdrew the money and ran just like
6 he did.

7 Q. As of the date he was trying to take the final draw
8 had he, had he effectively walked off the job?

9 A. Oh, yeah. Couldn't contact him by phone, never
10 came back out. I mean it was ---

11 Q. What's your best guess of the date that Mr. Beal
12 was last on the job site?

13 A. The day of or the day after the pouring of the
14 driveway. From that point it was over.

15 Q. Now, you have mentioned earlier this is your dream
16 house. Is it still your dream house?

17 A. Huh. If I could sell it tomorrow, it would be
18 gone.

19 Q. Did you, did you also have more charges from Wells
20 Fargo because of the inability to close?

21 A. Yes, we did. I don't have them with me.

22 Q. Is it on the list?

23 A. But I think they're on here, let me look. Yes,
24 yes, they are.

25 Q. How much did Wells Fargo charge you because you

1 couldn't close on time?

2 A. They charged us Wells Fargo fees for late closing
3 on 12-12 because we couldn't close on the date we were
4 supposed to close. They charged us \$4,405.63.

5 MR. GAMBRELL: I have nothing further, Your Honor.

6 THE COURT: Re-examine?

7 MR. LEFEVRE: Thank you, Your Honor, may it please
8 the Court?

9 REDIRECT EXAMINATION

10 BY MR. LEFEVRE:

11 Q. Mr. Sanders, are you a building and codes expert?

12 A. No, I'm not.

13 Q. Do you have a builder's license?

14 A. No, I'm not. If I did, I would have built this
15 house.

16 Q. Okay. You testified that this house should never
17 have passed inspection. Are you saying that Anderson
18 County was wrong in giving the approval in the
19 inspection and giving the certificate of occupancy?

20 A. I'm saying according to the gentleman that come out
21 and did the estimate on our foundation, on his word
22 only, he said the house should not have passed.

23 MR. LEFEVRE: I object for ---

24 THE COURT: Hearsay?

25 MR. LEFEVRE: --- hearsay, Your Honor.

1 MR. GAMBRELL: Well, he asked him, Your Honor, so
2 he's entitled to explain how he came to that
3 information.

4 THE COURT: Not exactly. That doesn't make it any
5 more reliable. Sustained.

6 MR. LEFEVRE: Okay. Thank you, Your Honor.

7 BY MR. LEFEVRE:

8 Q. The house passed inspection, correct?

9 A. Somehow, yes.

10 Q. Okay. And you got a certificate of occupancy for
11 that house, correct?

12 A. Yes.

13 Q. And you've been living in that house for about four
14 years?

15 A. Yes.

16 Q. Okay. And your contract price was about \$247,000;
17 isn't that accurate?

18 A. No. Our contract price was \$236,534. We borrowed
19 247 because we had to pay the land off.

20 Q. Okay. So you have a 240-some thousand dollar house
21 and it is now valued by Anderson County at \$260,000?

22 A. Yeah. If Anderson County is up to date, yes.

23 Q. I'm not sure what number, but it's the list of the
24 2 -- on 6-8 of '08 there were several expenses. Who
25 made this list by the way?

1 A. This was a list we put together on a spreadsheet to
2 keep up with it.

3 Q. Who's we?

4 A. My wife and I.

5 THE COURT: Now which one was that?

6 THE WITNESS: Exhibit Number 3.

7 MR. LEFEVRE: It's actually, yeah, Defendant's
8 Exhibit Number 3.

9 THE COURT: All right. Here we go. Thank you.

10 BY MR. LEFEVRE:

11 Q. So June 8th of 2008 there was four expenses that
12 you have listed here: \$1,130, \$300, \$150, and \$1,360;
13 is that accurate?

14 A. Yes, it is.

15 Q. Okay. You knew about Mr. Moats' lien on this date,
16 right, June 8, 2008?

17 A. Yes, sir.

18 Q. And you chose not to pay him?

19 A. I didn't choose not to pay, but we didn't have any
20 money to pay everyone, so we were told we could not pay
21 no one if we couldn't pay everyone.

22 Q. All right. So you paid -- even still after paying
23 those there's still \$22,000 -- well, \$20,000 left of the
24 original last draw; is that accurate? \$20,696.38?

25 A. Yes, sir.

1 Q. So you could have paid them out of that, right?

2 A. As I said, we were told not to pay.

3 Q. Who told you not to pay?

4 A. We were told by our attorney.

5 Q. Who is your attorney?

6 A. At that time it was Ron McCabe, that you can't pay
7 one if you can't pay all.

8 Q. What is line -- what is the per diem line 3-20-08
9 to 5-26-08?

10 A. Per diem goes back to our contract. Exhibit 2,
11 Article 3, time of completion. "The approximate
12 commencement date of the project shall be 8-20-07. The
13 approximate completion date of the project shall be
14 2-20-08; however, any change orders and/or unusual
15 weather might delay or otherwise affect the completion
16 date. Barring inclement weather or owner related
17 delays, the contractor shall pay liquidated damages of
18 \$20 per day if the project is not completed within seven
19 months. The contract execution date shall be 7-16-07."
20 But it's seven days from construction loan closing.

21 Q. The -- okay, I'm sorry.

22 A. The per diem was if he didn't finish the job
23 because we were renting we were allocated \$20 a day if
24 he didn't complete our contract.

25 Q. So this money went to you?

1 A. Well, it was our money.

2 Q. The money went to you.

3 A. The money was our money that went to us because he
4 didn't finish the contract by the completion date. In
5 turn we had to pay rent because of it.

6 Q. All right. And so the other, the first three lists
7 expenses that you have listed there, was that due to any
8 fault of Russell Moats that you had to pay those?

9 A. No. This whole case is not the fault of Russell
10 Moats. This whole case is the fault of Henry Beal who
11 hired Russell Moats.

12 Q. So without having to go through all of these then,
13 every single item on this list has nothing to do with
14 Russell Moats or was caused by Russell Moats?

15 A. No.

16 Q. Okay. You have listed on here legal fees. You are
17 wanting the Court to give you credit for legal fees that
18 you paid?

19 A. If it wasn't for the breach of contract and the
20 shoddy work we had done on our house, it wouldn't
21 require late fees or incur late fees.

22 Q. If you have a settlement with Harbin Lumber, isn't
23 that one of the former lienholders?

24 A. Yes. We had mediation with Harbin Lumber and
25 Russell Moats and we made a settlement offer to both and

1 Russell said he wanted every dime of his money and
2 Harbin accepted \$2,000.

3 Q. Yeah. And you paid the other lienholders out of
4 this money, right?

5 A. We paid a \$2,000 on a \$20,000 lien.

6 Q. Well, you told me earlier that you couldn't pay any
7 of the lienholders, but you did.

8 A. We also tried to pay your client, but he wouldn't
9 settle.

10 Q. That's not my question. My question is you paid
11 one of the lienholders and you said you couldn't.

12 A. We did at mediation, yes.

13 Q. In the last -- well, there's five estimates on here
14 that you have not done, you have not paid for; is that
15 correct?

16 A. That's correct.

17 Q. But you have added those because you want credit
18 for those?

19 A. Well, I do. My house is not completed.

20 Q. All right. And these were in 2010, right?

21 A. Yes.

22 Q. All right. Let's go on. 12-16-08 you have an
23 American Contracting Bonding liens amount, \$1,310.

24 A. Right.

25 Q. What's that?

1 A. You cannot close on a home that has a mechanic's
2 liens or any type of lien on it.

3 Q. Right.

4 A. Therefore, we couldn't close on that house until
5 the liens were bonded. You bond the liens and it gives
6 you clear title to then close on the property.

7 Q. And before that lien, according to your
8 calculations, there was still \$7,092 left out of the
9 original draw?

10 A. Yes.

11 Q. So up until December of '08, I think there's a
12 mistake in your, in one of your items here. But up
13 until December of 2008 you had enough money to pay for
14 Russell's job; isn't that correct?

15 A. I did, but we didn't have enough money to pay the
16 other six people that were involved.

17 Q. Do you have any, do you have any knowledge of size
18 of driveways at all? Could you guesstimate what the
19 size of your driveway is right now?

20 A. No.

21 Q. Do you know what a 12 by 73 driveway looks like?

22 A. No, I do not.

23 Q. Okay. You testified earlier that you first
24 discovered there was a problem in the beginning of
25 April, a potential problem with Mr. Beal in the

1 beginning of April because of this lien that went to
2 your neighbor's house.

3 A. That's correct.

4 Q. Okay. How long after that was it that the concrete
5 driveway was built, about a week?

6 A. The concrete was poured 3-28 of '08.

7 Q. And you found out the first week of April there was
8 a potential problem?

9 A. After the concrete was poured, yes.

10 Q. Okay. So when you found out there was a potential
11 problem with Beal not paying, you're saying you didn't
12 go to the other contractors who were, who were not paid
13 too?

14 A. No. Ava Chappellear, our realtor, started making
15 phone calls and found out there were more to the issues
16 that we didn't know about. And at that point in time
17 she tried to get all parties involved to lower their
18 fees just a little bit so we could pay everybody
19 involved. Well, several wouldn't take a dime less and
20 one of them was Mr. Moats. And, you know, all this time
21 all of it was added up. More people filed liens on top
22 of it. Then it exceeded above and beyond monies to try
23 to resolve the issues.

