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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2010-CP-40-8155
Appellate Case No. 2014-000272

RECORD ON APPEAL

Howard Nankin and Nancy Nankin, Plaintiffs,
v.
Donald M. Danford d/b/a Don Danford Interiors, Defendant.
Donald M. Danford d/b/a Don Danford Interiors, Third Party Plaintiff,
v.
Jeff Stahl, Third Party Defendant,
Of Whom Howard Nankin and Nancy Nankin are the Appellants,
and
Donald M. Danford d/b/a Don Danford Interiors is the Respondent.

RECORD ON APPEAL

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM RICHLAND COUNTY
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Edgar W. Dickson, Circuit Court Judge

Case No. 2010-CP-40-8155
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Howard Nankin and Nancy Nankin.....Appellants,

v.

Donald M. Danford d/b/a Don Danford Interiors.....Respondent.

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-40-08155

Howard Nankin and Nancy
Nankin,)

Plaintiffs,)

vs.)

Donald M. Danford d/b/a Don
Danford Interiors,)

Defendant.)

Donald M. Danford d/b/a Don
Danford Interiors,)

Third-Party Plaintiff,)

vs.)

Jeff Stahl,)

Third-Party Defendant.)

ORDER

THIS MATTER came before the undersigned for a bench trial on October 4, 2012. Wesley D. Peel, Esquire appeared on behalf of Plaintiffs Howard and Nancy Nankin. W. Duvall Spruill, Esquire appeared on behalf of Defendant Donald M. Danford d/b/a Don Danford Interiors ("Danford"). Third-Party Defendant Jeff Stahl ("Stahl") appeared *pro se*. Based on the exhibits, testimony of witnesses, and arguments presented at trial, I make the following Findings of Fact and Conclusions of Law:

1. Findings of Fact

Plaintiffs own and live in the residence at 247 Southlake Drive in Columbia, South Carolina and decided to renovate the master bathroom of their home (the "Project"). Specifically, Plaintiffs wanted to upgrade all existing features of their master bathroom as well as install a handicap accessible shower to ensure that the renovated bathroom remained usable and practical as Plaintiffs grew older. Plaintiffs were referred to Danford as an interior designer, and Plaintiffs enlisted Danford as a decorator to design the Project. Danford agreed to perform the decorating work and also told the Plaintiffs that he would locate a contractor to perform the renovation. The budget for the project was around \$25,000.00. Danford contacted David Noss, a licensed residential builder, to provide an estimate for the Plaintiffs' bathroom. Mr. Noss visited the home and prepared an estimate, which he gave directly to Danford. Danford told the Plaintiffs that the estimate was too high. Danford then presented the Plaintiffs with a second estimate written on Danford's letterhead showing that the project would cost \$25,974.25, which was within Plaintiffs' budget. Mr. Nankin testified that that he was aware the budget on the letterhead was not all-inclusive, specifically omitting the plumbing fixtures, which cost more than \$4,000.00. The estimate on Danford's letterhead contained a line item for "Contractor's Fees" in the amount of \$3,800.00, which supported the notion that Danford would obtain a contractor. In subsequent invoices, the amount of \$3,800 was shown as fees to Danford for labor. Danford explained to the Plaintiffs that he had reworked his estimate for them to meet budget. Danford represented to the Plaintiffs that his only charges were for decorating services at \$125.00 per hour. The Plaintiffs agreed to the price and the work began.

Rather than hire a general contractor on Plaintiffs' behalf as promised, Danford directly ordered and paid for materials for the Project and directly hired, paid, and coordinated

subcontractors to perform the various tasks required to complete the Project. Matthew Cooper, testified at trial that he worked for and was paid pay by Danford for construction work on the Plaintiffs' home. It is undisputed that Danford self-performed some of the construction. All payments from the Plaintiffs were made directly to Danford. Plaintiffs were not informed that Danford was performing the duties of a general contractor on the Project and, in fact, believed that he had hired a contractor. Plaintiffs experienced problems throughout the Project as a result of poor planning and coordination by Danford. As the Project progressed, Plaintiffs began to notice evidence of poor workmanship and quality throughout the various aspects of the Project. These defects were pointed out to, but not corrected by, Danford. At this point Plaintiffs discovered that Danford had not hired a general contractor and was performing that task himself. As a result of the poor and unacceptable work and Danford's concealing of the fact that he was acting as the general contractor for the Project, Plaintiffs terminated Danford, fixed the bathroom so that it was in a usable condition, and have lived with various problems and deficiencies during the pendency of this action. Danford offered testimony tending to downplay or contradict his role as the contractor, as well as evidence contradicting the Plaintiffs' understanding of agreement. The Court considered this evidence in its deliberation but ultimately gave it little weight in its ruling.

Plaintiffs paid Danford \$24,895.00 for an incomplete and poorly constructed master bathroom. Plaintiffs corrected some of the deficiencies themselves and solicited a bid from Arthur Suggs, a licensed general contractor and residential builder, to correct the defective work and complete the Project. Mr. Suggs was duly qualified as an expert in residential construction, and Danford offered no expert testimony of his own. Significant amounts of the poor work

performed by Danford likely will have to be torn up and re-done to properly remedy the defective condition of the Project at a significant cost.

Danford is neither a licensed general contractor nor a licensed residential builder. Plaintiffs have already paid Danford \$24,895.00 on a project that was supposed to cost \$25,974.25. The Plaintiffs have paid \$2,127.00 to bring the bathroom to a usable condition. Additionally, the Plaintiffs received an estimate of \$22,951.00 from Mr. Suggs to correct the defective workmanship in their master bathroom and to complete the Project.

2. Conclusions of Law

The Plaintiffs instituted this action against Danford for breach of contract, negligence, negligent misrepresentation, fraud, and violation of the South Carolina Unfair Trade Practices Act. Danford filed a counterclaim for breach of contract and/or quantum meruit, alleging that the Plaintiffs did not pay him for all materials and labor he expended on the project. Additionally, Danford filed a third-party complaint against Stahl for indemnity. Stahl installed most of the tile on the Project, and Danford alleged Stahl must indemnify him for any damages awarded Plaintiffs relating to the tile work. I find in favor of the Plaintiff's on their breach of contract action in the amount of Twelve Thousand Nine Hundred Twenty-Seven Dollars (\$12,927.00). I find Danford's counterclaim against Plaintiffs barred by statute. I find for Danford on his third-party claim against Stahl in the amount of Six Thousand Four Hundred Dollars (\$6,400.00).

a. Plaintiffs' Claim for Breach of Contract

To recover for breach of contract against Danford, Plaintiffs were required to plead and prove "(1) the existence of a contract, (2) breach of the contract, and (3) damages caused by the breach." Consignment Sales, LLC v. Tucker Oil Co., 391 S.C. 266, 271, 705 S.E.2d 73, 76 (Ct.

App. 2010) (citing Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)). This Court finds that Plaintiffs entered into a contract with Danford whereby Danford was to design a remodeled master bathroom for Plaintiffs. As part of that contract, Danford was to assist Plaintiffs in hiring a general contractor to perform the actual construction work. Danford breached his contract with Plaintiffs by failing to hire a general contractor and concealing this fact from Plaintiffs as well as in constructing a bathroom with numerous deficiencies. As the direct and proximate result of Danford's breach, Plaintiffs have been damaged as follows based upon services Danford promised to perform that were not performed or performed unsatisfactorily: One Thousand Four Hundred Dollars (\$1,400.00) in damages for the plumbing/toilet; Six Thousand Four Hundred Dollars (\$6,400.00) for the tile floor; and Three Thousand Dollars (\$3,000.00) for the glass door/surround. I further find Plaintiffs entitled to the Two Thousand One Hundred Twenty-Seven Dollars (\$2,127.00) they have spent thus far on repairs. In total, I find in favor of the Plaintiffs on their breach of contract claim for Twelve Thousand Nine Hundred Twenty Seven Dollars (\$12,927.00).

b. Plaintiffs' Claim for Violation of the South Carolina Unfair Trade Practices Act

By statute, Danford was required to hold a license with the South Carolina Residential Builders Commission for the work he performed for Plaintiffs. S.C. Code Ann. § 40-59-20(6) defines a "Residential Builder" as

one who constructs, superintends, or offers to construct or superintend the construction, repair, improvement, or reimprovement of a residential building or structure which is not over three floors in height and which does not have more than sixteen units in any single apartment building, when the cost of the undertaking exceeds five thousand dollars. Anyone who engages or offers to engage in such undertaking in this State is considered to have engaged in the business of residential building.

Danford engaged in the business of residential building by ordering materials for the Project and by hiring, overseeing, and coordinating subcontractors and other workers on the Project. Danford also engaged in the practice by offering to return to correct deficiencies in his work. Pursuant to S.C. Code Ann. § 40-59-220(A), "All residential builders must be licensed . . . by the commission for a period established by the commission in regulation." Danford was not licensed and, as such, was sanctioned by the Residential Builders Commission for violating this very section. As the agency charged with administering and enforcing the statutes and regulations related to residential home buildings, the Residential Builders Commission's findings and decision "should be given great deference." Barton v. Higgs, 381 S.C. 367, 371, 674 S.E.2d 145, 147 (2009) (citing Dunton v. S.C. Bd. of Exam'rs in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987) for the proposition "that the construction of a statute by the agency charged with its administration will be accorded the most respectful consideration"). "The chapter on residential home builders is designed to benefit the public in general by insuring that only licensed builders perform residential building." Summers v. Harrison Constr., 298 S.C. 451, 456, 381 S.E.2d 493, 496 (Ct. App. 1989); see also W&N Constr. Co., Inc. v. Williams, 322 S.C. 448, 450, 472 S.E.2d 622, 623 (1996) (discussing rulings from other jurisdictions not allowing unlicensed contractors to enforce a contract for construction despite absence a clear statutory mandate, "The rationale is that such licensing statutes protect the public and to permit unlicensed contractors to circumvent licensing requirements by payment of a small fine would defeat the legislative intent.").

S.C. Code Ann. §39-5-20(a), provides that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are . . . unlawful."

To establish a cause of action under the UTPA, the plaintiff must prove unfair or deceptive acts or practices in the conduct of any trade or commerce. The unfair or

deceptive act or practice must affect the public interest. An impact on the public interest may be shown if the acts or practices have the potential for repetition. The potential for repetition may be proven by showing: (1) the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) the defendant's procedures created a potential for repetition of the unfair and deceptive acts

Hollman v. Woolfson, 384 S.C. 571, 580, 683 S.E.2d 495, 499 (2009) (internal citations omitted). Danford violated a statute enacted for the protection of the public. Plaintiffs presented uncontested evidence that Danford has entered into similar arrangements with at least two other clients in the past, where he was performing the duties of a contractor without a license. Plaintiffs presented an invoice from Danford to Rich and Mary Edelson dated July 12, 2010 and an invoice from Danford to Jackie Warrington dated November 23, 2010, both of which were for residential construction projects. However, the Court does not find that Danford's actions arise to the "potential for repetition" threshold required for treble damages and attorneys' fees to be awarded under the South Carolina Unfair Trade Practices Act. While there was evidence presented that Danford had acted in a similar capacity on two prior occasions, the Court feels the underlying dispute in this case was between two private parties and does not substantially affect the public at large.

c. Danford's Counterclaim

Danford's counterclaim against Plaintiffs is barred by statute. S.C. Code Ann. § 40-59-30(B) states,

Notwithstanding Section 29-5-10, or another provision of law, a person or firm who first has not procured a license or registered with the commission and is required to do so by law may not file a mechanics' lien or bring an action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting which the person or firm entered into in violation of this chapter.

Danford alleged that the Plaintiffs failed to reimburse him for the expenses he advanced and for his time and effort. As to Danford's claim for his time and effort, the statute cited above clearly

precludes any recovery as he was engaged in the practice of residential building without a license. As to the "expenses" advanced, South Carolina law also precludes any recovery. In Roberta, Inc. v. Trust, 274 S.C. 53, 260 S.E.2d 818 (1979) the plaintiff, an unlicensed contractor, argued that even though he could not recover for his time and profit, he should be able to recover the cost of materials and payments to third parties. The Supreme Court concluded otherwise:

Appellant, conceding that the statute which prohibits an unlicensed builder from enforcing the contract bars any action for services rendered by it, either on the theory of contract, quantum meruit, or unjust enrichment, contends that the statute should not be so construed as to bar recovery by an unlicensed builder for amounts paid to third parties for labor and materials used in construction, at least, to the extent that the landowner was benefited. In other words, appellant argues that the statute should be construed to prevent any benefit or profit to the unlicensed builder, but should not bar recovery for labor and materials used in the construction from which the unlicensed builder received no profit and from which the landowner received a benefit. We find no basis in the statute for this construction.

The recovery sought in this action is for work and material contracted to be furnished by appellant in the construction of respondent's house. The fact that the work and materials, for which recovery is sought, were furnished by appellant through third parties does not render the bar of the statute any less applicable.

Id. at 54-55, 260 S.E.2d at 818. The entirety of Danford's counterclaim is barred by S.C. Code Ann. 40-59-30(B).

d. Danford's Third-Party Claim Against Stahl

As there was no written contract between Danford and Stahl, Danford's cause of action must be construed as one for equitable indemnity. To recover for equitable indemnity, Danford was required to prove that "(1) [Stahl] was liable for causing [Plaintiffs'] damages; (2) [Danford] was exonerated from any liability for those damages; and (3) [Danford] suffered damages as a result of [Plaintiffs'] claims against it, which were eventually proven to be the fault of [Stahl]." Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 63, 518 S.E.2d 301, 307 (Ct. App. 1999). At trial, Danford established that any damages Plaintiffs suffered relating to the

tile floor were solely caused by Stahl. As such, Danford is entitled to equitable indemnity from Stahl in the amount of Six Thousand Four Hundred Dollars (\$6,400.00).

3. Conclusion

Judgment in favor of Howard Nankin and Nancy Nankin against Donald M. Danford d/b/a Don Danford Interiors in the amount of Twelve Thousand Nine Hundred Twenty-Seven Dollars (\$12,927.00).

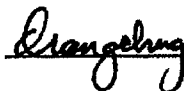
Judgment in favor of Donald M. Danford d/b/a Don Danford Interiors against Jeff Stahl in the amount of Six Thousand Four Hundred Dollars (\$6,400.00).

AND IT IS SO ORDERED.



The Honorable Edgar W. Dickson
Presiding Judge, Fifth Judicial Circuit

April 18, 2013

, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2010 CP 40-8155

Howard Nankin and Nancy Nankin,)
Plaintiffs,)

vs.)

Donald M. Danford d/b/a Don Danford)
Interiors,)
Defendant.)

Donald M. Danford d/b/a Don Danford)
Interiors,)
Third Party Plaintiff,)

vs.)

Jeff Stahl,)
Third Party Defendant.)

**ORDER DENYING PLAINTIFFS' RULE
59(e) MOTION**

2014 JAN 23 PM 12:58
CLERK OF COURT
C.C.P. & G.S.

This matter is before the Court for consideration of the Plaintiff's Rule 59(e) Motion to alter or amend this Court's Order of April 18, 2013. Having considered the briefs submitted by counsel, I have concluded that the Motion is without merit and deny it.

When this matter was tried before me as a non-jury matter, the principal witnesses were Howard Nankin, one of the plaintiffs, and Don M. Danford, the Defendant. As with all witnesses, the Court was able to observe their demeanor in an effort to fully grasp the scope of the dispute. As concluded in my initial Order deciding the case, the parties had a contract which the Defendant failed to perform, but the

Plaintiffs' effort to convince the Court that it was more than just a contract claim failed. In fact, it was apparent that the relationship between Plaintiffs and Defendant started with Defendant serving simply as an interior designer which was his business and experience. The Court found that, as suggested by the Plaintiffs, the relationship between the parties had evolved from the simple interior design assistance to that of serving as a de facto contractor for the renovation of a bathroom. However, Defendant failed to perform the work which Plaintiffs requested in a timely or workmanlike manner.

The defects in the work which the Court found were simply a failure to achieve the quality of work which the Plaintiffs were entitled to receive. These items included such matters as uneven grout, a ledge at the shower door, the bathtub jets not functioning and, in general, poor workmanship, which resulted in a bathroom which was visually displeasing to the Plaintiffs. The Court concluded at that time that each of these shortcomings were simply failures to comply with the contract terms, not some standards set by law. The Court simply reaffirms its opinions stated in the Order of April 18, 2013 that the dispute is no more than a contract dispute.

The same rationale continues to apply to the rejection of the Plaintiffs' claim under the South Carolina Unfair Trade Practices Act. I concluded and reaffirm that this was simply a private contractual matter between Plaintiffs and Defendant which did not rise to the stature of affecting the public interest. While there was testimony about two other customers which Defendant had served in a somewhat similar manner, it was my conclusion that this did not rise to the level of "potential for repetition" as contemplated under the UTPA.

While the Plaintiffs' arguments at trial were primarily directed to the contract claim and the unfair trade practices claim, they also asserted claims for negligent misrepresentation and fraud, but I concluded that their proof of those claims had failed in several respects. The Defendant's communications with the Plaintiffs in an effort to appease them and regarding the employment of a tile setter who was a family friend of Plaintiff Nankin and her children, were lax and not what might have been sufficient to avoid the misunderstandings which resulted, but Plaintiffs failed to convince the Court that these amounted to misrepresentations made to mislead or that any of the other requirements for supporting such claims were met.

WHEREFORE, having considered these matters again, the Court is still convinced that this was simply a contract dispute and that the Plaintiffs' Motion to alter or amend the Order of April 18, 2013 is without merit and should be denied.



Edgar W. Dickson, Fifth Judicial Circuit

Orangeburg, South Carolina

January 7, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

HOWARD NANKIN and NANCY NANKIN,

Plaintiff(s)

vs.

DONALD M. DANFORD dba DON DANFORD
INTERIORS,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010 CP 400 8155

(Please Print)

Submitted By: WESLEY D. PEEL

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

☐ JURY TRIAL demanded in complaint.

☒ NON-JURY TRIAL demanded in complaint.

☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.

☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.

☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts

- ☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☒ Breach of Contract (140)
☐ Other (199)

Torts - Professional Malpractice

- ☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____-CP-_____
☐ Notice/ File Med Mal (230)
☐ Other (299)

Torts - Personal Injury

- ☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

Real Property

- ☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

Inmate Petitions

- ☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

Judgments/Settlements

- ☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Other (799)

Administrative Law/Relief

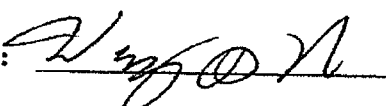
- ☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

Appeals

- ☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOF (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission
(990)
☐ Employment Security Comm (991)
☐ Other (999)

Special/Complex /Other

- ☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Sexual Predator (510)

Submitting Party Signature: 

Date: November 19, 2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR.**
 Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CASE NO.:

Howard Nankin and Nancy
Nankin,)

PLAINTIFFS,)

vs.)

Donald M. Danford d/b/a Don
Danford Interiors,)

DEFENDANTS.)

SUMMONS

JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 NOV 19 PM 5:10

RICHLAND COUNTY
FILED

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint upon the undersigned subscriber at his offices at 1735 St. Julian Place, Suite 200, Columbia, South Carolina 29204, within thirty (30) days after service upon you, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.



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wpeel@brunerpowell.com
Attorneys for the Plaintiff

Columbia, South Carolina
November 19, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CASE NO.:

Howard Nankin and Nancy
Nankin,)

PLAINTIFFS,)

vs.)

Donald M. Danford d/b/a Don
Danford Interiors,)

DEFENDANTS.)

COMPLAINT

RICHLAND COUNTY
FILED
2010 NOV 19 PM 5:10
JEANETTE W. McBRIDE
C.C.P. & G.S.

Plaintiffs, Howard and Nancy Nankin (the "Nankins" or "Plaintiffs"), complaining of the Defendant Donald M. Danford d/b/a Don Danford Interiors (the "Decorator"), would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. The Plaintiffs are husband and wife and are residents of Richland County, South Carolina.
2. The Decorator is, upon information and belief, a resident of South Carolina at all times relevant hereto was engaged in the trade of interior design and interior design consultation as well as the unlicensed practice of general contracting.
3. All actions that are the subject matter of this litigation occurred in Richland County, South Carolina. Venue is proper in Richland County.
4. This court has jurisdiction over the subject matter and parties.

FACTS AND BACKGROUND

5. The Nankins own and live in the residence at 247 Southlake Drive in Columbia, South Carolina.

6. The Nankins decided to renovate the master bathroom of their home (the "Project"). Specifically, the Nankins wanted to upgrade all existing features of their master bathroom as well as install a handicap accessible shower to ensure that the renovated bathroom remained usable and practical as the Nankins grew older.

7. The Nankins enlisted the Decorator to design the Project and locate a contractor.

8. Specifically, the Nankins desired the Decorator to design the Project, to solicit bids from general contractors for the Project, and to coordinate design and materials with the general contractor selected.

9. The Decorator provided the Nankins with an estimate for the Project which is attached hereto as "Exhibit A." The Decorator specifically provided for "Contractors Fees" in the estimate.

10. The Decorator is not a licensed residential contractor.

11. The Decorator did not hire a general contractor. Instead, the Decorator took it upon himself to order materials for the Project and to hire and coordinate subcontractors to perform the various tasks required to complete the Project.

12. The Nankins were not informed that the Decorator was performing the duties of a general contractor on the Project and, in fact, believed that he had hired a contractor.

13. The Nankins experienced problems throughout the Project as a result of poor planning and coordination by the Decorator including, but not limited to, the following:

- a. a damaged marble table in the master bedroom;

- b. damage to the carpet in the master bedroom because the carpet was inadequately covered to protect from workers coming and going from the Project;
 - c. unreliable scheduling of various workers causing the Nankins to alter their schedules to be available to allow workers access to the Project when in fact no appointment had been scheduled by the Decorator;
 - d. poorly installed tile, resulting in the Nankins paying for significantly more tile than necessary, because tile had to constantly be pulled up and re-laid;
 - e. sloppy workmanship resulting in significant amounts of broken tile which resulted in the Nankins paying for significantly more tile than necessary; and
 - f. many other unnecessary problems and inconveniences to the Nankins.
14. As the Project progressed, the Nankins began to notice evidence of poor workmanship and quality throughout the various aspects of the Project. This included, but is not limited to, the following:
- a. significant damage to the marble countertop in the master bathroom which the Nankins had to have repaired themselves;
 - b. a significant ledge was added to the doorway from the master bedroom into the master bathroom, making it not accessible for a wheelchair and dangerous to a person with impaired ambulatory capabilities;
 - c. poor painting work throughout the Project;
 - d. poorly functioning drawers in the vanity;
 - e. over half of the jets in the newly installed bathtub not functioning;
 - f. all electrical outlets installed upside down with many protruding oddly and not being set flush with the wall;

- g. the newly installed heated floor and control panel not functioning at all;
- h. the glass shower door was installed with no seal or divider to prevent water from leaking out;
- i. the shower was installed with a significant ledge and without any support handles rendering it not handicap accessible;
- j. improperly spaced tiles throughout the Project;
- k. uneven grouting throughout the Project, particularly between wall and floor tiles;
- l. the absence of grout for some decorative tiles;
- m. the shower handles to regulate hot and cold water were not sealed to the wall to prevent water from leaking behind the cover plates;
- n. workers damaged the wall of the closet behind the master bathroom to cut an access panel for the shower controls and left the roughly cut and unfinished hole and then attempted to hide the damages by moving clothes in the closet to cover it;
- o. missing caulk around the toilet where it meets the floor and where it was caulked that caulk began to crack;
- p. tile around the tub and shower edge not cleaned and it protruded with extremely sharp and pointed edges;
- q. incorrectly installed window to the master bathroom;
- r. water-damaged and stained subfloor was left un-replaced right beside areas where subflooring was replaced;
- s. missing floor insulation;
- t. the use of incorrect floor insulation;

- u. improperly installed floor installation;
 - v. and various other work performed in an unprofessional and non-workmanlike manner.
15. These defects were pointed out but not corrected by the Decorator.
16. At this point the Nankins found out that the Decorator had not hired a general contractor and was performing that task himself.
17. As a result of the poor and unacceptable work and the Decorator's concealing of the fact that he was acting as the general contractor for the Project, the Nankins were forced to terminate the Decorator.
18. The Nankins have paid the Decorator a significant sum of money and are left with an incomplete and poorly constructed master bathroom. They have already fixed some of the deficiencies themselves and have begun soliciting bids from residential contractors to correct the defective work and complete the Project.
19. Significant amounts of the poor work performed by the decorator will have to be torn up and re-done to properly remedy the defective condition of the Project at a significant cost.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

20. The Nankins re-allege and repeat the foregoing allegations the extent required by, but not in contradiction to, the following allegations.
21. The Nankins and the Decorator had an oral contract whereby the Decorator was to serve as the Nankins' agent in the following regards:
- a. designing the Project;
 - b. hiring a general contractor for the Project;

- c. coordinating design and materials for the Project with the general contractor;
 - d. ensuring the design and work were in accordance with the Nankins' expressed desires to the Decorator regarding the Project, including that the bathroom be handicap accessible; and
 - e. ensuring the work was performed in a workmanlike manner according to the Decorator's overall scheme;
22. The Decorator breached this contract by:
- a. failing to hire a general contractor for the Project and performing that role himself;
 - b. designing and constructing a bathroom that was not handicap accessible;
 - c. allowing and performing work that was not in a good and workmanlike manner as outlined above.
23. These failures on the Decorator's part constitute a significant and material breach of the contract.
24. The Decorator's refusal to complete the work it contractually obligated itself to perform was a significant and material breach of the contract.
25. The Nankins have suffered damage as a direct and proximate result of the Decorator's breaches of contract.
26. The Nankins are entitled to recover their damages from Defendant, in an amount to be determined by the trier of fact.

FOR A SECOND CAUSE OF ACTION
(Negligence)

27. The Nankins re-allege and repeat the foregoing allegations the extent required by, but not in contradiction to, the following allegations.

28. The Decorator owed a duty to the Nankins to perform its work in accordance with the industry standards and in conformance with the applicable building codes.

29. The Decorator owed a duty to the Nankins to hire a properly licensed general contractor to insure compliance with industry standards and in conformance with the applicable building codes.

30. The Decorator was negligent, reckless, willful, wanton, and grossly negligent when it breached its duty by failing to perform its work in accordance with industry standards and in conformance with the applicable building codes and by failing to hire a properly licensed general contractor.

31. The Nankins suffered damages as a direct and proximate result of the negligence of the Decorator.

32. The Nankins have been unable to fully use their master bathroom since the Project commenced and still cannot do so because many areas are not properly sealed and caulked.

33. Other areas of the Nankins' home have been damaged as a result of the Decorator's negligence which includes, but is not limited to, the marble table in the master bedroom, the carpet in the master bedroom, and the closet in the master bedroom.

34. The Nankins must now hire a licensed residential contractor to correct the Decorator's negligent work.

35. The Nankins are entitled to recover their damages from Defendant, along with punitive damages.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

36. The Nankins re-allege and repeat the foregoing allegations the extent required by, but not in contradiction to, the following allegations.

37. The Decorator represented to the Nankins that he would hire a general contractor for the Project.

38. This representation was false.

39. The Decorator had a pecuniary interest in making this representation in that he could retain the "Contractors Fees" on top of what he was charging the Nankins for his services.

40. The Decorator owed the Nankins a duty of care to ensure that he communicated truthful information to them given the degree of trust and confidence the Nankins placed in the Decorator.

41. The Decorator breached that duty by failing to exercise due care and conveying false information.

42. The Nankins relied on the false representations of the Decorator and were justified in doing so.

43. As a direct and proximate result of the Nankins' reliance on the Decorator's false representations, the Nankins have suffered a pecuniary loss.

44. The Nankins are entitled to recover their damages from the Decorator, in an amount to be determined by the trier of fact.

FOR A FOURTH CAUSE OF ACTION
(Fraud)

45. The Nankins re-allege and repeat the foregoing allegations the extent required by, but not in contradiction to, the following allegations.

46. The Decorator represented to the Nankins that he would hire a general contractor for the Project.

47. This representation was false.

48. This representation by the Decorator to the Nankins was material to the Nankins' decision to hire the Decorator for the Project and to oversee the Project.

49. The Decorator knew this representation was false, or at the very least acted in reckless disregard of its truth or falsity.

50. The Decorator intended for the Nankins to act on his representation that he would hire a general contractor for the Project by hiring him to oversee and administer the Project.

51. The Nankins did not know that the Decorator's representation regarding the hiring of a general contractor was false.

52. The Nankins relied on the truth of the Decorator's representation by hiring the Decorator to oversee and administer the Project.

53. The Nankins were entitled to rely on the Decorator's representation.

54. The Nankins were consequently and proximately injured by their reliance on the Decorator's false and fraudulent representation.

55. As a direct and proximate result of the Nankins' reliance on the Decorator's fraud, the Nankins have suffered a pecuniary loss.

56. The Nankins are entitled to recover their damages from the Decorator, in an amount to be determined by the trier of fact.

FOR AN FIFTH CAUSE OF ACTION

(South Carolina Unfair Trade Practice Act S.C. Code. Ann. § 39-5-10 *et seq.*)

57. The Nankins re-allege and repeat the foregoing allegations the extent required by, but not in contradiction to, the following allegations.

58. The Decorator performed the duties of and held himself out to others as a residential general contractor on the Project.

59. The Decorator does not hold any license as a contractor.

60. The performance of the duties of a contractor without being licensed is an unfair method of competition and an unfair or deceptive act or practice in the conduct of a trade or commerce.

61. This constitutes a violation of the South Carolina Unfair Trade Practices Act S.C. Code Ann. § 39-5-10 *et seq.* (the "Act").

62. The unfair and deceptive act and practice of performing the duties of general contractor without the proper licensure affects the public interest and has the potential for repetition.

63. The actions of varying parties holding themselves out as general contractors or performing the duties of general contractors despite the absence of proper licensing have occurred in the past and thus will likely continue to occur absent deterrence.

64. The Decorator's procedures of concealing the absence of a licensed general contractor from the Nankins creates a potential for repetition of the unfair and deceptive acts on the Decorator's other clients as they engage the Decorator to assist or oversee the remodeling or renovation of various aspects of their homes.

65. Further, the Decorator's use or employment of the unfair or deceptive method, act, or practice was a willful or knowing violation of the Act.

66. The Nankins suffered an ascertainable loss as a proximate result of the Decorator's use or employment of the unfair or deceptive method, act, or practice.

67. The Nankins are entitled to their actual damages from the Decorator, in an amount to be determined by the trier of fact.

68. Further, the Nankins are entitled to have their recovery of actual damages trebled in accordance with S.C. Code Ann. § 39-5-140.

WHEREFORE, the Nankins pray for judgment in their favor; an award in an amount to be determined by the trier of fact, including actual, consequential, and punitive damages, against the Decorator; a trebling of their actual damages according to S.C. Code Ann. § 39-5-140; costs and attorneys' fees; and such other and further relief as this court finds just and fair.



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Attorneys for the Plaintiff

Columbia, South Carolina
November 19, 2010



Estimate for Nancy Nankin:

Bath Renovation

Cabinetry & marble	4,500.00
Dumpster	1,500.00
Electrical	900.00
Framing	900.00
Insulation & Sheetrock	1,500.00
Plumbing	1,400.00
Tile materials & labor	6,400.00
Window	675.00
Glass door/Surround	3,000.00
Contractors Fees	3,800.00
Subtotal:	24,275.00
Tax:	1,699.25
Total:	25,974.25

COPY

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Civil Action No. 2010 CP 40-8155

Howard Nankin and Nancy Nankin,
Plaintiffs,

vs.

Donald M. Danford d/b/a Don Danford
Interiors,
Defendant.

Donald M. Danford d/b/a Don Danford
Interiors,
Third Party Plaintiff,

vs.

Jeff Stahl,
Third Party Defendant.

RICHLAND COUNTY
FILED
2010 DEC 29 PM 1:31
JEANETTE M. HARRIS
C.C.P. & G.S.

**DEFENDANT'S ANSWER,
COUNTERCLAIM AND THIRD PARTY
COMPLAINT**

The Defendant, reserving his right to insist upon Motions previous filed, responds to the Plaintiffs' Complaint as follows:

1. Defendant denies any and all paragraphs except those admitted or otherwise addressed.
2. Defendant admits the allegations contained in Paragraphs 1, 3, 10 and 59 of Plaintiffs' Complaint.
3. With respect to Paragraph 2, this Defendant is and has been in the business of interior design but not the practice of general contracting.
4. With respect to Paragraph 4, this Defendant denies the allegations because Plaintiffs' Complaint is based upon the allegation that Defendant is a general

contractor, which is specifically denied, but Plaintiffs have failed to comply with South Carolina Code § 40-59-840.

5. With respect to Paragraph 5 and all allegations thereafter, it is denied that Plaintiff Howard Nankin owns any interest in the residence at 247 Southlake Drive. It appears that two daughters of Nancy Nankin own an interest in the house and that they are therefore indispensable parties to this lawsuit. All subsequent references to "The Nankins" are wrong to the extent they suggest that Howard Nankin has any claim to relief.

6. With respect to Paragraphs 6, 21 and 32 of the Complaint, this Defendant demands strict proof since some of the information alleged is not known to this Defendant.

7. With respect to Paragraphs 7 and 8, it is admitted only that the Defendant was asked to help Mrs. Nankin with her project. Howard Nankin was involved in the discussions as if he were an owner.

8. With respect to Paragraph 9, this Defendant admits that part of the assistance he offered was to provide Exhibit A to Mrs. Nankin.

9. With respect to Paragraph 11, this Defendant would show that Mrs. Nankin did not hire a general contractor because she said that the quoted price was too high. Defendant assisted Mrs. Nankin in lining up craftsmen, some of which he suggested and some of which Mrs. Nankin suggested. Defendant also coordinated delivery of some materials for Mrs. Nankin. Until the final stages of the project, Mrs. Nankin provided to Defendant money so that he could pay for the materials and the labor of the craftsmen.

10. With respect to Paragraph 12, the Nankins knew exactly what the role of the Defendant was, which is not what they allege in Paragraph 12.

11. Paragraphs 13, 14, 16, 17, 18, 19, 22, 23, 24, 25, 26, 30, 31, 33, 34, 35, 37, 38, 39, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 65, 66, 67 and 68 are denied.

12. With respect to Paragraph 15, a few of the matters were disclosed to Defendant in early September 2010, and Defendant had coordinated arrangements for several craftsmen to return to do more work on September 7, 2010, and on September 9, 2010, but Plaintiffs communicated with Defendant's office on the morning of September 7, 2010 instructing Defendant to stop all efforts to deal with any of their questions or concerns. Since that date, Plaintiffs have frustrated and stopped any efforts by Defendant to coordinate any further work or repair to the Nankin house. In fact, Defendant was not even allowed in the house.