24 Q. Now, let me ask you this Mr. Sanders. You said you
25 work for UPS, right?

1 A. Yes.

2 Q. Do you get paid a salary?

3 A. Hourly.

4 Q. Okay. And you get paid a week or every two weeks
5 or how do you get paid?

6 A. Every week.

7 Q. Okay. Do you, do your job well every week?

8 A. I give 100 percent.

9 Q. And you get paid every week?

10 A. Yes, sir.

11 Q. If UPS came to you and said, Mr. Sanders I'm gonna
12 need you to take a little bit less this week ---

13 MR. GAMBRELL: Objection, relevance.

14 MR. LEFEVRE: Your Honor, he's testified that my
15 client did not take any less.

16 THE COURT: I understand. All right. I'll permit
17 it, but let's get your hypothetical concise.

18 BY MR. LEFEVRE:

19 Q. Okay. If UPS came to you and said Mr. Sanders
20 we're gonna need you to take a little bit less this
21 week, even though you did a great job, how would you
22 feel?

23 A. I wouldn't like it.

24 Q. Okay. Would you think it was fair?

25 A. No, I wouldn't.

1 Q. Is it fair that Mr. Moats gave you a driveway,
2 which you have no complaints about, and he hasn't been
3 paid a dime?

4 A. It's not fair to Mr. Moats, but it's also not fair
5 to me. We're both victims in this case. I didn't hire
6 Mr. Moats. I'm out just as much as Mr. Moats, if not
7 more, and gonna be out more over the next few years of
8 owning this house. We're both victims.

9 Q. Did you ever contemplate going after Mr. Beal's
10 insurance or bond?

11 A. We had mentioned it to our realtor, and because
12 Mr. Beal was over \$2 million in liens, mechanic's liens,
13 all properties involved, we were told we would probably
14 incur more attorney fees and costs than it was even
15 worth. So, no, we didn't.

16 Can I add something, though?

17 Q. Sure. Go ahead.

18 A. Did Mr. Moats try to go after him for a bond since
19 he was the subcontractor that was hired?

20 Q. I ask the questions, I don't answer them.

21 A. Okay.

22 Q. The last four items on your, on your list, which is
23 Defense Exhibit 3 are legal fees. Have those been paid
24 or not paid?

25 A. No. These legal fees are just -- we pay so much.

1 here and there. We can't pay it all at one time, so
2 these are just legal fees that are just stacking on top
3 of one another.

4 Q. Okay. So it's not really accurate that you are out
5 \$26,000 at this point. I mean, according to your
6 calculations, at best you're out \$3,900, 39, 49?

7 A. No. The legal fees on this document were paid, the
8 250 was paid on this date, the 50 was paid on this date,
9 the 250 and the 50 were paid on those dates. Those
10 monies have been paid. We have incurred more legal fees
11 since this time that we continue paying payments on as
12 we can pay them.

13 Q. Okay. So we'll add \$600. So at best you're out
14 approximately \$4,500?

15 A. How are you figuring?

16 Q. Well, you haven't paid anything on items, estimate
17 to repair excess door under house, estimate to repair
18 steps, estimate to replace frame and carpet, estimate to
19 repair drywall issues, estimate after drywall repairs.
20 You haven't actually paid those, right?

21 A. We have not, but we'll have to.

22 Q. So the number previous to that before those
23 estimates, it said that you replaced five recessed
24 lights for \$77.40 bringing your balance down to negative
25 3,949.52?

- 1 A. Correct. And then you can add the ---
- 2 Q. And then you can add the legal fees.
- 3 A. The legal fees and the U.S. Postal Service
- 4 overnight charge to Rhino.
- 5 Q. Which was approximately \$650. So approximately
- 6 give or take 30 -- \$4,600?
- 7 A. Right. That we've paid out of pocket.
- 8 Q. Right. But some of those items were paid to you
- 9 per diem about \$22,000 ----
- 10 A. 1360 to be exact.
- 11 Q. Well then there's another per diem charge on
- 12 8-15-08 from 5-27-08 to 7-15-08, right, for \$1,000? So
- 13 that's \$2,360 paid to you.
- 14 A. There's one per diem from 6-08 for 1360.
- 15 Q. All right. Go down about halfway down to 8-13-08
- 16 where it says ---
- 17 A. Yeah. Another thousand because we still couldn't
- 18 get it ---
- 19 Q. So there's \$2,300 that you are wanting credit for
- 20 that was paid to you?
- 21 A. By contract, yes.
- 22 Q. Yes, sir. You are also asking for the Court to
- 23 give you credit for your legal fees that you paid.
- 24 A. We would have not incurred these legal fees if
- 25 Mr. Beal would not have breached the contract and left

1 us hanging dry like he did.

2 Q. You are also asking the Court to give you credit
3 for a settlement in which you paid another lienholder of
4 \$2,000.

5 A. Yes. Because we did have to pay them.

6 MR. LEFEVRE: That's all the questions I have.

7 MR. GAMBRELL: I'll attempt to be incredibly brief,
8 Your Honor.

9 RECROSS-EXAMINATION

10 BY MR. GAMBRELL:

11 Q. The items you are asking for an offset for, are the
12 damages existing right now?

13 A. Yes, they are. I don't have the money to fix them.

14 Q. And so on the date you froze the account, the items
15 that needed repair those conditions already existed in
16 this house?

17 A. Yeah. Yes, it was left this way.

18 Q. And when you were paid the per diem, did you keep
19 that money or what did you do with that money?

20 A. We had to continue paying rent until we could get
21 into the house.

22 Q. When did you actually get to move in?

23 A. I don't remember the date.

24 Q. But you were having to pay rent out of the money
25 that had been frozen?

1 A. Right.

2 Q. Okay.

3 MR. GAMBRELL: Nothing further, Your Honor.

4 THE COURT: All right. Very good. You may step
5 down. Thank you, sir.

6 MR. WAGNER: Leave all this up here?

7 THE COURT: Yeah. Leave everything up there. You
8 won't be able to leave the courthouse if you take it
9 with you.

10 All right. It's 20 after 12. What do you all
11 anticipate?

12 (Whereupon, witness leaves witness stand.)

13 MR. LEFEVRE: I really don't anticipate his
14 testimony to be very long.

15 MR. GAMBRELL: I don't anticipate our
16 Cross-Examination to be very long.

17 THE COURT: All right. Well, let's take a short
18 break and then we'll take up the next witness.

19 (Whereupon, a short recess was taken.)

20 MADAM CLERK: Please place your left hand on the
21 Bible and raise your right hand. (Complies.)

22 Do you solemnly swear or affirm the testimony you
23 give the Court to be the truth, the whole truth, and
24 nothing but the truth?

25 THE WITNESS: I do.

1 MADAM CLERK: Thank you, sir.

2 (Whereupon, witness takes witness stand.)

3 RUSSELL TYSON MOATS,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. LEFEVRE:

7 Q. Russell who are you employed with?

8 A. I'm principal and owner of Moats Construction,
9 L.L.C.

10 Q. How long have you been the principal and owner of
11 Moats Construction, L.L.C.?

12 A. Since 2008.

13 Q. What kind of work does Moats Construction, L.L.C.
14 do?

15 A. We're a state licensed specialty contractor.
16 General contractor who specializes in five different
17 trades of work which are civil, concrete masonry,
18 framing, structural framing, and specialty roofing.

19 Q. How long have you been doing that?

20 A. I've been licensed, state licensed since 2004. And
21 Moats Construction was a spinoff company from a
22 family-owned business, family-owned since 1970 in the
23 building and trades industry.

24 Q. So you were in the business prior to becoming Moats
25 Construction?

1 A. Yes, sir.

2 Q. Same business?

3 A. Same business.

4 Q. How did you become involved in this case that we
5 are here on today?

6 A. This particular case, and I don't remember exactly
7 how I was contacted, people call our office, you know,
8 by requesting a quote on a job or something, and I may
9 get a message there or in the field or something that
10 I'll respond when I have time. Sometimes the same day,
11 sometimes the following day, and meet with generally
12 whoever made the initial call or somebody, you know, a
13 representative of the company.

14 In this particular case, I spoke to a Henry Beal, I
15 remember, and not knowing who Mr. Beal was, and was
16 asked if I could meet him out at a house that he was
17 building on the address, I can't remember exactly which
18 address it was now. So I met Mr. Beal and the homeowner
19 there on that particular day. I believe the same day he
20 was contacted, called the office.

21 Q. Was that address 311 Sunny Lane in Anderson?

22 A. I believe so.

23 Q. Okay. And were the homeowners the Sanders?

24 A. The homeowner was Bobby Sanders that I met with
25 Henry Beal.

1 Q. Okay. So you met Bobby Sanders out at the house?

2 A. I did.

3 Q. And that was sometime late March?

4 A. Late March.

5 Q. So describe that meeting. What happened at that
6 meeting?

7 A. It was pretty standard. I went out and met
8 Mr. Beal, you know, described himself as him being the
9 homebuilder and he needed a driveway done as soon as
10 possible because he had an inspection coming up and they
11 had to have a driveway in. I believe they had carpet in
12 the house so they had to have a driveway. If I remember
13 correctly, he was told by the inspector previously that
14 he had to have ---

15 MR. GAMBRELL: Objection, Your Honor, hearsay.

16 THE COURT: Sustained.

17 BY MR. LEFEVRE:

18 Q. You can't testify about what somebody else told
19 you.

20 A. Okay. Okay. But that he had to have an inspection
21 before his next draw and they needed to get the driveway
22 in as soon as possible. And I told him that it
23 shouldn't be a problem, that we could do that.

24 Mr. Sanders was there to show us exactly where he wanted
25 the edge of the driveway, how he wanted the walkway

1 formed.

2 I then told both of them, you know, what the
3 pricing was for the driveway. And I actually inquired
4 as to why the original contractor, private contractor
5 wasn't doing the driveway. Because typically a
6 homebuilder will hire and have his own concrete
7 contractor to pour the garage, porches and the driveway.

8 And at that point I became, you know, a little bit
9 concerned. And that was the whole reason that I, I told
10 both of them that I had to be paid as soon as the job
11 was over. That was the condition of me getting the
12 driveway in, so they both agreed to that. That was no
13 problem.

14 Q. The name has been mentioned here, it was Benny
15 Clark.

16 A. Benny Clark is a relative of mine. He's a second
17 cousin, my first cousin's husband.

18 Q. Okay. And Benny Clark had his home built by Henry
19 Beal; is that correct?

20 A. He did.

21 Q. What, if anything, did your cousin tell you about
22 Henry Beal?

23 MR. GAMBRELL: Objection, hearsay.

24 THE COURT: Sustained.

25 BY MR. LEFEVRE:

1 Q. As a result of a conversation with your cousin, a
2 conversation with your cousin, did you have any concerns
3 about Henry Beal?

4 A. I did. I had -- his house is actually back behind
5 mine. I can see, I was able to watch the entire
6 construction of the house from the time it came out of
7 the ground until it was completed. And I would ride
8 there and look at the progress because they didn't live
9 there and keep an eye on the house. You can see it well
10 from my back porch to my house.

11 I didn't want to say anything to Benny during the
12 construction process, but I did kind of voice my opinion
13 on how some things were done and different things I
14 didn't agree with that shouldn't have been done. For
15 instance, Mr. Beal poured a concrete driveway for Benny
16 and started pouring it at 5:00 in the afternoon one
17 afternoon and they were out there in the dark finishing
18 it. And then the next day they were driving on it and
19 tracked red mud all over it. So that was just one
20 instance.

21 And when Mr. Beal first contacted me I didn't know
22 who he was because I didn't know who Benny's homebuilder
23 was. But after I met with Bobby and Mr. Beal, I called
24 and asked him what was the name of your homebuilder, and
25 that's when I put two and two together and said this was

1 the same guy.

2 Q. Would you work for Henry Beal?

3 A. No. Not under any condition would I work for
4 somebody who built a house the way he did. And
5 certainly, you know, somebody who, who has to have
6 multiple contractors come in to perform the same trade
7 on a similar job. You know, there's issues when that
8 happens, prior issues.

9 Q. All right. So explain when you showed up at the
10 site to give the estimate, who hired you?

11 A. Mr. Sanders did.

12 Q. And he agreed to pay your price?

13 A. He did.

14 Q. Did you tell him how you were billing him?

15 A. I told him exactly how I was billing him because I
16 told him, I asked him if he wanted us to come over and
17 grade the driveway because it really hadn't been graded
18 before. You know, it hadn't even been graded close
19 enough to be consistent, you know, for a driveway, and
20 they didn't express any real concern about that.

21 I told them it would be an additional cost, and I
22 told them, you know, we can form it up like it is but,
23 you know, the driveway will be thicker in places but we
24 would make sure it was at least four inches thick which
25 was the minimum that it needed to be. And so, and

1 that's what we did.

2 I told them it would be 94.50 a yard, per cubic
3 yard, plus tax for the concrete and material, and then
4 it would be \$45 per cubic yard for the labor to place
5 and finish the concrete. And then we charge a dollar
6 per lanyard foot for to install control joists. And
7 that's standard for home construction.

8 We are actually a little bit higher than other
9 people are and that was really cheap price for that
10 driveway. Because normally a contract price like for an
11 individual and a existing house we charge per square
12 foot. And if you assess the driveway now and measure it
13 you got more driveway there than what he charged for.

14 Q. All right. So at that initial meeting Mr. Sanders
15 told you how he wanted the driveway to be, how he wanted
16 it to meander and for the driveway ---

17 MR. GAMBRELL: He's starting to lead there.

18 THE COURT: Let's ask him what he told him.

19 MR. LEFEVRE: All right. Let me withdraw that
20 question. I didn't understand it anyway.

21 BY MR. LEFEVRE:

22 Q. I don't understand when you came to the, to the
23 site at first there was already concrete poured?

24 A. There was. There was a garage poured, a front
25 porch and there was a back patio that had been poured to

1 my recollection.

2 Q. Okay. But there was no driveway that had been
3 poured?

4 A. No, there was no driveway.

5 Q. All right. So when you were testifying that there
6 was concrete already poured, why were you concerned that
7 the same concrete person wasn't doing the driveway?

8 A. Oh, well, it's just not consistent with residence
9 homebuilding standards, industry standards that one
10 contractor will pull off a job and not complete the job.
11 Typically a homebuilder has subcontractors that performs
12 all the subcontractor duties on the job and that's who
13 they use for the entirety of the project.

14 Q. Is the driveway that you installed a 12 by 73
15 concrete driveway?

16 A. I can't remember exactly how wide it is. I know
17 it's definitely a way off the road. The house doesn't
18 sit that far off the road, but this driveway it comes
19 inside and then it curves up to a parking area. And I
20 believe it's actually wider in areas than 12 feet just
21 because it's making a turn.

22 And we actually took that driveway all the way to
23 the pavement, the road pavement instead of having a
24 County pave an apron and put a pipe in the driveway. We
25 put it all the way to the shoulder of the road, saw cut

1 the road for it to be, you know, neat. And most new
2 home construction I built cut the driveway off 10 to
3 14-feet from the road and have the County pave that
4 apron. It doesn't look as good. So that's what we did.

5 As far as the length of the driveway, it's every
6 bit of 73-feet long with the exception of the parking
7 area. I'm not exactly sure how wide. Typically we stay
8 30, 33-feet from the house. So I figure if you go with
9 the square footage it would be a lot more.

10 Q. Would you term this a standard driveway?

11 A. It was pretty standard for a new home.

12 Q. Okay. Take a look at what's Plaintiff's Exhibit
13 Number 1, which you should have. What is that?

14 A. That's an invoice from Moats Construction to Bobby
15 Sanders dated the 28th of March, 2008. It describes the
16 location and the work under the PO number, and the
17 description of the work, material; has a line item,
18 sales tax is a line item, unit pricing per cubic yard
19 for labor, and then unit pricing for installation of
20 control device.

21 Q. Now, you're saying that this is, when your line
22 iteming it out, that's what you charge for the job?

23 A. That's what I charge for that job.

24 Q. And who okayed that?

25 A. The homebuilder and the homeowner the day I met

1 them out there to do the work.

2 Q. And did the homeowner promise you payment?

3 A. The homeowner told me that I would be -- to give
4 that bill to Henry Beal so that he could give it to
5 Bobby so it could be paid.

6 Q. Okay. Why is it billed to Bobby Sanders?

7 A. Because I was not gonna do any work for Henry Beal.

8 Q. And where did you get -- did you do this invoice?

9 A. Yeah. I created that invoice.

10 Q. Okay. Where did you get the 103 McLain Lake Drive,
11 Anderson, South Carolina?

12 A. I believe I called Henry and he gave me that
13 address.

14 Q. Okay.

15 A. Because they were supposed to pay the bill as soon
16 as the day we poured, which was the next day. They were
17 supposed to pay that bill as soon as we finished that
18 driveway. And I started getting really worried about it
19 after a week went by and still hadn't been paid.
20 Because that was a condition of us rushing over there
21 and putting the driveway in for them, paid as soon as
22 installed, and I made every effort to do that and I
23 think I held up my end.

24 Q. When you started to get worried about not being
25 paid what did you do?

1 A. I called Henry, I called Bobby, and I mean there
2 wasn't a whole lot I could do.

3 Q. Did you discuss with Mr. Sanders your pricing?

4 A. I did. The day that I met both of them at the job.

5 Q. And did he agree to that pricing?

6 A. I don't think Bobby had any idea what anything
7 cost. They just wanted to get it done. And he was
8 agreeable to everything that Henry was agreeable to.

9 Q. All right. Did he agree to what you were
10 discussing?

11 A. Yeah. Yeah. He was actually the one who showed us
12 where he wanted his driveway to come to, how he wanted
13 it to go around the corner of the house and tie into his
14 front porch. And, I mean, I think he entrusted Henry to
15 know what things cost and what, you know, if it was too
16 high or too low.

17 But I think the big thing was that they needed
18 somebody in there to do the job and get it done and
19 completed so they can get that -- I guess Henry probably
20 was on him to get the draw and get items completed so
21 they could get the last draw on the house to get other
22 people paid. Maybe so that liens would be filed because
23 Henry knew they were coming.