13. With respect to Paragraphs 20, 27, 36, 45, and 57, all relevant allegations are re-asserted.

14. With respect to Paragraphs 29, 40, 60 and 61, these are matters of law which do not require a factual response.

15. With respect to Paragraphs 62, 63 and 64, there was nothing under the facts as they actually happened which could or did fall within the scope of South Carolina Code § 39-5-10, so those Paragraphs are denied.

COUNTERCLAIM

16. This Defendant would show that at the request of Nancy Nankin, he provided design services and assistance toward her project of renovating and

decorating her master bath. The Defendant performed those services in coordination with Nancy Nankin until Mrs. Nankin told him to stop.

17. Plaintiff Nancy Nankin did not reimburse Defendant for all the expenses he had advanced. Neither did she pay him for all of his time and effort. She and the other owners of the house have received a substantial benefit for which they have not paid.

BY WAY OF THIRD PARTY COMPLAINT AGAINST THE THIRD PARTY DEFENDANTS, THE DEFENDANT WOULD SHOW THE FOLLOWING:

This Defendant would show the following about the actions of the Third Party Defendant, Jeff Stahl.

18. The Third Party Defendant is a resident of Richland County, South Carolina.

19. At the request of Plaintiff Nancy Nankin, the Defendant communicated with Third Party Defendant Stahl to have him lay tile in the renovated bathroom at 247 Southlake Drive. The Plaintiffs now complain that the quality of the work performed by the Third Party Defendant was defective. Further, Plaintiffs blame this Defendant for what they claim to be defective work. Further, Plaintiffs claim that they have or will have to spend money to correct or change Third Party Defendant's work. The Defendant also paid for some remedial work to the tile which Third Party Defendant had laid.

20. If Plaintiffs should establish any liability and damages against this Defendant on the allegations of the Complaint, see attached, as they relate to the installation of tile, then the Third Party Defendant would owe this Defendant full reimbursement and indemnity, and he owes for remedial work done.

FURTHER ANSWERING SAID COMPLAINT, this Defendant would show the following:

21. The Plaintiffs have failed to state a claim upon which relief can be granted with respect to the Second, Third, Fourth and Fifth Cause of Action.

22. The Plaintiffs' claim for punitive damages is not in accord with the South Carolina and United States Constitutions requiring equal protection and due process.

23. The Plaintiffs have failed to join essential parties, all the owners of the house, so the case should be dismissed or stayed until such parties are joined.

24. The Plaintiffs' First Cause of Action fails because there was a failure to pay consideration to the Defendant.

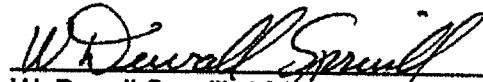
25. If the Plaintiffs are having trouble with the shower surround or the jets in the tub or the heat in the floor, they have available to them warranty rights from Gregory Electric, Gateway Supply and Ace Glass. All they have to do is ask.

WHEREFORE, this Defendant demands that:

- a. he be afforded relief as requested in previously filed motions,
- b. the Complaint be dismissed,
- c. that he recover on his Counterclaim for such amounts as are shown at trial;
- d. that he recover on the third party claim to the extent that the Plaintiffs should establish any recovery or offset on account of the quality of the work and for the cost spent for repairs; and
- e. he recover attorneys fees and such other relief as is fair and just.

TURNER PADGET GRAHAM & LANEY P.A.

By:



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Columbia, South Carolina 29202

Telephone: (803) 254-2200

December 29, 2010

**ATTORNEYS FOR THE DEFENDANT AND
THIRD-PARTY PLAINTIFF**

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2010-CP-40-08155

FILED
2011 JAN 12 PM 3:41
JEANETTE H. GIBBIE
C.C.P. & G.S.

Howard Nankin and Nancy
Nankin,
PLAINTIFFS,

vs.

ANSWER TO COUNTERCLAIMS

Donald M. Danford d/b/a Don
Danford Interiors,
DEFENDANTS.

Plaintiffs, Howard and Nancy Nankin (the "Nankins" or "Plaintiffs"), specifically reserving their right to move under Rules 12 and 56 of the South Carolina Rules of Civil Procedure, respectfully answer and respond to the allegations contained in the Answer, Counterclaim, and Third Party Complaint of Defendant Donald M. Danford d/b/a Don Danford Interiors (the "Decorator"), would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE
(General Denial)

1. The Plaintiffs deny each and every allegation contained in the Counterclaims that is not otherwise expressly admitted or qualified herein.
2. The Plaintiffs admit the allegations of Paragraph 16. Plaintiffs would further show that the Decorator provided more than the services listed in Paragraph 16 and craves reference to their Complaint where those services and actions are explained in detail.
3. The Plaintiffs deny the allegations of Paragraph 17.

FOR A SECOND DEFENSE

(Rule 12(b)(6), SCRCP)

4. The Plaintiffs reiterate the allegations contained hereinabove that are consistent with the following allegations.

5. The allegations in the Crossclaims fail to state facts sufficient to constitute a cause of action against the Plaintiffs.

FOR A THIRD DEFENSE

(Payment)

6. The Plaintiffs reiterate the allegations contained hereinabove that are consistent with the following allegations.

7. The Plaintiffs would show the Honorable Court they have paid the alleged debt in full and, therefore, owe nothing to the Decorator.

FOR A FOURTH DEFENSE

(Equitable Defenses)

8. The Plaintiffs reiterate the allegations contained hereinabove that are consistent with the following allegations.

9. The Decorator's claims are barred, in whole or in part, by one or more of the doctrines of laches, estoppel, unclean hands, or waiver.

FOR A FIFTH DEFENSE

(The Decorator is Unlicensed, and the contract is void as a matter of law)

10. The Plaintiffs reiterate the allegations contained hereinabove that are consistent with the following allegations.

11. The Decorator does not hold, nor at any time relevant hereto has it held, either a general contractor's or residential builder's license pursuant the laws of the State of South Carolina.

12. Therefore, the contract between the Decorator and the Plaintiffs is unenforceable and void as a matter of law.

13. As a result, the damages alleged in the Counterclaims cannot be enforced as they arise from an illegal and unenforceable contract.

FOR AN SIXTH DEFENSE

(Equitable Estoppel)

14. The Plaintiffs reiterate the allegations contained hereinabove that are consistent with the following allegations.

15. Because the Decorator is participating in an illegal act, namely entering into a contract for construction or residential homebuilding without either a contractor or residential homebuilder license to provide construction services, the Decorator is estopped for asserting any claim against these Plaintiffs at law or in equity.

FOR A SEVENTH DEFENSE

(Set Off)

16. The Plaintiffs reiterate the allegations contained hereinabove that are consistent with the following allegations.

17. Plaintiffs assert that if they are found liable for damages sought in the Counterclaims, which they expressly deny, they are entitled to an offset against said liability.

FOR AN EIGHTH DEFENSE

(Illegality)

18. The Plaintiffs reiterate the allegations contained hereinabove that are consistent with the following allegations.

19. The Decorator's alleged damages are the result of an illegal contract which cannot be enforced in a court of law.

FOR A NINTH DEFENSE
(Waiver)

20. The Plaintiffs reiterate the allegations contained hereinabove that are consistent with the following allegations.

21. The Decorator's recovery is barred because he has waived any right to recover for the causes of action asserted in the Counterclaims.

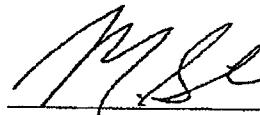
FOR A TENTH DEFENSE
(Failure to Mitigate Damages)

22. The Plaintiffs reiterate the allegations contained hereinabove that are consistent with the following allegations.

23. The Decorator has failed to mitigate his damages and is therefore barred from recovering any monies from the Plaintiffs.

WHEREFORE, having fully answered the allegations contained in the Decorator's Counterclaims, Howard Nankin and Nancy Nankin pray for Judgment as follows:

- a. That the Court dismiss the Decorator's Counterclaims and enter judgment for the Plaintiffs against the Decorator, with reasonable attorney's fees and costs awarded to the Plaintiffs;
- b. That, with respect to the Plaintiffs' Complaint, the Court enter judgment against the Decorator for actual damages, punitive damages, and costs; and
- c. For such further and other relief that this court may deem just and proper.



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Attorneys for the Plaintiff

Columbia, South Carolina
January 7, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

HOWARD NANKIN AND NANCY NANKIN,

Plaintiffs

v.

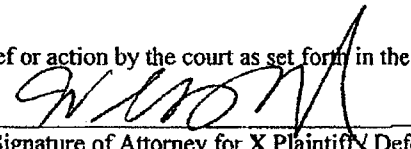
DONALD M. DANFORD D/B/A DON DANFORD
INTERIORS,

Defendant

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-40-08155

MOTION INFORMATION FORM
AND COVER SHEET

Plaintiff's Attorney: WESLEY D. PEEL Bar No. 9283 Address: P.O. Box 61110 Columbia, SC 29260 phone: 803-252-7693 fax: 1-888-246-7615 e-mail: WPEEL@BRUNERPOWELL.COM		Defendant's Attorney:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)		JENNIFER W. McBRIDE C.C.P. & C.S.	
SECTION I: Hearing Information Nature of Motion: MOTION TO ALTER OR AMEND JUDGMENT Estimated Time Needed: 30 MINS Court Reporter Needed: YES / NO			
SECTION II: Motion Type ☒ Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for X Plaintiff/Defendant May 9, 2013 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION Collected by: Date Filed: ☐ MOTION FEE COLLECTED: ☐ CONTESTED - AMOUNT DUE:			

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2010-CP-40-08155

Howard Nankin and Nancy Nankin,
PLAINTIFFS,
vs.
Donald M. Danford d/b/a Don Danford Interiors,
DEFENDANTS.

MOTION TO ALTER OR AMEND
JUDGMENT
(Rule 59(e), SCRCP)

JEANETTE W. McBRIDE
C.C.P. & G.S.

2013 MAY -9 PM 3:46

FILED

Plaintiffs, Howard and Nancy Nankin (collectively, "Plaintiffs"), by and through their undersigned counsel, hereby move to alter or amend the Order signed by The Honorable Edgar W. Dickson on April 18, 2013 pursuant to Rule 59(e), SCRCP. The Order was sent to Plaintiffs' counsel on April 25, 2013 and received on April 29, 2013.

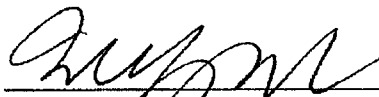
The Plaintiffs alleged five causes of action against the Defendant: Breach of Contract, Negligence, Negligent Misrepresentation, Fraud, and Violation of the South Carolina Unfair Trade Practices Act. The Court ruled for Plaintiffs' on their Breach of Contract Claim. The Court did not make any ruling on Plaintiffs' Negligence, Negligent Misrepresentation, and Fraud causes of action. Plaintiffs' request a ruling on these causes of action.

Regarding the Unfair Trade Practices Claim, the Court found that Plaintiffs' failed to establish the Defendant's unfair or deceptive act or practice affected the public interest. Plaintiffs move for reconsideration on this issue.

To establish a cause of action under the UTPA, the plaintiff must prove unfair or deceptive acts or practices in the conduct of any trade or commerce. The unfair or deceptive act or practice must affect the public interest. An impact on the public interest may be shown if the acts or practices have the potential for repetition.

The potential for repetition may be proven by showing: (1) the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) the defendant's procedures created a potential for repetition of the unfair and deceptive acts

Hollman v. Woolfson, 384 S.C. 571, 580, 683 S.E.2d 495, 499 (2009) (internal citations omitted). In the present matter, it appears the Court found that the Defendant engaged in an unfair or deceptive act or practice, i.e., engaging in construction without a license, but failed to prove Defendant's action affected the public interest. As stated above, Plaintiffs could show that Defendant's actions affected the public interest by showing the "acts or practices have the potential for repetition." Further, the Plaintiffs could show the potential for repetition by showing "the same kind of actions occurred in the past, *thus* making it likely they will continue to occur absent deterrence." (Emphasis added). At trial, the Plaintiffs proved, and the Court so found, that the Defendant's unfair and deceptive acts or practices *had* occurred in the past on at least two prior occasions. Plaintiff's contend they have satisfied the requirement to show that Defendant's actions affect the public interest.



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COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2010-CP-40-08155

Howard Nankin and Nancy)
Nankin,)
)
PLAINTIFFS,)
)
vs.)
)
Donald M. Danford d/b/a Don)
Danford Interiors,)
)
DEFENDANTS.)

**PLAINTIFFS' MEMORANDUM
IN SUPPORT OF MOTION TO
ALTER OR AMEND JUDGMENT
(Rule 59(e), SCRCP)**

2013 AUG 16 PM 12:33
C.C.P. & G.S.
FILED
CLERK OF COURT

Plaintiffs offer this memorandum in support of their Motion to Alter or Amend Judgment on their cause of action for violation of the South Carolina Unfair Trade Practices Act ("SCUPTA") against Defendant Donald M. Danford d/b/a Don Danford Interiors ("Defendant"). Plaintiffs seek an award of Twelve Thousand Nine Hundred Twenty-Seven Dollars and 00/100 (\$12,927.00) in actual damages, as awarded under the breach of contract cause of action, for their SCUPTA claim, for attorneys' fees pursuant to S.C. Code. § 39-5-140(a), and for their actual damages to be trebled awarded pursuant to S.C. Code. § 39-5-140(a). Plaintiffs further seek a ruling from the Court on Plaintiffs' causes of action for negligence, negligent misrepresentation, and fraud.

Facts

Plaintiffs retained Defendant to serve as the interior decorator of their master bathroom renovation and also to hire a general contractor to perform the construction work of the renovation. Defendant misrepresented to Plaintiffs that he had hired a contractor, when in fact he was serving the role of a general contractor on the project himself. Defendant was not licensed

as either a residential builder or a general contractor. Plaintiffs eventually discovered that Defendant was serving as the general contractor after noticing several instances of poor workmanship. Plaintiffs fired Defendant and obtained an estimate from a licensed contractor to repair Defendant's substandard work.

Plaintiffs filed suit against Defendant alleging causes of action for breach of contract, negligence, negligent misrepresentation, fraud, and violation of the South Carolina Unfair Trade Practices Act. The Court tried this case without a jury on October 4, 2012. The Court awarded Plaintiffs \$12,927.00 on their breach of contract cause of action. The court denied Plaintiffs any recovery under their SCUPTA cause of action and made no findings or rulings on Plaintiffs' negligence, negligent misrepresentation, and fraud causes of action.

The Order

"To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 50, 691 S.E.2d 135, 149 (2010) (quoting *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006)). In its Order of April 18, 2013 (the "Order")¹, the Court recognizes that the Defendant engaged in unfair or deceptive acts or practice, i.e., engaging in construction without a license, when he personally performed a contractor's duties while working on Plaintiffs' home (*see* Order, pp. 5-7);² however, the Court did not find that Defendant's actions

¹ The Court's Order is attached hereto as Exhibit A.

² The Court made no express ruling on whether Plaintiffs' suffered monetary or property loss as a result of Defendant's actions as it specifically relates to Plaintiffs' SCUPTA cause of action. If the Court does not believe this element is satisfied, Plaintiffs' request a ruling to that effect. For purposes of this Memorandum, Plaintiffs assume this element is met based on the Court's rulings on Plaintiffs' other causes of action.

were capable of repetition or that they affected the public interest to the extent required for a recovery under the SCUPTA (*see id.*, p. 7.) Plaintiffs moved for reconsideration on this issue.

Argument

I. SCUPTA – Public Interest

S.C. Code Ann. §39-5-20(a), provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are...unlawful.”

To establish a cause of action under the UTPA, the plaintiff must prove unfair or deceptive acts or practices in the conduct of any trade or commerce. The unfair or deceptive act or practice must affect the public interest. An impact on the public interest may be shown if the acts or practices have the potential for repetition.

Hollman v. Woolfson, 384 S.C. 571, 580, 683 S.E.2d 495, 499 (2009) (internal citations omitted) (emphasis added). As found by the Court, by choosing to undertake a contractor’s duties without obtaining a license the Defendant violated a statute enacted for the protection of the public. (Order, pp. 6-7.) The Court further found that Defendant had performed work without a license on at least two prior occasions. (*Id.*, p. 7.) Invoices from the Defendant to Rich and Mary Edelson dated July 12, 2010 and invoices from Defendant to Jackie Warrington dated November 23, 2010 were presented and not disputed; both of which were for similar residential construction projects the Defendant was not licensed to perform. (*Id.*) Still, the Court found that Defendant’s actions did not arise to the “potential for repetition” threshold required to recover under the SCUPTA. (*Id.*)

The “potential for repetition” element of a SCUPTA claim is the method by which a plaintiff shows that the unfair or deceptive act or practice has an impact on the public interest. Wright, 372 S.C. at 29, 640 S.E.2d at 501 (quoting *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004)) (“An impact on the public interest may be shown if the acts or practices have the potential for repetition.”). A plaintiff can satisfy the “potential for

repetition” element of a SCUPTA cause of action in one of two ways and is not required to show both:

The potential for repetition may be demonstrated in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company’s procedures create a potential for repetition of the unfair and deceptive acts.

Id. at 30, 640 S.E.2d at 502 (citing *Singleton*, 358 S.C. at 379, 595 S.E.2d at 466) (emphasis added). Plaintiffs elected to show Defendant’s actions affected the public interest and were capable of repetition by showing that these same actions occurred in the past. Because the Defendant’s actions occurred repeatedly in the past, they have—as a matter of law—risen to the “potential for repetition” threshold requirement to show effect on public interest. As a result, Defendant’s unfair or deceptive acts or practices are actionable under the SCUPTA.

The Court also found that the underlying dispute is between two private parties and, therefore, does not significantly affect the public at large. (Order, p. 7.) However, once the Plaintiffs showed the potential for repetition, they satisfied the “public interest” requirement of a SCUPTA cause of action: “After alleging and proving facts demonstrating the potential for repetition of the defendant’s actions, the plaintiff has proven an adverse effect on the public interest. The plaintiff need not allege or prove anything further in relation to the public interest requirement.” *Crary v. Djebelli*, 329 S.C. 385, 388, 496 S.E.2d 21, 23 (1998) (internal citations omitted). Because Plaintiffs introduced evidence proving Defendant’s potential for repetition, they have proved an adverse effect on the public interest and are entitled to recover under the SCUPTA.

II. Negligence

To recover on their cause of action for negligence against Defendant, Plaintiffs were required to plead and prove three elements. The Plaintiffs were required to “demonstrate (1) the

defendant[] owed [them] a duty of care; (2) the defendant[] breached that duty by a negligent act or omission; and (3) [they] suffered damage as a proximate result of that breach..” *Nelson v. Piggly Wiggly Central, Inc.*, 390 S.C. 382, 391, 701 S.E.2d 776, 780 (Ct. App. 2010) (citing *Bloom v. Ravoir*, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000)) (emphasis added). In *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 658 S.E.2d 80 (2008), a case involving the allegedly defective construction a residence, the Supreme Court held that on the issue of negligence, the trial court correctly charged the jury as follows:

“[a]ny failure to exercise due care on the part of [the Builder] ... would constitute negligence;” that “[a] builder who undertakes construction of a building impliedly represents that he possesses and will exercise a reasonable degree of skill usually possessed by a member of the building occupation;” and that “[a] builder who undertakes to supervise the construction of a building is under a duty to exercise reasonable care and such supervision to see that the work is done in conformity with the applicable building code ... and in a good and workmanlike manner.”

Id. at 560, 658 S.E.2d at 88. In the present case, Defendant did not possess and exercise a reasonable degree of skill usually possessed by a member of the building occupation. The Court need not look any further than the uncontroverted expert testimony of Arthur D. Suggs to see the various ways that the Defendant fell below the applicable standard of care.

III. Negligent Misrepresentation

In order to prevail on their negligent misrepresentation claim, Plaintiffs were required to prove six elements:

(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation.

Quail Hill, LLC v. County of Richland, 387 S.C. 223, 240, 692 S.E.2d 499, 508 (2010) (quoting *West v. Gladney*, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct. App. 2000)). At trial, Plaintiffs presented evidence to satisfy all six elements.

The Court has already found that Defendant falsely represented he would hire a general contractor when, in fact, he intended to do the work himself. (Order, pp. 2-3.) Defendant had a pecuniary interest in making this statement, as he could retain the “contractor’s fee” itemized in the estimate. Defendant, as Plaintiffs’ agent, owed a duty of care to convey truthful information to Plaintiffs. See *Armstrong v. Collins*, 366 S.C. 204, 220, 621 S.E.2d 368, 376 (Ct. App. 2005) (quoting *Redwend Ltd. P’ship v. Edwards*, 354 S.C. 459, 474, 581 S.E.2d 496, 504 (Ct. App. 2003)) (“A duty to exercise reasonable care in giving information exists when the defendant has a pecuniary interest in the transaction.”). Defendant breached this duty by failing to be forthright with Plaintiffs, and as a result of Plaintiffs’ justifiable reliance on Defendant’s misrepresentations, Plaintiffs suffered a monetary loss.

IV. Fraud

To recover under their fraud cause of actions, Plaintiffs were required to prove the following nine elements by clear and convincing evidence:

(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer’s ignorance of its falsity; (7) the hearer’s reliance on its truth; (8) the hearer’s right to rely thereon; and (9) the hearer’s consequent and proximate injury.

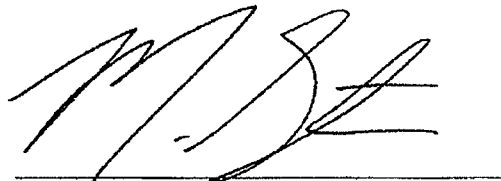
Id. at 218-219, 621 S.E.2d at 375. As explained above, Defendant made a false representation to Plaintiffs that he would hire a contractor to oversee the construction of the master bathroom renovation. Defendant’s representations were material to Plaintiffs’ decision to move forward with the project as evidenced by the fact that Defendant was fired when his misrepresentations were discovered. Defendant was obviously aware that his representations were false, and he

intended for Plaintiffs to act on them by hiring him. As the court found, Plaintiffs were unaware that Defendant was acting as the contractor. (Order, p. 3.) Plaintiffs had the right to rely on Defendant's representations, which they did. As a result of the fraud committed by Defendant, Plaintiffs suffered damages in the form of an unsuitable and barely useable master bathroom that will require extensive repairs.

Plaintiffs have proven all nine elements of fraud and are entitled to an award of actual damages under this cause of action as well as punitive damages.

Conclusion

For the above-stated reasons, Plaintiffs' *Motion to Alter or Amend Judgment* should be GRANTED. Plaintiffs should receive judgment on their SCUPTA cause of action for Twelve Thousand Nine Hundred Twenty-Seven Dollars and 00/100 (\$12,927.00) in actual damages, such amount to be trebled, and for attorneys' fees pursuant to S.C. Code. § 39-5-140(a). Further, Plaintiffs should be awarded actual and punitive damages under its causes of action for negligence, negligent misrepresentation, and fraud.



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August 15, 2013

Exhibit A

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2010-CP-40-08155

Howard Nankin and Nancy
Nankin,

Plaintiffs,

vs.

Donald M. Danford d/b/a Don
Danford Interiors,

Defendant.

Donald M. Danford d/b/a Don
Danford Interiors,

Third-Party Plaintiff,

vs.

Jeff Stahl,

Third-Party Defendant.

ORDER

RECEIVED
C.C.P. & G.S.

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RICHLAND COUNTY
FILED

THIS MATTER came before the undersigned for a bench trial on October 4, 2012. Wesley D. Peel, Esquire appeared on behalf of Plaintiffs Howard and Nancy Nankin. W. Duvall Spruill, Esquire appeared on behalf of Defendant Donald M. Danford d/b/a Don Danford Interiors ("Danford"). Third-Party Defendant Jeff Stahl ("Stahl") appeared *pro se*. Based on the exhibits, testimony of witnesses, and arguments presented at trial, I make the following Findings of Fact and Conclusions of Law:

1. Findings of Fact

Plaintiffs own and live in the residence at 247 Southlake Drive in Columbia, South Carolina and decided to renovate the master bathroom of their home (the "Project"). Specifically, Plaintiffs wanted to upgrade all existing features of their master bathroom as well as install a handicap accessible shower to ensure that the renovated bathroom remained usable and practical as Plaintiffs grew older. Plaintiffs were referred to Danford as an interior designer, and Plaintiffs enlisted Danford as a decorator to design the Project. Danford agreed to perform the decorating work and also told the Plaintiffs that he would locate a contractor to perform the renovation. The budget for the project was around \$25,000.00. Danford contacted David Noss, a licensed residential builder, to provide an estimate for the Plaintiffs' bathroom. Mr. Noss visited the home and prepared an estimate, which he gave directly to Danford. Danford told the Plaintiffs that the estimate was too high. Danford then presented the Plaintiffs with a second estimate written on Danford's letterhead showing that the project would cost \$25,974.25, which was within Plaintiffs' budget. Mr. Nankin testified that that he was aware the budget on the letterhead was not all-inclusive, specifically omitting the plumbing fixtures, which cost more than \$4,000.00. The estimate on Danford's letterhead contained a line item for "Contractor's Fees" in the amount of \$3,800.00, which supported the notion that Danford would obtain a contractor. In subsequent invoices, the amount of \$3,800 was shown as fees to Danford for labor. Danford explained to the Plaintiffs that he had reworked his estimate for them to meet budget. Danford represented to the Plaintiffs that his only charges were for decorating services at \$125.00 per hour. The Plaintiffs agreed to the price and the work began.

Rather than hire a general contractor on Plaintiffs' behalf as promised, Danford directly ordered and paid for materials for the Project and directly hired, paid, and coordinated

subcontractors to perform the various tasks required to complete the Project. Matthew Cooper, testified at trial that he worked for and was paid pay by Danford for construction work on the Plaintiffs' home. It is undisputed that Danford self-performed some of the construction. All payments from the Plaintiffs were made directly to Danford. Plaintiffs were not informed that Danford was performing the duties of a general contractor on the Project and, in fact, believed that he had hired a contractor. Plaintiffs experienced problems throughout the Project as a result of poor planning and coordination by Danford. As the Project progressed, Plaintiffs began to notice evidence of poor workmanship and quality throughout the various aspects of the Project. These defects were pointed out to, but not corrected by, Danford. At this point Plaintiffs discovered that Danford had not hired a general contractor and was performing that task himself. As a result of the poor and unacceptable work and Danford's concealing of the fact that he was acting as the general contractor for the Project, Plaintiffs terminated Danford, fixed the bathroom so that it was in a usable condition, and have lived with various problems and deficiencies during the pendency of this action. Danford offered testimony tending to downplay or contradict his role as the contractor, as well as evidence contradicting the Plaintiffs' understanding of agreement. The Court considered this evidence in its deliberation but ultimately gave it little weight in its ruling.

Plaintiffs paid Danford \$24,895.00 for an incomplete and poorly constructed master bathroom. Plaintiffs corrected some of the deficiencies themselves and solicited a bid from Arthur Suggs, a licensed general contractor and residential builder, to correct the defective work and complete the Project. Mr. Suggs was duly qualified as an expert in residential construction, and Danford offered no expert testimony of his own. Significant amounts of the poor work

performed by Danford likely will have to be torn up and re-done to properly remedy the defective condition of the Project at a significant cost.

Danford is neither a licensed general contractor nor a licensed residential builder. Plaintiffs have already paid Danford \$24,895.00 on a project that was supposed to cost \$25,974.25. The Plaintiffs have paid \$2,127.00 to bring the bathroom to a usable condition. Additionally, the Plaintiffs received an estimate of \$22,951.00 from Mr. Suggs to correct the defective workmanship in their master bathroom and to complete the Project.

2. Conclusions of Law

The Plaintiffs instituted this action against Danford for breach of contract, negligence, negligent misrepresentation, fraud, and violation of the South Carolina Unfair Trade Practices Act. Danford filed a counterclaim for breach of contract and/or quantum meruit, alleging that the Plaintiffs did not pay him for all materials and labor he expended on the project. Additionally, Danford filed a third-party complaint against Stahl for indemnity. Stahl installed most of the tile on the Project, and Danford alleged Stahl must indemnify him for any damages awarded Plaintiffs relating to the tile work. I find in favor of the Plaintiff's on their breach of contract action in the amount of Twelve Thousand Nine Hundred Twenty-Seven Dollars (\$12,927.00). I find Danford's counterclaim against Plaintiffs barred by statute. I find for Danford on his third-party claim against Stahl in the amount of Six Thousand Four Hundred Dollars (\$6,400.00).

a. Plaintiffs' Claim for Breach of Contract

To recover for breach of contract against Danford, Plaintiffs were required to plead and prove "(1) the existence of a contract, (2) breach of the contract, and (3) damages caused by the breach." Consignment Sales, LLC v. Tucker Oil Co., 391 S.C. 266, 271, 705 S.E.2d 73, 76 (Cl.

App. 2010) (citing Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)). This Court finds that Plaintiffs entered into a contract with Danford whereby Danford was to design a remodeled master bathroom for Plaintiffs. As part of that contract, Danford was to assist Plaintiffs in hiring a general contractor to perform the actual construction work. Danford breached his contract with Plaintiffs by failing to hire a general contractor and concealing this fact from Plaintiffs as well as in constructing a bathroom with numerous deficiencies. As the direct and proximate result of Danford's breach, Plaintiffs have been damaged as follows based upon services Danford promised to perform that were not performed or performed unsatisfactorily: One Thousand Four Hundred Dollars (\$1,400.00) in damages for the plumbing/toilet; Six Thousand Four Hundred Dollars (\$6,400.00) for the tile floor; and Three Thousand Dollars (\$3,000.00) for the glass door/surround. I further find Plaintiffs entitled to the Two Thousand One Hundred Twenty-Seven Dollars (\$2,127.00) they have spent thus far on repairs. In total, I find in favor of the Plaintiffs on their breach of contract claim for Twelve Thousand Nine Hundred Twenty Seven Dollars (\$12,927.00).

b. Plaintiffs' Claim for Violation of the South Carolina Unfair Trade Practices Act

By statute, Danford was required to hold a license with the South Carolina Residential Builders Commission for the work he performed for Plaintiffs. S.C. Code Ann. § 40-59-20(6) defines a "Residential Builder" as

one who constructs, superintends, or offers to construct or superintend the construction, repair, improvement, or reimprovement of a residential building or structure which is not over three floors in height and which does not have more than sixteen units in any single apartment building, when the cost of the undertaking exceeds five thousand dollars. Anyone who engages or offers to engage in such undertaking in this State is considered to have engaged in the business of residential building.

Danford engaged in the business of residential building by ordering materials for the Project and by hiring, overseeing, and coordinating subcontractors and other workers on the Project. Danford also engaged in the practice by offering to return to correct deficiencies in his work. Pursuant to S.C. Code Ann. § 40-59-220(A), "All residential builders must be licensed . . . by the commission for a period established by the commission in regulation." Danford was not licensed and, as such, was sanctioned by the Residential Builders Commission for violating this very section. As the agency charged with administering and enforcing the statutes and regulations related to residential home buildings, the Residential Builders Commission's findings and decision "should be given great deference." Barton v. Higgs, 381 S.C. 367, 371, 674 S.E.2d 145, 147 (2009) (citing Dunton v. S.C. Bd. of Exam'rs in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987) for the proposition "that the construction of a statute by the agency charged with its administration will be accorded the most respectful consideration"). "The chapter on residential home builders is designed to benefit the public in general by insuring that only licensed builders perform residential building." Summers v. Harrison Constr., 298 S.C. 451, 456, 381 S.E.2d 493, 496 (Ct. App. 1989); see also W&N Constr. Co., Inc. v. Williams, 322 S.C. 448, 450, 472 S.E.2d 622, 623 (1996) (discussing rulings from other jurisdictions not allowing unlicensed contractors to enforce a contract for construction despite absence a clear statutory mandate, "The rationale is that such licensing statutes protect the public and to permit unlicensed contractors to circumvent licensing requirements by payment of a small fine would defeat the legislative intent.").

S.C. Code Ann. §39-5-20(a), provides that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are . . . unlawful."

To establish a cause of action under the UTPA, the plaintiff must prove unfair or deceptive acts or practices in the conduct of any trade or commerce. The unfair or

deceptive act or practice must affect the public interest. An impact on the public interest may be shown if the acts or practices have the potential for repetition. The potential for repetition may be proven by showing: (1) the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) the defendant's procedures created a potential for repetition of the unfair and deceptive acts

Hollman v. Woolfson, 384 S.C. 571, 580, 683 S.E.2d 495, 499 (2009) (internal citations omitted). Danford violated a statute enacted for the protection of the public. Plaintiffs presented uncontested evidence that Danford has entered into similar arrangements with at least two other clients in the past, where he was performing the duties of a contractor without a license. Plaintiffs presented an invoice from Danford to Rich and Mary Edelson dated July 12, 2010 and an invoice from Danford to Jackie Warrington dated November 23, 2010, both of which were for residential construction projects. However, the Court does not find that Danford's actions arise to the "potential for repetition" threshold required for treble damages and attorneys' fees to be awarded under the South Carolina Unfair Trade Practices Act. While there was evidence presented that Danford had acted in a similar capacity on two prior occasions, the Court feels the underlying dispute in this case was between two private parties and does not substantially affect the public at large.

c. Danford's Counterclaim

Danford's counterclaim against Plaintiffs is barred by statute. S.C. Code Ann. § 40-59-30(B) states,

Notwithstanding Section 29-5-10, or another provision of law, a person or firm who first has not procured a license or registered with the commission and is required to do so by law may not file a mechanics' lien or bring an action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting which the person or firm entered into in violation of this chapter.

Danford alleged that the Plaintiffs failed to reimburse him for the expenses he advanced and for his time and effort. As to Danford's claim for his time and effort, the statute cited above clearly

precludes any recovery as he was engaged in the practice of residential building without a license. As to the "expenses" advanced, South Carolina law also precludes any recovery. In Roberta, Inc. v. Trust, 274 S.C. 53, 260 S.E.2d 818 (1979) the plaintiff, an unlicensed contractor, argued that even though he could not recover for his time and profit, he should be able to recover the cost of materials and payments to third parties. The Supreme Court concluded otherwise:

Appellant, conceding that the statute which prohibits an unlicensed builder from enforcing the contract bars any action for services rendered by it, either on the theory of contract, quantum meruit, or unjust enrichment, contends that the statute should not be so construed as to bar recovery by an unlicensed builder for amounts paid to third parties for labor and materials used in construction, at least, to the extent that the landowner was benefited. In other words, appellant argues that the statute should be construed to prevent any benefit or profit to the unlicensed builder, but should not bar recovery for labor and materials used in the construction from which the unlicensed builder received no profit and from which the landowner received a benefit. We find no basis in the statute for this construction.