24 Q. All right. So the total on your invoice there,
25 what's the total that you billed?

1 A. \$5,921.63.

2 Q. Okay. And is that what you are owed for the work
3 that you did to the Sanders' home?

4 A. Yes, sir.

5 Q. Have the Sanders ever called you back and said that
6 they had a problem with your work?

7 A. No.

8 Q. Did you have a discussion specifically with Bobby
9 Sanders about being paid?

10 A. I did. I did.

11 Q. What happened during that conversation?

12 A. It was a week or two after we installed the
13 driveway. It could have been two weeks. I guess he was
14 aware because I was attempting to call him personally
15 and at his workplace, because I believe I went up there
16 one day to look for him. And he finally called me back
17 and he said, Russell, you know, we've got X amount and
18 he named a number, 22, \$23,000 left in escrow account
19 and when we close, and we're closing in the next week or
20 so, and as soon as we close I'll make sure that you are
21 paid that money. I'll make sure, you know, that your
22 invoice is paid in full.

23 You know, we don't have any problem with the
24 driveway, he never mentioned having any kind of issue
25 with the driveway. And he never mentioned having any

1 other liens pending on the driveway -- I mean on the
2 house.

3 Q. Have you been paid any?

4 A. Not a dime.

5 Q. Not a dime. Did you have a contract with Henry
6 Beal to build this driveway?

7 A. No.

8 Q. Who was your contract with?

9 A. It was with Michael Sanders.

10 Q. Was it in writing?

11 A. We do not have a written contract, but I don't have
12 -- rarely do I have on a residential, on residential
13 cases rarely do have I a written contract. Usually I
14 will write out an estimate and give it to the homeowner
15 and sign it, and if they agree to it they can sign it
16 and I tell them to hold onto it. You know, if they want
17 us to do the work and we come back then we both know we
18 agreed to that price.

19 But in this case I gave the pricing to Henry.
20 Henry was standing right beside Bobby. I gave the
21 prices to him and they were both agreeable and that's
22 where we left it. And I was told I would be paid when I
23 got through putting the driveway in.

24 Q. Who told you that you would be paid?

25 A. Bobby and Henry Beal did.

1 Q. Did you have any other conversations with Bobby
2 Sanders that you haven't talked about here?

3 A. Not that I recall.

4 Q. Any other conversation regarding the formation of
5 this contract between ourself and Bobby Sanders?

6 A. None that I recall.

7 MR. LEFEVRE: That's all the questions I have.

8 THE COURT: Cross-examine?

9 CROSS-EXAMINATION

10 MR. GAMBRELL:

11 Q. Mr. Moats I think you just testified you are a
12 licensed general contractor?

13 A. That's correct.

14 Q. How long have you been a licensed general
15 contractor?

16 A. Since 2004.

17 Q. And what's your -- are you residential or
18 commercial?

19 A. I'm commercial, industrial and residential general
20 contractor.

21 Q. And what category are you licensed at for your
22 general contracting license?

23 A. Category 5, unlimited.

24 Q. Okay. And you have been in the construction
25 business for quite a while now, correct?

1 A. We have.

2 Q. And you have testified that -- I want to make sure
3 that I've got it right before I ask you further
4 questions on it -- you had observed the work Mr. Beal
5 had done on your cousin's house before you ever dropped
6 concrete on the Sanders property, correct?

7 A. That's correct.

8 Q. And, in fact, you were so very concerned about his
9 quality of workmanship that you testified you wouldn't
10 accept a contract from him?

11 A. That's correct.

12 Q. Okay. Did you ever explain to Mr. Sanders while
13 you were standing right next to him that you had
14 concerns about his contractor?

15 A. No. It was none of my business.

16 Q. Did you ever bring up to him that the site prep
17 work wasn't done correctly before you dropped the load
18 concrete?

19 A. I did. I explained that to both of them.

20 Q. And did you fix the front work or did you just drop
21 the concrete?

22 A. No. They told us just to pour it over what was
23 there and that's what we did.

24 Q. Is that within industry standard to do?

25 A. It is, yeah.

1 Q. Okay.

2 A. The only thing is it can be a waste of money. It
3 can be your driveway can be thicker than it's supposed
4 to be and you incur added costs for material.

5 Q. Did you and Mr. Beal ever discuss what the
6 allowance on the driveway was for this project?

7 A. No.

8 Q. So you don't know if your price was above or below
9 the allowance?

10 A. It was standard. Actually we charge a little bit
11 higher rate than some finishers charge to place a finish
12 on a new house, but it's not much.

13 Q. And you said you were contacted by Mr. Beal.

14 A. I was.

15 Q. And every time when you initially came out to the
16 job site, besides Mr. Sanders, who was standing there?

17 A. Bobby Sanders and Henry Beal.

18 Q. And Mr. Beal was the general contractor, correct?

19 A. He was the homebuilder. From every indication that
20 I was given, yeah.

21 Q. Okay. So when you're the general contractor, just
22 generally speaking, do you negotiate directly with your
23 subcontractors or do your owners do that?

24 A. No. He did, he did something that is pretty
25 standard for -- I mean, I meet homeowners out with their

1 homebuilder at job sites all the time and do the same
2 thing that we were doing.

3 Q. But you testified that --

4 THE COURT: Let him finish answering. You asked a
5 question and he can also explain his answer.

6 THE WITNESS: Because when, when they -- when
7 someone builds a new house, their house might not set
8 like in a subdivision. It may not set uniformly with
9 the other houses off the road. You might have, if you
10 are in a rural setting or something, you might have a
11 house that's set 500 feet off the road. So you would
12 have an allowance for a driveway in the initial
13 contract, but a homebuilder may have a cost plus, you
14 know, cause in his contract, you know, for that reason,
15 you know, and the homeowner may say well, you know,
16 we've got a party or something and we want a bigger
17 driveway. So we'll go out and let them show us exactly
18 what they want.

19 Q. But that would generally be an add on, correct?

20 A. It would be. However the contract was structured,
21 it would be more or less probably an add on for the
22 homebuilder or I have had homeowners pay us directly.

23 Q. But you also said that it's also an industry
24 standard that at one concrete placement contractor
25 usually does all the work?

1 A. It is.

2 Q. And, in fact, you were concerned because there had
3 been concrete poured on the job site and you weren't the
4 guy that did it.

5 A. Right. Henry, both of them I believe, had me look
6 at the back porch and the back patio and they said you
7 see how this looks? We're not happy with this. We
8 don't want it to look like this. I can't remember if it
9 was because of the cracking or calcium chloride eat up,
10 which is what it looked like.

11 Q. So you testified that you were worried because
12 you're now -- in fact, you were concerned because you
13 were now another additional contractor to come on?

14 A. That's correct.

15 Q. And there could be reasons for that, but one of
16 those reasons could be maybe the general contractor
17 isn't paying subcontractors correctly; isn't that true?

18 A. That's correct. That's why ---

19 Q. Just -- sorry.

20 A. That's why I want to be paid as soon as we got
21 through with the job.

22 Q. So you were already so worried about Mr. Beal that
23 you didn't -- you've testified you didn't look to
24 Mr. Beal to pay you, you looked to Mr. Sanders to pay
25 you?

1 A. That's correct. And that's why I invoiced
2 Mr. Sanders instead of Mr. Beal.

3 Q. Have you ever done contracting where you were given
4 permission to do direct bank draws off a construction
5 fund?

6 A. No.

7 Q. So you wouldn't know how that process would even
8 work?

9 A. Well, I do. I mean, you have to as a contractor.

10 Q. Okay. As a contractor, if you as the contractor
11 had direct access to the money, who is then responsible
12 for paying the subcontractors?

13 A. The -- generally it is an approval process between
14 the financial institution and the homeowner who has
15 taken on the loan and the homebuilder.

16 Q. But who submits the draw request?

17 A. Usually the contractor does.

18 Q. And do you have any knowledge or any information as
19 to what kind of a relationship Mr. Beal had with the
20 Plaintiffs -- I mean, with the Defendants?

21 A. No, and I wasn't concerned about it. It was none
22 of my business.

23 Q. Now, you testified that your contract was with the
24 Sanders, correct?

25 A. That's correct.

1 Q. That was your testimony. And that's how it's
2 always been in your mind?

3 A. That's correct.

4 Q. And it's always been in your mind because you
5 didn't want to work for Henry Beal?

6 A. That's exactly right.

7 Q. You worked for Henry Beal because you put concrete
8 down on his job site, but you wouldn't work for Henry
9 Beal?

10 A. No. I didn't work for Henry Beal. I was working
11 for his homeowner.

12 Q. You realize that when you walked up here you swore
13 an oath to tell the truth?

14 A. Yes, I do.

15 Q. You don't have any problems telling the truth?

16 A. I don't.

17 Q. Judge, this isn't an exhibit because it happens to
18 be the Complaint. Do you want me to mark the Complaint
19 as an exhibit?

20 THE COURT: No. The Complaint is in the record,
21 particularly in a non-jury matter. Otherwise, I
22 wouldn't be looking at the pleadings.

23 BY MR. GAMBRELL:

24 Q. Okay. I want to show you the Complaint you filed
25 in this case. Take your time. Oh, let me help you.

1 A. Is there a ---

2 Q. Yeah. Let me help you. I'll tell you what. Do
3 you recognize this signature right here?

4 A. I do.

5 Q. Whose signature is that?

6 A. It's Mr. LeFevre's.

7 Q. That's your lawyer, right?

8 A. That's correct.

9 Q. And all the facts that your lawyer would have known
10 about this case you told him, right?

11 A. That's correct.

12 Q. I'm gonna show you particularly Page 4 of 12, Roman
13 Numeral 15. I want you to read that paragraph out loud,
14 please.

15 A. Okay. "On or before March the 28, 2008 the
16 Plaintiff entered into an agreement with the Defendant
17 Premier Southern Homes or its agents" ---

18 Q. Wait. What was the name of that entity?

19 A. Defendant Premier Southern Homes or its agent.

20 Q. Okay.

21 A. "In which the Plaintiff agreed to furnish certain
22 labor and materials and services which were utilized as
23 improvements to said property with the consent of for
24 the benefit of and furnished at the request of the
25 Defendant or Defendant's agent on the Defendant's real

1 property as described in Exhibit A."

2 Q. And because this is the only work you have ever
3 done for the Sanders -- let me have my complaint back --
4 the only property you would have done work for would be
5 the property that was the subject of the mechanic's
6 lien, correct?

7 A. Can you repeat the question?

8 Q. This is the only job you've ever done for the
9 Sanders?

10 A. That's correct.

11 Q. So you haven't seen their house?

12 A. I haven't seen Exhibit A so I couldn't tell you.

13 Q. (Handing document to witness.)

14 A. Yeah. I would, I would imagine it is if that's the
15 correct tax map number, yes.

16 Q. So, in other words -- when was this Complaint
17 signed? (Handing document to witness.)

18 A. September the 19th, 2008.

19 Q. So, in other words, until today your contract was
20 with Premier Southern Homes?

21 A. No.

22 Q. According to your own Complaint that has been filed
23 in this courthouse since 2008, your contract was with
24 Premier Southern Homes.

25 A. No. It specifically says in Article Number 15,

1 Premier Southern Homes or its agent. And I believe that
2 Mr. Sanders, being a property owner, could be considered
3 an agent.

4 Q. Do you have any ---

5 A. He did direct the work.

6 Q. Did you have any idea what an agent is?

7 A. I do.

8 Q. Okay. What is an agent?

9 A. An agent is someone who acts in confidence for
10 someone else or acts as a representative for someone
11 else.

12 Q. Okay. Is your lawyer your agent?

13 A. He would be considered an agent.

14 Q. Are you your lawyer's agent?

15 A. I guess I could be in certain circumstances if it
16 was relevant.

17 Q. In the general circumstance, are you his agent?

18 A. (No response.)

19 THE COURT: The Court is very familiar with 801(a)
20 (2)(d) and I think it's ...

21 MR. GAMBRELL: Okay.

22 BY MR. GAMBRELL:

23 Q. But are you ever when you are a general contractor,
24 is the owner ever your agent?

25 A. Sure they are. When an owner -- and I'll give you

1 an example.

2 Q. No.

3 THE COURT: Just a second.

4 THE WITNESS: When an owner directs a portion of
5 the work, they are directing or advising you to do it a
6 certain way. I believe that would be a prime example of
7 somebody being an agent. And I wasn't being an ---

8 Q. Or the owner could be the ---

9 COURT REPORTER: Excuse me.

10 MR. GAMBRELL: I'm sorry.

11 COURT REPORTER: An example of somebody being a?

12 THE WITNESS: Agent.

13 COURT REPORTER: Thank you.

14 BY MR. GAMBRELL:

15 Q. But the owner could be a principal, correct?

16 A. I'm sure they could.

17 Q. And a principal has the right, the power to direct
18 his agent?

19 A. Should have.

20 Q. So another -- and when your lawyer drafted this
21 Complaint, he knew who the Sanders were, correct?

22 A. I believe he did.

23 Q. But doesn't he also say in there that it was the
24 Defendants, meaning that the general contractor had the
25 duty to pay you too, correct?

1 A. I wasn't seeking anything from Henry Beal or
2 Premier Southern Homes because I knew that he, he
3 probably didn't have anything to offer. I mean I
4 specifically was doing the work for the homeowner,
5 that's how I billed him, and that's who I was looking to
6 for payment.

7 Q. Tell me who the third named Defendant on this
8 caption is.

9 A. Premier Southern Homes.

10 Q. So you were looking for something from Premier.

11 A. I was looking for Bobby Sanders, being the
12 homeowner, or Henry Beal, being the homebuilder, to take
13 care of paying for the driveway that I installed for
14 them; that both of them told me that they would make
15 sure and guarantee that they both guaranteed payment
16 for. So that is why Premier Southern Homes was named as
17 a Defendant in this case.

18 Q. Did you ever go inside the house?

19 A. I did not.

20 Q. Have you done an inspection on the inside of the
21 house as far as quality of the workmanship?

22 A. I have not. Just seen the photographs.

23 Q. But you testified you are familiar with Mr. Beal's
24 workmanship.

25 A. I am. I've been inside my cousin's house, and so

1 I'm familiar with -- after the fact, I'm familiar with
2 his work.

3 Q. And Beal did a crappy job on that one, didn't he?

4 A. He did. They're not happy with that one at all.

5 MR. GAMBRELL: Nothing further, Your Honor.

6 THE COURT: Redirect?

7 REDIRECT EXAMINATION

8 By MR. LEFEVRE:

9 Q. Since he brought up the Complaint, Paragraph 17,
10 can you read it? I'll bring mine. (Handing document.)

11 A. Seventeen?

12 Q. Yes, sir.

13 A. "Defendants have failed and refused and continue to
14 fail and to refuse despite repeated demands for payment
15 to make payments in accordance with the terms of the
16 agreement and is therefore in breach of contract as
17 entered into with the Plaintiff."

18 Q. Did I say it wrong? No. Seventeen.

19 A. Okay, sir. "Of the \$5,921.63 owed pursuant to the
20 agreement, Defendants Premier Southern Homes, Bobby B.
21 Sanders and Staci Y. Sanders have paid zero on this debt
22 to the date, leaving a remaining balance of 5,921.63
23 with the interest at the legal rate. No part of the
24 \$5,921.63 has been paid even though the Plaintiff has
25 demanded that Defendant or Defendant's agent pay the

1 sums do and owing to it for the labor, materials and
2 services that it has furnished and/or caused to be
3 furnished for the improvements into the aforementioned
4 real property."

5 Q. Can you read the paragraph which begins wherefore?

6 A. "Wherefore, the Plaintiff prays that this Court
7 determine the amount of the indebtedness due to the
8 Plaintiff including the principal, interest, cost and
9 attorneys' fees and award judgment against the
10 Defendants Bobby D. Sanders, Staci Y. Sanders, and
11 Premier Southern Builders L.L.C. jointly and severally
12 for the full amount found to be due to the Plaintiff."

13 Q. Okay. When did you create this invoice Russell?

14 A. It was the -- it could have been the same day or it
15 would have been the following day the drywall was
16 installed.

17 THE COURT: What date was that?

18 THE WITNESS: That would have been the 28th of
19 March.

20 MR. LEFEVRE: Exhibit, Plaintiff's Exhibit Number
21 1.

22 THE COURT: Just remember because the record needs
23 to reflect that.

24 MR. LEFEVRE: Yes, sir.

25 BY MR. LEFEVRE:

1 Q. Look at Plaintiff's Exhibit Number 1. What date is
2 on it?

3 A. The 28th of March, 2008.

4 Q. All right. That was the date this invoice was
5 created?

6 A. It was.

7 Q. Okay. And billed to who?

8 A. Billed to Bobby Sanders, 103 McLain Lake Drive.

9 Q. All right. So in 2008, about a day after you laid
10 the concrete down, you believe your contract was with
11 the Sanders, correct?

12 A. That's correct.

13 MR. LEFEVRE: That's all the questions I have.

14 THE COURT: Recross?

15 RECROSS-EXAMINATION

16 BY MR. GAMBRELL:

17 Q. Let me see Plaintiff's 1.

18 A. (Handing document.)

19 Q. Your address, 1523 Old Roberts Church Road, what's
20 physically located there?

21 A. It's my home and my place of business. I have a
22 home office there.

23 Q. When did you acquire that home?

24 A. It's been in our family since 1979.

25 Q. When did you move in there?

1 A. I moved in there in 2002.

2 Q. Okay. Is this invoice signed at all by
3 Mr. Sanders?

4 A. No, sir, it's not.

5 Q. Is this your copy of the Complaint or is it mine?
6 Who prepared that report?

7 A. I believe I did. I'm pretty sure I did.

8 MR. GAMBRELL: Okay. Nothing further, Your Honor.

9 THE COURT: Very good. Anything else?

10 MR. LEFEVRE: No, sir.

11 THE COURT: All right. You may step down. Thank
12 you.

13 (Whereupon, the Witness was excused.)

14 MR. LEFEVRE: Plaintiff rests.

15 MR. GAMBRELL: Your Honor, I'm gonna make a motion
16 for directed verdict based on a couple of grounds under
17 the statute.

18 Judge, the only uncontradicted testimony in the
19 record right now is that there were significant defects
20 with this home prior to closing. In fact, the Plaintiff
21 himself said that Mr. Beal generally did crappy work.
22 We put up basically the Plaintiff's Case-in-Chief a list
23 of overages and offsets that the Defendants, the owners,
24 would be entitled to under a contractual theory that
25 Mr. Beal was seen.