The recovery sought in this action is for work and material contracted to be furnished by appellant in the construction of respondent's house. The fact that the work and materials, for which recovery is sought, were furnished by appellant through third parties does not render the bar of the statute any less applicable.

Id. at 54-55, 260 S.E.2d at 818. The entirety of Danford's counterclaim is barred by S.C. Code Ann. 40-59-30(B).

d. Danford's Third-Party Claim Against Stahl

As there was no written contract between Danford and Stahl, Danford's cause of action must be construed as one for equitable indemnity. To recover for equitable indemnity, Danford was required to prove that "(1) [Stahl] was liable for causing [Plaintiffs'] damages; (2) [Danford] was exonerated from any liability for those damages; and (3) [Danford] suffered damages as a result of [Plaintiffs'] claims against it, which were eventually proven to be the fault of [Stahl]." Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 63, 518 S.E.2d 301, 307 (Ct. App. 1999). At trial, Danford established that any damages Plaintiffs suffered relating to the

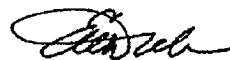
tile floor were solely caused by Stahl. As such, Danford is entitled to equitable indemnity from Stahl in the amount of Six Thousand Four Hundred Dollars (\$6,400.00).

3. Conclusion

Judgment in favor of Howard Nankin and Nancy Nankin against Donald M. Danford d/b/a Don Danford Interiors in the amount of Twelve Thousand Nine Hundred Twenty-Seven Dollars (\$12,927.00).

Judgment in favor of Donald M. Danford d/b/a Don Danford Interiors against Jeff Stahl in the amount of Six Thousand Four Hundred Dollars (\$6,400.00).

AND IT IS SO ORDERED.



The Honorable Edgar W. Dickson
Presiding Judge, Fifth Judicial Circuit

April 18, 2013

Orangelung, South Carolina

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25

1 him whether he was licensed.

2 MR. PEEL: I was confused. I didn't know if
3 you wanted a copy of the order or not.

4 THE COURT: No, no.

5 MR. PEEL: Okay. I'm sorry. That's
6 withdrawn.

7 THE COURT: Thank you.

8 MR. PEEL: So strike 31.

9 THE COURT: I'm going to make that note too.
10 Thank you, Mr. Peel.

11 BY MR. PEEL:

12 Q Do you hold a license of any kind with the
13 Residential Home Builders Association?

14 A No, sir.

15 Q Have you ever?

16 A No, sir.

17 Q How about a general contractor's license?

18 A No, sir.

19 Q Okay. Now, Mr. Danford, you talked to the Nankins
20 about doing interior design work on the bathroom?

21 A Correct.

22 Q And what happened next?

23 A Brought in a contractor, David Noss, to look at it
24 and give them an estimate.

25 Q Okay. Did you suggest to the Nankins that they

1 You see it says "answer" there. What does it
2 say?

3 A What number?

4 Q Number 13. They're typed in italics. It says
5 Interrogatory Number 13, right there (indicating).
6 Then the answer is in bold under that.

7 A (Pause.) I don't remember this. What context is
8 this?

9 Q The question is right in front of it. It says:
10 State with particularity your reasons for not
11 hiring a general contractor to oversee the project
12 that is the subject of this litigation.

13 Can you read me the answer?

14 A The defendant suggested to plaintiff, Nancy Nankin,
15 that she hire a contractor and provided an estimate
16 from that contractor. Ms. Nankin refused to hire
17 that contractor. She said that the estimate costs
18 was too high.

19 Q Okay. And you're telling me that's not accurate?

20 A Well, I've never seen this before. I don't know
21 what I'm answering.

22 Q Well, why -- was there a contractor, a licensed
23 contractor, on this job?

24 A David Noss.

25 Q David Noss. He was the contractor?

1 A He was the contractor.

2 Q And who was his contract with?

3 A With me and the Nankins.

4 Q With you and the Nankins. What was his contract
5 with you?

6 A He was coming over to -- he did another job for me,
7 the Edelsons, which is one that I believe is in
8 this book; and he was coming to help me get their
9 bathroom put together.

10 Ms. Nankin, he gave her his first estimate.
11 Ms. Nankin did not like that. We went back to the
12 drawing board. We talked on the phone, and that's
13 where the estimate came from that is on my
14 letterhead.

15 Q Okay. What was your job going to be?

16 A I was an interior designer. I was going to pick
17 the tile and do a game plan.

18 Q What is a game plan?

19 A Put it together and work right alongside of the
20 contractor.

21 Q Okay.

22 A I'm not a contractor.

23 Q Okay. I think you've used the word somewhere
24 facilitator. You said you were a facilitator for
25 the trades?

1 A What do you mean by that, facilitator?

2 Q Those were your words. I'm asking you. You
3 weren't a facilitator? You didn't go out and hire
4 subcontractors and suppliers to perform work --

5 A No, I recommended them to the client.

6 Q But you paid them all directly?

7 A Because that's what I was asked to do.

8 Q You paid for the supplies too and material; right?

9 A Correct.

10 Q And you charged a contractor's fee?

11 A I did not charge a contractor's fee because I am
12 not a contractor.

13 Q Well, turn to Tab 2 for me, please. That is a
14 letter on Fisher and Phillips, LLP, letterhead
15 dated September 27, 2010, to Howard and Nancy
16 Nankin.

17 THE COURT: This is Tab 2?

18 MR. PEEL: Tab 2.

19 THE COURT: Is that your Tab 2 as well?

20 MR. SPRUILL: That is correct.

21 THE COURT: I just wanted to make sure that's
22 all.

23 MR. PEEL: Before I forget, I move to
24 introduce Tab 4 as an exhibit, which is the answers to
25 interrogatories.

- 1 Q But you say that's incorrect?
- 2 A We hired David Noss.
- 3 Q And you said the Nankins were aware of that?
- 4 A Yes, they were aware of that.
- 5 Q Okay. And then the fourth paragraph -- I think I'm
- 6 counting right -- second sentence or the first
- 7 sentence. It says, Enclosed is a copy of a bill
- 8 and an amount still due. Mr. Danford, on behalf of
- 9 his company, provided extensive labor that is not
- 10 on this bill.
- 11 What labor did you provide?
- 12 A I helped design the bathroom. I helped rip out the
- 13 old tile, and Ms. Nankin constantly called me to
- 14 come out and look at things.
- 15 Q And that was incomplete. Actually this is an
- 16 attachment that was behind it. This was the actual
- 17 bill?
- 18 A Where? What? What do you want me to look at?
- 19 Q Well, she said she enclosed a bill, and I didn't
- 20 want to leave that out. Is that a copy of the bill
- 21 that she sent with the letter? It got put in the
- 22 wrong place.
- 23 A Yes.
- 24 Q So on that bill, this is from you. You're
- 25 invoicing for framing, Number 5?

1 A It was the whole estimate.

2 Q Okay. You're invoicing for electrical; right?

3 A Correct.

4 Q You've got Number 16, labor, Don, \$3,800; right?

5 A I see that, yes.

6 Q Okay. Basically everything on the job is in your
7 invoice here; right? Every piece of work?

8 A Correct, because I never got an invoice from David.

9 Q Okay. The balance at the back, on the back page
10 shows on Tabs 3 and 4 shows what was paid and what
11 wasn't?

12 A Correct.

13 MR. PEEL: Now, here is 3 and 4 for your copy.
14 I'm sorry. I left those out.

15 THE COURT: Okay.

16 (Hands to Court.)

17 BY MR. PEEL:

18 Q Okay. Now, I want you to turn to the last
19 paragraph or next to the last paragraph on the
20 second page of the letter.

21 It says in the last paragraph, the last
22 sentence of that paragraph says: The company will
23 be notifying all persons who assisted in this
24 matter to accept no further charges related to your
25 account due to your termination of the company.

1 What does that mean?

2 A I'm not sure.

3 Q Okay. Why would you have -- if there was a
4 contractor on the job -- why would you have the
5 say-so over who accepts charges and who doesn't?

6 A What are you asking me?

7 Q I'm asking: How can you threaten the Nankins by
8 telling them if they've already got a contractor
9 that you are telling everybody who provided any
10 type of service on the job not to accept anymore
11 orders from them?

12 MR. SPRUILL: Objection, Your Honor. He was
13 mischaracterizing what this letter says.

14 THE COURT: Well, I understand he may be doing
15 it. I'm going to overrule your objection and let you
16 ask it. You can rephrase it if you'd like to.

17 MR. PEEL: I'll just go back to what the
18 letter says.

19 THE COURT: Okay.

20 BY MR. PEEL:

21 Q It says -- you say you're not the contractor;
22 you're just the designer. But your lawyer is
23 telling the Nankins to notify all persons who
24 assisted in this matter to accept no further
25 charges related to your account due to your

1 termination of the company.

2 If you're just the interior designer, how do
3 you have the say-so over who accepts charges and
4 who doesn't?

5 A They put all of this in my name.

6 Q They put it all in your name?

7 A Dr. and Ms. Nankin wanted me to handle everything.
8 They got my discounts. I called the people and it
9 was all in my name. They were not wanting to pay
10 their bill.

11 I don't -- I mean, I don't know if this is
12 just Richele's legal way of saying it. I'm not
13 sure. I've never been in a courtroom before.

14 Q Okay. Turn to Tab 6 for me then, please. Do you
15 recognize that as Mr. Noss's original estimate that
16 you asked him to provide for the bathroom?

17 A It is.

18 Q Okay. He said -- or the Nankins said it was too
19 high?

20 A That's what they said.

21 Q Do you recall what their budget was?

22 A Not off the top of my head.

23 Q Okay.

24 MR. PEEL: I move to submit Exhibit Number 6,
25 Plaintiff's Exhibit 6, into evidence.

1 MR. SPRUILL: No objection.

2 THE COURT: It's in evidence without
3 objection.

4 (Plaintiff's Tab Number 6 is received into
5 evidence.)

6 BY MR. PEEL:

7 Q Okay. Turn to Tab 7, please. Are those your
8 notes?

9 A Those are my notes.

10 Q Okay. What are these from?

11 A These are from when me and David talked on the
12 phone.

13 MR. PEEL: Your Honor, move to admit Tab
14 Number 7, Plaintiff's Exhibit Number 7, into evidence.

15 MR. SPRUILL: No objection.

16 THE COURT: Tab 7 is admitted without
17 objection.

18 MR. PEEL: Here is Number 6 and Number 7.

19 THE COURT: Thank you, sir.

20 (Hands to Court.)

21 (Plaintiff's Tab Number 7 is received into
22 evidence.)

23 BY MR. PEEL:

24 Q So this was a rework; is that right?

25 A This was a rework.

1 Q So you got the price down lower?

2 A That's what they asked me to do.

3 Q Okay. But you didn't get -- you didn't get another
4 estimate on Mr. Noss's letterhead; is that right?

5 A No, the Nankins wanted to get going. It was typed
6 up on my letterhead. That was one of the -- that
7 was a big mistake of mine.

8 Q Turn to Tab 1 and tell me exactly that estimate.

9 A 25,974.25.

10 Q That is the estimate?

11 A That is the estimate.

12 Q Prepared on your letterhead?

13 A Yes.

14 Q The one we were just discussing?

15 A Yes.

16 MR. PEEL: Your Honor, I move to admit
17 Plaintiff's Exhibit 1 into evidence.

18 MR. SPRUILL: No objection.

19 THE COURT: All right. Tab 1 is in evidence
20 without objection.

21 (Plaintiff's Tab Number 1 is received into
22 evidence.)

23 BY MR. PEEL:

24 Q Okay. So you say this is based upon your phone
25 conversation and your notes, and you went and

1 plugged this into your letterhead for the Nankins?

2 A Correct.

3 Q What do you say the last item is, contractor's
4 fees, \$3,800? What is that for?

5 A That was for David's fee.

6 Q So David Noss was supposed to get that?

7 A He was.

8 Q Okay. Turn to Tab 9, please. Is that a copy of a
9 check from your account?

10 A It is.

11 Q Okay. Who is it to?

12 A David Noss.

13 Q Okay. And it says for Nankins' cabinet?

14 A Uh-huh.

15 Q Is that right?

16 A Correct.

17 Q I assume you were paying him for building the
18 Nankins' cabinets?

19 A He sent the person over there. This is what he
20 charged me and asked me to pay him.

21 Q So you did?

22 A Of course. I mean, I wanted to make sure everybody
23 got paid.

24 MR. PEEL: Your Honor, move to admit

25 Plaintiff's Exhibit 9.

1 MR. SPRUILL: No objection.

2 THE COURT: All right. Nine is in evidence
3 without objection.

4 (Plaintiff's Tab Number 9 is received into
5 evidence.)

6 BY MR. PEEL:

7 Q Turn to Tab 10 for me, please. There are two
8 pages. That's your estimate again with some
9 handwritten notes at the bottom. Do you see that?

10 A Correct.

11 Q The Bates stamp number, the first one is Nankin 22,
12 the second one is Nankin 21. It's the little
13 number at the bottom right-hand corner. Those are
14 stamped on the bottom there.

15 A Yes.

16 Q Is that your handwriting?

17 A I believe so, yes.

18 Q Is that reflecting payments to you from the
19 Nankins?

20 A That was the first check that the Nankins gave me.

21 Q April 19, 2010, they paid you \$11,000?

22 A Correct.

23 Q What work had been done at that time?

24 A None had been done. That was to order tile.

25 Q And then the second page shows some additional

1 payments in your handwriting at the bottom?

2 A Yes, sir.

3 Q That's payments to you from the Nankins?

4 A Yes.

5 Q One payment. The other is the balance, 6/21/10,
6 \$8,000?

7 A Correct.

8 MR. PEEL: Your Honor, I move to admit
9 Plaintiff's Exhibit 10 into evidence, please.

10 MR. SPRUILL: No objection.

11 THE COURT: Tab 10 is in evidence without
12 objection.

13 (Plaintiff's Tab Number 10 is received into
14 evidence.)

15 BY MR. PEEL:

16 Q Okay. Would you turn to Tab 12, please. Let me
17 put this right here. Do you recall this? This is
18 something on Don Danford's Design letterhead dated
19 8/25/10. Would you say this is a punch list?

20 A Yes, this is what Ms. Nankin called my assistant
21 and gave her.

22 Q So your assistant typed this up?

23 A No, I typed it up. She had written it, telling me
24 this is what Ms. Nankin was wanting done.

25 Q Okay. So what were you going to do with this?

1 A I was trying to get the bathroom finished, trying
2 to --

3 Q I'm sorry. Are those your notes on it?

4 A Those are my notes, some of it, yes.

5 MR. PEEL: Your Honor, I'd move to admit
6 Plaintiff's Exhibit 12 into evidence, please.

7 MR. SPRUILL: No objection.

8 THE COURT: Plaintiff's Exhibit 12 -- Tab 12,
9 excuse me -- is in evidence without objection.

10 MR. SPRUILL: That's two pages, Wesley.

11 THE COURT: I've only got one page.

12 MR. PEEL: I'm sorry. I think they -- yeah,
13 there are two pages.

14 BY MR. PEEL:

15 Q Is the other page your notes too? I should ask you
16 that.

17 A Yes.

18 (Hands to Court.)

19 THE COURT: Thank you.

20 (Plaintiff's Tab Number 12 received into
21 evidence.)

22 BY MR. PEEL:

23 Q It's the same list but different notes; correct?

24 A Yeah, I believe it was either the second -- I'm not
25 sure which is which. It was on two different times

1 that I did it.

2 Q Okay. Who is D.R. Martin Interiors or D. Martin?

3 A It's me.

4 Q Is that your company?

5 A That was my company, yes.

6 Q Was your company. Okay. Turn to Tab 13, please.

7 Do you recognize that?

8 A No. What is this?

9 Q The plumbing receipt. The customer is Martin.

10 A Okay. Customer, Martin, yes.

11 Q Are these not --

12 A This was what we bought for the Nankins' bathroom.

13 Me and Dr. and Ms. Nankin went to -- I guess this

14 is Gateway, yes. It's not on here who this is

15 from.

16 Q It says ordered to: It says Gateway at the top,

17 Gateway Supply Company.

18 A So this is Gateway. Yes, that's where the plumbing

19 fixtures came from.

20 Q Okay. So those were charged to your account?

21 A Correct.

22 MR. PEEL: Your Honor, move to admit Tab 13

23 into evidence.

24 MR. SPRUILL: No objection.

25 THE COURT: All right. Tab 13 is in evidence

1 without objection.

2 (Plaintiff's Tab Number 13 is received into
3 evidence.)

4 BY MR. PEEL:

5 Q Okay. I'm going to turn to Number 14. It looks
6 like an invoice from Plumb Time Plumbing Company to
7 you; is that right?

8 A Yes, sir.

9 Q Okay. This is for 247 South Lake Drive, which is
10 the Nankins' home; correct?

11 A Correct.

12 Q And this is for plumbing work performed in the
13 remodel of the bathroom; correct?

14 A Correct.

15 MR. PEEL: Your Honor, move to admit Tab 14
16 into evidence.

17 MR. SPRUILL: No objection.

18 THE COURT: All right. Tab 14 is in evidence
19 without objection.

20 (Plaintiff's Tab Number 14 is received into
21 evidence.)

22 BY MR. PEEL:

23 Q Who is Jeff Stahl?

24 A The tile guy.

25 Q Who hired Jeff Stahl?

1 A Dr. and Ms. Nankin.

2 Q Didn't you hire him and pay him?

3 A They asked me to pay him.

4 Q The Nankins asked you to pay him?

5 A And they asked me to hire him. He is a family
6 friend of theirs.

7 Q Turn to Tab 15, please. It's four pages.

8 A Fifteen? Check images?

9 Q Check images. These were your checks, Don Danford,
10 all to Jeff Stahl; correct?

11 A Correct.

12 Q The first one is dated 6/18/10. The second one is
13 6/21/10. The third one is 6/28/10. The fourth one
14 is July 4th, 2010; correct?

15 A Correct.

16 Q So you paid Jeff Stahl?

17 A Because they asked me to.

18 MR. PEEL: Your Honor, move to admit Tab 15
19 into evidence.

20 MR. SPRUILL: No objection.

21 THE COURT: Tab 15 is in without objection.

22 (Plaintiff's Tab Number 15 is received into
23 evidence.)

24 BY MR. PEEL:

25 Q Turn to Tab 16. Take a look through it. These are

1 consecutive. I believe they are mixed up. It
2 should be a bunch of invoices from Palmetto Tile to
3 D. Martin Interiors charged to D. Martin Interior's
4 account.

5 Take your time to look through them. Tell me
6 if these tiles from Palmetto Tile for the Nankin
7 home were charged to your account with Palmetto
8 Tile?

9 A I believe so, yes.

10 Q That front page is just a spreadsheet. Is that a
11 summary of the selection?

12 A I believe so, yes.

13 MR. PEEL: Your Honor, we would move to admit
14 Tab 16 into evidence.

15 MR. SPRUILL: No objection.

16 THE COURT: Tab 16 is in evidence without
17 objection.

18 (Plaintiff's Tab Number 16 is received into
19 evidence.)

20 BY MR. PEEL:

21 Q Would you turn to Tab 17, please. Do you recognize
22 that as a bill from Marble and Granite Creations,
23 Inc. to you for the Nankin residence?

24 A Correct.

25 Q There are actually two of them in there, one for

1 579 and one for 159?

2 A Correct.

3 Q Why did you order this?

4 A Because the Nankins wanted a marble top on their
5 countertop.

6 Q So you ordered that for them?

7 A I did.

8 Q Had it delivered for them?

9 A The marble and granite people came out and
10 installed it, yes.

11 Q Did you oversee that installation?

12 A No, I was not there.

13 MR. PEEL: Your Honor, I move to admit Tab 17
14 into evidence.

15 MR. SPRUILL: No objection.

16 THE COURT: Tab 17 is in without objection.

17 (Plaintiff's Tab Number 17 is received into
18 evidence.)

19 BY MR. PEEL:

20 Q Turn to Tab 18, please. Is that a bill from
21 Sheppard's Glass to Don Danford Designs?

22 A It is.

23 Q For the Nankin residence?

24 A It is.

25 Q What was that for?

1 A This is for two specialty glass doors. It was
2 glass to go in the cabinet doors.

3 MR. PEEL: Your Honor, move to admit Tab 18.

4 MR. SPRUILL: No objection.

5 BY MR. PEEL:

6 Q And you paid for that, right?

7 A I did.

8 THE COURT: All right. Tab 18 is in without
9 objection.

10 (Plaintiff's Tab Number 18 is received into
11 evidence.)

12 BY MR. PEEL:

13 Q Did you bill the Nankins for it?

14 A I did.

15 Q Number 19, please. It appears to be a bill, an
16 invoice from Neal Perkins to Don Danford Interiors?

17 A Correct.

18 Q Who is Neal Perkins?

19 A He was the tile guy that came in after the Nankins
20 asked me to fire Jeff Stahl.

21 Q Why did they want Jeff Stahl fired? Do you
22 remember?

23 A Because they didn't think his work was adequate.

24 Q What did you think?

25 A I think that some of it was not adequate, yes.

1 Q Okay.

2 A That's the reason Neal Perkins came in.

3 Q Okay. You paid him?

4 A I did.

5 Q Did you bill the Nankins for the work?

6 A It was billed on my invoice but taken off, and I
7 paid for it.

8 Q Why did you take it off?

9 A Because they didn't -- they weren't happy with
10 Jeff's work. I was trying to make them happy. I
11 was wanting to get the bathroom done and get out of
12 their house.

13 Q Okay. I thought you said Jeff worked for them?

14 A He did work for them, but they held me responsible
15 for everything.

16 Q Why did they do that?

17 A Because they wanted me to be the banker, take care
18 of everything, pay everything.

19 Q And you did that?

20 A Because they asked me to. I didn't know I was
21 doing anything wrong.

22 MR. PEEL: Your Honor, move to admit Tab 19
23 into evidence, please.

24 MR. SPRUILL: No objection.

25 THE COURT: All right. Tab 19 is in evidence

1 without objection.

2 (Plaintiff's Tab Number 19 is received into
3 evidence.)

4 BY MR. PEEL:

5 Q Tab 21, please. Is that a bill from Gregory
6 Electric to you?

7 A It is.

8 Q Okay. And this related to the heated floor in the
9 bathroom; correct?

10 A It was the heated floor and the can lights.

11 Q And who installed the heated floor?

12 A Jeff Stahl.

13 Q Has it ever worked?

14 A To my knowledge it was working. Because the day
15 that I was fired, Gregory Electric went out there
16 that afternoon; and to my knowledge Gregory told me
17 it was working.

18 Q Okay. But this bill was to you and you then paid
19 it?

20 A I did.

21 MR. PEEL: Your Honor, I move to admit Tab 21
22 into evidence, please.

23 MR. SPRUILL: No objection.

24 THE COURT: Okay. Tab 21 is in evidence
25 without objection.

1 (Plaintiff's Tab Number 21 is received into
2 evidence.)

3 BY MR. PEEL:

4 Q Mr. Danford, please turn to Tab 22. It appears to
5 be a bill from Myers Dupree to you for sheetrock
6 and paint?

7 A It is.

8 Q Who is Myers Dupree?

9 A He was a painter.

10 Q Who did he work for?

11 A I called him in because Ms. Nankin was not happy
12 with the first painters that came.

13 Q Who were the first painters?

14 A There was a crew that was from Vincent's, and they
15 came in. Ms. Nankin said that they made a mess.
16 They didn't know what they were doing. I had no
17 idea. So we brought in Myers to fix everything and
18 make it right.

19 Q I'm sorry. What was the previous painter's name?

20 A Vincent.

21 Q Vincent. Who did they work for?

22 A Me and the Nankins.

23 Q Why didn't they work for Mr. Noss?

24 A Mr. Noss walked out on me during all of this.

25 Q Oh, he quit?

1 A He walked out on me and the Nankins know that. He
2 came and he did certain things; but when Jeff Stahl
3 was involved, he didn't want anything to do with
4 it. We had just got through with renovations that
5 me and David Noss had done together at the
6 Edelsons, and Jeff Stahl did the floor there.

7 MR. PEEL: Your Honor, I move to admit Tab 22
8 into evidence.

9 MR. SPRUILL: No objection.

10 THE COURT: Tab 22 is in evidence without
11 objection.

12 (Plaintiff's Tab Number 22 is received into
13 evidence.)

14 BY MR. PEEL:

15 Q That was August 2010 --

16 A Correct.

17 Q -- for Myers Dupree. Who is Matthew Cooper?

18 A He is a person that worked for David Noss.

19 Q He worked for you; didn't he?

20 A He did come to work for me after the Nankin
21 bathroom, yes.

22 Q He worked for you during the Nankin bathroom;
23 didn't he?

24 A Yeah, and I paid him because David asked me to.

25 Q Was he Mr. Noss's employee or was he Don Danford's

1 employee?

2 A I don't know whose employee he was.

3 Q Okay. Who told him to come to work?

4 A He came and helped me do the rip out.

5 Q Okay. Who told him to do that?

6 A Mr. Noss called me and said that Matthew was
7 coming, to pay him. He came and helped me. Me and
8 Matthew pulled out the tile and did the work to
9 save the Nankins money.

10 Q And Matthew helped you perform construction work on
11 other projects; correct?

12 A Not that I know of. He did a little bit of trim
13 work.

14 Q Okay. You have provided trade coordination or
15 facilitation on other projects; haven't you?

16 A What do you mean by that?

17 Q For other homeowners you have called in
18 subcontractors and superintended the job -- haven't
19 you -- when there's been no licensed builder on the
20 job?

21 A No, sir --

22 MR. SPRUILL: Your Honor, I object.

23 THE COURT: Hold on.

24 MR. SPRUILL: I object. I object. This is
25 irrelevant. It has nothing to do with construction on

1 the Nankins' project.

2 THE COURT: I understand that. Didn't they
3 plead unfair trade practices as well?

4 MR. SPRUILL: Yeah, they pled it.

5 THE COURT: Okay.

6 MR. SPRUILL: That doesn't mean that they can
7 open the door to anything. I still think -- make the
8 objection that it's irrelevant to this matter.

9 THE COURT: I understand it's not relevant to
10 this one, but I will allow you to continue with your
11 questioning. I'll note your objection but I will
12 overrule it. Go ahead.

13 BY MR. PEEL:

14 Q Turn to Tab 32, please. Give me one second to get
15 organized. We might have to flip through a couple
16 of documents. Do you recognize Tab 32.

17 A I do.

18 Q What is that?

19 A It's an invoice for Rich and Mary Edelson.

20 Q Dated July 12, 2010?

21 A Correct.

22 Q And what did you do for them?

23 A We remodeled a kitchen and put in hardwood flooring
24 and other things in their house.

25 Q Okay. And you oversaw that renovation and

1 remodeling; didn't you?

2 A David Noss did. He was the contractor on this job.

3 Q You didn't?

4 A No, I didn't.

5 Q Okay. Because if you go back to Tab 4, and I asked
6 you in interrogatories: Identify each -- this is
7 Interrogatory Number 8 on page 4.

8 I'll give you a second to get there because I
9 got your book messed up. I want to make sure
10 you're on the right page if I may. It's toward the
11 back. Keep flipping. Page 4 of that. Yes, that's
12 it.

13 Number 8, do you see it in italics? My
14 question to you was: Identify each person or
15 entity, including addresses and telephone numbers,
16 with whom you have contracted within the previous
17 five years to oversee a renovation or remodeling
18 job in which the total cost of the project exceeded
19 \$5,000.

20 Then your answer is on the next page. The
21 first one is: (A), Richard and Mary Edelson.
22 Correct?

23 MR. SPRUILL: Your Honor?

24 THE COURT: Yes, sir.

25 MR. SPRUILL: I suggest, without the preface

1 before those names were given, that the question is
2 misleading.

3 THE COURT: All right.

4 MR. SPRUILL: This is in evidence and you can
5 certainly take a look at it and see what was sent.

6 THE COURT: Okay.

7 MR. PEEL: I think I read that. Did I not
8 read it accurately? I thought I read what was on the
9 page.

10 MR. SPRUILL: You did not read the preface to
11 the answer before the --

12 BY MR. PEEL:

13 Q Okay. Well, read that, please, for me, the answer
14 to 8 and 9. I'm sorry.

15 A What am I reading?

16 MR. PEEL: I'm sorry. I misunderstood
17 Mr. Spruill.

18 THE COURT: Just point it out for him to make
19 it easier.

20 BY MR. PEEL:

21 Q In bold at the top of page 5. I'm sorry, right
22 there (indicating). I'll do it for you. It
23 says -- interpreting the word subcontractor and
24 then contractor -- whose scope of performance is
25 limited, and not using that term to mean a

1 contractor who was contracting directly with
2 defendant to perform, the defendant identifies the
3 following people: Richard and Mary Edelson.
4 Right?

5 A David Noss was the contractor on their job.

6 Q Did I read that accurately?

7 A Yes, you read that accurately. I'm not sure...

8 Q Okay. On that job you didn't call in all these
9 subcontractors and painters, and you and Mr. Cooper
10 did some work on that one?

11 A Me and Mr. Cooper pulled out the cabinets for David
12 to put in. David did most of the work on this job.
13 The only thing that David didn't do work on was the
14 plumbing, which Dr. and Ms. Edelson had.

15 Q Okay.

16 A The painting was through Dr. and Ms. Edelson
17 because they did a lot of painting on their house.

18 Q Okay. Well, on the Edelson bill, can you still get
19 to that, Tab 31, I believe?

20 MR. SPRUILL: Thirty-two.

21 MR. PEEL: Thirty-two. Thank you.

22 BY MR. PEEL:

23 Q It's Tab 32 on the last page of that bill, which is
24 Bates stamped 10 through 12. They were paying you;
25 right? All the payments went to you?

1 A They were reimbursing me.

2 MR. PEEL: Your Honor, I move to admit
3 Plaintiff's Tab 32 into evidence.

4 MR. SPRUILL: Subject to my continuing
5 objection about relevance --

6 THE COURT: Okay.

7 MR. SPRUILL: -- then there is no objection.

8 THE COURT: Okay. It's in evidence subject to
9 your continuing objection as to relevance on this job.
10 Thank you, sir.

11 (Plaintiff's Tab Number 32 is received into
12 evidence.)

13 BY MR. PEEL:

14 Q Why didn't Mr. Noss just bill him?

15 A Because Dr. and Ms. Edelson was never home. Once
16 again, this one, the Warrington one and the Nankin
17 one, is the ones that I made mistakes on. The
18 clients have asked me to pay things that I didn't
19 realize was wrong at the time.

20 I was just starting my business. I didn't
21 realize what the ramification for paying all these
22 people were.

23 Q Okay. And Tab 33, that's your bill to
24 Ms. Warrington?

25 A It is.

1 Q Who was the contractor on this job?

2 A Capital Kitchens and Bath.

3 Q But you did all the billing and paying?

4 A I didn't do all the paying on this.

5 Q Okay.

6 A The Warringtons did a lot of paying on this.

7 Really this invoice is wrong. I didn't get paid
8 this amount. I got paid the first 20 because I
9 went up and ordered the cabinets; but on the end of
10 it, Mr. and Ms. Warrington paid the final payment
11 on the cabinets.

12 They paid for all the electrical. They
13 reimbursed me for the tile and reimbursed me for
14 the plumbing because they were at work and no one
15 was there.

16 Q Ms. Warrington was, again, one of the parties you
17 identified in the response to my Interrogatory
18 Number 8 that we talked about; correct?

19 A She was.

20 MR. PEEL: Before I forget, Your Honor, I move
21 to admit Tab 33 into evidence.

22 MR. SPRUILL: That is subject to the prior
23 objection.

24 THE COURT: All right. It is in evidence
25 subject to the prior objection.

1 (Plaintiff's Tab Number 33 is received into
2 evidence.)

3 MR. PEEL: Your Honor, I did not hand up to
4 the Court Number 4 of the interrogatories earlier.

5 (Hands to Court.)

6 THE COURT: Okay.

7 BY MR. PEEL:

8 Q So they paid you \$8,000. Ms. Warrington, Jackie
9 Warrington, you said paid 20 for the cabinets, paid
10 you eight for -- you said you didn't get paid that
11 eight?

12 A No, I didn't receive that.

13 Q Why did you type that in?

14 A This was their bill that we were going over the
15 night that their project was done, and we sat down
16 and went over the bill. Then they wrote out checks
17 to different people that was here on the bill.

18 Q Why didn't they write it out to the contractor?

19 A Because the contractor was doing the cabinets and
20 doing the -- all of the things -- and we gave the
21 contractor the money for the cabinetry.

22 We gave -- Jackie and Ms. Warrington paid for
23 the electrical to be done. This was them doing a
24 lot on their own house.

25 Q Who paid the electrician?

- 1 A Ms. Warrington.
- 2 Q What about plumbing?
- 3 A I paid the plumber because he came during the
4 middle of the day, and Ms. Warrington reimbursed
5 me.
- 6 Q Why is the electrician on your invoice?
- 7 A Because I told you this is a summary of what was
8 done.
- 9 Q Okay. Well, why is an interior decorator
10 summarizing what's done?
- 11 A Because I was asked to. Once again, I had just
12 started my business. I didn't know all of this. I
13 had no idea what I was doing.
- 14 Q How long have you been an interior designer?
- 15 A I've been working as an interior designer almost 12
16 years selling furniture. But on my own I've only
17 been on my own doing interior design three, four
18 years. I've learned a lot through this case.
- 19 Q When is the last time you have been to the Nankins'
20 home?
- 21 A Was when me and my attorney went.
- 22 Q Okay. So you had a chance to go look through that.
23 Did you go in the bathroom?
- 24 A Yes, we did.
- 25 Q Did you note that the tile work was uneven in

1 places?

2 A I thought the tile work looked good after
3 Mr. Perkins was done with it.

4 Q Did you try to turn on the heated floor at all?

5 A I don't believe we did. I didn't touch anything.

6 MR. PEEL: Give me just one second, please.

7 (Pause.)

8 BY MR. PEEL:

9 Q Who installed the tub?

10 A Manny.

11 Q Who?

12 A Manny the plumber.

13 Q Manny the plumber. That you paid?

14 A Uh-huh.

15 Q Okay. He didn't install an access to the motor;
16 did he?

17 A No, I don't believe so.

18 Q It has a big old caulk thing on the back of it,
19 just with the back sealed in by caulk; right?

20 A I had nothing -- I don't know.

21 Q Okay. You didn't notice that when you were in
22 there?

23 A I noticed a caulk line, but that wasn't there when
24 I left.

25 Q Okay. You helped with the rim out yourself; right?

1 A I did.

2 Q What other labor did you perform?

3 A Me and Matthew -- let me think. We put on
4 hardware, put up the towel bars.

5 Q Okay. Do you recall why the Nankins asked you not
6 to come back?

7 A I don't understand your question.

8 Q Okay. At some point in time, the Nankins told you
9 not to come back?

10 A They called my assistant and told her that I was
11 terminated, not to come back, not to call.

12 Q Was that the last time --

13 A That they were contacting an attorney.

14 Q Okay.

15 A And that was the last time that I talked with them,
16 and then Richele sent them that letter because I
17 was trying to get my money back that I had paid out
18 for the people that I had paid.

19 Q For the laborers and suppliers?

20 A Correct, the people that had been used.

21 Q Why didn't they just send the bill to the Nankins?

22 A Because the Nankins told me not to contact them,
23 not to come.

24 MR. PEEL: Your Honor, may I have just a
25 second to speak to my client?

1 THE COURT: Sure.

2 (Pause.)

3 MR. PEEL: Your Honor, I believe I'm done.

4 Let me just double check my exhibits.

5 THE COURT: Take your time.

6 MR. PEEL: Make sure I got in what I need to.

7 THE COURT: Take your time.

8 (Pause.)

9 MR. PEEL: Your Honor, I have no further
10 questions.

11 THE COURT: All right. Mr. Spruill, anything
12 on cross examination or are you going to call him later
13 in your case in chief?

14 MR. SPRUILL: Your Honor, I think I might as
15 well go ahead and deal with it now.

16 THE COURT: Would your mind if we take a short
17 break? I have need to sign a couple of documents.

18 MR. SPRUILL: I'd be delighted.

19 THE COURT: All right. Mr. Danford, we're
20 going to take a short break. You are going to be
21 allowed to step down, but you cannot talk with your
22 attorney about your testimony or anything like that.
23 Other than that, you're free to step down.

24 THE WITNESS: Can I go to the rest room?

25 THE COURT: Yes, sir, that's why we're going

1 to take a break.

2 (Whereupon there is a recess.)

3 THE COURT: Mr. Spruill, are you ready to
4 proceed?

5 MR. SPRUILL: Your Honor, I would make note to
6 you that Mr. Stahl has now arrived.

7 THE COURT: Oh, good.

8 MR. SPRUILL: He came during the break, and we
9 can certainly find a table for him. This is him in the
10 blue shirt right behind me. If he wants to come sit up
11 here, we will certainly find a place for him.

12 THE COURT: Mr. Stahl, you -- would you mind
13 standing up for a second, please, sir?

14 MR. STAHL: Yes.

15 THE COURT: Mr. Stahl, do you understand you
16 are named as a third-party defendant in this action?

17 MR. STAHL: Yes, Your Honor.

18 THE COURT: It's my understanding you do not
19 have an attorney representing you?

20 MR. STAHL: No, Your Honor.

21 THE COURT: At one time you did however; is
22 that right?

23 MR. STAHL: Yes, I did.

24 THE COURT: And you were given time by another
25 judge to obtain counsel?

1 MR. STAHL: Yes, Your Honor.

2 THE COURT: And you did not obtain counsel?

3 MR. STAHL: No, sir.

4 THE COURT: All right. We have already -- you
5 were placed on notice to be here at 9:30?

6 MR. STAHL: Yes, sir, I arrived long before
7 the break. I've been here since about 9:45.

8 THE COURT: If you want to, you're welcome to
9 come up here and ask questions as well. You are a part
10 of this action now as well.

11 MR. STAHL: All right.

12 THE COURT: Do you mind if he just sits at the
13 end of your table?

14 MR. SPRUILL: Certainly not.

15 THE COURT: Mr. Stahl, if you will sit at the
16 end of that table right there. Just pull up a chair.
17 Thank you, sir.

18 Mr. Danford, earlier we took a break. You
19 were placed under oath before then. You are still under
20 oath.

21 Mr. Spruill, Mr. Danford is now your witness.

22 MR. SPRUILL: Thank you very much.

23 THE COURT: Yes, sir. Mr. Spruill, would it
24 be easier for you to examine from that table?

25 MR. SPRUILL: I thank you for thinking of

1 that, but I am happy standing up here closer to you and
2 the witness.

3 THE COURT: All right. Just whatever is
4 easiest for you, sir.

5 MR. SPRUILL: Thank you.

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION

8 BY MR. SPRUILL:

9 Q Now, Mr. Danford, good morning again.

10 A Good morning.

11 Q I've got some questions, and I'd like to go over
12 some of the materials that we've already been over
13 to try to fill in a few gaps and also ask you about
14 a few other things that haven't come up yet.

15 Let's start with a little bit of your personal
16 history, please. Tell the judge where you were
17 raised and what your education was before you came
18 to Columbia.

19 A I was raised in Alabama. I have a high school
20 diploma. That's all my education. I worked at a
21 furniture store doing interior designs in Alabama,
22 and then I moved to Columbia and started working at
23 Whit-Ash Furniture. For ten years I worked for
24 Whit-Ash furniture, and then I left there and
25 started my own design business.

1 Q And that was in the spring of 2010?

2 A Correct.

3 Q So the Edelsons and the Nankins were some of your
4 very first customers when you weren't working for
5 the furniture store?

6 A They were.

7 Q Now, as an interior designer, what are some of the
8 recognitions that you have received in Columbia to
9 show that people appreciate what you do?

10 A I've been wrote up in Columbia Metropolitan. I've
11 been wrote up in a new magazine that is -- oh, the
12 name leaves me -- and I've had four or five
13 articles wrote about me in the past two years.

14 Q How do you go about finding new work?

15 A I advertised a little bit in Columbia Metropolitan,
16 but normally it's just word of mouth. It's just
17 people call me and ask me to come or I get
18 referrals from other clients.

19 Q Let me ask you first about a couple of the last
20 things that you were asked about by Mr. Peel, and
21 those are the ones to which I objected; but I'm
22 still going to ask you the question anyway.

23 THE COURT: And you are preserving your
24 objection while you ask these questions; is that
25 correct?

1 MR. SPRUILL: Correct.

2 THE COURT: All right, sir.

3 BY MR. SPRUILL:

4 Q As far as the Edelsons are concerned, have you ever
5 had any problem with them complaining about what
6 you did or how you did it?

7 A No, sir. Me and another contractor, Ward Dunn,
8 just redid another bathroom for them.

9 Q All right. How about with the Warringtons? Have
10 you had any problem? Any concern?

11 A I've had no complaints from the Warringtons.

12 Q Let's go to Exhibit 32, which is the Edelson's
13 invoice that you were asked about a minute ago. I
14 would ask you -- that is Number 32 -- to go to the
15 next to the last page on that.

16 Look down toward the bottom of the page where
17 it says Don's labor. Is that what you charged them
18 for your labor on the entire project?

19 A That was my labor charged to them, and then I made
20 commissions on things that I had made for them and
21 done for them.

22 Q But it was ten hours?

23 A It was ten hours is all I charged them.

24 Q At \$125 an hour?

25 A Correct.

1 Q Is that your customary rate?

2 A Correct.

3 Q Now, you say you made commissions on some things.
4 Tell the judge, please, how that works that you
5 would make a commission on something.

6 A Normally if a client of mine buys something like
7 with Palmetto Tile, I get a 10 percent commission.
8 Granite is the same way. On draperies, things like
9 that, if I sell draperies -- Whit-Ash is the same
10 way -- they pay a 10 percent commission. So I
11 don't charge my client I just make the commissions,
12 and then it all pays me.

13 Q All right. Now, with respect to the Nankins' job,
14 tell the judge, if you will, what was done with
15 those commissions that might possibly have been
16 paid to you?

17 A They were given to the Nankins.

18 Q Explain how that was and why that was.

19 A Dr. and Ms. Nankin knew the Palmetto Tile people.
20 They wanted the discount. They wanted the discount
21 on everything that I did practically. They didn't
22 want to -- they didn't want to pay a lot of money
23 for a bathroom.

24 Q And so when you gave them the prices to reimburse
25 you at the end of the job, was that minus the

1 discounts?

2 A Correct. And I had -- I made nothing. I made no
3 money on the Nankins, none whatsoever. As a matter
4 of fact, it cost me.

5 Q All right. We'll come back to that in just a
6 minute -- or why don't we go to it now. Let's go
7 to the bill that you sent them the middle of
8 August, which ought to be Exhibit Number 11.

9 Let's go to: What was it that prompted on
10 August 13, 2010, your preparing this invoice and
11 giving it to Dr. and Ms. Nankin?

12 A They asked me for it. They wanted to know what
13 they had spent and where we were at.

14 Q All right. And so you prepared this and this
15 represented the costs that were being incurred in
16 their bathroom work?

17 A Correct.

18 Q Now, there's one item on here, Item Number 11 for
19 windows. You never paid that out; did you?

20 A No, I didn't.

21 Q Now, if you take the other invoices -- and by the
22 way, the materials that were introduced this
23 morning, like the bills for the granite and the
24 bills for the marble, those bills, were those that
25 you submitted to the Nankins to show what you had

1 paid; is that right?

2 A Correct. I gave them this invoice and my bills.

3 Q All right.

4 A The bills that I had incurred and showed them what
5 we had spent.

6 Q Now, there at the top of the second page of your
7 bill, it says the total is 37,651. Now, if we take
8 out the window, the \$675; and I have done the
9 calculation that also takes out entirely the \$3,800
10 from item 16 -- which is what you billed for your
11 time?

12 A Correct.

13 Q So if you take those two out, then --

14 MR. SPRUILL: I think, Your Honor, the math
15 will show that 33,176 is the number that's left.

16 Q And, Mr. Danford, is that the amount that you
17 actually paid out?

18 A That is. Well, I paid more out than that because I
19 paid for Matthew to tear out. I paid for the
20 heated floor.

21 Q Wait a minute. We're talking about -- let's stick
22 to one thing at a time. I'll ask it this way. You
23 paid out at least that much?

24 A Yes.

25 Q Okay. Now, and how much were you paid -- or how

1 much was paid by the Nankins in connection with the
2 project? They've got on the -- let's go to --

3 MR. SPRUILL: I'm sorry, Your Honor. I didn't
4 have an index to the Plaintiff's Exhibits. Let me
5 simply --

6 A 23,895.75. From this invoice is what they paid
7 out, including what they paid Gateway.

8 Q What one are you looking at there to help me
9 because I was having some trouble?

10 A The invoice that was sent on August 13th --

11 Q Okay.

12 A -- 2010.

13 Q I think that the amount -- and the number is in
14 evidence -- I think it is 24,895.75, but it is on
15 the Nankins' records?

16 MR. PEEL: Right. Your Honor, we'll stipulate
17 to that figure.

18 THE COURT: So 24,895.75 was paid by the
19 Nankins to Mr. Danford, and we're stipulating to that;
20 is that correct?

21 MR. PEEL: That's correct.

22 THE COURT: Is that correct, Mr. Spruill?

23 MR. SPRUILL: Yes.

24 BY MR. SPRUILL:

25 Q And you had paid out by the time they called you

1 A Which notes, sir?

2 Q That is the handwritten notes on the first page of
3 this Exhibit 6.

4 A Setting up an appointment to meet with the Nankins,
5 I believe is what this was.

6 Q Okay. And the numbers and the circles that are
7 marked on the Noss original proposal, what were you
8 doing with making notes there?

9 A This was from when me and David talked on the
10 telephone and what we were trying to get the
11 estimate down.

12 Q So do I understand that the estimate or the
13 proposed contract -- which is the third, fourth,
14 and fifth page of this exhibit -- was presented to
15 the Nankins, and they said that was too much?

16 A Correct.

17 Q And then is when you talked to Ms. Noss again and
18 made the notes on the first page?

19 A Correct.

20 THE COURT: Mr. Spruill, I hate to break your
21 chain of thought, but my Tab 6 is four pages; is that
22 correct?

23 MR. SPRUILL: That is correct.

24 THE COURT: Okay. For some reason I thought
25 you said the third, fourth, and fifth pages. That's

1 when I lost it.

2 MR. SPRUILL: I might have. The first page is
3 the one with written -- handwritten notes.

4 THE COURT: Right.

5 MR. SPRUILL: And the second page is identical
6 without the notes, and then there were two other pages
7 attached.

8 THE COURT: Which was the contract?

9 MR. SPRUILL: Which was the contract.

10 THE COURT: Thank you, sir. I wanted to
11 confirm that. Thank you, sir.

12 BY MR. SPRUILL:

13 Q Now, let me show you what I will ask the court
14 reporter to mark as Defendant's Exhibit 1.

15 (Defendant's Exhibit Number 1 is marked for
16 identification.)

17 BY MR. SPRUILL:

18 Q Mr. Danford, I've given you Defendant's Exhibit
19 Number 1. Is that a bill you presented to
20 Ms. Nankin in April while you were doing this work
21 for her?

22 A Correct.

23 MR. SPRUILL: We would offer that, Your Honor.

24 MR. PEEL: No objection.

25 THE COURT: Okay. Defendant's 1 is in

1 evidence without objection.

2 (Defendant's Exhibit Number 1 is received into
3 evidence.)

4 MR. SPRUILL: If I might pass up a copy for
5 you.

6 THE COURT: Thank you, sir.

7 BY MR. SPRUILL:

8 Q Now, Mr. Danford, why was it that in the middle of
9 April that you thought it was appropriate for you
10 to send a bill for these hours at \$125 an hour?

11 A Because I was doing design work for them.

12 Q And --

13 A And these were the dates that we had met and the
14 times.

15 Q So before the bill was sent, you had met with them
16 twice in March; and this was the second meeting in
17 April?

18 A I believe so, yes.

19 Q And was that bill ever paid?

20 A No, sir.

21 Q Now, if we turn to Tab 1 --

22 A Yes, sir.

23 Q -- that is the estimate that totals \$25,900?

24 A 25,974.25, yes, sir.

25 Q And this you put on your letterhead and submitted

- 1 to the Nankins; is that right?
- 2 A Correct.
- 3 Q And that was before work began?
- 4 A Correct.
- 5 Q And the origin of these numbers came from where?
- 6 A Me and Mr. Noss talking on the telephone after I
- 7 took back his bid.
- 8 Q Now, are there some items on this that are
- 9 obviously left out?
- 10 A Correct.
- 11 Q What are the -- what's the biggest item that is not
- 12 on this at all?
- 13 A Painting and the materials, the fixtures, the
- 14 toilet, the tub, the sinks, the faucets.
- 15 Q Okay. And the fixtures was almost a \$6,000 bill;
- 16 was it not?
- 17 A Correct.
- 18 Q Even after your discount?
- 19 A Correct.
- 20 Q Now, why was it that when you went back to the
- 21 Nankins that this didn't have the fixtures on it?
- 22 A Because they said that we would purchase those.
- 23 Q And, in fact, that's what happened; isn't it?
- 24 A Correct.
- 25 Q That you and both of the Nankins went to the store,

1 picked out what you wanted, and the bill then they
2 paid?

3 A Correct.

4 Q That is a bill that is reflected on your invoice
5 from August 13th?

6 A Correct.

7 Q But it is one that there is no question they paid
8 it?

9 A Correct.

10 Q Now, let's go to -- from the time then that you
11 said, Okay. Let's go. Let's go pick out some
12 fixtures, tell the judge, if you will, what your
13 role started out being and how it morphed into
14 something else?

15 A I was working with the Nankins, and we hired David
16 Noss and we got into it. They wanted to start the
17 bathroom. We went and picked out the fixtures. We
18 got those, ordered those. We ordered the tile,
19 picked out the tile.

20 Then from there David -- we started doing the
21 rip out. Habitat for Humanity came and took away
22 the fixtures that were there, and Dr. and
23 Ms. Nankin got a tax writeoff for that.

24 Then Matthew and I, to save money, started
25 ripping out the tile work that was left from

1 Habitat for Humanity and hauled that out of the
2 house and took it to the dump.

3 Then from there -- I'm trying to think what
4 came next. It's been so long. From there David
5 came over. He put joists underneath the house.
6 The cabinet guy came, got his measurements.

7 Q Let me -- I will help you a little bit about
8 several trades, but let me ask you one question
9 before we get to the different trades. Why was it
10 throughout this project that you were the one who
11 paid the bills?

12 A Because the Nankins asked me to.

13 Q Tell the judge what that conversation was.

14 A The conversation was that they wanted me to oversee
15 it, and they wanted to keep the price down. They
16 wanted all of my discounts so that it would keep
17 the price down, and they didn't want the bathroom
18 to cost them a lot of money.

19 Q Why, though, was it for you to pay the bills, to
20 actually write the checks?

21 A Because they weren't there some of the time. They
22 were taking vacations, and they wanted me to take
23 care of the money. At the time I didn't realize
24 that that was wrong.

25 Q And as far as you were concerned, it was not wrong;

1 was it?

2 A Correct.

3 Q Now, let's go through some of the trades that came
4 and worked on the project after it did get started.
5 The cabinets, who did the cabinets?

6 A Mr. Noss.

7 Q All right. The next item on the estimate that is
8 on Exhibit 1 -- and that's what I'm doing. I am
9 going down Exhibit 1. So if you turn to that, you
10 can follow along with me. The next item is the
11 dumpster. What happened about the dumpster?

12 A Ms. Nankin didn't want a dumpster on her driveway.
13 They have a beautiful yard, and they didn't want it
14 to crack their driveway. So me and Matthew hauled
15 all the tile out in buckets and used his truck to
16 take it to the dumpster.

17 Q So there was no dumpster?

18 A No, there was no dumpster.

19 Q That money was saved?

20 A Correct.

21 Q The next item was electrical. Who picked or
22 suggested an electrician?

23 A I suggested Gregory Electric. They're well known
24 and they are a good electric company, and the
25 Nankins agreed to it.

1 Q And then as far as the framing is concerned, the
2 framing and the installation and sheetrock, which
3 comes next --

4 A Matthew --

5 Q -- how were those handled?

6 A Matthew did a lot of the framing. David Noss came
7 over and put wood underneath the bathroom to
8 support it, and then Myers Dupree finished up the
9 sheetrock.

10 Q Okay. As far as plumbing goes, how was that
11 selected and done?

12 A The Nankins and I talked and Manny came. He
13 disconnected things. He put in -- took all the
14 things down and disconnected it so Habitat for
15 Humanity could get the fixtures out. Then he came
16 back and installed it at different times.

17 Q All right. Then the tile materials, where did
18 those come from?

19 A Those came from Palmetto Tile, and the labor was
20 from Jeff Stahl.

21 Q And as far as the tile is concerned, was there a
22 decorator's discount on that?

23 A There was.

24 Q And --

25 A And they received the decorator's discount.

- 1 Q The Nankins got that benefit?
- 2 A Correct.
- 3 Q Then you say the tile was installed or at least
- 4 started by Jeff Stahl?
- 5 A Correct.
- 6 Q Okay. And then the window?
- 7 A David Noss took care of the window.
- 8 Q And he actually finished putting that in after you
- 9 were told not to come back?
- 10 A I believe so.
- 11 Q And then the glass door and surround for the
- 12 shower, who did that?
- 13 A That was David Noss, and he had Ace Glass come over
- 14 and put it in.
- 15 Q All right. Do you know why he picked Ace Glass?
- 16 A I believe that's where he has an account.
- 17 Q And by getting it in his name, did he get some sort
- 18 of a discount?
- 19 A He did get a discount, and the Nankins also
- 20 received that.
- 21 Q And then as far as the contractor's fee is
- 22 concerned, that is less than what Mr. Noss had
- 23 originally quoted; was it not?
- 24 A Yes, it is. I believe so.
- 25 Q And the big items that are omitted from this list

1 you say were the fixtures and the painting?

2 A Uh-huh, and then framing Ms. Nankin's pictures and
3 the mirrors. I believe that was it.

4 Q Let's turn our attention to the installation of the
5 tile, please, Mr. Danford. Tell the judge, if you
6 will, how it was that Jeff Stahl was selected to be
7 the tradesman who installed the tile in the
8 bathroom?

9 A Jeff Stahl is a family friend of Dr. and
10 Ms. Nankin. His mother and daddy are their
11 friends, and they wanted to help him out and asked
12 me to use him. So we hired him.

13 Q Would he had been your first choice to do this?

14 A He had just done the Edelsons with me and David
15 and, no, no.

16 Q And did you suggest that to the Nankins --

17 A I did ask them about that.

18 Q -- that there might be somebody else?

19 A But they wanted to help out their friend.

20 Q Did Mr. Stahl actually have a key to their house so
21 he could come and go?

22 A He did. He did. He did work there while they
23 weren't there at times.

24 Q All right. Did you ever have a key to the house?

25 A Oh, no. I never got a key. They were always there

1 THE COURT: All right. So the tab is in
2 without objection. It's already in. I'm sorry.

3 BY MR. SPRUILL:

4 Q Now, let's go, if you will, to your two pages there
5 that are in Tab 12, Mr. Danford. Are you with me?

6 A I am.

7 Q All right. Did I understand you to say on direct
8 examination that you typed this up from
9 communication from Ms. Nankin?

10 A Correct. She had called my assistant and gave her
11 these items.

12 Q Okay. And so then on both of these pages, there
13 are a bunch of notes -- checkmarks, done, need,
14 that kind of thing -- whose notes are those?

15 A These are my notes.

16 Q All right. Now, this first copy which is noted at
17 the bottom is Nankin 125. That means that this
18 came from the Nankins' files. The one on the next
19 page, Danford 013, means it came from your files.
20 We start with the same typing though; don't we?

21 A Correct.

22 Q Now, let's just go to the second page of that. How
23 many times were there that you went over this list
24 with the Nankins in the days following August 25th?

25 A Two or three times we revisited it, and we walked

1 through the bathroom together. These were the
2 things they pointed out, and these were my little
3 notes while me and Ms. Nankin was going through all
4 of it.

5 Q And the things that are said or that are marked
6 done, had tradesmen come back to actually do that?

7 A Correct. Mr. and Ms. -- Dr. and Ms. Nankin was not
8 happy with the first toilet. They said that it
9 looked crooked. So Gateway got another toilet, and
10 the plumber came back out and reinstalled it.

11 The "add extender to the showerhead" was going
12 to happen, but then Ms. Nankin said, No, no. We
13 don't want to do that. So we didn't do it. "Add
14 fix, silver," that was the plumber underneath the
15 sink needed suction. I guess it's the little
16 silver things that go up, and that was done.

17 Q The sink stopper was done?

18 A Correct.

19 Q Now, somebody has written in another item, need to
20 seal the handle to the shower rain-head top, and
21 that was done?

22 A Correct.

23 Q Were there continuing discussions like that where
24 Ms. Nankin brought up other matters?

25 A Correct.

1 Q Then on the next, cabinet drawers, you've got,
2 "Done by fill the holes but not by caulking and
3 touch-up paint." Why was that not done when you
4 made your last notes?

5 A Because the painter needed to come back.
6 Ms. Nankin was still not happy with some of the
7 caulking, and she felt that the paint needed
8 touching up again.

9 Q All right. Now, the next item is the floor heater.
10 It says, "Gregory, September 13th at 9:00 o'clock
11 or 2:00 to 3:00." Which was it?

12 A It was 2:00 to 3:00.

13 Q Okay. What was Gregory's connection with the floor
14 heater?

15 A They were the ones who were hooking it up to get it
16 to work.

17 Q And as far as you know, has it worked?

18 A That's what I was told by Gregory is that it did
19 work.

20 Q Now, the floor heater is actually what heats the
21 tile under the floor; is it not?

22 A Correct.

23 Q So that you have warm tiles?

24 A Correct.

25 Q Now, the next thing is the shower glass with the

1 note, "8/30 to replace." What was that about?

2 A Went, there was -- Ms. Nankin said there was a nick
3 on the corner edge of it, and she wasn't happy with
4 it. We called Ace to come back out, and that was
5 the date they were supposed to show up.

6 Q So it is then pretty clear that these notes, these
7 handwritten notes, were made before -- between the
8 25th and the 30th?

9 A Correct.

10 Q And now the next one, cleaning schedule, who was
11 Cedric?

12 A Cedric is a house -- he cleans my house. He helps
13 me clean up, and hang pictures, do different
14 things. So I took him over there -- well, he went
15 over there to clean up the bathroom when Ms. Nankin
16 was upset and wanted things cleaned up and looking
17 better. So he went over there to clean it.

18 Q All right. What is the note there that says, "need
19 to come back, done with him"?

20 A He went by himself. Ms. Nankin let him in, and she
21 said that there was things that was -- needed
22 retouching and redoing, so I was scheduling him to
23 come back.

24 Q All right. The next matter is Number 7, marble
25 scratches, Countertop Medic is scheduled for 9/9.

1 Then there's a note there that that was a Jewish
2 holiday; so it was rescheduled for the 15th. Is
3 that what happened?

4 A Correct.

5 Q And what we know now is that after you were no
6 longer allowed to come back, that Countertop Medic
7 did come and work on their marble top?

8 A Correct.

9 Q Then as far as the window is concerned, this was a
10 replacement window; was it not?

11 A It was, correct.

12 Q There had been one there all along that was still
13 there --

14 A Correct.

15 Q -- but at this point they wanted a new one that was
16 insulated and nice?

17 A Correct.

18 Q And David Noss had availability for that window and
19 was going to order it and install it?

20 A Correct, and his telephone number was put there for
21 her to call and confirm when he could get over
22 there to do it.

23 Q Now, were you told that same week that this was
24 going on that the Nankins were having a home
25 inspection made?

1 right thing.

2 Q All right. Now, the next one is painting from
3 Vincent. Is that something you actually paid him
4 to do?

5 A It is.

6 Q But you were not charging them. Why?

7 A Because Ms. Nankin was unhappy, and that's when we
8 got Myers Dupree; and so I just paid him and went
9 on.

10 MR. SPRUILL: Your Honor, at this point I
11 would offer a series of photographs of the bathroom and
12 parts of the house which were taken as part of the
13 Rule 34 examination of the house in October of 2011.

14 THE COURT: All right, sir.

15 MR. SPRUILL: That is a year after the
16 termination but a year ago.

17 THE COURT: All right. And, Mr. Peel, you've
18 seen a copy of all these?

19 MR. PEEL: Yes, I have. No objection.

20 THE COURT: And they have not yet been marked
21 for exhibit?

22 MR. SPRUILL: They have not been. What I have
23 done and will propose that I mark them as a group as
24 Defendant's Exhibit Number 2.

25 THE COURT: Okay.

1 Tell us, please, what discussion there was
2 with the Nankins about making this bathroom
3 handicap accessible?

4 A They wanted it to be handicap accessible, but the
5 door was only 24 inches wide, and it couldn't be
6 made that. So this is what happened after Jeff had
7 done his tile floor, and there was no way to change
8 it.

9 Q All right. The tile and the mud under the tile
10 made the bathroom floor higher than the carpet.

11 A Yes, it did.

12 Q And so what is there that we're looking at on the
13 next page too, page 13, what we're looking at is
14 how there is a transition from the carpet into the
15 bathroom?

16 A Correct.

17 Q Now, was there discussion about putting grab bars
18 in the bathroom so that somebody could hold onto
19 it?

20 A There was. When Jeff was doing the tile work, I
21 went and purchased some grab bars. They didn't get
22 put on, and Ms. Nankin said, Don't worry about it.
23 She was just hurrying me and wanting to finish up
24 and get out.

25 Q So you actually went and bought grab bars --

- 1 A I believe so.
- 2 Q And I said: So you all were going to split that?
- 3 And your answer was: Correct.
- 4 It's the same page. It's right after what I
- 5 just read. Is that accurate?
- 6 Page 39: You all are going to split that?
- 7 And you answered: Correct?
- 8 A That's --
- 9 Q Line 13.
- 10 A That's what it says.
- 11 Q So in your mind you were going to split this
- 12 contractor's fee with Mr. Noss from the beginning;
- 13 right?
- 14 A No, it wasn't.
- 15 Q Well, were you mistaken at your deposition when you
- 16 told me that?
- 17 A I was mistaken. The 3,800 was for David Noss to do
- 18 this work, and I don't understand the --
- 19 Q You don't understand why you answered that way?
- 20 A No, I don't.
- 21 Q Okay. Let's go back to the Warringtons. You said
- 22 that was Capital Kitchen and Bath?
- 23 A Uh-huh.
- 24 Q They worked for you; right?
- 25 A Me and the Warringtons hired them.

- 1 Q You hired them; right?
- 2 A Me and the Warringtons hired them.
- 3 Q Just you?
- 4 A No.
- 5 Q Okay. Turn to page 75 of your deposition then.
- 6 Are you there?
- 7 A I'm on page 75.
- 8 Q You can look back on 74. I'm asking you questions
- 9 about Jackie Warrington. Does that appear to be
- 10 correct?
- 11 A Yes. Yes, sir.
- 12 Q Okay. Page 75, line 7, I asked: Who pulled the
- 13 building permit?
- 14 You answered: Capital Kitchens and Bath?
- 15 Correct? Line 7 and 8.
- 16 A On 74 or 75?
- 17 Q Page 75, please.
- 18 A And line?
- 19 Q Seven and 8. Who pulled the building permit?
- 20 A Capital Kitchens and Bath.
- 21 Q So then I asked you: Who did they work for?
- 22 A And my answer was: Don Danford.
- 23 Q "We hired them to do the kitchen remodel." Then I
- 24 said: Don Danford hired Capital Kitchen and Bath?
- 25 And you said?

- 1 A I had answered: Correct. I didn't realize what
2 you were asking for at the time.
- 3 Q So you didn't understand when I asked: Who did
4 that work for you, what I meant?
- 5 A No.
- 6 Q Who is Tara Blair?
- 7 A She's an assistant for me.
- 8 Q She is an employee?
- 9 A Correct.
- 10 Q How long has she worked for you?
- 11 A About a year and a half, two years.
- 12 Q Was she working for you during the Nankin project?
- 13 A She was.
- 14 Q That's who had the handwritten notes?
- 15 A Correct.
- 16 Q You mentioned you were published in the Columbia
17 Metropolitan Magazine; right?
- 18 A Yes.
- 19 Q It was your testimony earlier that they did a nice
20 article on you; right?
- 21 A I believe so.
- 22 Q It was very complimentary, nice pictures. That
23 was -- is that (indicating) the issue?
- 24 A Yes.
- 25 Q November 2011?

- 1 A Yes, sir.
- 2 Q Former wife?
- 3 A Yes, his former wife was my aunt.
- 4 Q Okay. And what kind of work did you do for
- 5 Mr. Noss?
- 6 A I was a laborer.
- 7 Q What type of company does he have?
- 8 A He is a general contractor and does contracting
- 9 work.
- 10 Q And did you do some work in the bathroom in the
- 11 Nankins' home?
- 12 A Yes, sir.
- 13 Q And when did your employment with Mr. Noss end?
- 14 A When my employment with Don Danford Designs began.
- 15 Q And why did you leave Mr. Noss?
- 16 A Well, work was slowing down. He wasn't able to
- 17 give me the hours that he would like to give me,
- 18 and Don Danford said that he could employ me
- 19 full-time, 40 hours a week; and that's when I
- 20 switched.
- 21 Q Mr. Danford made you an offer to come to work for
- 22 him?
- 23 A Yes, sir.
- 24 Q Prior to the Nankins' home, had you done some work
- 25 with Mr. Danford before?

- 1 A Not directly.
- 2 Q Not directly. So when you were in the Nankins'
- 3 home, who were you working for?
- 4 A Don Danford.
- 5 Q Who was paying you?
- 6 A Who was paying me? Don Danford was paying me.
- 7 Q Don was paying you. You were working for him. Was
- 8 Mr. Noss contracting on that bathroom to your
- 9 knowledge?
- 10 A No.
- 11 Q Did you have occasion to work any other homes for
- 12 Mr. Danford?
- 13 A I did.
- 14 Q And do you remember the names of the people at all?
- 15 A Several of them were mentioned earlier: The
- 16 kitchen remodel, Edelson, I believe; and one after
- 17 the Nankin project was a kitchen remodel that we
- 18 had started, Warrington.
- 19 Q Warrington?
- 20 A Yes.
- 21 Q Okay. What type of work did you do in the
- 22 Warrington home?
- 23 A Well, I helped do the demolition of the kitchen
- 24 that was in there, helped do a bunch of trim work,
- 25 and I believe a little bit of framing.

1 record and spell your last name.

2 THE WITNESS: David R. Noss, N-O-S-S.

3 DIRECT EXAMINATION

4 BY MR. PEEL:

5 Q Good afternoon, Mr. Noss. I appreciate you waiting
6 on us. What's the name of your company?

7 A D.R. Noss Custom Homes, LLC.

8 Q How long have you been in business?

9 A A little over 17 years.

10 Q What type of work does your company do?

11 A We do all types of custom homes to custom
12 remodeling.

13 Q What licenses do you hold in the State of South
14 Carolina?

15 A Residential Home Builder's Association license.

16 Q How long have you been a licensed residential home
17 builder?

18 A Seventeen years.

19 Q Do you know Mr. Danford?

20 A Yes.

21 Q How long have you known him?

22 A Probably about three and a half, four years now,
23 since we worked on our first job.

24 Q And you submitted a bid on the Nankin home; is that
25 right?

1 A Yes.

2 Q How did you come to do that?

3 A Mr. Danford asked me to give him a bid on doing
4 their bathroom renovation. I worked up a quote of
5 what I felt like it would take to do the project
6 and do it correctly and submitted it to him.

7 He said that him and the Nankins felt that it
8 was too pricy. So they didn't want to use me
9 unless I could bring the numbers down, and I didn't
10 feel like I could do it for anything less. So I
11 didn't do the job.

12 Q What were the parameters you were given for the
13 job? What kind of specs were there?

14 A There really wasn't anything in writing. It was
15 more verbal. It was that they wanted to do a
16 complete tear out, move the shower over to where
17 there was a -- an old closet, I believe, relocate
18 some other things in the bathroom, do a complete
19 renovation of the master bathroom.

20 Q Did Mr. Danford say anything to you about handicap
21 accessibility?

22 A It was mentioned but we didn't go into a lot of
23 detail. There was maybe mention of making the
24 shower handicap accessible and if we could maybe
25 make the entranceway to the bathroom larger.