1 The case that I handed up to you, the Woods case,
2 stands for basically the proposition that if there are
3 offsets on a project, the offsets on the project reduce
4 the amount due under the contract to the point that the
5 reduction based on offsets could reduce the contract
6 price below zero. Your Honor, I believe, again, it's
7 been uncontradicted that there was work that needed to
8 be done, work that had not yet been done because of a
9 lack of funds.

10 But basically, Your Honor, that because of the way
11 the, the way the testimony has come out, there is
12 basically no issue left of material fact as to the
13 Defendant's entitlement to an offset. The Defendants
14 through Cross-Examination did challenge one or two or
15 three or four different line items, but the line items
16 that were challenged kind of even in their own
17 cross-examination it would still be a negative balance.

18 And offsets don't necessarily have to be money
19 that's already paid. The money could represent credits
20 that are due to contractors. In other words, if the two
21 of us owed money, if you are the contractor and I'm the
22 owner, and you owed me money on something else, I could
23 agree to forgive a certain amount of debt in exchange
24 for, in exchange for an offset.

25 Those two cases I handed up, the ABA case and also

1 Wood, both stand for that proposition that offset
2 credits reduce the amount due under the contract. And
3 obviously, Judge, he can only prevail on his mechanic's
4 lien to the extent that there is amounts left due under
5 the contract.

6 And the Wood case, Wood versus Hardy, clearly says
7 that if there are offsets that amount can be reduced.
8 And we have put in evidence that would clearly show that
9 the amount due left under the contract is zero. And at
10 this point the amount due under the contract is now
11 somewhere in the negative 26, \$27,000 range.

12 So because of that, because of the Section 40 of
13 the mechanic's lien statute says that the aggregate of
14 the amount of the lien cannot exceed the contract price,
15 and that's the exact situation that we have now due to
16 the offsets. The amount of any of any aggregates due
17 would now exceed the amount due under any of the
18 contract.

19 Further, I believe that the Plaintiff is bound by
20 his pleadings. The Plaintiff did not plead a contract
21 between himself and the Sanders. His contract, his
22 pleadings, and, you know, we went round and around about
23 the subject of the word agent. Your Honor, my
24 experience the owner is never the agent. The owner is
25 the principal. And because of that his pleadings

1 clearly lay out exactly who he thought this contract was
2 with, and that pleading has been this way since he
3 filed, the date he filed.

4 So at this point, Your Honor, as to the two
5 principal causes of action, we've got the mechanic's
6 lien he can't prevail because of the amount of the liens
7 is now an aggregate more than the amount due under the
8 contract, and he can't prevail under the contractual
9 theory because of his own Complaint. He basically got
10 up now and testified inconsistently with his own
11 contract.

12 THE COURT: I beg your pardon?

13 MR. GAMBRELL: He's testified inconsistently under
14 his own contract in order to try and save himself
15 because he realizes that the mechanic's lien theory may
16 be in jeopardy, and so now he has changed his story.
17 And I think the Court is well aware of the definition of
18 the word agent, and that there was nowhere in that
19 pleading that he had pled that his contract was with the
20 Defendants.

21 Furthermore, Plaintiff's Exhibit Number 2, which is
22 the contract itself between the parties, which is --
23 it's up there -- clearly holds that the driveway was
24 within the scope of work between Southern Premier Homes
25 and the Defendants.

1 Your Honor, I think that a Judging as to whether
2 there is really an issue in dispute of material fact for
3 purposes of directed verdict I don't think there really
4 is much of a dispute.

5 THE COURT: Well, don't I have to read the
6 pleadings in its entirety?

7 MR. GAMBRELL: That you would, Your Honor.

8 THE COURT: And that when he seeks judgment against
9 both Defendants that means both landowner and the
10 homebuilder?

11 MR. GAMBRELL: He can, Your Honor, but because the
12 Defendants own the property, the Defendant -- I mean,
13 the Defendants are never ---

14 THE COURT: They make agreement with the contract.

15 MR. GAMBRELL: Certainly he could, but not under
16 this set of facts and not under ---

17 THE COURT: I mean, you're doing the pleadings and,
18 of course, I think at this point -- and I think it
19 should be recognized that this is not the jury that had
20 the unfortunate responsibility to determine if there is
21 a genuine issue of material fact. It seems like there
22 is an issue as to whether or not there was an agreement.

23 MR. GAMBRELL: The last point I want to raise, Your
24 Honor, is the point about Zepa versus Randazzo. Zepa
25 versus Randazzo stands for the proposition, Your Honor,

1 that in most circumstances it kind of defines what is
2 the amount due under the contract and it also defines
3 that in certain circumstances profit is not considered
4 part of the, not considered the amount due under the
5 contract. And the Plaintiffs, the contract in the
6 record is very similar to the contract discussed in this
7 case. And that basically the amount left due under that
8 the draw occurred was for retainage and designed to
9 secure the general contractor's performance of the
10 agreement. It contains a net profit in it. And because
11 he walked off the job and refused to perform, he
12 forfeited that money.

13 And the Zepssa case says that the amount due under
14 the contractor's work is money done for work, not
15 profit. And so to the extent we took a draw that there
16 was money left over, that money was left over and is
17 consistent and the contracts are very similar if you
18 read this case.

19 And so for those reasons, Your Honor, we believe we
20 are entitled to judgment. If you give me a minute I'll
21 determine if I'm gonna put testimony on.

22 THE COURT: Very good.

23 MR. LEFEVRE: I couldn't tell if you were denying
24 his motion up until that point or if I need to go back
25 and argue whether there's a material issue of fact as

1 whether there's a contract or not.

2 THE COURT: Well, he's in essence saying that there
3 is none. That's a directed verdict motion. You know,
4 it's the same that summary judgment is no genuine issue
5 of material fact.

6 MR. LEFEVRE: Well, Your Honor, I believe there is
7 sufficient evidence in the record that you have to
8 consider not only the pleadings but also the testimony
9 you've heard today to create a significant issue of
10 material fact as to whether there was an agreement
11 between Moats and his homeowner or Moats and the general
12 contractor. Mr. Moats testified that ---

13 THE COURT: I understand. Okay.

14 MR. LEFEVRE: Okay. And I think you can conform
15 the testimony to the ---

16 THE COURT: Conform the pleadings of the testimony?

17 MR. LEFEVRE: Yes, sir. I'm sorry, Your Honor?
18 Well, I think he testified to what he believed the
19 contract was.

20 THE COURT: Oh, all right.

21 MR. LEFEVRE: And the reading of the Complaint he
22 reads it one way, he reads it another way, there's an
23 issue there. He testified today that he thought the
24 contract was between himself and the homeowner.

25 As far as the, and I'm just gonna address the point

1 of the profit. Your Honor, this was 10 percent of the
2 contract price. There's been no testimony
3 whatsoever ---

4 THE COURT: I understand. Very well. I do deny
5 the motion for summary -- I mean, excuse me, directed
6 verdict, which is in essence a summary judgment motion
7 at this point because I do feel -- in fact, I'll be very
8 candid with you. I'll take time to not only consider
9 the testimony, but also the authorities that have been
10 handed up. I'm familiar with Wood versus Carter because
11 that's an Ocone case.

12 MR. GAMBRELL: If I could have maybe two minutes
13 with my client.

14 THE COURT: Certainly. I tell you it's 1:30.

15 MR. GAMBRELL: I don't want you to walk off the
16 bench because if I decide not to we can go home.

17 THE COURT: All right. Very well. We'll take just
18 a few minutes and stand at ease.

19 MR. GAMBRELL: All right. I'll just step out for a
20 minute.

21 THE COURT: All right, certainly.

22 (Whereupon, a short recess was had.)

23 MR. GAMBRELL: Your Honor, I'm gonna re-call Bobby
24 Sanders to the stand.

25 THE COURT: Very good. You understand you are

1 still under oath?

2 THE WITNESS: Yes, sir.

3 THE COURT: All right, very good.

4 DIRECT EXAMINATION .

5 BY MR. GAMBRELL:

6 Q. Mr. Sanders, did you ever have a conversation with
7 Mr. Moats about, that you would agree to pay him for his
8 work?

9 A. No.

10 Q. And explain how the money was divided up between
11 you and your wife and Premier Southern Homes.

12 A. When we first contracted with Henry Beal, we gave
13 him all access to the funds. We did not have to sign
14 off on any draws or any of that. We pretty much left it
15 in contractor's hand to pay the bills as they came in.
16 We had no input, and we did not have to sign off on any
17 draws to allow him to take money.

18 Q. Why did you agree to do that?

19 A. Our realtor expressed to us that sometimes when
20 you, the hours that Staci and I work, that sometimes it
21 will slow down a project if they have to wait on you to
22 sign off on draws, and we were ready to get into the
23 home because we were renting at this time.

24 (Counsel confer.)

25 MR. GAMBRELL: Mark these as the next set of

1 exhibits.

2 (Whereupon, Defendant's Exhibit Number 5,
3 Disbursement Authorization Form, was marked for
4 identification.)

5 (Whereupon, Defendant's Exhibit Number 6,
6 Inspection Draw Release, was marked for identification.)

7 (Whereupon, Defendant's Exhibit Number 7, Premier
8 Southern Homes Draw, was marked for identification.)