- 1 Q Was this information -- who was this information
2 coming from?
- 3 A Mr. Danford.
- 4 Q Did you have any communication with the Nankins
5 regarding the quote you gave?
- 6 A No, sir.
- 7 Q Turn to Tab 6 in that notebook in front of you.
8 Tell me if that's your original estimate.
- 9 A Yes.
- 10 Q And that's \$35,850?
- 11 A Yes.
- 12 Q And what were you -- what were you told about this
13 estimate once you submitted to it Mr. Danford?
- 14 A That I was way over their budget limit.
- 15 Q What told you that?
- 16 A Danford.
- 17 Q Did you speak to the Nankins about their budget?
- 18 A No, sir.
- 19 Q Did you ever meet them during the time that you
20 were pricing this?
- 21 A Just briefly when I went over to look at the
22 bathroom for the first time.
- 23 Q Okay. Did Mr. Danford ask you for a second quote?
- 24 A We discussed on the phone maybe trying to modify
25 the numbers to get closer to their budget, and I

- 1 Q And what's the address of your home?
- 2 A 247 South Lake Road.
- 3 Q How long have you lived there?
- 4 A Since we got married, May 31, 1997.
- 5 Q Ms. Nankin was in there before that?
- 6 A Yes.
- 7 Q All right. So you've been in that house a while.
- 8 Have you done any other renovation work to that
- 9 home?
- 10 A We've done a lot since we've been there. We redid
- 11 the roof. We redid the kitchen, redid the
- 12 driveway. We've done some minor repairs.
- 13 Q So you've redone the kitchen?
- 14 A Yes, sir.
- 15 Q And put on a new roof?
- 16 A Right.
- 17 Q How did y'all decide that you wanted to get your
- 18 bathroom redone?
- 19 A Well, Nancy really wanted to redo the bathroom for
- 20 a long time -- to modernize it, upgrade it and make
- 21 it handicap accessible.
- 22 Q And when did you come to meet Don Danford?
- 23 A We met him in early 2010, probably in March.
- 24 Q How did you come to meet him?
- 25 A He was recommended by a couple that we know very

1 well, and he had done decorating and some landscape
2 design for them.

3 Q And what did you -- do you remember when you first
4 met with him?

5 A I don't remember the exact date. He came over and
6 we explained what we wanted and what kind of tile
7 and surfaces and coloring, and that was the first
8 meeting. We showed him the bathroom.

9 Q Were you and Ms. Nankin equally involved in the
10 bathroom project?

11 A I was with Nancy every time she met Don Danford. I
12 went to Gateway with her; and for most of the
13 construction, I was in the house because she was
14 taking a course at the University.

15 Q And what did Mr. Danford say he was going to do for
16 you?

17 A Well, first we gave him a budget. We told him we
18 wanted it to be between 20 and \$25,000. About a
19 week later, he came in with the estimate that you
20 saw with the prices. He said that would be the
21 total renovation --

22 Q Okay.

23 A -- I said, Do you have a written contract? He
24 said, That is my written contract.

25 Q Okay.

- 1 A And he would get a contractor, and he was a
2 coordinator of the trades.
- 3 Q That's what he told you?
- 4 A That's what he told us.
- 5 Q You mentioned some documents. So let's make sure
6 we know what you're talking about in there. You
7 said he showed you a quote. Turn to Tab 6,
8 Mr. Noss's quote. Did he show you that quote?
- 9 A We never saw that quote. We were never given that
10 quote. We never saw that quote. We had no idea
11 what Mr. Noss's estimate was.
- 12 Q Turn to Tab 1.
- 13 A That's the quote we saw. That's the only quote we
14 saw.
- 15 Q You were aware Mr. Noss was pricing your bathroom;
16 correct?
- 17 A Well, after Don came out with this budget, we said,
18 It looks okay. He brought Mr. Noss over. He took
19 Mr. Noss into the bathroom. They discussed it. On
20 the way out, he said, This is Mr. Noss. He is the
21 contractor. That was the extent of our meeting.
- 22 Q Did Mr. Danford ever tell you anything about
23 Mr. Noss's quote?
- 24 A No. The only thing was a few days after Mr. Noss
25 was there, he came over or he called; and he said,

1 Mr. Noss is too high. I have to get another
2 contractor for you.

3 Q Did you believe he did that?

4 A I believed he was going to. He didn't say anything
5 to the contrary.

6 Q And when did you say he gave you Tab 1, this
7 estimate for Nankin bath restoration -- renovation?

8 A This had to be in late March, early April,
9 somewhere in there.

10 Q So did you settle on a price?

11 A He said he could do it for this estimate. The only
12 additional things was he didn't include for his
13 expertise as a decorator. We understood that
14 usually ranges about ten hours, and he was going to
15 charge about \$125 an hour.

16 Q Okay. Who did you believe was -- when the work
17 started, who did you believe was the contractor on
18 the job?

19 A We believed David Noss was the contractor. On the
20 first day, Don was there for a while; and Matthew
21 Cooper worked the rest of the day. I walked in. I
22 asked Matthew, Who do you work for? He said, Well,
23 for the last four years, I worked for David Noss.

24 You know, I didn't pursue it. I just assumed
25 he was still working for David Noss, and every once

1 in a while David Noss would be there.

2 He was involved with strengthening the beams
3 under the house. He was involved with putting in
4 the new cabinet. He was involved with putting the
5 trim up, and he also was involved with the window.

6 Q Did you come at some point in time to realize that
7 Mr. Noss was not your contractor?

8 A Yes. Several weeks into the remodel, I was sitting
9 in the kitchen. Don was coming out with one of the
10 trades. I believe it was the man from Ace Glass,
11 and they were just going out the front door.

12 They passed right by the kitchen door, and the
13 man from Ace Glass said, Well, who is the
14 contractor on this job? Donald said, I am. The
15 guy said, Oh.

16 Q And did you confront Mr. Danford about that?

17 A Yes. After the man left, I said, Why are you doing
18 this? He said to save money.

19 Q Had you asked him to not hire a contractor to save
20 money?

21 A Never. We fully anticipated he was going to bring
22 on a contractor. We fully thought that David Noss
23 was the contractor.

24 Q Who did you write all your checks to for the
25 bathroom project?

1 A We gave them all to Don.

2 Q Would he give you invoices?

3 A He gave us those -- you've seen some of those
4 sheets or he would just ask us -- well, for
5 Gateway, we had the price estimate from Gateway.
6 That was the extent of invoices.

7 The first check I actually wrote it out for
8 was \$11,000. He said he needed it for supplies.
9 We didn't have any invoices. He was just going to
10 start purchasing supplies.

11 Q As far as the supplies, did you pay the supplies
12 directly or did you pay Don Danford?

13 A We only paid Don Danford. Up until the time we
14 terminated his employment, we paid everything to
15 him.

16 Q Tell me about the project itself. What was the
17 first thing that happened on the project once y'all
18 gave the go ahead to renovate?

19 A It began on June 8, 2010. Two employees of Habitat
20 for Humanity, Don Danford, and Matthew Cooper came.
21 They salvaged what they could. Then the two
22 Habitat for Humanity employees left with what they
23 could take.

24 They began to take out cabinets and they
25 gutted it. Don worked alone and left, and Matthew

1 stayed on for a full day. That continued for
2 several days.

3 A few days into the project, they showed me
4 where the old shower was. There was water damage
5 to some of the wall studs in the flooring. I fully
6 thought they were going to replace those
7 floorboards.

8 The tear-out went and all the removed stuff
9 was put into Matthew's little pickup truck, and he
10 took out three truckloads of debris. They never
11 used the dumpster.

12 As far as telling him we didn't want a
13 dumpster, that's not true. We never told him not
14 to have a dumpster. When I asked him why he didn't
15 have a dumpster, he said they didn't need it.

16 Q What were -- once the project got underway, how
17 long did it take?

18 A Well, Don originally said he could do it in nine
19 days or ten working days if he ran into problems.
20 We terminated him at three months. We terminated
21 him on September 7, 2010. So that was three months
22 into the project, and it still wasn't done.

23 Q And why did you ask Mr. Danford not to come back?

24 A There were so many things he told us which were not
25 true. There were so many things that were done

1 incorrectly. He hired all the trades. He hired
2 everybody. We didn't know that he was hiring
3 anybody.

4 We didn't tell him to hire anybody. I never
5 met Jeff Stahl before this construction was going
6 on. I never told him -- we never told him to hire
7 Jeff Stahl. I didn't even know Jeff Stahl did
8 tiles.

9 Q Did you give Jeff Stahl a key to your house?

10 A Never. No one had a key to the house.

11 Q So you didn't recommend -- you didn't demand that
12 he hire Jeff Stahl to do your tile work?

13 A No. There were so many things that went wrong.
14 Don always seemed to be in a rush to get things
15 done to move ahead. After the demolition was done,
16 Jeff came in and began doing the tile.

17 Jeff would usually get there in the morning,
18 and he would tell me that he's having a hard time
19 doing the work because Don didn't give him enough
20 supplies. He had to go down to the tile center
21 most mornings and spend time getting tiles and
22 supplies and then come back. So he lost time on
23 the job.

24 Q Quality wise, work wise, what are the problems with
25 the bathroom as it exists now?

1 A There are many things wrong with it even after we
2 had done \$2,500 or so in repairs since we
3 terminated Don. For example, there is a ramp that
4 leads into the bathroom. It doesn't show up on the
5 picture that Mr. Spruill used, but we have a color
6 photograph.

7 The floor was made about a inch and a half or
8 two inches thicker than it needed to be. When Jeff
9 poured the self-leveling concrete or mortar,
10 whatever you call it, over the electric grid, Jeff
11 called me in one night.

12 He was very upset. He had the grid down. He
13 told me that he wanted the electrician to come in
14 and check out the circuitry, and Don didn't want to
15 have the electrician. He just wanted Jeff to pour
16 the self-leveling concrete.

17 So Jeff showed me it. He said, This is it.
18 Once I pour it, you really can't do anything else.
19 He poured out this concrete mix, which was sort of
20 the consistency of mashed potatoes.

21 He made some rough trowel marks, spreading it;
22 and he said, It will self-level by morning. I
23 looked at it after supper. I looked at it at
24 bedtime. I looked at it the next morning. It
25 didn't self-level.

1 The next morning Don and Jeff came in at the
2 same time and I went in with them. They were
3 obviously very upset because it didn't self-level.
4 You had these ripples.

5 So when Jeff had to put the thin set on there,
6 he had to make the thin set very thick. He told me
7 one time he used eight bags of thin set. That's
8 more thin set than he had ever used before.

9 THE COURT: Hold on.

10 MR. SPRUILL: I object to the hearsay.

11 MR. PEEL: He's a party.

12 THE COURT: Pardon me?

13 MR. PEEL: He is a party.

14 THE COURT: I note your objection, but I
15 overrule your objection. Go ahead.

16 THE WITNESS: So the flooring had to be
17 floated on this thin set, which was very thick. The
18 tiles on the floor are just not level. When you walk on
19 it barefoot, it cuts your feet. It scrapes. The
20 spacing isn't the same. The electric floor doesn't
21 work.

22 BY MR. PEEL:

23 Q Has it ever worked?

24 A Never worked. We had Gregory Electric come right
25 after we terminated Don. Someone had changed the

1 wiring. They got the wiring correctly installed so
2 it didn't short anymore.

3 But they went -- John, the electrician, called
4 up the company that sells the electric floors.
5 They went through a program, and they found that no
6 thermostatic sensor had been installed. You can't
7 set the temperature. You've cannot use that floor.
8 Anyone that says different is not telling the
9 truth.

10 Q Dr. Nankin, we have some photographs, I think, that
11 maybe will help as we'll go through. If you will
12 kind of hit them as you reach the topics.

13 MR. PEEL: Mr. Spruill and I have written
14 numbers on these. I think these would be 35,
15 Plaintiff's 35. The exhibit at deposition was 34.

16 COURT REPORTER: Are you going to add those to
17 the notebook?

18 THE COURT: Why don't we do these like we did
19 the defendant's? Are those numbered as well?

20 MR. PEEL: They are numbered 1 through 16 in a
21 packet. That's why I was saying I would put them in as
22 whatever the next number will be.

23 THE COURT: Would that be Plaintiff's 2?

24 COURT REPORTER: I did the deposition as
25 Number 2.

1 THE COURT: So that would be Plaintiff's 3.

2 MR. PEEL: Okay.

3 THE COURT: And then you can refer to
4 Plaintiff's 3 by the number in the corner.

5 BY MR. PEEL:

6 Q I will hand you the first two pictures, which are
7 marked 1 and 2 in the bottom right-hand corner.
8 They are close to the same picture. Does that show
9 you the threshold to your bathroom?

10 A Yes. It's about an inch and a half to two inches
11 above the surface of the floor. That threshold is
12 lying on the carpet; so you can't tell the whole
13 depth just by looking at the picture.

14 Q You say that's too high?

15 A It's a trip hazard, and it would be hard to roll a
16 wheelchair in there.

17 Q When you talk about a wheelchair, what type of
18 wheelchair are you talking about?

19 A When my wife had her foot surgery, we used what is
20 called a traveling wheelchair. It fits through
21 that door easily. We always assumed that is the
22 kind of wheelchair we'd use. That's only 19 inches
23 wide.

24 It's a perfectly adequate wheelchair to use
25 around the house or going into the bathroom. It

1 fits through that doorway. That doorway, I
2 measured it at 24 and a half inches.

3 Q As to design was Mr. Danford aware -- did you make
4 him aware that that was a concern of yours being
5 able to get a traveling wheelchair through that
6 door?

7 A We wanted it handicap accessible, and he knows what
8 the term means. When we saw that the floor was
9 raised, we were very upset and we told him.

10 Q I'm going to hand you Number 3 out of the pictures.
11 Can you tell me what that shows?

12 A Yes, this is the bathtub. This is the -- it was
13 framed in. Don made the frame too long and he
14 didn't put an access. This bathtub has a bubbler.
15 There's an electronic pump in there. If you have
16 to access the pump, there was no way to do it.

17 The second tile man left the whole foot end of
18 the bathtub on easy boards, and he caulked in it.
19 He said the only way to get to that part is to take
20 out the whole end of the bathtub.

21 When we had a second plumber come in and look
22 at it, he wanted to see if there was a GFCI unit, a
23 ground fault circuit interrupter in there. He
24 wanted to check out the pump because there are 12
25 aerators on this thing and only five worked when

1 Don left, when I terminated Don.

2 He wanted to see if it was working okay. He
3 had to open this up. Then you can't look at it
4 because the toilet is in the way. So he had to
5 take the toilet out. He found that the toilet
6 wasn't fastened to the floor.

7 The floorboard under the toilet was so rotten
8 that the screws couldn't hold it, and it was
9 leaking water. He eventually, when he put the
10 toilet back in, he had to glue it in with grout.
11 We left the -- we couldn't get the ends of the
12 bathtub back in.

13 When Don made the frame, when he and Matthew
14 made the frame, they made it too long. Before they
15 put the bathtub in, they put an extra two-by-four
16 in sideways inside the frame, and they left the
17 exterior the same size. It encroaches on the space
18 around the toilet.

19 Q So that picture shows, Number 3, the way the tub
20 was left?

21 A It shows the easy board. You can't get it back in.
22 I used spray styrofoam, spray foam, because it was
23 leaking air.

24 Q Okay. Number 4, does that show the toilet next to
25 the jacuzzi?

1 A That shows the toilet next to that. You can see,
2 looking at the picture on the left side and on the
3 right side, there is a big difference. There is a
4 six-inch difference.

5 If the bathtub framing had been made the
6 appropriate size, it would have been about half
7 that distance. It would have looked more
8 symmetrical.

9 By the way, when the toilet was installed, the
10 flush didn't work; and the second plumber fixed it
11 so it worked. We didn't use any of the plumbing,
12 except fill in the bathtub one time, because we
13 didn't think anything was correctly installed.

14 MR. PEEL: I'd like to move to put the
15 pictures in as a group.

16 THE COURT: Okay.

17 MR. PEEL: As I'm going through, after he
18 identifies them, I can hand them up to the Court so the
19 Court can see what we're talking about.

20 MR. SPRUILL: No objection.

21 THE COURT: Defendant's Exhibit's 3, which is
22 a number of photographs?

23 MR. PEEL: Sixteen photographs.

24 THE COURT: Sixteen photographs are all in
25 without objection.

1 (Plaintiff's Exhibit Number 3 is received into
2 evidence.)

3 BY MR. PEEL:

4 Q On Number 5, is that your shower?

5 A That's the shower.

6 Q I guess 5 and 6, you can have those together.

7 Those are both of the shower?

8 A Yes, sir.

9 Q Can you tell me: Are there any problems with the
10 shower?

11 A Yes. When Ace Glass came in to measure the glass
12 surround, I had to let them in because Don wasn't
13 there yet. They looked at it and they spoke to
14 Don, and he wanted the doorway to open directly
15 opposite the handles.

16 They recommended that the doorway open from
17 the side because when you have to turn on that
18 shower, you get a jolt of cold water. In the
19 winter it goes right on you, but Don said he had
20 done it this way before and it works fine.

21 The other thing that they recommended, you
22 will see there is a bench directly ahead. The bench
23 comes flush to the glass surround. They
24 recommended that he not make it flush to the glass
25 surround, that he make steps and go down. Because

1 if water ever got between the edge of the bench and
2 the glass surround, it would grow mold; and it's
3 growing mold right now.

4 Q How about the tile work in the shower?

5 A The tile work in the shower is not the best. Grout
6 was left out. Caulking was left out. The bench
7 has sharp edges on it. You can't sit on it because
8 it cuts you. The framework for the shower is not
9 plumb. The tiling varies on the floor.

10 Q And so to turn the shower on, you have to walk all
11 the way through it and turn it on on top of it?

12 A Right.

13 Q And you have -- what is that (indicating) of?

14 A That's a wand and the wand was installed in the
15 corner. The second plumber said it should have
16 been installed in the middle, not in the corner.

17 Q Okay.

18 A And the bench was put in the wrong place. It
19 should have been put on the side because you can't
20 reach -- you should be able to reach the spigot
21 from the bench. You can't reach it.

22 Q Number 7, is that the access panel to the shower?

23 A Yes, yes. We didn't find that out until the home
24 inspector came. The morning that they were going
25 to install this access door, I took out the

1 clothes.

2 When I came home that night, the clothes were
3 back in the closet. I thought, Gee, isn't that
4 wonderful. They hung the clothes back up for me.

5 We didn't check on it until the home inspector
6 came, and we found that the drywall had been
7 damaged and hadn't been repaired and had been
8 hidden by the clothes.

9 Q That was Number 7. I'm going to skip to Number 9.
10 Is that the inside of that panel?

11 A Yes, that is the inside of that panel.

12 Q Number 8 appears to be some carpet. You took that
13 picture?

14 A Yes. Don put down rolls of like heavy scotch tape
15 on all the carpeting that led from the
16 reconstructed bathroom out the front door, and it
17 was on for three months.

18 It was about 18 inches wide; and when we took
19 it off, all the carpeting that it was on was
20 sustained. We had Duraclean come. They came twice
21 and tried to get out the staining; but it's some
22 kind of glue material, and it just won't come out.

23 Q I'm going to hand you 10 through 13 as a group.
24 They appear to be closeup shots of some tile work.
25 Can you tell me what you're showing me in those

1 pictures?

2 A I'm showing you that some of the corners and some
3 of the joints are not done well. There are big
4 spaces. The trim is different heights.

5 Some of the edges are sharp. Some of these --
6 these are called molding strips -- should have been
7 replaced and the space is a little small.

8 Q Is that typical of the installation of the trim and
9 the tile in the bathroom?

10 A There's caulking missing. There is grout still
11 missing. In the shower the second plumber came in
12 and he put in grout, and he sealed it up.

13 The handles in the shower were not fixed to
14 the wall, and you couldn't use the shower because
15 water would get -- if you turn the handles on, they
16 move. So he made the handles firm to the wall and
17 then put silicone in there.

18 Q What is Number 14?

19 A This just shows the caulking. It's really not very
20 good.

21 Q Is that a closeup in 15 of the caulking?

22 A Yes.

23 Q Is it too wide or what?

24 A It's too wide and it's not crisp.

25 Q And Number 16, what is that a picture of?

1 A Well, this is the edge of the bathtub. You can see
2 there's no grout. There's no grout in there, and
3 on the floor also there is no grout.

4 Q Okay. Turn to Number 25, please, in that notebook.
5 You mentioned that once Mr. Danford was asked not
6 to come back, you had to make some repairs yourself
7 to the bathroom?

8 A Correct.

9 Q Why is that?

10 A Well, the counter in the bathroom was covered by
11 heavy construction paper. One day Don came in and
12 took it off. The next day workers came with their
13 heavy tools, put it on the marble counter, and
14 scratched it up.

15 Q Okay. What is Number 25?

16 A Number 25 is a charge from Countertop Medic from --
17 the young man came down from North Carolina, and he
18 polished up the marble so that the scratches were
19 no longer visible. He took some of the old
20 caulking out; and he took some of the silicone out,
21 which was done very crudely, and made it neater.

22 Q Okay. And what was the total charge?

23 A Total charge was \$325.

24 Q Did you pay that?

25 A Yes.

1 Q Okay.

2 MR. PEEL: Your Honor, move to admit Tab 25.

3 THE COURT: Any objection?

4 MR. SPRUILL: No.

5 THE COURT: Tab 25 in without objection.

6 (Plaintiff's Tab Number 25 is received into
7 evidence.)

8 BY MR. PEEL:

9 Q Turn to 26, please. That appears to be an invoice
10 from J.V. Hutchison plumbing services. There are
11 actually three pieces of paper behind this tab?

12 A Right.

13 Q What was J.V. plumbing doing?

14 A Well, we couldn't use any of the plumbing. We
15 didn't want to use any of the plumbing until we had
16 it checked out by a plumber. So J.V. Hutchison
17 came in.

18 He fixed the handles on the shower so they
19 didn't move. He put a silicone sealer so it was
20 closed. He put grout on the missing grout in the
21 showers. He checked the bubbler.

22 He opened up underneath the bathtub. He tried
23 to get the bubblers working. He got another five
24 of the bubblers working; so only two were not
25 working after he got done. We had the Lasco

1 warranty guy come, and he got the last two working.

2 He took off the toilet to get access under the
3 tub, and he found that the toilet was not tightened
4 to the floor. It was just sitting there. It was
5 leaking. The floorboard under it was rotted.

6 Q Did you see this? Did you see the floor?

7 A No. I trust -- he had to glue the toilet to the
8 tile.

9 Q Before you change pages, the bill, the 10/17/10 --

10 A Yes.

11 Q -- for \$510. Did you pay that?

12 A Yes.

13 Q Did you pay for the work listed in the description
14 of work performed at the top?

15 A Yes, \$85 an hour. He was there six hours, yes.

16 Q And then you had him do some additional work on the
17 third page, 138?

18 A Well, he also wrote this letter explaining some of
19 the problems that he had found.

20 Q Okay. On the third page?

21 A Yes, third page.

22 Q 2/24/11, Nankins installed two stops and water
23 lines going to laundry room sinks?

24 A Yeah. That was the laundry room, but the rain
25 shower was consistently dripping. Even if we go

1 away for a week, we'd come home and it was still
2 dripping.

3 Q That's the one in the ceiling with the shower?

4 A In the ceiling, yeah. At first he thought maybe
5 the head was faulty. It was making some kind of
6 suction. We got a new head put on, and it still
7 dripped.

8 So a few months later, we got new facet
9 handles from Kohler; and he took out the old faucet
10 handles. I can't prove it, but there are two
11 little O-rings on the seal, that handler, to keep
12 the water from flowing.

13 That's the only thing that could have been
14 wrong, could have been installed wrong. He put in
15 new handles and the dripping stopped. That went on
16 for about five months after we terminated Don.

17 MR. PEEL: Okay. Your Honor, move to admit
18 Tab 26 into evidence.

19 THE COURT: Any objection?

20 MR. SPRUILL: Your Honor, we have an objection
21 to the second page of that.

22 THE COURT: To the letter?

23 MR. PEEL: I don't have any problem with just
24 the invoices coming in.

25 THE COURT: If you would take the letter out

1 and just the two invoices will come in.

2 MR. PEEL: Would you hand me that notebook for
3 a second, please.

4 THE COURT: All right. Exhibit 26 without the
5 letter is in evidence.

6 (Plaintiff's Tab Number 26 is received into
7 evidence.)

8 BY MR. PEEL:

9 Q Okay. Turn to 27, please, Number 27.

10 A Okay.

11 Q Who is George Wood?

12 A Well, we had our bathroom inspected by
13 Mr. Strickland, the home inspector, the end of
14 August. I was there when he did it, and I went
15 around with him.

16 He looked under the house, and he found that
17 insulation was missing in certain areas. The
18 insulation that was used was R-13 and not R-19.
19 The paper was put on backwards. It should have
20 been facing the floorboards, but it was facing
21 outside.

22 He also looked above the bathroom, and there
23 was no -- essentially very little to no insulation
24 above the bathroom. There were no cans around the
25 receptacles lights that were put in.

1 So he thought we should have round cans put
2 around the receptacle lights, and then appropriate
3 insulation blown in above the bathroom and have
4 appropriate insulation put in under the bathroom,
5 and we did.

6 Q And that's the first page of the bill. You paid
7 him \$492?

8 A \$497.

9 Q And \$135 for the cans?

10 A No, that was -- we also had cans going down the
11 hallway. So while he was up there, he did other
12 parts of the house.

13 Q So that's not related to the bathroom?

14 A No.

15 Q So related to the bathroom, you paid him \$497?

16 A Correct.

17 MR. PEEL: Your Honor, I would move to admit
18 the first page of Tab 26 and 27.

19 THE COURT: And that is just the 497?

20 MR. PEEL: That is just the 497. There's a
21 bottom portion listed that he said is not related to the
22 bathroom.

23 THE COURT: Any objection?

24 MR. SPRUILL: Your Honor, I would note that
25 the third page is the actual invoice for the work for

1 497, which doesn't confuse it with the other work.

2 THE COURT: Do you just want to do the third
3 page, Mr. Peel? Apparently the third page is just the
4 invoice.

5 MR. PEEL: That's fine.

6 THE WITNESS: There are two pages missing.
7 This is an inappropriate one right here.

8 MR. PEEL: That's right. That's what the
9 judge is telling us. Let me take the other ones out.

10 THE COURT: Thank you, sir. The 497 invoice
11 is in evidence without objection.

12 MR. PEEL: That's Bates stamped 124 Nankin.

13 (Plaintiff's Tab Number 27 is received into
14 evidence.)

15 BY MR. PEEL:

16 Q Okay. Tab 28, please. Did you have Duraclean in
17 to do something?

18 A Yeah, they tried to get out the stain on the
19 carpeting that Don put down, that sticky roll
20 plastic sheeting. They wrote in here: The glue
21 from the plastic used by the contractor remained in
22 the carpet after cleaning.

23 Q Okay. How much did that cost you?

24 A \$195.

25 MR. PEEL: Your Honor, I'd move to admit Tab

1 28.

2 MR. SPRUILL: No objection.

3 THE COURT: All right. Tab 28 is in evidence
4 without objection.

5 (Plaintiff's Tab Number 28 is received into
6 evidence.)

7 BY MR. PEEL:

8 Q Okay. Tab 29, please. It's a bill from Abbey
9 Carpet.

10 A Yes, that was to put a -- buy and install a window
11 shade.

12 Q Was that extra over what you had originally had
13 planned with Mr. Danford?

14 A I don't think it was in the original estimate, no.

15 Q Okay. That is something else; so we'll leave that
16 out. And today after doing all that corrective
17 work in the bathroom, is it functional?

18 A We use it. Now, when the original construction was
19 started when they had gutted -- Matthew and Don had
20 gutted the bathroom -- they were installing
21 concrete boards over the floorboards, the old
22 floorboards.

23 I walked in and I said, Please, if there are
24 any floorboards that need replacing, please replace
25 them. Don jumped up and down on the flooring and

1 said, Everything is going to be made up to code.

2 But now I find that at least two boards needed
3 to be replaced and they weren't, one under the old
4 shower and one under the toilet.

5 Q What are the problems remaining? We talked about
6 the tile. We talked about the shower. We talked
7 about the tub and the heated floor. Any problems
8 with your cabinets?

9 A The first sets of doors -- door fronts didn't
10 match. They were crude sides. The spacing was
11 different. They had to remake the front doors, and
12 they took out the old facings.

13 In so doing they took out the screws from the
14 back, and they tore up the inside of the drawers;
15 and it's never been adequately repaired. They put
16 new facings on which look much better.

17 Don brought in a group of painters that came
18 toward the end of one afternoon. They began
19 working probably about 4:30 after having lunch on
20 our front stoop.

21 One of them spoke English; three of them
22 didn't. Don told us they would work until
23 8:00 o'clock at night. At 9:00 o'clock I walked in
24 and asked them to leave.

25 They had put tarps all over the bathroom,

1 including a pile of cut tiles that were in the
2 shower. While I walked in there, they were walking
3 on the -- Jeff Stahl had cut these tiles to fit
4 into the shower.

5 I heard tiles cracking. By 9:30 they began to
6 leave. I showed him that there was at least one
7 broken tile. When I mentioned it to Don, he said
8 only three tiles were broken.

9 Now, these were tiles that were 24 inches by
10 24 inches. They run a lot of money. I don't know
11 how many were broken, but there was a big pile of
12 broken tiles in the backyard.

13 So the original painters were fired because
14 they did an awful job. Where they had spackled or
15 smoothed over was bad. The colors bleached
16 through. Where they put caulking in was poorly
17 done.

18 So Don fired them and he hired Myers Dupree --
19 Myers Dupree, is it? Mr. Dupree. He had two of
20 his workers in, and for two days they spent sanding
21 and trying to clean up the poorly done job. Then
22 they spent two days painting.

23 Well, when we had the window put in, we needed
24 to have the painter come in and do a nice job on
25 it. So we had a professional painter come in. He

1 just looked at the paint job and showed us where
2 caulking was still missing.

3 He showed us where the old medicine cabinets
4 were. Where you ran your fingers, there were bumps
5 that hadn't been sanded down. He found the surface
6 of the paint rough because after he they sanded it,
7 he didn't clean it.

8 He found a big crack in the wall. Apparently
9 they hadn't put tape over some of the cracks, and
10 the cracks were now showing through. There was
11 also paint cracking on some of the cabinet work.

12 Also, he opened up the cabinets and showed us
13 that it was very rough. The first group of
14 painters had used a heavy roller and had left
15 little ridges on the paint. It wasn't smooth. It
16 should have been hand brushed or spray painted.

17 Q What's wrong with the cabinet fronts now?

18 A Just that it needs to be repainted and the insides
19 have to be refinished. They didn't open well when
20 we first got there. David Noss put on heavy-duty
21 rollers, and then it worked fine; but the first set
22 of rollers didn't work.

23 Q Did you have to get Mr. Noss to put a window in?

24 A Yes.

25 Q Why did you call Mr. Noss?

1 A Well, around early August Don said that the first
2 window came in broken; and he had to order a
3 different window. It takes about six to eight
4 weeks.

5 We subsequently found that there was no window
6 that came in broken. We found that the first
7 window ordered was ordered about August 9th, and it
8 takes six to eight weeks to come in.

9 We were told that David Noss would install it
10 if we paid him. We called up David Noss. He
11 agreed to put it in. When he came with the first
12 window, it was the wrong size.

13 He apologized. He said he didn't do the
14 original measuring. He took measurements again.
15 It took another six to eight weeks, right around
16 Thanksgiving, for the window to come in.

17 Q So Tab 24, Mr. Noss spoke about it. I want you to
18 look at it and make sure it's right. Did you pay
19 Mr. Noss \$525 to install that window?

20 A That's what he asked for. That's what we paid him,
21 yes.

22 Q Why did you think to call Mr. Noss?

23 A Well, he wasn't somehow involved in ordering the
24 window, the original window, because he was going
25 to install it. He was going to install whenever it

1 came in.

2 Q All right. Dr. Nankin, would you have -- would you
3 have agreed to this contract if you had known there
4 was not going to be a licensed home builder working
5 on your project?

6 A I don't think so, no. We never appreciated that
7 there wasn't going to be a home builder, licensed
8 home builder.

9 Q And you asked Mr. Suggs, who is here today, to look
10 at your bathroom to give you an estimate on what
11 it's going to cost to repair it?

12 A Yes, sir.

13 Q And has he told you how much that's going to cost?

14 MR. SPRUILL: Objection, Your Honor.

15 THE COURT: Well, he is just asking him if he
16 told him. What you want to avoid is him saying the
17 amount; is that correct?

18 MR. SPRUILL: Certainly the second part, yes.
19 I don't believe it's --

20 MR. PEEL: Mr. Suggs is here. I'll withdraw
21 the question.

22 THE COURT: He is going to call Mr. Suggs for
23 that.

24 MR. PEEL: I withdraw the question.

25 THE COURT: Thank you, Mr. Spruill.

1 Q Okay. Now, the principal complaint that you had is
2 with respect to the tile work; is it not?

3 A I think it's more than just the tile work.

4 Q Well, let's deal first with the tile work. What
5 have you spent to repair or fix up in any way the
6 tile work?

7 A We were waiting to have it all redone.

8 Q So was the answer nothing?

9 A We have done some grouting, caulking, and sealing;
10 but we haven't replaced anything, no.

11 Q And you have not taken steps to have it all redone;
12 have you?

13 A Not yet, no.

14 Q And after two years what's holding you up?

15 A We'd like to have the money to do it.

16 Q Are you telling this Court that you don't have the
17 money to do what you want to do on this bathroom?

18 A We were also advised to wait until this is over
19 because you just said, Come and look at it. If we
20 had redone it, you couldn't look at it. I think it
21 will speak for itself.

22 Anybody that comes in there, we can show them
23 the cracks in the paint. We can show them the
24 styrofoam holding in the end of the tiles. We can
25 show them the uneven tiles on the floor.