9 THE COURT: You stipulate this in?

10 MR. LEFEVRE: Yes.

11 MR. GAMBRELL: Okay.

12 THE COURT: What is it?

13 MR. GAMBRELL: They are Defense Exhibits 5, 6 and
14 7.

15 THE COURT: Are they already in?

16 MR. GAMBRELL: No.

17 MR. LEFEVRE: I have no objection.

18 THE COURT: All right. But it's Defense exhibits?

19 MR. GAMBRELL: Yes, sir.

20 THE COURT: All right. What's the next number
21 Madam Court Reporter?

22 COURT REPORTER: Uh, Yes. It's Defendant's 5, 6
23 and 7.

24 THE COURT: Oh, that is Defense Exhibits 5, 6, and
25 7. Okay, very good. Admitted without objection.

1 (Whereupon, Defendant's Exhibits Nos. 5, 6, and 7
2 were entered into the record.)

3 BY MR. GAMBRELL:

4 Q. Explain briefly what Number 5 is.

5 A. This is the constructions firm advantage program
6 disbursement authorization form. It looks like where
7 Staci and I signed on September 5th of '07 to allow the
8 payment directly to the biller.

9 Q. And what is Exhibit Number 6?

10 A. Exhibit 6 is a general contractor commercial owner
11 homes, it gives the loan number and shows the
12 disbursement spec. I guess that's the lady at Wells
13 Fargo, Ms. Harris, and it releases maximum amount per
14 inspection to Henry Beal.

15 Q. Meaning that when Mr. Beal has an inspection done
16 what happens?

17 A. That he gets the maximum amount of the draw.

18 Q. And do you -- did you or Staci have to approve
19 those draws?

20 A. No. We didn't approve anything through the whole
21 process.

22 Q. Defendant's Exhibit Number 7, what is that?

23 A. This look like the Premier Southern Homes. It
24 looks like his draw as he was doing the construction
25 costs.

1 Q. And what was the amount allocated for the driveway?

2 A. \$6,847.95.

3 Q. And so that would mean that that would be a
4 responsibility of Mr. Beal to pay for it, correct?

5 A. Our contract was ---

6 THE COURT: What was that number again?

7 BY MR. GAMBRELL:

8 Q. Read that number out again for the judge.

9 A. 6,347.95.

10 THE COURT: Very good, thank you.

11 THE WITNESS: Our contract with Mr. Beal as a
12 general contractor should have been a completed house
13 that we could move into. Therefore, I would not have
14 had to hire outside subs and I would not have had to
15 hire Mr. Moats as an outside sub. The day I was there,
16 there were no figures or estimates thrown out at me.
17 That must have been between him and Mr. Beal before I
18 got there.

19 BY MR. GAMBRELL:

20 Q. What was your participation on that day you met
21 Mr. Beal and Mr. Moats at the job site?

22 A. Just to show him what I wanted the walkways to be
23 and how the driveway was to be poured. I didn't know
24 about pouring the driveway over this insufficient hilly
25 dirt until today. Maybe that's why it was cracked.

1 Q. I want you to read that. It's really, really,
2 really little print, but can you read that little
3 sentence there. What exhibit number is this?

4 A. This is on Exhibit Number 6. Are you talking about
5 the note?

6 Q. Yeah. The 10 percent.

7 A. "The following 10 percent of the original
8 construction loan amount will be held back into the
9 certificate of occupancy final job card or the
10 equivalent is received in addition to the requests for
11 the time of draw." I can't hardly read it.

12 Q. But in other words, that requirement required 10
13 percent to be held back as a retainage?

14 A. That is correct.

15 MR. LEFEVRE: Your Honor, I'm gonna object to that.
16 I'm not sure he knows what retainage is. I'm not sure
17 he's qualified to testify to that.

18 THE COURT: That's all right. Go ahead, please.

19 MR. GAMBRELL: Okay.

20 By MR. GAMBRELL:

21 Q. Have you ever promised to pay Mr. Moats?

22 A. No.

23 Q. Did you ever make an agreement with Mr. Moats?

24 A. No, I did not.

25 MR. GAMBRELL: Nothing further, Your Honor.

1 THE COURT: All right.

2 CROSS-EXAMINATION

3 BY MR. LEFEVRE:

4 Q. You testified just a second ago on Defendant's
5 Exhibit Number 7 that the driveway allowance was
6 6,847.95?

7 A. That is correct.

8 Q. Okay. That's not exactly accurate, is it?

9 A. Well, it says driveway, walks, decks and
10 landscaping.

11 Q. Yeah, exactly. It's driveway, walks, decks and
12 landscaping. It's 6,847.95.

13 A. Okay.

14 Q. I'm gonna show you what you've got on your defense,
15 your list of expenses. I mean, you spent almost \$3,000
16 on landscaping, not including your deck and your
17 walkways, right?

18 A. The walkways were included in his price.

19 Q. Right, they were. And you spent \$5,900 on that
20 driveway and walks, right?

21 A. Mr. Beal did.

22 Q. So what you're asking us to believe is that you,
23 you have almost \$10,000 worth of landscaping, driveways,
24 and decks now for which your original contract -- let me
25 back up one second.

1 Have you ever seen Defense Exhibit Number 7 before
2 today?

3 A. Number 7? We got a copy of this I think from our
4 attorney before court.

5 Q. Today?

6 A. We didn't get it today. Prior to today.

7 Q. Did you see it in May of '08?

8 A. If I did, I didn't pay any attention.

9 Q. So you didn't know what was allotted for what?

10 A. I knew that I had a contractor price with Mr. Beal
11 and it allowed a 12 by 73 driveway and it allowed the
12 landscaping package that was involved. I did not know
13 what he was spending on anything and, therefore, I did
14 not, I would not have agreed to an amount with Mr. Moats
15 because I didn't even know how much we were allotted for
16 a driveway because Mr. Beal was in charge of the entire
17 process.

18 Q. Well, did you know the amount of the landscaping
19 when you paid \$3,000 for it?

20 A. We had estimates done by the page on the contract,
21 the initial contract. That's Exhibit Number 2. And it
22 said landscaping with seed and straw, 10 one-gallon,
23 five three-gallons of shrubs, and 30 yards mulch is what
24 we had installed. I don't know what it cost or what it
25 cost Mr. Beal, but that's what it cost me. He may have

1 got it done cheaper, he might have used somebody on
2 every home, but I don't know.

3 Q. I don't know what number it is, but there's a
4 picture of your deck.

5 A. Okay.

6 Q. Do you see it?

7 A. Yes, sir. It's Exhibit 1.8.

8 Q. 1.8. Did the original contract call for this
9 landscaping with the lights in the mulch?

10 A. The landscaping, bricks, and the lighting come out
11 of my pocket.

12 Q. Okay. So ---

13 A. We were allowed the mulch.

14 Q. Okay. But the brick, the landscaping bricks and
15 the lights and all that weren't in the original
16 contract?

17 A. No. I did not take it out of this contract. I
18 paid for it out of my own pocket.

19 Q. Was that out of the \$3,000 that you spent and paid
20 for it?

21 A. No, it was not. I applied only to the yard what
22 the contract stated.

23 Q. Did the contract say anything about Wells Fargo
24 late fees?

25 A. Probably not because there shouldn't have been an

1 issue with late fees if the -- you know if the ---

2 Q. Did the contract say anything about bonding liens?

3 A. Nothing.

4 Q. Did the contract say anything about your attorneys'
5 fees?

6 A. It did not, but then again we shouldn't have had
7 all these issues if Mr. Beal hadn't breached the
8 contract.

9 Q. Did the contract say anything about your settlement
10 with Harbin Lumber?

11 A. No, it didn't. And it didn't say anything about
12 the offer to settle with Mr. Moats either.

13 MR. LEFEVRE: Okay. That's all the questions I
14 have, Your Honor.

15 MR. GAMBRELL: I have nothing further, Your Honor.

16 THE COURT: All right. Anything else?

17 MR. GAMBRELL: The Defendants rest.

18 THE COURT: All right. Any reply?

19 MR. LEFEVRE: No, Your Honor.

20 THE COURT: I think we've heard all the witnesses
21 once or twice.

22 MR. GAMBRELL: The only sort of pending I would
23 obviously renew my motion. I understand that you're
24 gonna deny it.

25 THE COURT: Well, I am because I feel there are

1 some issues that the Court needs to look at.

2 MR. GAMBRELL: The only other matter, Your Honor,
3 is -- and to be fair to Mr. LeFevre, I looked through my
4 Complaint and I believe that we did allege negligence on
5 the part of the contractor, but I'm not sure that I
6 plainly allege -- I had it in the Complaint, but plainly
7 allege the right to the offset. I think you could read
8 paragraphs into that.

9 THE COURT: Well, let me ask you both. Would it be
10 fair to say that we're going to conform the pleadings to
11 the testimony and the evidence?

12 MR. GAMBRELL: That's fine.

13 MR. LEFEVRE: Yes, Your Honor.

14 THE COURT: I think there's some question about
15 won't say articulate, but maybe not specific pleadings
16 on one side as well as on the other. So offset is gonna
17 be considered because it's been testified to ---

18 MR. GAMBRELL: Correct.

19 THE COURT: --- without objection. And also
20 separate contract has been argued too, or testified to.
21 So the record will reflect and hopefully it's amended to
22 conform with the testimony.