1 We can ask them to turn the water on in the
2 shower and get sprayed in the face. We can show
3 them the mold growing alongside the bench --

4 Q Sir, just a minute, please, sir.

5 A Well, you asked that.

6 Q No. I asked why you haven't done it.

7 A Right.

8 Q And what you had started all of that with was you
9 were advised not to do it before this trial?

10 A Correct.

11 Q Is that right?

12 A Correct.

13 Q So it hadn't bothered you enough to go ahead and
14 get any of that work done?

15 A Sir, would you do that?

16 Q Sir, if it bothered me as much as you say it
17 bothers you, then yes.

18 A Well, how many times would I be paying for that?

19 Q Right now all you now is --

20 MR. SPRUILL: This is going too far in our
21 discussion.

22 THE COURT: Yes, sir.

23 MR. SPRUILL: Let me stop that.

24 BY MR. SPRUILL:

25 Q Let's just keep going with the fact that for the

1 A I have a general contractor's license, as well as a
2 home builder's.

3 Q So you can do commercial and residential
4 construction?

5 A Yes.

6 Q Have you done any bathroom remodels?

7 A I've done quite a few.

8 Q Fifty, 100?

9 A You know, I don't have a list of them; but I've
10 probably done for sure 50.

11 Q How long have you been licensed as a residential
12 home builder?

13 A Thirty-something years.

14 Q How long have you been licensed as a general
15 contractor?

16 A Longer than that.

17 Q Okay.

18 A I don't know the exact date.

19 Q How long have you been in the construction field?

20 A Since 1972.

21 MR. PEEL: Your Honor, we'd move or ask the
22 Court to recognize Mr. Suggs as an expert in residential
23 home building and remodeling.

24 THE COURT: Mr. Spruill?

25 MR. SPRUILL: Your Honor, I don't object to

1 that part of the qualification, but that is just the
2 beginning of the questions for him. So as far as being
3 an expert in contracting and remodeling, we do not
4 challenge Mr. Suggs's credentials on that.

5 It is a question of whether this is necessary
6 and appropriate and that is not something that we are
7 accepting his qualifications on because that is -- we
8 don't think falls within general qualifications.

9 THE COURT: All right. I'll note that he is
10 an expert in contracting and remodeling and subject to
11 the exceptions that you have made on the record. Okay.

12 BY MR. PEEL:

13 Q Mr. Suggs, have you had a chance to inspect the
14 Nankins' bathroom?

15 A I have. I've been there on three different
16 occasions.

17 Q The latest of which was?

18 A Yesterday.

19 Q Yesterday. Okay. Can you tell the Court your
20 overall impression of the quality of the work in
21 the bathroom?

22 A Well, when you first walk in the door going in the
23 door, it looks really wonderful. The tile is a
24 good color selection. I like the way the shower
25 looks. The bathtub is very nice. It's a nice open

1 area.

2 But when you get a little closer, you can tell
3 there's some defects in workmanship, whether it's
4 related to materials or the actual workmanship. I
5 would say probably some of the trim work on the
6 tile, it's a metallic-looking trim, there's some
7 really sharp edges on those, not real crisp inside
8 corners where they meet.

9 On the floor, I am not intimately familiar
10 with industry standards on tile, other than I know
11 to give it the shuffle test. I do that at my
12 house. I didn't take my shoes off at the Nankins,
13 but I did feel certain areas.

14 I think the technical term is called lippage.
15 That's where one tile is laid here and the tile
16 adjoining it, the lippage is the difference in
17 height between the two tiles. Some were
18 noticeable.

19 Q Is that something that would be acceptable in a job
20 that you performed?

21 A No.

22 Q All right. Let's turn to -- so we can go in some
23 order about this -- let's turn to Tab 30, which is
24 a copy --

25 A Is this it?

1 Q Yes. Of your estimate -- and ask you to identify
2 and verify that's something that you prepared?

3 A Yep, that's mine.

4 Q And overall what does this represent?

5 A This represents a request by the Nankins for items
6 to be repaired or replaced.

7 Q Are these items that in your opinion should be
8 repaired and replaced throughout the bathroom?

9 A Yes.

10 Q And do they relate to quality of work, function, or
11 some of both?

12 A Some relate to quality, some relate to function.
13 The big ticket item, of course, would be all of the
14 tile work. If we can break it down on the floor --
15 because I was told and I relied on information from
16 the Nankins that there was some damaged subflooring
17 under there -- the only way to replace damaged
18 subflooring is take the finished floor up and
19 replace it from the top.

20 Q Is it industry standard, if when you remove
21 flooring and there's damaged subflooring, rotten or
22 otherwise water damage, to replace it before you go
23 back with a new tile?

24 A That's my standard. I don't know if it's industry
25 standard, but I think most builders would recognize

1 A Yes.

2 Q Others is based on what else?

3 A Others would be based on relying on what the
4 Nankins told me that they understood was supposed
5 to be part of the project. I never saw a contract;
6 so I can't speak to that. But I understood, based
7 on what they told me, that the shower was supposed
8 to be handicap accessible and it's not.

9 Q And then you observed the toilet being grouted into
10 the floor?

11 A The toilet is not anchored to the floor properly.

12 Q Okay. What does that indicate to you?

13 A Well, it either indicates that somebody didn't put
14 the bolts in or there wasn't subfloor sufficient to
15 put the bolts in with, one of the two.

16 Q So the total, total estimate to bring this bathroom
17 up to what you say is the standard or what needs to
18 be repaired or what needs to be done, in addition
19 to what is there, is how much?

20 A My total is \$22,951.

21 Q And that's less the window?

22 A Less the window.

23 Q Which is 625. What's that 3,825, overhead and
24 profit?

25 A That is overhead and profit. That's what keeps the

1 contractor's interest in a project and our
2 attention.

3 Q Thank you, Mr. Suggs. Please answer any questions
4 Mr. Spruill may have.

5 THE COURT: Mr.~Spruill, your witness; and I
6 understand that you are going to be cross-examining him
7 about matters that you have objected to.

8 MR. SPRUILL: Thank you, sir. This won't take
9 more than two hours.

10 THE COURT: Good. If it won't take more than
11 two hours, we'll be ahead of the game. Thank you,
12 Mr. Spruill, just so I'm finished in time for the
13 Georgia game.

14 **CROSS EXAMINATION**

15 BY MR. SPRUILL:

16 Q Mr. Suggs, you gave this estimate to the Nankins
17 two years ago; did you not?

18 A I think that's correct. I don't have a date on
19 here, but I think that's right.

20 Q And you did it at the request of Mr. Peel?

21 A I was contacted by Mr. Peel's office, yes.

22 Q Is there somebody in his office that you work with
23 regularly?

24 A This is my first time doing this.

25 Q Now, if you were doing all of this work that's on

1 30, the door getting into the bathroom is still not
2 handicap accessible; is it?

3 A No, sir, not right now it isn't.

4 Q Well, if you did all of this work, it's still not;
5 is it?

6 A No, you're right.

7 Q And the work that you have described, I was
8 listening carefully to try to hear anything that
9 was safety related.

10 What I heard was that some of these pieces of
11 tile might catch somebody on their finger if
12 they're cleaning.

13 Is there anything more than the corners on the
14 tile that is safety related?

15 A It depends on how you define safety. I would think
16 if you were barefooted -- I just know my wife and I
17 have and I'm going to answer it this way -- we just
18 built a new home.

19 Part of my design for my new home was to make
20 it shuffle ready. I'm over 60. I'm going to start
21 shuffling one day. When I go into my bathroom, I
22 want to be able to shuffle in there without
23 stubbing my feet or stubbing my toe, and I think
24 that might happen here. I don't know if that would
25 fall under your definition of safety but it would



Estimate for Nancy Nankin:

Bath Renovation

Cabinetry & marble	4,500.00
Dumpster	1,500.00
Electrical	900.00
Framing	900.00
Insulation & Sheetrock	1,500.00
Plumbing	1,400.00
Tile materials & labor	6,400.00
Window	675.00
Glass door/Surround	3,000.00
Contractors Fees	3,800.00
Subtotal:	24,275.00
Tax:	1,699.25
Total:	25,974.25

4116 Blossom Street, Columbia, South Carolina 29205
Phone 803-351-1123 Fax 803-787-7955 www.dondanfordinteriors.com

NANKIN000023

FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

www.laborlawyers.com

Columbia

Suite 1400

1901 Main Street (29201)

Post Office Box 11612

Columbia, SC 29211

(803) 255-0000 Tel

(803) 255-0202 Fax

Writer's Direct Dial:

(803) 255-0000

Writer's E-mail:

rtaylor@laborlawyers.com

September 27, 2010

Howard and Nancy Nankin
247 Southlake Drive
Columbia, SC

RE: Don Danford Designs

Dear Mr. and Mrs. Nankin:

I represent Don Danford Designs ("the Company"). On behalf of the Company, I am contacting you to as the homeowners to resolve the recent dispute regarding design work performed at your residence. From your last phone call with the Company, it is my understanding that you have contacted a lawyer regarding this matter. If you are represented in this matter, please have your attorney contact me or let me know who your representative is so that I may contact him going forward.

Don Danford Interiors has provided design assistance in the remodeling of a bathroom in your residence. As you chose not to hire a contractor for your remodel, Mr. Danford was asked to provide recommendations of persons who could handle various portions of the remodeling work. Mr. Danford assisted you with this aspect of the remodel per your request, as well as designing the bathroom, picking out materials for you, and providing materials, often at a substantial discount due to his relationship with various contacts.

The Company has offered, and is still offering, to correct the problems addressed in the home inspection performed by Preferred Home Inspections, LLC. In fact, there was an appointment on September 17, 2010, to correct these issues. This appointment was canceled by you the morning of the appointment. The Company is willing to correct any remaining issues. The only item on the list that would not be within the purview of this work would be the stains noted on the sub-floor that was not replaced as you made the decision not to replace this sub-floor during the renovations. The stains are not related to any assistance the Company provided.

Enclosed is a copy of the bill and the amount still due. Mr. Danford, on behalf of his company, provided extensive labor that is not included on this bill. In addition, he has reduced the bill for items that were complained about, even while paying to fix these items without charging you. For example, the cost of the heated floor has been removed, even though the floor was repaired on the date that you terminated the Company and charged to the Company. The Company is still owed \$8,884.60. Many of the materials used in your bathroom have not been paid for. Additionally, Mr. Danford bills at an hourly rate of \$125, and has spent far more

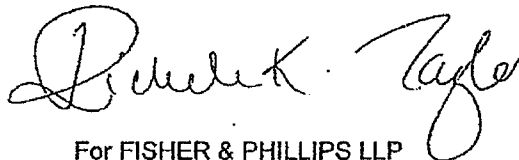
Howard and Nancy Nankin
September 27, 2010
Page 2

than the hours billed at the total amount of \$3,800 based on this rate. The Company believes the bill is more than fair for the design assistance provided.

As you have asked the Company not to contact you, please contact me regarding this matter. The Company would like to resolve this matter without pursuing legal action. Don Danford has provided design assistance for many customers over the past eleven years, and has always worked to ensure the client is satisfied with the results. The Company is more than willing to finish the project and resolve the listed issues. Further, please be aware that any further repairs you are having done should not be charged to the Company, but must be paid by you as the homeowners due to your terminating the Company on this project. The Company will be notifying all persons who assisted in this matter to accept no further charges related to your account due to your termination of the Company.

I look forward to working with you to resolve this matter. It is the Company's hope, as is mine, that it can complete any repairs needed and receive payment in full for the work done.

Sincerely



For FISHER & PHILLIPS LLP

RKT:tr

cc: Don Danford Designs



DON DANFORD

DESIGNS

INVOICE

August 13, 2010

Client: Nancy Nankin

	Item or Date	Time/Item	Hr Rate or Item Each	Total
1.	Cabinetry			\$2,418.00
2.	Doors Special Glass	2		\$99.60
3.	Marble Counter Tops			\$1,680.00
4.	Electrical			\$1,215.06
5.	Framing			\$900.00
6.	Insulation & Sheetrock			\$1,500.00
7.	Plumbing			\$2,123.00
8.	Tile			\$5,978.33
9.	Instaler Labor-Jeff Stahl			\$2,012.15
10.	Instaler Labor-Neal Perkins			\$755.00
11.	Window			\$675.00
12.	Glassdoor Surround			\$2,738.00
13.	Painting-Myers Dupree			\$1,950.00
14.	Molding & Trim			\$443.45
15.	Labor-David			\$180.00
16.	Labor-Don			\$3,800.00
17.	Mirror	2	\$299 each	\$598.00
18.	Picture Reframed	1	\$239 each	\$239.00
19.	Picture Reframed	1	\$249 each	\$249.00
20.	Towel Bar, Hooks, TP Holder			\$245.33
21.	Light Fixtures			\$198.12

4116 Blossom Street, Columbia, South Carolina 29205
Phone 803-351-6075 Fax 803-787-7955 www.dondanforddesigns.com

NANKIN000003

DON DANFORD
DESIGNS

22.	Cabinet Hardware	\$159.16
23.	Gateway Fixture	\$5,895.75
	TOTAL	\$37,651.95
	Customer Paid	-\$11,000.00
	Customer Paid	-\$8,000.00
	Customer Paid/Gateway	-\$5,895.75
	BALANCE	\$12,756.20
	Heated Floor	-\$841.60
	Window on order	-\$675.00
	Neal Perkins <i>P</i>	-\$755.00
	Painting-Venciente	-\$1600.00
	TOTAL DUE	\$8,884.60

Total amount due upon receipt of this bill.

4116 Blossom Street, Columbia, South Carolina 29205
Phone 803-351-6075 Fax 803-787-7955 www.dondanforddesigns.com

NANKIN000004

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010 CP 40-8155

Howard Nankin and Nancy Nankin,)
Plaintiffs,)

vs.)

Donald M. Danford d/b/a Don Danford)
Interiors,)
Defendant.)

**DEFENDANT'S ANSWERS TO
PLAINTIFFS' FIRST SET OF
INTERROGATORIES**

Donald M. Danford d/b/a Don Danford)
Interiors,)
Third Party Plaintiff,)

vs.)

Jeff Stahl,)
Third Party Defendant.)

Defendant Donald M. Danford d/b/a Don Danford Interiors, by and through his undersigned counsel, submits the following answers to Plaintiffs' First Set of Interrogatories to Defendant.

Interrogatory No. 1. Give the names and addresses of persons known to you or your counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

- a. Nancy and Howard Nankin
Plaintiffs
- b. David Noss
721 Muddy Springs Road
Lexington, SC 29123

- c. Matthew Cooper
No known address
- d. Jeff Stahl
2005 Riding Ridge Road
Columbia, SC 29223-6701
- e. Neal Perkins
- f. Palmetto Tile
316 Huger Street
Columbia, SC
- g. Gregory Electric Company, Inc.
- h. Ace Glass –Lexington
4661 Augusta Road
Lexington, SC
- i. Marble & Granite Creations, Inc.
94 N. Shorecrest Road
Columbia, SC 29209
- j. Sheppard's Glass
2519 Platt Springs Road
West Columbia, SC
- k. Plumb Time Plumbing & Drain
West Columbia, SC
- l. Myers Dupree
526 Rabon Circle
Elgin, SC
- m. Gateway Supply Company
1312 Hamrick St
Columbia, SC
- n. Tara Parker

No written statements have been taken from any of the witnesses listed above.

Interrogatory No 2. For each person known to you or your counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other

party of the important facts known to or observed by such witness or provide a copy of any written or recorded statement taken from such witness.

ANSWER:

a. Nancy and Howard Nankin: *The Nankins are the Plaintiffs in this matter and are expected to testify about their allegations.*

b. David Noss: *Mr. Noss owns Custom Homes, LLC and is expected to testify about his work with the Nankins.*

c. Matthew Cooper: *Mr. Cooper is expected to testify about work he handled for the Nankins.*

d. Jeff Stahl: *Mr. Stahl handled the tile work initially and is expected to testify with regards to the tile work.*

e. Neal Perkins: *Mr. Perkins is expected to testify regarding the tile work that he did for the Nankins.*

f. Palmetto Tile: *Palmetto Tile personnel is expected to testify about the Nankins' tile purchases.*

g. Gregory Electric Company, Inc.: *Gregory Electric personnel is expected to testify about the worked it performed for the Nankins.*

h. Ace Glass: *Ace Glass personnel is expected to testify about the worked it performed for the Nankins and its willingness to satisfy them if they are not happy.*

i. Marble & Granite Creations, Inc.: *Marble & Granite Creations, Inc. personnel is expected to testify about the worked it performed for the Nankins.*

j. Sheppard's Glass

k. Plumb Time Plumbing & Drain: *Plumb Time personnel is expected to testify about the worked it performed for the Nankins.*

l. Myers Dupree: *Mr. Dupree is expected to testify about the painting he performed for the Nankins.*

m. Gateway Supply Company: *Gateway Supply Company is expected to testify about the products the Nankins purchased.*

n. Tara Parker: *Ms. Parker is expected to testify about her conversations with the Nankins.*

Interrogatory No. 3. Set forth a list of photographs, plats, sketches or other prepared documents in possession of you or your counsel that relate to the claims, counterclaims and/or defenses in the case.

ANSWER: Purchase invoices for materials, labor and pictures and communications with the Nankins. Those are being produced instead of specific identification.

Interrogatory No. 4. List the names and addresses of any and all expert witnesses whom you propose to use as a witness at the trial of this case.

ANSWER: None at this time. The home inspector engaged by Plaintiffs' attorney may have relevant testimony.

Interrogatory No. 5. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the counterclaims and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: None known at this time.

Interrogatory No. 6. Identify each person, other than your legal counsel, who assisted you in preparing any pleadings you have filed or in responding to these or another parties' interrogatories or other discovery requests.

ANSWER: None

Interrogatory No. 7. Identify all subcontractors and suppliers on the project that is the subject of this litigation.

ANSWER: Defendant objects to the question based on the characterization of the persons who worked on the Nankins' house. Subject to and without waiving this objection, Defendant submits that all workers or suppliers that he is aware of are listed in Answers (1) and (2).

Interrogatory No. 8. Identify each person or entity, including address and telephone number, with whom you have contracted within the previous five (5) years to oversee a renovation or remodeling job in which the total cost of the project exceeded five thousand (\$5,000.00) dollars.

AND

Interrogatory No. 9. Identify each person or entity, including address and telephone number, with whom you have contracted within the previous five (5) years to oversee design changes, which required subcontractors to perform certain aspects of the work, in which the total cost of the project exceeded five thousand (\$5,000.00) dollars.

ANSWER TO 8 AND 9: Interpreting the word "subcontractor" to mean contractors whose scope of performance was limited, and not using that term to mean a contractor who was contracting directly with Defendant to perform, the Defendant identifies the following people:

- a. Richard and Mary Edelson
104 Turnberry Lane
Lexington, SC 29072
- b. Jackie Warrington

Interrogatory 10. Identify each person or entity, including address and telephone number, with whom you have contracted within the previous five (5) years to oversee design changes under an agreement similar to the one you had with the Nankins, in which the total cost of the project exceeded five thousand (\$5,000.00) dollars.

ANSWER: None

Interrogatory No. 11. Identify each person or entity, including address and telephone number, with whom you have contracted within the previous five (5) years to whom you charged "Contractors Fees" as you did in the contract that is the subject of this litigation. A copy of this estimate to the Nankins including this "Contractors Fee" is attached to these Interrogatories as "Exhibit 1."

ANSWER: None. There was no Exhibit 1 attached to the Interrogatories received. Further, Defendant objects to the wording of the question as inaccurate.

Interrogatory No. 12. Identify any and all licenses held by you with the South Carolina Department of Labor, Licensing and Regulation.

ANSWER: None

Interrogatory No. 13. State with particularity your reason(s) for not hiring a general contractor to oversee the project that is the subject of this litigation.

ANSWER: The Defendant suggested to Plaintiff Nancy Nankin that she hire a contractor and provided an estimate from that contractor. Ms. Nankin refused to hire that contractor. She said that the estimated cost was too high.

Interrogatory No. 14. Identify the person or persons whom prepares your bills and/or invoices.

ANSWER: Don Danford

Interrogatory No. 15. Identify the person or persons whom prepares your estimates.

ANSWER: Don Danford

Interrogatory No. 16. State with particularity why you believe you are entitled to the protections of the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act (the "Act"), S.C. Code Ann. §§ 40-59-810 et. seq. Specifically, state whether you claim to be contractor, subcontractor, supplier, or design professional to entitle you to the protection of the Act.

ANSWER: Defendant is a design professional. The Plaintiffs claim that Defendant is a contractor.

Turner Padget Graham & Laney P.A.

By: 
W. Duvall Spruill 5295
DSpruill@TurnerPadget.com
P.O. Box 1473
Columbia, South Carolina 29202
Telephone: (803) 254-2200

**ATTORNEYS FOR DEFENDANT AND THIRD
PARTY PLAINTIFF**

May 27, 2011

TPGL 3842325v1

D.B. Moss

Custom Homes LLC

724 Muddy Springs Road

Lexington, S.C. 29123



P.O. No.	TERMS	PROJECT
		Spring Valley

DESCRIPTION	COST	PAYMENT	AMOUNT
Permits			\$ -
Dumster/Demolition	\$ 3,000.00		\$ 3,000.00
Footing Materials			\$ -
Footing Labor			\$ -
Foundation Walls Materials			\$ -
Foundation Wall Labor			\$ -
Framing Material	\$ 300.00		\$ 300.00
Framing Labor	\$ 900.00		\$ 900.00
Gutters			\$ -
Siding / Cornish Labor			\$ -
Ext. Windows & Door Material	\$ 574.00		\$ 574.00
Plumbing (R/I) (M/L)	\$ 1,400.00		\$ 1,400.00
Electrical (R/I) (M/L)	\$ 800.00		\$ 800.00
Heated Floor	\$ 1,300.00		\$ 1,300.00
Insulation (M/L)	\$ 150.00		\$ 150.00
Sheetrock Materials	\$ 250.00		\$ 250.00
Sheetrock Labor	\$ 1,500.00		\$ 1,500.00
Tile Materials	\$ 4,000.00		\$ 4,000.00
Tile Labor	\$ 3,200.00		\$ 3,200.00
Rinnai Water Heater			\$ -
Cabinetry	\$ 1,650.00		\$ 1,650.00
Hardwood Floors (M)			\$ -
Carpet (M/L)			\$ -
Granite M/L	\$ 900.00		\$ 900.00
Interior Doors (M/L)			\$ -
Interior Trim (M/L)			\$ -
Interior Painting (M/L)	\$ 3,800.00		\$ 3,800.00
Interior Hardware	\$ 150.00		\$ 150.00
Interior Lightnig	\$ 200.00		\$ 200.00
Plumbing Fixtures	\$ 4,000.00		\$ 4,000.00
Exterior Painting (M/L)			\$ -
Screened Porch (M/L)			\$ -
Roofing (M/L)			\$ -
Termite Treatment (M/L)			\$ -
Job Site Toilet			\$ -
Lowe Miss			\$ -
Display Center			\$ -
Ace glass	\$ 3,100.00		\$ 3,100.00
Contractor Fees	\$ 4,676.00		\$ 4,676.00
			\$ -
Total cost of projects			\$ -

PAYMENTS / CREDITS	
ESTIMATED JOB COST	\$ 35,850.00
DIFFERENCE	
SALES TAX	
BALANCE DUE	\$ 35,850.00

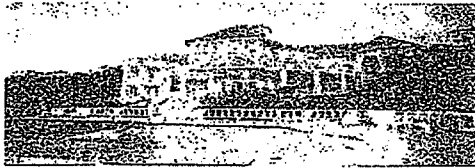
Danford 014

D.R. Ross

Custom Homes LLC

724 Muddy Springs Road

Lexington, S.C. 29123



P.O. No.		TERMS	PROJECT
			Spring Valley
DESCRIPTION	COST	PAYMENT	AMOUNT
Permits			\$ -
Dumster/Demolition	\$ 3,000.00		\$ 3,000.00
Footing Materials			\$ -
Footing Labor			\$ -
Foundation Walls Materials			\$ -
Foundation Wall Labor			\$ -
Framing Material	\$ 300.00		\$ 300.00
Framing Labor	\$ 900.00		\$ 900.00
Gutters			\$ -
Siding / Cornish Labor			\$ -
Ext. Windows & Door Material	\$ 574.00		\$ 574.00
Plumbing (R/I) (M/L)	\$ 1,400.00		\$ 1,400.00
Electrical (R/I) (M/L)	\$ 800.00		\$ 800.00
Heated Floor	\$ 1,300.00		\$ 1,300.00
Insulation (M/L)	\$ 150.00		\$ 150.00
Sheetrock Materials	\$ 250.00		\$ 250.00
Sheetrock Labor	\$ 1,500.00		\$ 1,500.00
Tile Materials	\$ 4,000.00		\$ 4,000.00
Tile Labor	\$ 3,200.00		\$ 3,200.00
Rinnai Water Heater			\$ -
Cabinetry	\$ 1,650.00		\$ 1,650.00
Hardwood Floors (M)			\$ -
Carpet (M/L)			\$ -
Granite M/L	\$ 900.00		\$ 900.00
Interior Doors (M/L)			\$ -
Interior Trim (M/L)			\$ -
Interior Painting (M/L)	\$ 3,800.00		\$ 3,800.00
Interior Hardware	\$ 150.00		\$ 150.00
Interior Lightning	\$ 200.00		\$ 200.00
Plumbing Fixtures	\$ 4,000.00		\$ 4,000.00
Exterior Painting (M/L)			\$ -
Screened Porch (M/L)			\$ -
Roofing (M/L)			\$ -
Termite Treatment (M/L)			\$ -
Job Site Toilet			\$ -
Lowe Miss			\$ -
Display Center			\$ -
Ace glass	\$ 3,100.00		\$ 3,100.00
Contractor Fees	\$ 4,676.00		\$ 4,676.00
			\$ -
Total cost of projects			\$ -
		PAYMENTS / CREDITS	
		ESTIMATED JOB COST	\$ 35,850.00
		DIFFERENCE	
		SALES TAX	
		BALANCE DUE	\$ 35,850.00

Danford 024

D.R. NOSS CUSTOM HOMES

Cell: 803-513-3027

Fax: 803-520-3299

Specifications for residence of:

Spring Valley

Bid Estimate:

Article I - Scope of work

The contractor shall execute all of the work shown on the drawings and or described before him to code and specification required by law at said property. The responsibility of other workers known as (sub-contractors) must be approved by contractor only after proof of qualifications are submitted, plus no sub or other contractor shall be awarded any work dully stated in this agreement, except specifically approved in writing by said contractor.

Article II - Time of Completion

The work to be performed under this contract shall be commenced on 0010 and as time is of the essence will be completed on 0010

Article III - Contract Price

The owner shall pay the contractor for the materials and the labor to be performed in a professional manner under the said contract. This is a bid estimate for materials and labor (estimated bid is based on a contractors allowance and is subject to change.) Any changes made to the original set of plans may be subject to additional cost plus for the project.

Addendum for Change orders:

- If any unforeseen conditions arise additional cost for this project will be brought to the home owner's attention and subject to a cost plus to the existing quote in agreement with the homeowner and the contractor.
- Any changes made by the homeowner will also constitute a cost plus to the existing quote.

Article IV

This is a cost plus job.

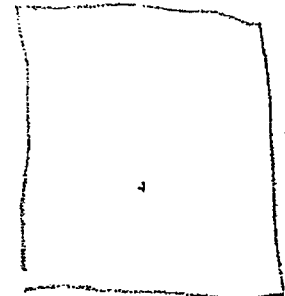
ESTIMATE; is based on a cost to do this job

(THIS JOB IS ON AN ALLOWANCE BASES).

References: Phone numbers will be provided per request

Jim Avenger
Mark Williams
Bill Roberts
Bob Royal
Paul & Kathy Raad

Custom Built Home Lake Murray
Custom Built Home Lake Murray
Custom Built Home In Golden Hills
Custom Built Home Hugar
Custom Remodeling Job Lake Shore Drive



Danford 015

DR NOSS

1. All work shall and will be completed in a workmanship like manner and in compliance with all building codes and other applicable laws.
2. To the extent required by law all work shall be performed by individuals duly licensed and authorized by law to perform said work.
3. Contractor may and will at his discretion engage subcontractors to perform work hereunder, provided contractor shall fully pay said subcontractor and in all instances remain responsible for the proper completion of this contract.
4. Contractor shall furnish owner appropriate releases or waivers of lien for all work performed or materials provided at the time of the last payment are due.
5. All change orders shall be in writing and signed by both parties.
6. Contractor shall obtain all permits necessary for the work to be performed.
7. Contractor agrees removal of debris and leave premises in broom clean condition on a weekly basis.
8. In the event owner shall fail to pay any periodic or installment payment due hereunder, contractor may cease work without breach, pending payment or resolution of any dispute.
9. All disputes hereunder shall be resolved by binding arbitration in accordance with rules of the American Arbitration Association.
10. Contractor warrants all work for a period of 12 months following completion of said job.
11. Final contract will be industry standard AIA contractor's agreement.
12. Unforeseen waivers for water/rock/permits etc. will be paid by owner.

Estimated cost to tear out & remodel master bath \$35,850.00

Estimated time to complete job will be 2 months

Installment of 4 payments will be required.

- \$8,962.50 at the start of project,
- \$13,443.75 in 4 weeks after the initial start of project
- \$13,443.75 at completion of project.

Signed in the presence of: _____ this date of: _____

_____ printed

signed by contractor _____

_____ printed

Signed by owner _____

Danford 016

Door / - 1,500.00
 Framing - 900.00 Est -
 Window - 625.00
 Plumbing - 1,400.00 Est -
 Electric - 900.00 Est -
 Insulation
 Sheet Rock 1,500.00
 Tile Materials
 + Labor 6,400.00
 Cabinetry
 + Marble - 4,600.00
 Plumbing Fixtures - 3,800.00
 Toilet / Sink's /
 Shower / Tub -
 Glass Door / Surround - 3,000.00

Contractor Fees 3,500.00

28,026.00
 Tax 1,961.75
 29,987.75

Danford.017

ACE GLASS-LEXINGTON
4661 AUGUSTA RD
LEXINGTON SC 29072
803-356-3505 Fax:803-356-1395
Tax# 57-0785248

Order:2-372829
Date:07/06/2010

Scheduled:

Sold To:

D. R. NOSS CUSTOM HOMES
724 MUDDY SPRINGS RD
LEXINGTON SC 29073

Ph:(803)513-3027 Fax:(803)520-3299

Csr:	Tech:	PO:	Terms: NET 30		
<u>Qty</u>	<u>Item Description</u>	<u>Material</u>	<u>Labor</u>	<u>Item Total</u>	
1	AGSD - ALL GLASS SHOWER DOOR	2334.58	240.00	2574.58	

Tax Info: LE 23.35
ST 140.07

THANK YOU FOR USING "ACE GLASS"

Remit To: Ace Glass Company, Inc.
PO Box 4432
Columbia, SC 29240

SIGNATURE _____

<u>Material</u>	<u>Labor</u>	<u>Tax</u>	<u>Total</u>	<u>Payments</u>	<u>Balance</u>
2334.58	240.00	163.42	2738.00	0.00	2738.00

Store Copy

vers:7.1.44 Page:1 of 1

Danford 023

DON M DANFORD (803) 351-6075 4116 Blossom Street Columbia, SC 29205		2241 67-219/539 BRANCH 1237
Pay to the Order of <u>David Noss</u>		Date <u>8/6/10</u>
<u>two thousand & three hundred seventy five</u>		\$ <u>2,375.00</u>
CAROLINA FIRST		
For <u>Nathan Calvert</u>		<u>D. M. Danford</u>

01260002677100	>053201885< CAROLINA FIRST BANK 08/06/2010	2008 <u>David Noss</u>
08/06/2010 14:55 118 260 2610 2610 *****0238 \$2,375.00		

Date:08-06-2010 Account:8100880238 Serial:2241 Amount:\$2,375.00 TR:5390219 Sequence:327322120 BankNum:1
 TranCode:79 DbCr:D

Danford 019



Estimate for Nancy Nankin:

Bath Renovation

Cabinetry & marble	4,500.00
Dumpster	1,500.00
Electrical	900.00
Framing	900.00
Insulation & Sheetrock	1,500.00
Plumbing	1,400.00
Tile materials & labor	6,400.00
Window	675.00
Glass door/Surround	3,000.00
Contractors Fees	3,800.00
Subtotal:	24,275.00
Tax:	1,699.25
Total:	25,974.25

Payment 11,000.00 4/19/10
Bal 14,974.25



Nankin Bathroom

As of 08/25/10

1. Plumbing

- a. Reinstall toilet - Done ✓
- b. Add extender to shower head Need ✓
- c. Add/fix silver cushions under sink ✓
- d. Sink stopper ✓ Done

2. Threshold, replace where bathroom and bedroom meet ✓ Done -

3. Cabinet Drawer

- a. Fill holes ✓ Done Need to dry →
- * b. Caulking
- * c. Touch-up paint

* 4. Floor heater, ensure that it is working ← Need greasing to come out →

5. Shower glass, ACE to replace Monday - 10:00 -

* 6. Cleaning, schedule Cedric to clean 08/27/10 (- 2:00 -)

* 7. Marble scratches, Countertop Medic scheduled for Thursday 09/09/10 between 9 am and 9:45 am to repair. P 704-302-1832 or 704-243-5159

← Reschedule - Jew's Holiday →

* 8. Window, ordered by D Noss who will install. Contact him directly at 803-513-3027.

← Ship Date →

← Toilet → Wall →

Tile Floor
Shower Door
Window / Shade / Underhouse
Marble work + sealing
Touch up paint
Rain Shower
NANKIN000125

4116 Blossom Street, Columbia, South Carolina 29205
Phone 803-351-1123 Fax 803-787-7955 www.dondanfordinteriors.com



Nankin Bathroom

As of 08/25/10

1. Plumbing

- ✓ a. Reinstall toilet *Done -*
- ✓ b. Add extender to shower head *Monday 11:00 come in - Don't want to be there*
- ✓ c. Add/fix silver cushions under sink *Done*
- ✓ d. Sink stopper *Done*
Need to seal - Handle - Shower Rain head - top -

2. Threshold, replace where bathroom and bedroom meet *Done -*

3. Cabinet Drawer

- a. Fill holes *Done*
- b. Caulking
- c. Touch-up paint

4. Floor heater, ensure that it is working *Bregory - Step 13th = 9:00 - 3:00*

5. Shower glass, ACE to replace *8/30/10 Replace ->*

A 6. Cleaning, schedule Cedric to clean 08/27/10 *Done Don Paid Need to come back*
<Need Done>

7. Marble scratches, Countertop Medic scheduled for Thursday 09/09/10 *Don't want to be there*
between 9 am and 9:45 am to repair. P 704-302-1832 or 704-243-5159
Could not do Jewell's Holiday - Reschedule - 15th 9:30 - 10:00

8. Window, ordered by D Noss who will install. Contact him directly at 803-513-3027.

David to call customer when in - getting confirmation's

Don: to come back -

**PREFERRED
HOME INSPECTIONS, LLC.**

SERVING THE MIDLANDS OF SOUTH CAROLINA
Call Charles Strickland Phone # 407-3233
visit us on the web at www.SCHomeInspector.com

CUSTOMER

NAME HOWARD NANKIN
Address _____
City _____
State, Zip Code _____

DATE 08/31/2010

Inspected Property Location
247 SOUTHLAKE

CONDITIONS REQUESTED TO BE INSPECTED:

BATHROOM REMODELING

THE BATHROOM HAS BEEN REMODELED AND THE FOLLOWING WAS OBSERVED.

1. HEATED FLOOR IS NOT WORKING. CONTROL IS NOT WORKING.
2. GLASS SHOWER DOOR WAS INSTALLED WITH NO SEAL OR DIVERTER TO PREVENT WATER FROM LEAKING OUT ON HINGE SIDE OF DOOR.
3. GROUT WAS NOT INSTALLED EVENLY BETWEEN WALL AND FLOOR TILES. SOME DECORATIVE TILE HAS NO GROUT; SOME GROUT JOINTS ARE WIDER THAN OTHERS.
4. SHOWER HANDLES ARE NOT SEALED TO WALL TILES TO PREVENT WATER FROM LEAKING BEHIND COVER PLATES.
5. CLOSET WALL BEHIND SHOWER CONTROLS HAS DAMAGE TO WALL WHERE ACCESS PANEL WAS ADDED.
6. TILE HAS NOT BEEN FULLY CLEANED.
7. TOILET IS PARTIALLY CAULKED TO FLOOR. SOME CAULK IS CRACKING.
8. TILE AT TUB EDGE AND LEDGE IS NOT NEAT. TILE WAS NOT CLEANED OFF EDGES. FLOOR AND TUB EDGE IS NOT SEALED WITH CAULK.
9. BATH WINDOW HAS NOT BEEN REPLACED AND TRIM IS MISSING.
10. THERE ARE STAINS IN BATH SUB-FLOOR NEXT TO REPLACED SUB-FLOOR. THIS MAY BE AN ISSUE WITH FUTURE INSPECTIONS.
11. SOME FLOOR INSULATION IS MISSING. FLOOR INSULATION IS R-13. TYPICAL FLOOR INSULATION IS R-19.
12. FLOOR INSULATION WAS INSTALLED WITH PAPER DOWN. IT IS RECOMMENDED THAT PAPER IS TOWARD HEATER AREAS.

FROM JOHNS MANVILLE

FACED INSULATION; This is insulation with a facing already attached to it. Facing acts as a vapor retarder and is commonly made from Kraft paper or foil, depending on the intended application. In addition to its thermal and acoustical properties

Q: Which side do I install the vapor retarder on?

NANKIN000015

A: It depends on your geographical location. In cold climates, the vapor retarder should be installed on the inside (warm in winter) of the structure. In hot and humid climates the vapor retarder should be installed on the outside (warm side). Vapor retarders play an integral role in moisture control. Since climates are rarely cold or hot all the time, the vapor retarder should be placed to the side of the structure that is the predominately warm side. This is because heat flows from warmer to cooler in attempt to reach equilibrium. The warmer air can hold a higher amount of water vapor. As air cools, it can reach the dew point. This is the point at which the relative humidity reaches 100% and water vapor condenses from the vapor phase to the liquid phase. Therefore, the vapor retarder should be placed to the predominately warm side to prevent the moisture from migrating with the heat flow to the cold side, reaching the dew point, and creating a liquid moisture problem

1.

THANK YOU FOR USING PREFERRED HOME INSPECTIONS!



Charles E. Strickland, Jr.
Preferred Home Inspections, LLC.
1414 Old Road
Chapin, S.C. 29036
Office #(803) 407-3233

08/31/2010

Date

S.C. HOME INSPECTORS LICENSE #191

S.C. RESIDENTIAL HOME BUILDER LICENSE #12642

NANKIN000016

**PREFERRED
HOME INSPECTIONS, LLC.**
SERVING THE MIDLANDS OF SOUTH CAROLINA
Call Charles Strickland Phone #(803) 407-3233

INVOICE

PLEASE HAVE REALTOR OR CLIENT FILL OUT ALL INFORMATION
IF PAYMENT NOT MADE AT TIME OF INSPECTION
WE MUST HAVE CUSTOMER CREDIT CARD NUMBER IF INVOICE NOT PAID AT
TIME OF INSPECTION
YOUR PAYMENT OF THIS INVOICE IS CONSIDERED YOUR
ACCEPTANCE TO THE PRE-INSPECTION AGREEMENT AND
AGREEMENT TO ARBITRATION
PURSUANT TO SOUTH CAROLINA CODE 15-48-10.

CUSTOMER
NAME: Howard Nankin DATE 8/31/10
Address: _____ Property Location 247 South Oak
City/State/Zip: _____
Customer E-Mail Address: NLRose@aol.com
Phone #: 736-7397 Fax#: _____ Closing Date: _____
Realtor: _____ Phone#: _____ Realtor Fax#: _____
Closing Attorney: _____ Atty. Fax #: _____
Credit Card : We Accept (circle one) Visa or MasterCard :
Name as on card: _____
Credit Card Number: _____ Exp. Date: _____

We will run credit card if payment not received by agreed on date.

CHARGES:

VISUAL HOME INSPECTION\$ _____
HOME WARRANTY PLAN (\$335.00 OR \$365.00)\$ _____
STUCCO EXTERIOR MOISTURE INSPECTION\$ _____
ADDITIONAL CHARGES:\$ 150⁰⁰

TOTAL DUE \$ 150⁰⁰

PAYMENT DUE ON COMPLETION OF INSPECTION.
IF NOT PAID WITHIN 30 DAYS, AN ADDITIONAL \$25.00 CHARGE
WILL BE ADDED, PLUS ANY ADDITIONAL COLLECTION COST

PAID BY: Cash _____ Check# _____ Credit Card # _____

INSPECTION DONE BY: Charles Strickland

MAIL PAYMENT TO: Charles E. Strickland, Jr.

Preferred Home Inspections, LLC.

1414 Old Road

Chapin, S.C. 29036

S.C HOME INSPECTORS LICENSE #191

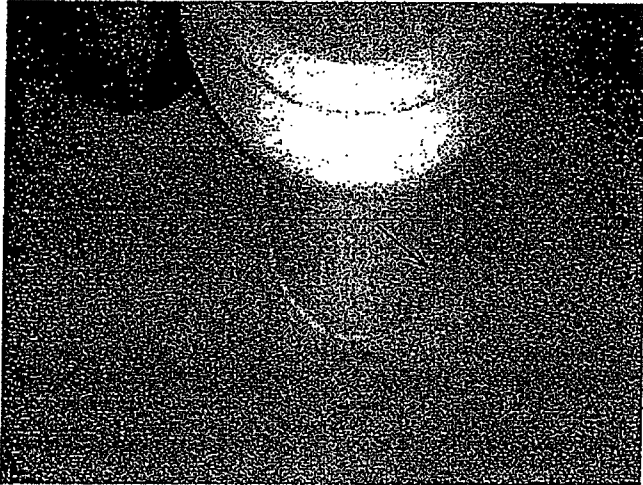
S.C RESIDENTIAL HOME BUILDERS LICENSE #12642

NANKIN000017

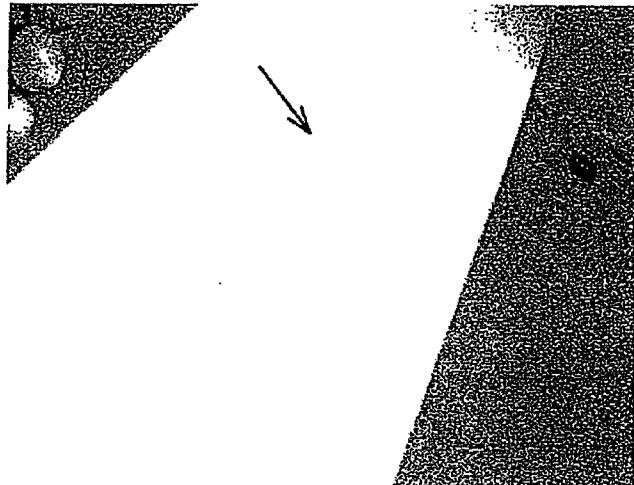
Preferred Home Inspections, LLC

21:04PM August 31, 2010

Photo Attachments



TOILET NOT CAULKED AT BASE



TUB EDGE CAULK NOT NEAT, EXCESS NOT CLEANED



WINDOW TRIM MISSING. NEW WINDOW NOT INSTALLED



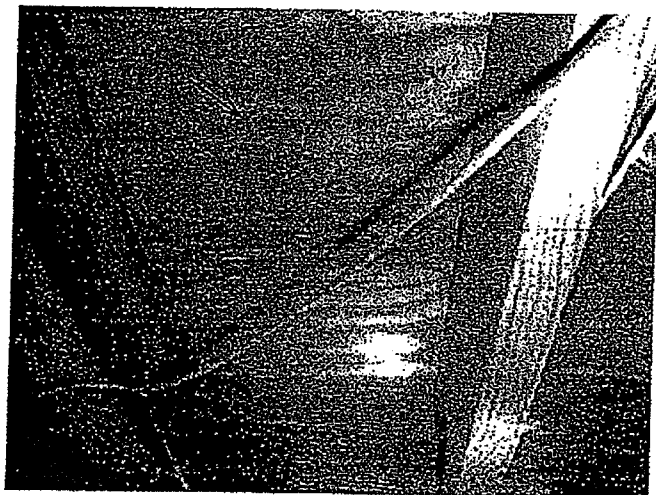
WATER STAINED FLOOR AT TUB EDGE SEEN IN CRAWL SPACE

Untitled

Preferred Home Inspections, LLC

21:04PM August 31, 2010

Photo Attachments



FLOOR INSULATION MISSING



FLOOR INSULATION IS R-13, NOT R-19. INSULATION
INSTALLED PAPER DOWN

Untitled

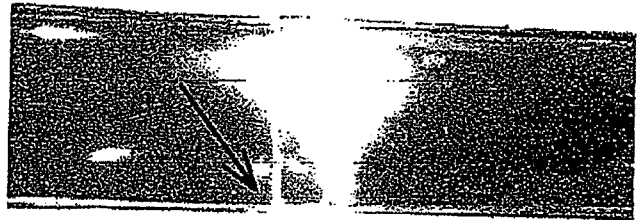
Preferred Home Inspections, LLC

21:04PM August 31, 2010

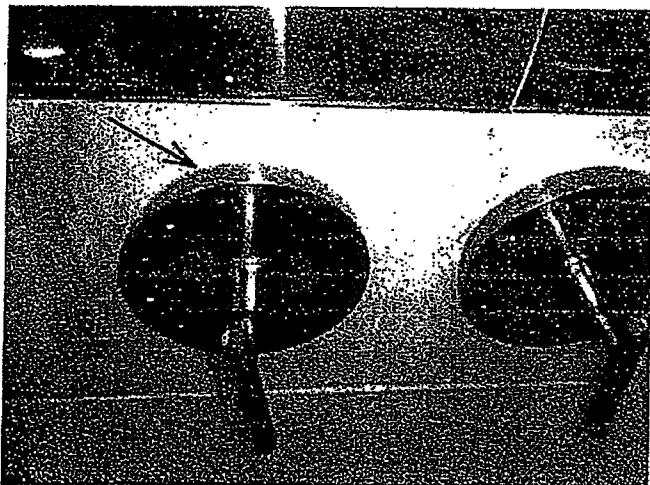
Photo Attachments



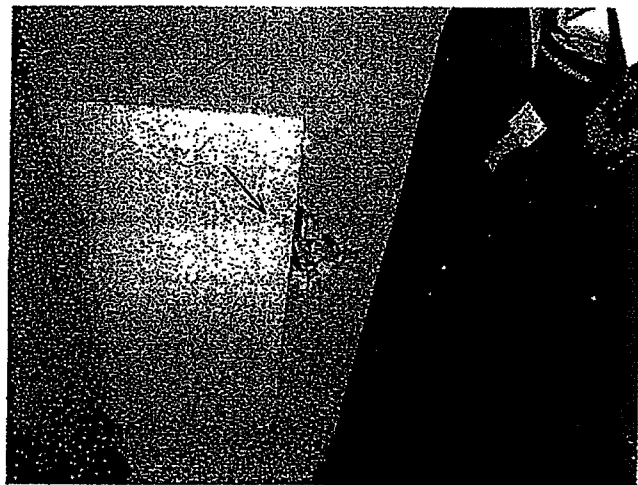
SHOWER DOOR HINGE SIDE NOT SEALED. SHOWER HEAD
AIMED AT THIS AREA



NO GROUT BELOW OR ON ENDS OF TILE TRIM



SHOWER HANDLES NOT SEALED TO TILE



SHOWER ACCESS CLOSET WALL HAS DAMAGE

Untitled



DON DANFORD
DESIGNS

INVOICE

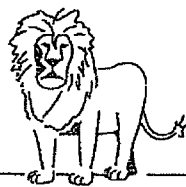
July 12, 2010

Client: Rich & Mary Edelson
104 Turnberry Ln
Lexington, SC 29072

		Total
	CABINETS	
1.	Top Cabinets	\$2,800.00
2.	Island Cabinets	\$1,800.00
3.	Bar Cabinets	\$1,400.00
4.	Closet Cabinet	\$1,300.00
5.	3 Corbels for Island (3 @ \$100 each)	\$300.00
	COUNTERTOPS	
6.	Granite Countertop-New Venetian Gold, 68.5 sf of 3mm @ \$73 per sq ft	\$5,000.50
7.	Granite Countertop-Black for Island, 36.12 sf of 3mm @ \$68 per sq ft	\$2,456.19
8.	Cut-out for Stove	\$100.00
9.	Cut-out for Sink	\$100.00
10.	1 Farm House Sink	\$698.90
	KITCHEN FLOOR & BACKSPLASH TILES	
11.	Floor Tile, 483 sf @ \$6.25 per sf	\$3,018.75
12.	Backsplash Tile, 98 sf @ \$9.78 per sf	\$958.44
13.	18 Concrete Boards Sheets @ \$9.98 per sf	\$179.64
14.	Labor-Rip Out Old Tile	\$800.00
15.	Labor-Lay New Floor	\$1,100.00
16.	Labor-Backsplash	\$600.00

4116 Blossom Street, Columbia, South Carolina 29205
Phone 803-351-6075 Fax 803-787-7955 www.dondanforddesigns.com

Danford 008



DON DANFORD
DESIGNS

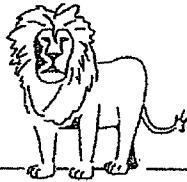
	HARDWOOD FLOOR	
17.	Den & Keeping Room, 796 sf @ \$3.96 per sf	\$3,152.16
18.	Keeping Room Subfloor	\$412.14
19.	Labor to Install	\$1,800.00
	PAINTING	
20.	Garage Wall Painting	\$300.00
21.	Kitchen Wall Painting	\$1,200.00
22.	Kitchen Ceiling Painting	\$800.00
23.	Cabinet Painting	\$1,400.00
24.	Scrape Ceiling	\$400.00
25.	Upstairs & Hall Walls Painting	\$1,000.00
26.	Paint for Kitchen, 6 gal @ \$32.98 per gal	\$196.80
27.	Paint for Hallway, 3 gal @ \$32.98 per gal	\$98.94
28.	Paint for Ceiling, 6 gal @ \$32.98 per gal	\$196.80
29.	Paint for Cabinet Trim, 10 gal @ 32.98 per gal	\$329.80
30.	12 Tubes of Calk @ \$3.97 per tube	\$47.64
31.	Mud Fill, 4 gal @ \$12.98 per gal	\$51.92
32.	Den Walls Painting	\$1,200.00
33.	Paint for Den Walls, 4 gal of paint and supplies	\$292.00
34.	Crown Molding Around Cabinets	\$428.12
	CABINET HARDWARE	
35.	28 Pulls @ \$9.63 each	\$269.64
36.	18 Handles @ \$12.19 each	\$219.42
37.	16 Switch Plate Covers	\$196.14



DON DANFORD

DESIGNS

	LIGHTING	
38.	Rope Lighting, 62 ft @ \$10.96 per ft	\$679.52
39.	Under-counter Light at Bar	\$129.00
40.	Ceiling Fan	\$196.12
	ELECTRICAL	
41.	Pull New Wire for: • Microwave, • Dishwasher, • Stove, • Downdraft, • Ice Machine, and • Bar Cooler. Install new gas line.	\$2,416.12
	PLUMMING	
42.	• Re-pipe Old Sink, • Install New Sink, • Run New Water Line to Ice Machine • Run New Drain for Ice Machine • Run New Plumming for Bar Sink	\$1,800.00
43.	Filter System, Disposal, & Bar Faucet	\$340.00
	CARPET (Bedrooms, Upstairs, Back Hall, & Stairs)	
44.	Woven Hemp, 880 sq ft @ \$3.25 per sq ft	\$2,860.00
45.	Pad, 880 sq ft	\$1,196.80
46.	Installation	\$852.00
	RUGS	
47.	2 8x10 Rugs @ \$429.00 each	\$858.00
48.	1 6x9 Rug	\$319.00
49.	1 Kitchen Round Rug	\$299.00



DON DANFORD
DESIGNS

	PAINTINGS/PICTURES	
50.	1 Large Painting	\$399.00
51.	1 Small Painting	\$299.00
52.	4 Children Pictures @ \$198.00 each	\$792.00
	SUNROOM	
53.	7 Natural Fiber Blinds @ \$49.98 each	\$349.86
54.	6 Natural Fiber Blinds @ \$39.98 each	\$239.88
	KITCHEN DRAPES	
55.	8 Roman Shades, Labor	\$1,800.00
56.	8 Roman Shades, Materials, 36 yd @ \$29.99 per yd	\$1,079.64
	DEN	
57.	2 Pictures @ \$299.00 each	\$598.00
58.	1 Picture @ \$399.00 each	\$399.00
59.	1 Lamp	\$249.99
	MISCELLANEOUS	
60.	Trash Can	\$189.00
61.	Outside Fireplace Brick Wash, Retip & Seal	\$2,200.00
	DON'S LABOR	
62.	6/22/10, 8 hr @ \$125.00 per hr	\$1,000.00
63.	6/28/10, 2 hr @ \$125.00 per hr	\$250.00
	SUBTOTAL	\$58,394.87
	TAX	\$4,087.64
	TOTAL	\$62,482.51



DON DANFORD
DESIGNS

	TOTAL	\$62,482.51
	PAYMENT-CHECK	-\$15,000.00
	PAYMENT-CHECK	-\$10,000.00
	PAYMENT-CHECK	-\$7,000.00
	PAYMENT-CHECK	-\$10,000.00
	PAYMENT-CHECK	-\$4,500.00
	PAYMENT-CHECK	-\$2,137.86
	BALANCE DUE	\$13,844.65

Total amount due upon receipt of this bill.

DON DANFORD
DESIGNS

INVOICE

November 23, 2010

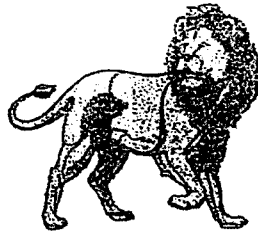
Client: Jackie Warrington

	Item	Total
1.	Cabinets, 30 qty	\$18,410.26
2.	Granite and Under-mount Sink	\$5,082.00
3.	Lighting: Under-counter, Can Lights, & Cabinet Lighting	\$600.00
4.	Tile for Backsplash	\$1,228.98
5.	Electrician: Wire, Install New Box, & New Switches	\$4,475.00
6.	Plumbing	\$720.00
7.	Tile Labor	\$840.00
8.	Hardwood Floor: Install, Sand, & Finish	\$2,999.18
9.	Rip Out Wall, Put Back Columns, & Re-hang Sheetrock in Ceiling & Wall	\$1,462.12
10.	Paint & Finish Sheetrock	\$1,600.00
11.	Appliance Install Gas Line, Microwave, Gas Range, & Dishwasher	\$600.00
12.	Hardware for Cabinets	\$505.04
13.	Under-mount Sink	\$153.00
14.	Sink & Faucets for Wash Room, Hot Water Tap	\$268.57
15.	Roman Shades, 5 qty	\$602.18
16.	Recover Chairs, 2 qty, Replace Batting, & Repair Springs	\$500.00
17.	Rewire Chandelier	\$160.00
	SUBTOTAL	\$40,205.76
	TAX	\$2,814.40
	TOTAL	\$43,020.16
	Paid Check	-\$20,000.00
	Paid Check	-\$8,000.00
	BALANCE DUE	\$15,020.16

Total amount due upon receipt of this bill.

4116 Blossom Street, Columbia, South Carolina 29205
Phone 803-351-6075 Fax 803-787-7955 www.dondanforddesigns.com

Danford 007

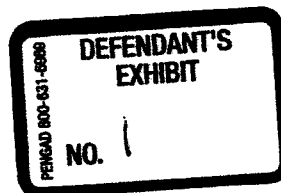


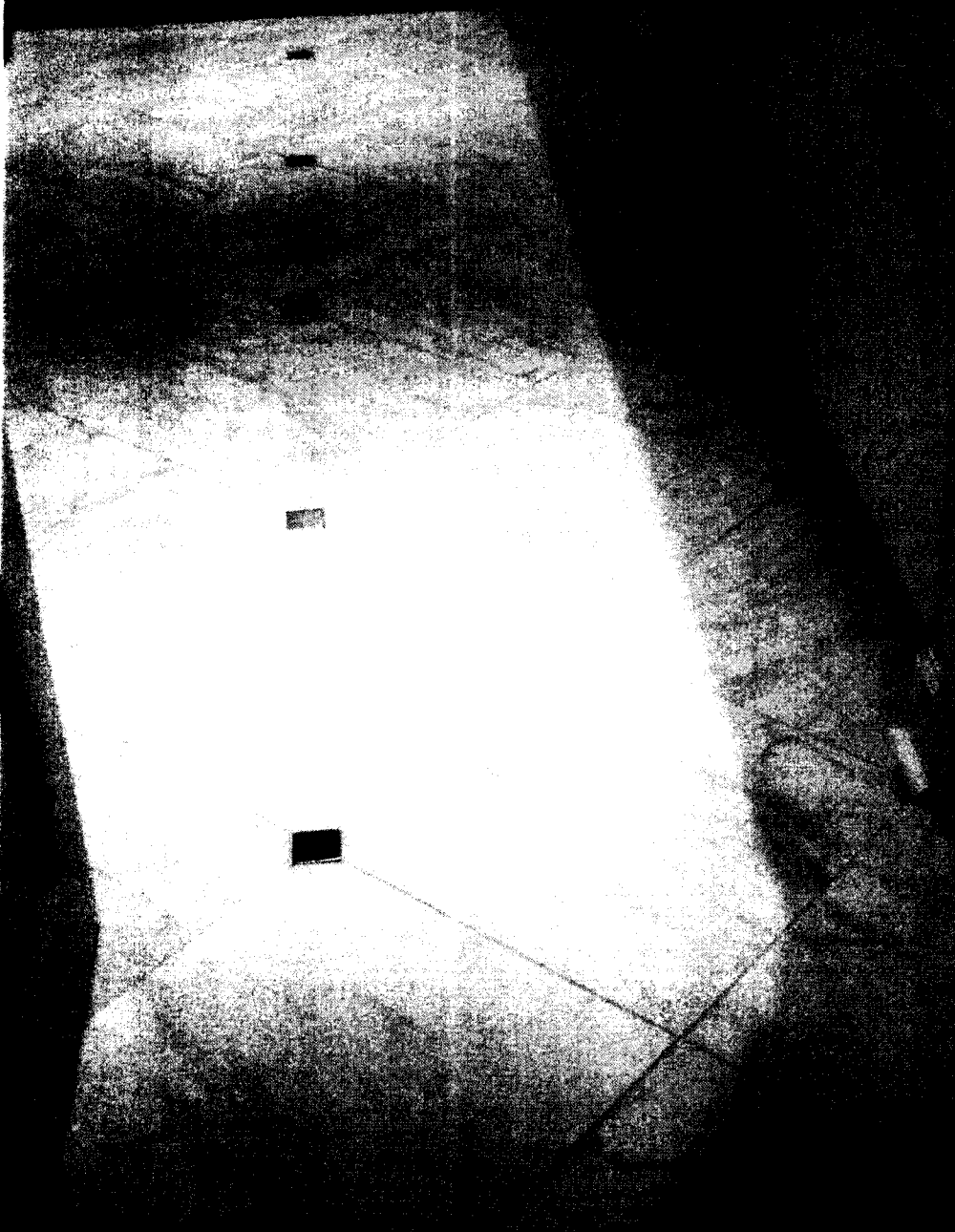
DON DANFORD
4116 Blossom Street
Columbia, South Carolina 29205

4/13/10

Nanay -
247 South Lake -
Columbia, S.C. 29225

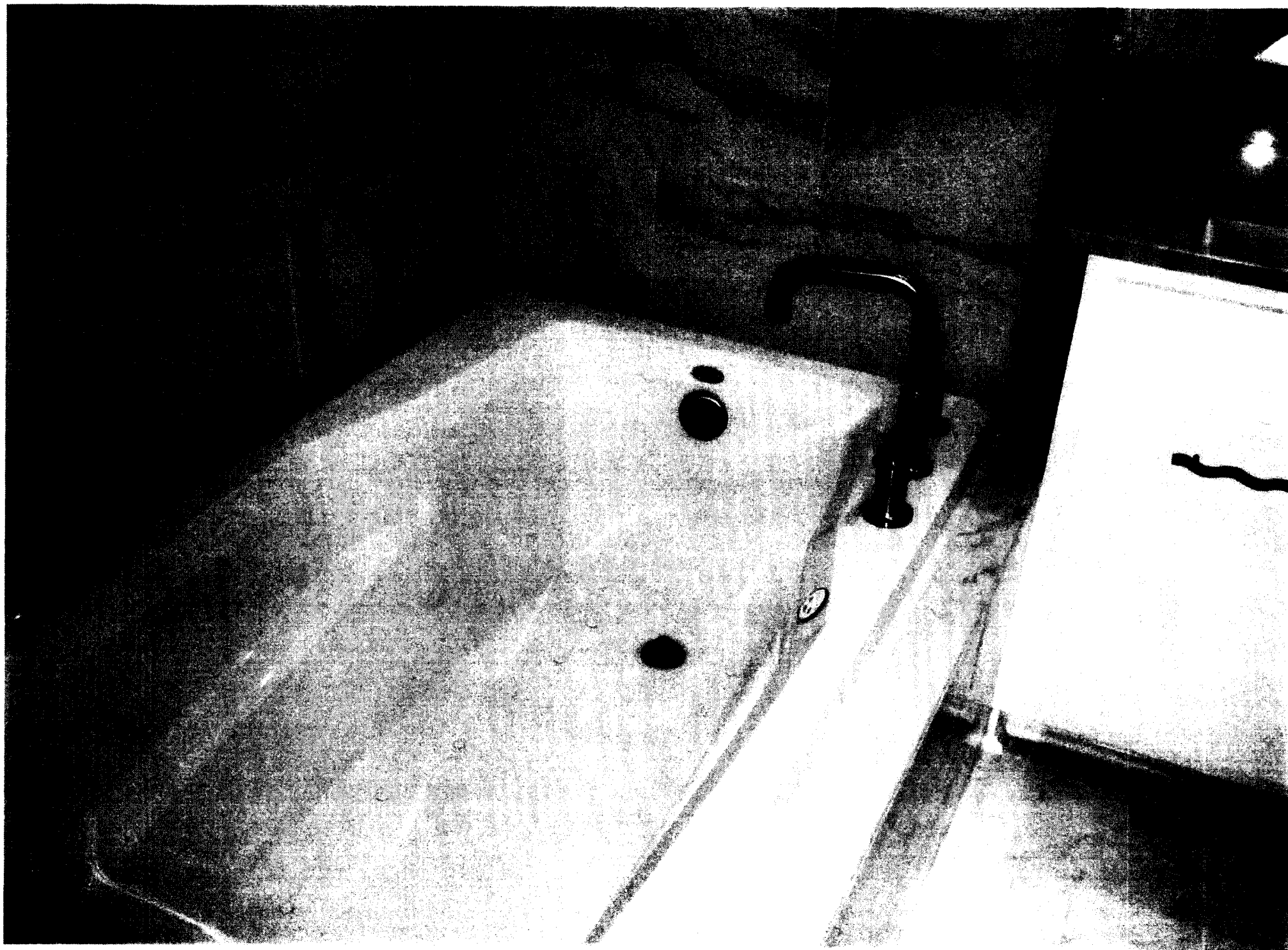
3/2/10 ->	1 hr @ 125.00 ->	125.00
3/24/10 ->	1 hr @ 125.00 ->	125.00
4/6/10 ->	3 hr @ 125.00 ->	375.00
4/13/10 ->	1 hr @ 125.00 ->	125.00
Total		<u>750.00</u>