23 Anything else?

24 MR. GAMBRELL: Nothing further, Your Honor.

25 THE COURT: All right. Gentlemen, this is a close

1 case, one that I must decide not only on the law but
2 also on the testimony and evidence. So I'm going to
3 need some time. I would ask you how much time would you
4 need for the Plaintiff to, if you want to submit any
5 authorities?

6 MR. LEFEVRE: Ten days, Your Honor,

7 THE COURT: It's a 2008 case, I know that or 2009
8 case.

9 THE LAW CLERK: Your Honor, I see

10 MR. LEFEVRE: It's a 2008 case.

11 THE COURT: So, I mean, we do need to get -- why
12 don't we do 30 days for both sides to submit their --
13 you can do it either in a proposed order or -- I
14 probably prefer a proposed order, and then do it e-mail
15 so I can play with it.

16 MR. LEFEVRE: Okay.

17 THE COURT: And then also then five days or a week
18 after that, then you reply. And so that would make it
19 when? All right. Today is the 15th. 30 days would be
20 the 16th of April and a week after that would be the
21 23rd of April.

22 MR. GAMBRELL: Prior to what date, Your Honor?

23 THE COURT: A week later. In other words, I put it
24 on the Monday is the filing time.

25 MR. LEFEVRE: Monday, the 16th?

1 THE COURT: Monday the 16th, yes. And then the
2 23rd. I do that to ruin lawyers' weekends because if
3 they procrastinate and don't do their work before Monday
4 it will ruin their weekend.

5 All right. Again, I want to thank both of you for
6 a very thorough presentation. As I say, I'll try to do
7 the best I can. All right. With that we'll stand
8 adjourned on this case and I'll wait to hear from you on
9 proposed orders. Thank you very much.

10 (Whereupon, Court adjourned at 2:00 p.m., to hear
11 other cases starting at 3:00)

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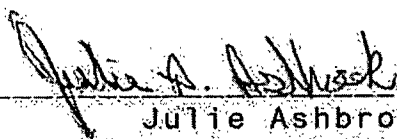
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Certificate of Court Reporter

I, the undersigned, Julie A. Ashbrook, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record to the best of my ability of the proceedings had and the evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for ANDERSON County, South Carolina, on the 15TH day of MARCH, 2012.

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

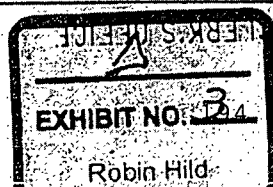
July 24, 2012



Julie Ashbrook
Family Court Reporter

ORIGINAL TRANSCRIPT PROVIDED FOR STEVEN LeFEVRE, ESQ.

Date	Description	Total	Balance
05/20/12	Starting Balance		\$23,654.40
06/08/08	Water - for Bulider's NSF Check to West Anderson Water Company	-\$1,130.00	\$22,524.40
06/08/08	Garage Door Opener - Anderson Garage Doors	-\$300.00	\$22,224.40
06/08/08	Window Pediment - Bi State Products	-\$150.03	\$22,074.37
06/08/08	Per Diem - 03/20/08 - 05/26/08 - ok'd by Ryan	-\$1,360.00	\$20,714.37
06/30/08	Water Heater Element - Home Depot - water heater not working	-\$17.99	\$20,696.38
06/30/08	Installation of Pediment - Anderson Construction	-\$289.53	\$20,406.85
07/15/08	Garage Door Hinges/Handles - Anderson Garage Doors	-\$50.00	\$20,356.85
07/15/08	Installation of water line to correct improper pipe - Anderson Construction	-\$2,325.00	\$18,031.85
07/15/08	Damaged patio - install deck - price of original patio	-\$1,350.00	\$16,681.85
08/15/08	Per Diem - 05/27/08 - 07/15/08 - ok'd by Ryan	-\$1,000.00	\$15,681.85
09/15/08	Legal Fees 06/08 (434.00) & 07/08 (615.00)	-\$1,049.00	\$14,632.85
09/30/09	Mailed certified letter to Ryan	-\$6.24	\$14,626.61
10/06/08	Landscaping - Heritage Outdoor Living	-\$2,953.00	\$11,673.61
10/23/08	Back window leak & OSB b/w back windows fixed - Scott Sutton	-\$175.00	\$11,498.61
12/12/09	Wells Fargo fees for late closing - ok'd by Ryan	-\$4,405.63	\$7,092.98
12/16/08	American Contracting - Bonding Liens	-\$1,310.00	\$5,782.98
07/10/09	TM Padgett - Cracked and sinking front porches	-\$4,000.00	\$1,782.98
07/10/09	Freeman Enterprises - fixed flashing on porches	-\$100.00	\$1,682.98
09/08/09	Outstanding Legal fees - \$754.40 & \$2800.70	-\$3,555.10	-\$1,872.12
09/24/09	Settlement with Harbin Lumber	-\$2,000.00	-\$3,872.12
11/20/09	Replaced 5 recessed lights. Springs bad and they kept falling from ceiling	-\$77.40	-\$3,949.52
03/17/10	Estimate to repair access door under house	-\$400.00	-\$4,349.52
03/17/10	Estimate to repair steps - not to Anderson County Code	-\$800.00	-\$5,149.52
03/17/10	Estimate to replace fraying carpet - pulling apart at seams and baseboards	-\$9,258.92	-\$14,408.44
03/17/10	Estimate to repair drywall issues - seams pulling apart, tape peeling	-\$2,306.00	-\$16,714.44
03/21/10	Estimate for painting after drywall repairs completed	-\$6,250.00	-\$22,964.44
04/12/10	USPS - Overnight Affidavit to Ryan	-\$18.30	-\$22,982.74
08/05/10	Legal Fees	-\$250.00	-\$23,232.74
12/03/10	Legal Fees	-\$50.00	-\$23,282.74
02/23/11	Legal Fees	-\$250.00	-\$23,532.74
04/18/11	Legal Fees	-\$50.00	-\$23,582.74

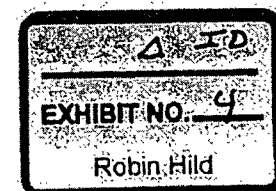


Name of Company	Type of Service	Date of Service	Date Lien Filed	Lien Served	Amount Owed	Lien Status	Bonded Lien
Elite Mechanical	Initial Wiring & Heat Install	12/31/07	03/28/08	Yes	\$5,498.90	????	No
Level Construction	Inside Trim work	unknown - No invoice	05/21/08	No	\$3,161.75	Released 10/02/08	No
Love Heating & Air	Finish wiring & air install	unknown - No invoice	05/21/08	No	\$5,198.00	Released 09/29/08	No
Solid Rock	Foundation & Steps	unknown - No invoice	05/22/08	No	\$5,565.50	??????	Yes
Moats Construction	Driveway	03/28/08	05/27/08	Yes	\$5,921.63		Yes
American Concrete	Concrete for Moats	03/28/08	06/13/08	Yes	\$3,760.88	??????	Yes
All Carolina Exteriors	Gutters & Garage Doors	unknown - No invoice	05/29/08	No	\$1,531.00	Released 01/07/09	No
Harbin Lumber	Lumber - settled 09/24/09	05/01/08	06/17/08	Yes	\$17,491.66	???????	Yes
Total of Mechanics Liens					\$48,129.32		

COMMON PLEAS AND
GENERAL SESSIONS

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ANDERSON SC



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

RECEIVED

AUG 07 2014

SC Court of Appeals

Appellate Case No. 2013-002176

Moats Construction Services, LLC. Appellant,

v.

Bobby D. Sanders, Jr.; Staci Y. Sanders; Premier Southern Homes, LLC; Elite Mechanical Services, Inc.; Level Construction, LLC; Love Heating & Air, LLC; Solid Rock Construction Services, LLC; All Carolina Exteriors, LLC; American Concrete and Precast, Inc.; and Harbin Lumber Co., Inc., Defendants,

Of whom Bobby Sanders is the Respondent.

Bobby Sanders, Jr., and Staci Y. Sanders, Third Party Plaintiffs,

Of whom Bobby Sanders, Jr. is the Respondent,

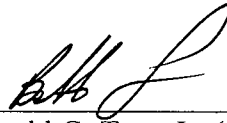
v.

Henry Beal. Third Party Defendant.

CERTIFICATE OF APPELLANT

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 5, 2014



Ronald G. Tate, Jr. (S.C. Bar No. 5475)

R. Batten Farrar (S.C. Bar No. 100077)

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

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Of whom Bobby Sanders is the Respondent.

Bobby Sanders, Jr., and Staci Y. Sanders, Third Party Plaintiffs,

Of whom Bobby Sanders, Jr. is the Respondent,

v.

Henry Beal. Third Party Defendant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Bobby D. Sanders, Respondent, by depositing a copy of same in the United States Mail, with the correct

postage affixed, on August 5, 2014, addressed to Bobby D. Sanders' attorneys of record in the above-referenced civil action:

Donald Ryan McCabe, Jr., Esq.
Stephanie Carol Trotter, Esq.
McCabe Trotter & Beverly, P.C.
140 Stoneridge Drive, Suite 650
Columbia, SC 29210



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864-271-9580
ATTORNEY FOR APPELLANT