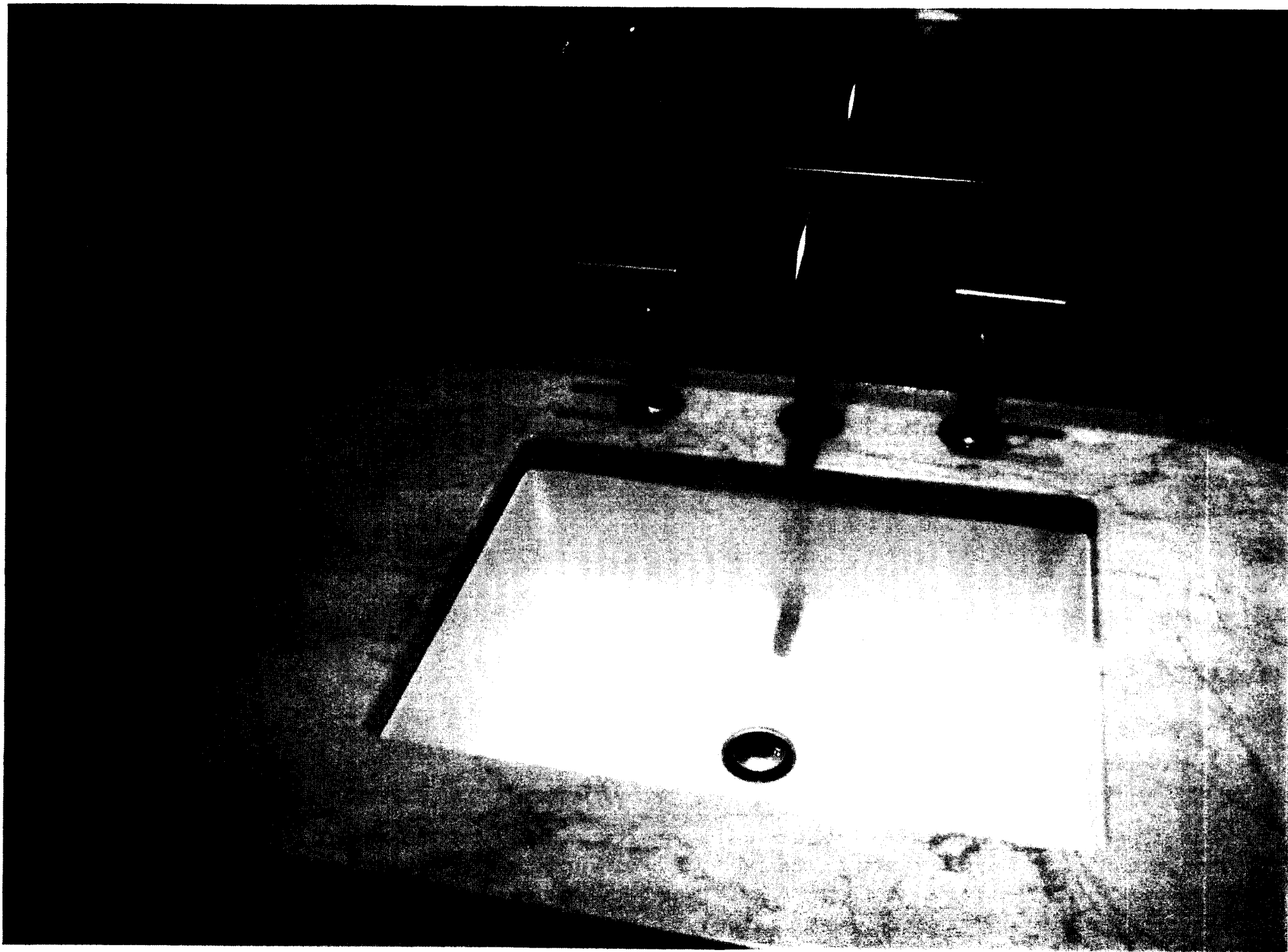


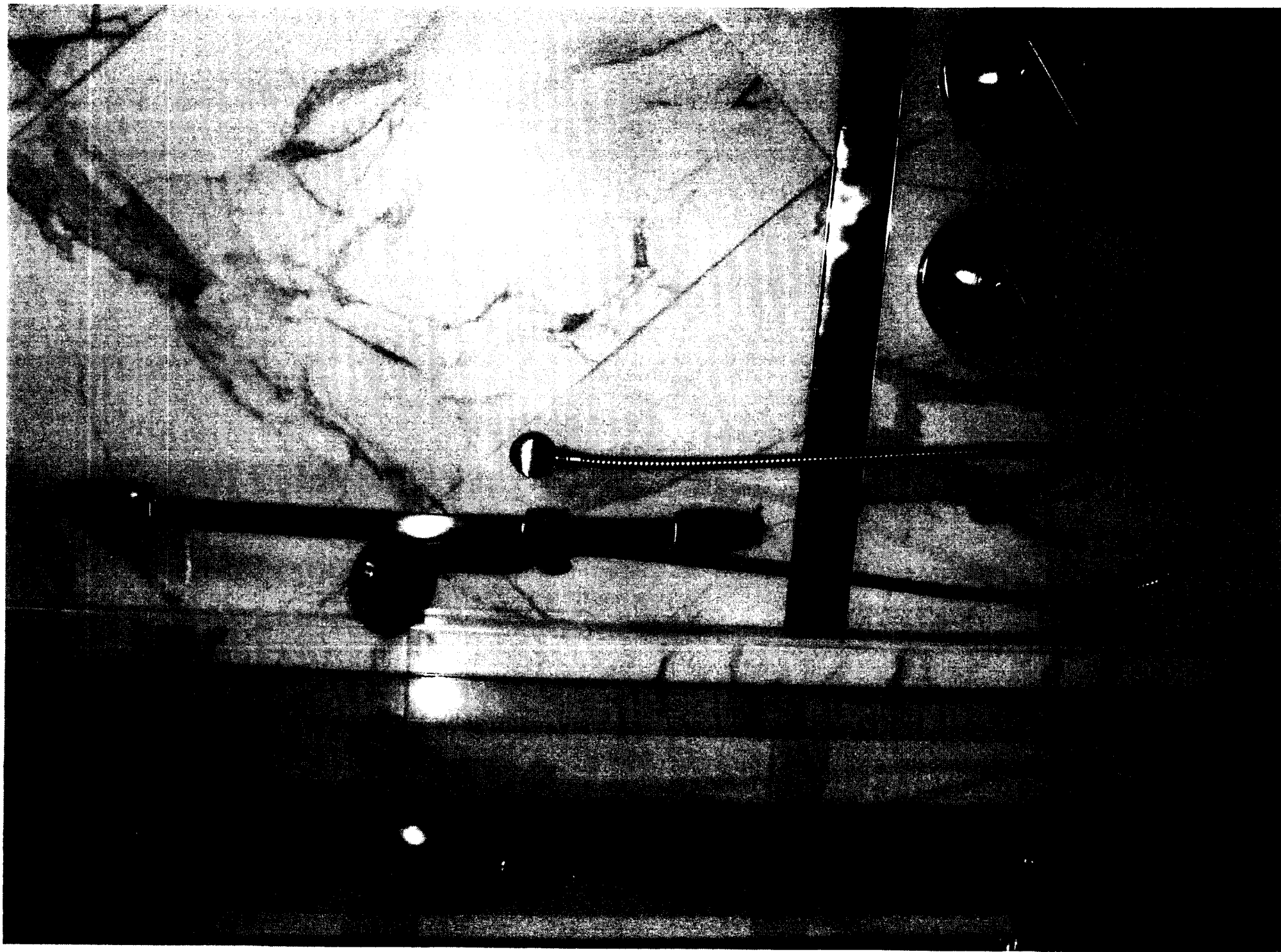


PENSAID 800-431-6886
**DEFENDANT'S
EXHIBIT**
NO. 2

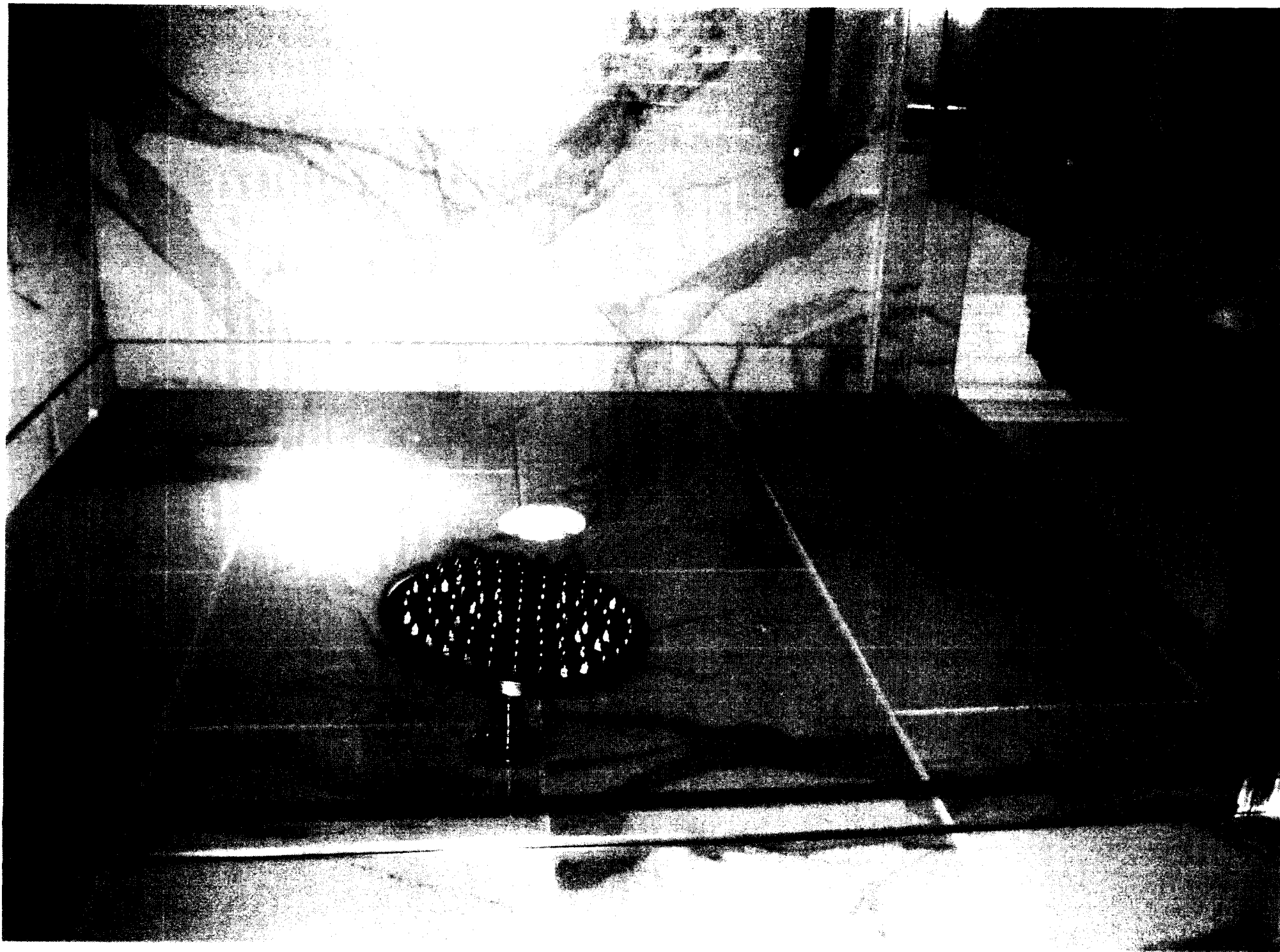


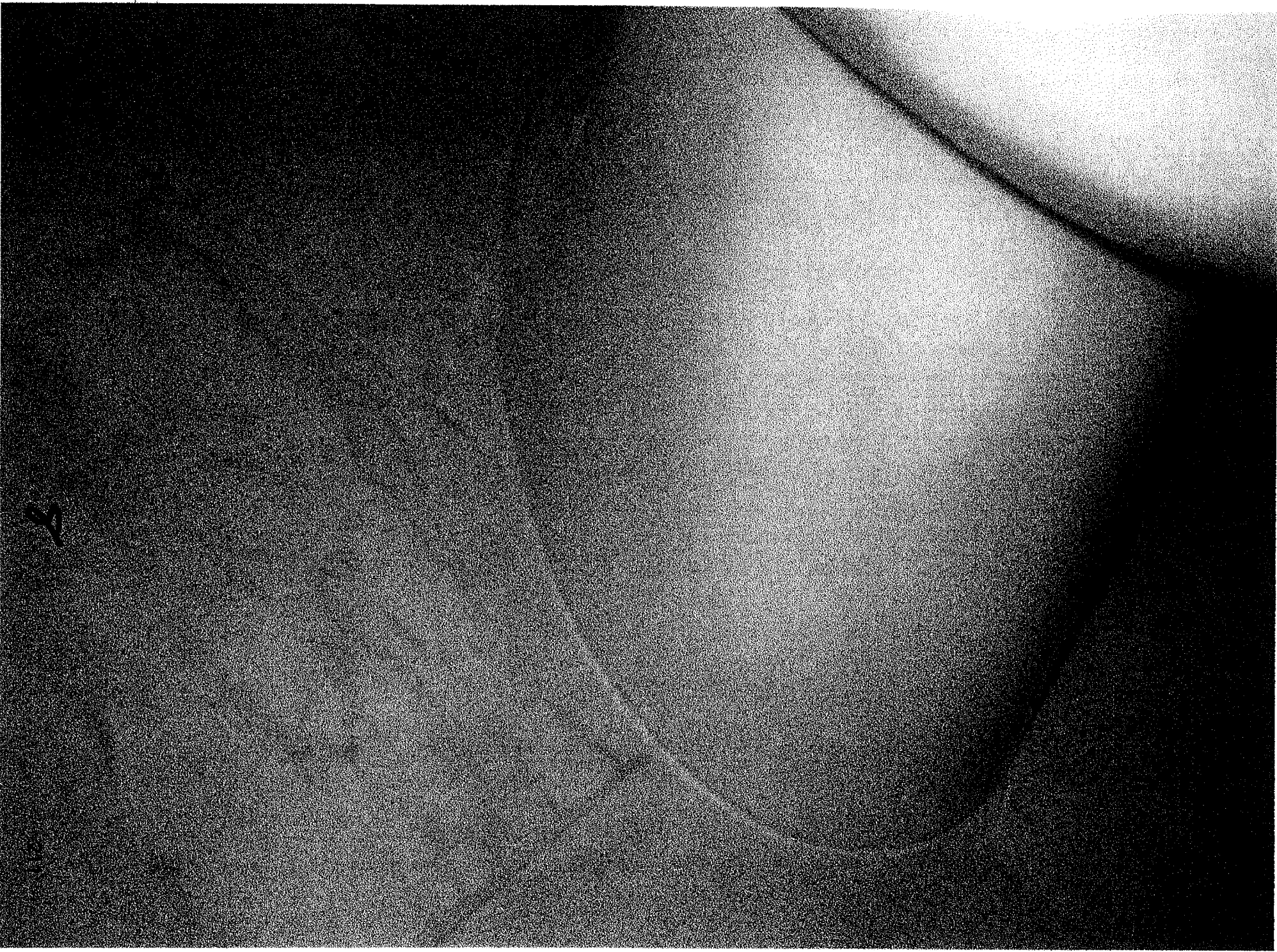


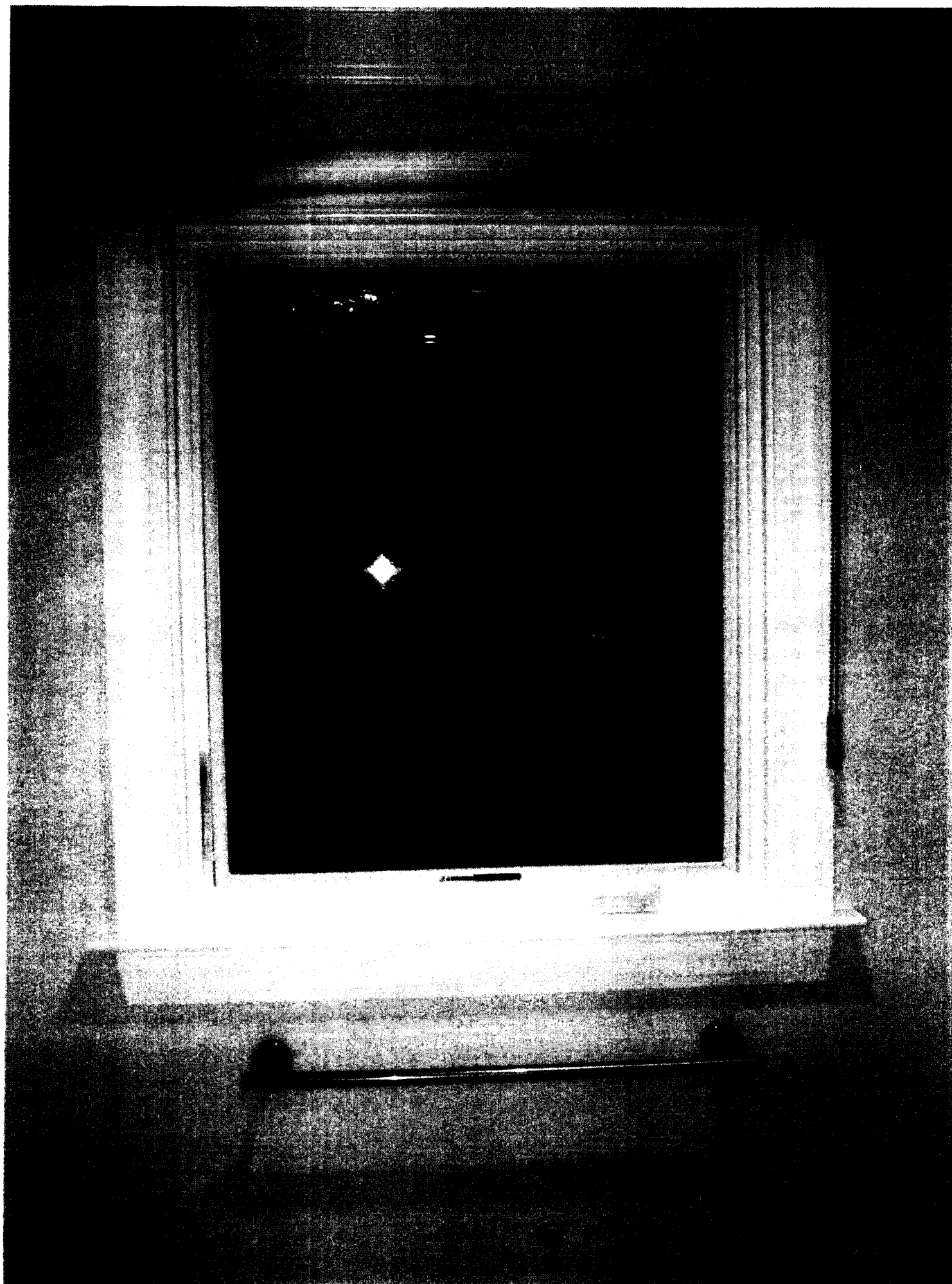










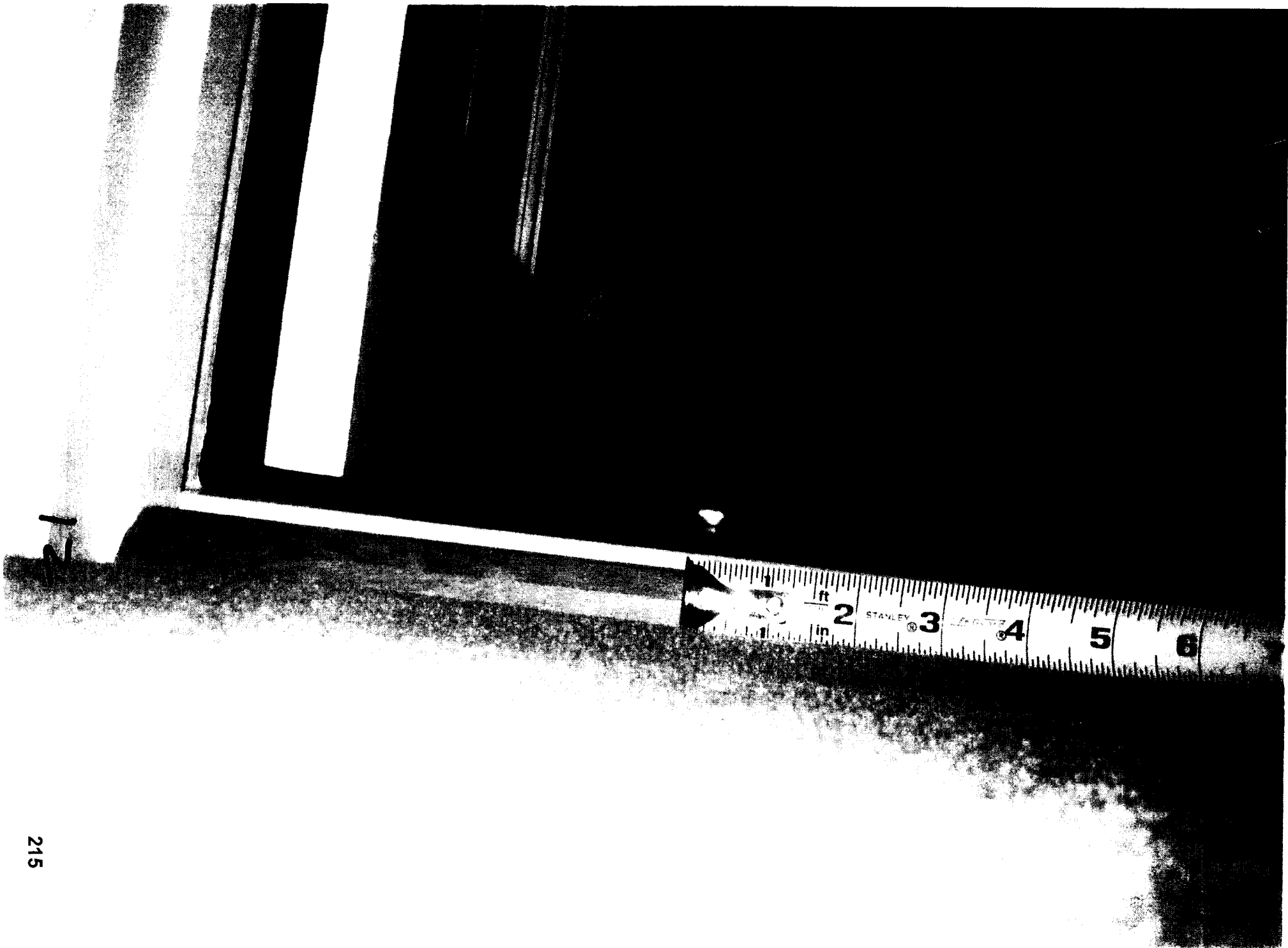




10



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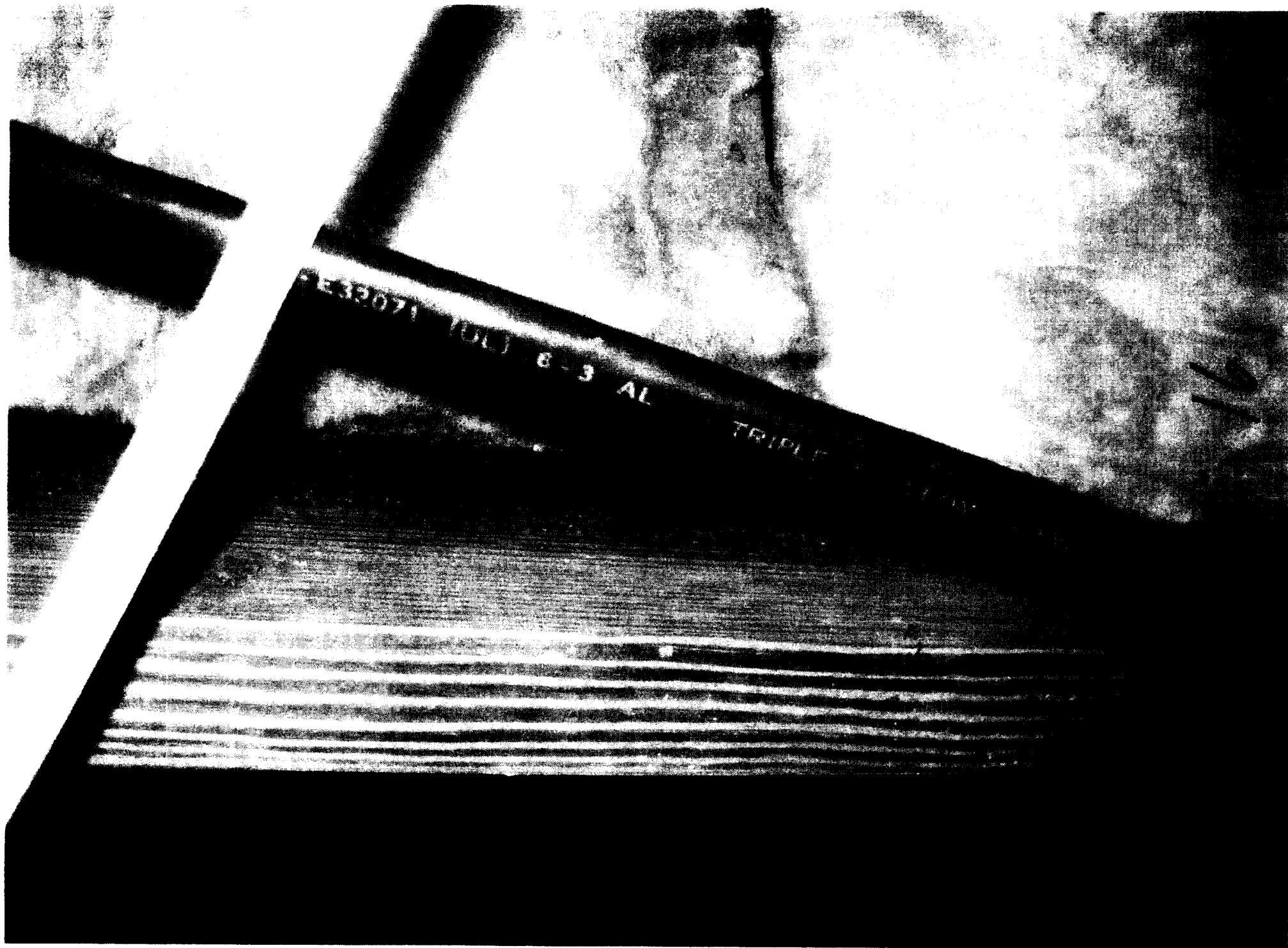


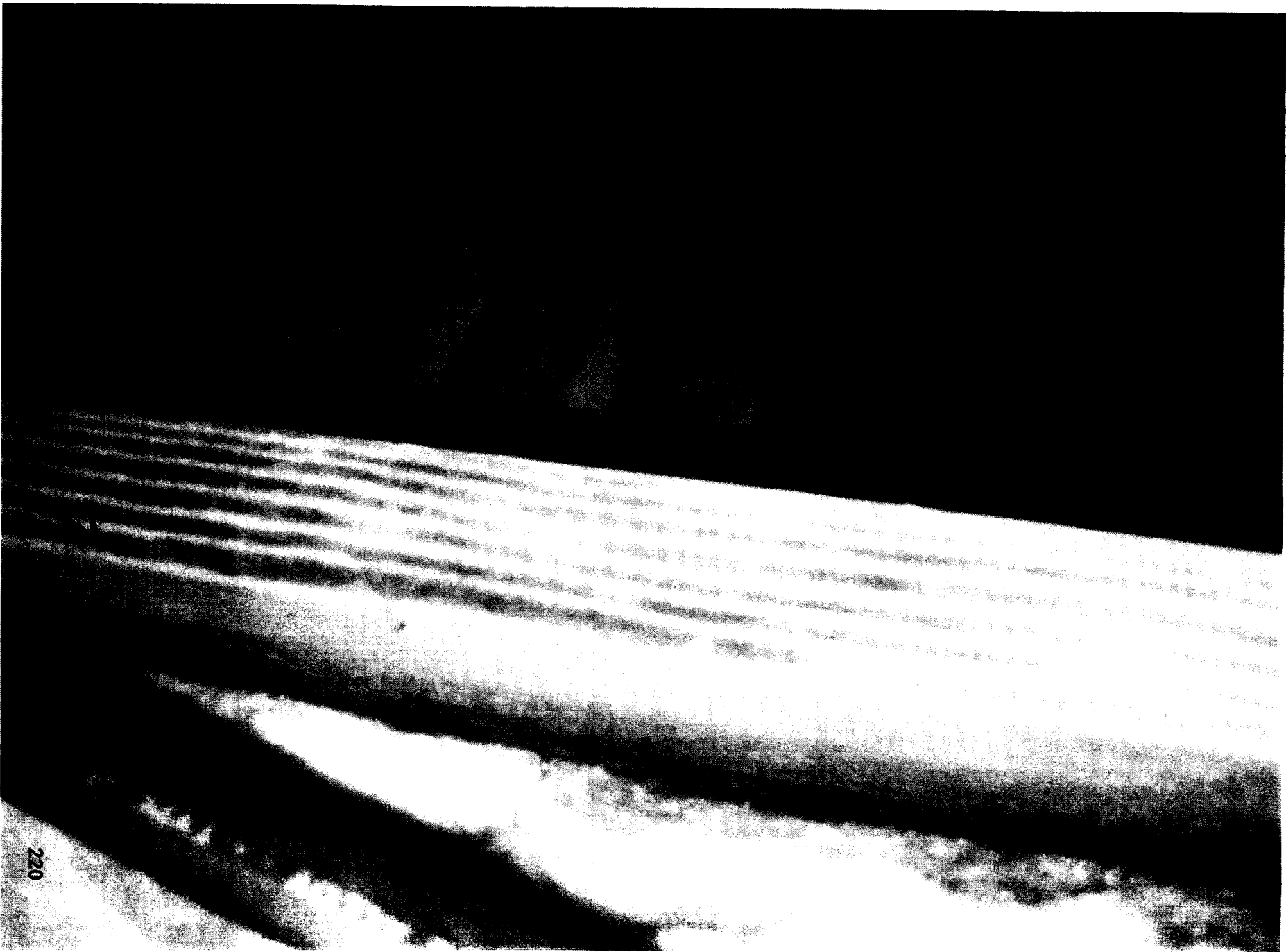
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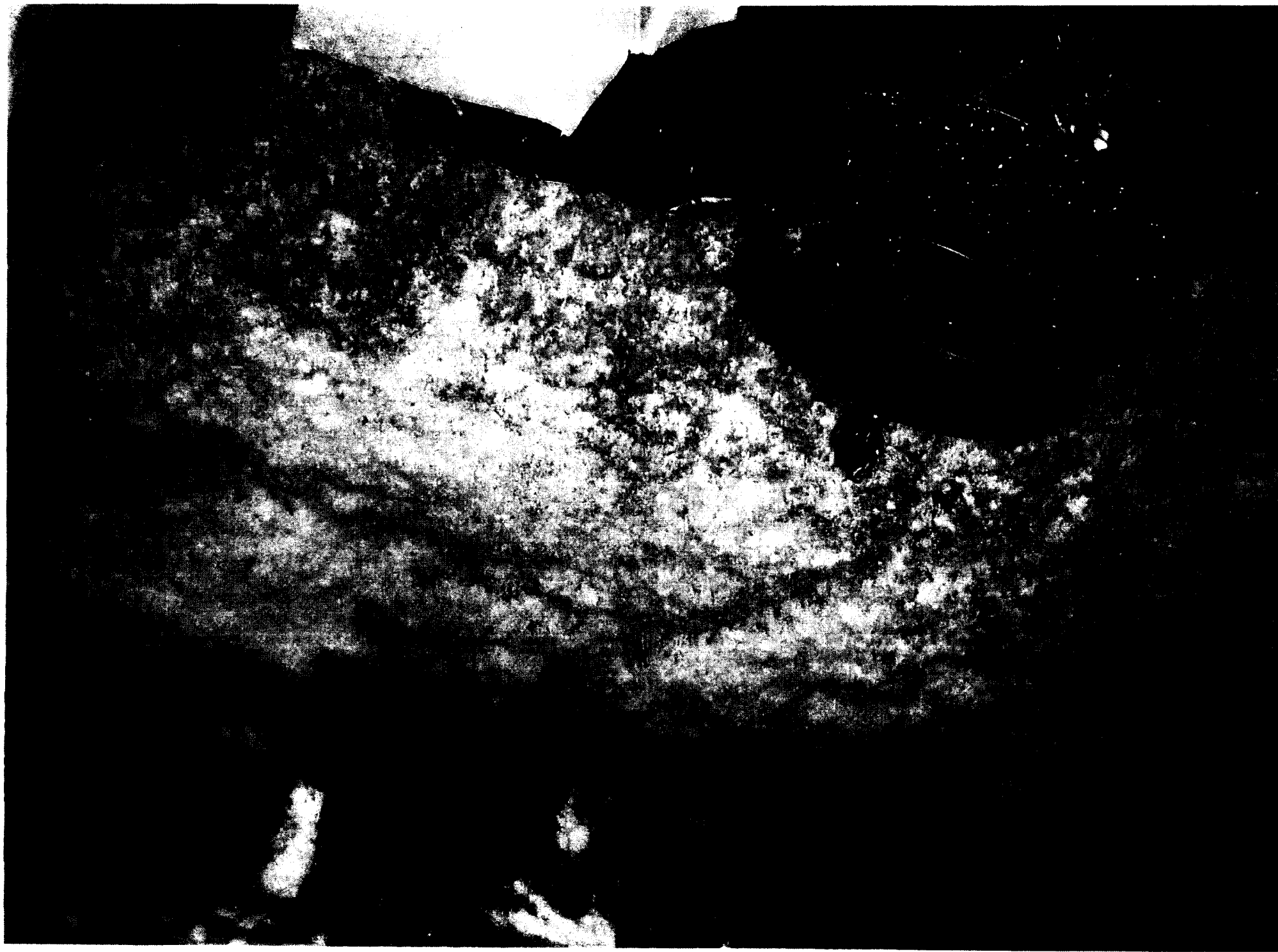
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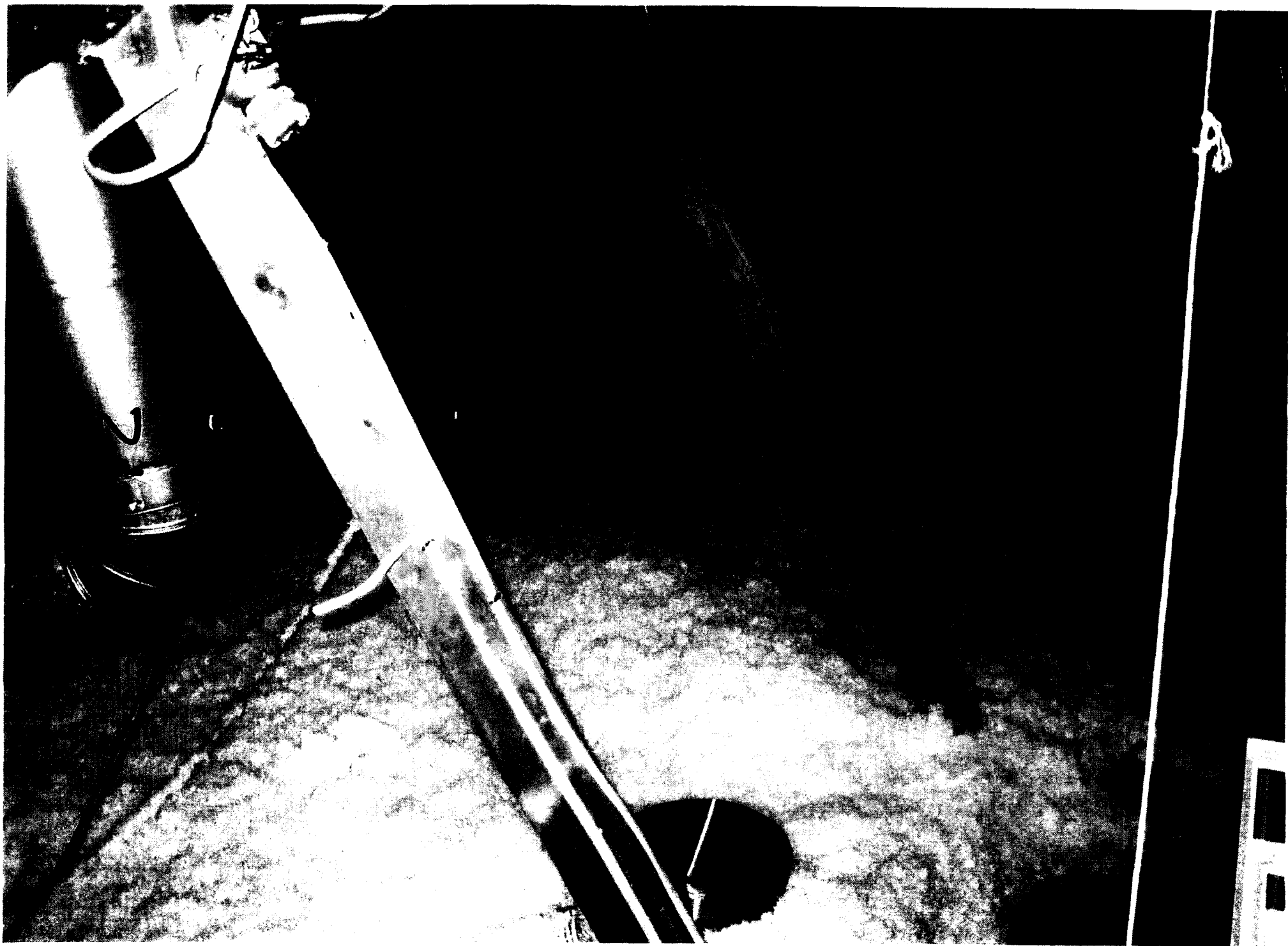












THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

DEC 23 2014

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2010-CP-40-8155
Appellate Case No. 2014-000272

Howard Nankin and Nancy Nankin.....Appellants,

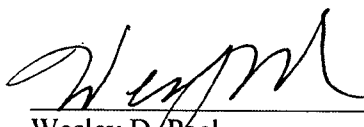
v.

Donald M. Danford d/b/a Don Danford Interiors.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule
211(b) SCACR.

December 4, 2014



Wesley D. Peel
BRUNER, POWELL, WALL & MULLINS, LLC
P.O. Box 61110
Columbia, South Carolina 29260
(803) 252-7693
Fax: (803) 254-5719
wpeel@brunerpowell.com
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

DEC 23 2014

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2010-CP-40-8155
Appellate Case No. 2014-000272

Howard Nankin and Nancy Nankin.....Appellants,

v.

Donald M. Danford d/b/a Don Danford Interiors.....Respondent.

PROOF OF SERVICE

I do hereby certify that on this 23rd day of December 2014, I served the **Record on Appeal, Final Brief of Appellant and Final Reply Brief of Appellant**, upon the Respondent by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed to his attorney of record as follows:

W. Duvall Spruill, Esquire
Turner Padgett Graham & Laney, PA
PO Box 1473
Columbia, SC 29202


Rita D. DeCarlis

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2010-CP-40-8155
Appellate Case No. 2014-000272

Howard Nankin and Nancy Nankin.....Appellants,

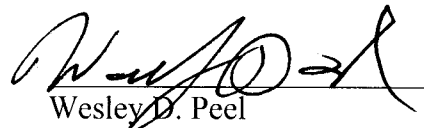
v.

Donald M. Danford d/b/a Don Danford Interiors.....Respondent.

APPELLANTS' BRIEF CERTIFICATION

I certify that the Final Brief of Appellants and Final Reply Brief of Appellant conforms to the requirements of Rule 211(b) of the Appellate Court Rules.

December 22, 2014



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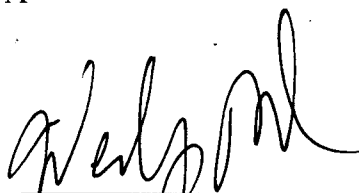
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PROOF OF SERVICE

I do hereby certify that on this 4th day of December, 2014, I served the
Record on Appeal upon the Respondent, via hand-delivery, and addressed to his
attorney of record as follows:

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Dated: December 4, 2014

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