

Terlizzi Home Improvement, LLC, Appellant,

v.

Michael L. Boheler, Jeannette A. Boheler, and the  
Palmetto Bank as Assignee of Midlands Mortgage Corp.,  
Defendants,

Of Whom

Michael L. Boheler and Jeannette A. Boheler are,  
Respondents,

v.

William Terlizzi, Third-Party Defendant and  
Appellant.

Appellate Case No. 2014-002540

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**RECORD ON APPEAL (Vol. 3)**

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Attorneys for Respondents

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SC Court of Appeals

Terlizzi Home Improvement, LLC, Appellant,

v.

Michael L. Boheler, Jeannette A. Boheler, and the  
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1 Q All right. So tell me: What arrangement did you  
2 reach with John Harding in regards to constructing  
3 the Boheler job?

4 A That he was going to do the job. I would have the  
5 -- I -- I would have the name as the builder. He  
6 would do the job. I would do -- because I was also  
7 a licensed electrical, I'd be doing the electrical  
8 on the job. And I was available to him for any,  
9 you know, problems, if he had, or whatnot.

10 Q All right. Mr. Terlizzi -- it is Terlizzi, right?

11 A Terlizzi. Yes, sir.

12 Q Terlizzi or Telizzi?

13 A Terlizzi.

14 Q Okay. I know with the southern accent sometimes --

15 A Yeah.

16 Q -- it's hard for me to -- you know I'm just a  
17 Yankee, so what do I know?

18 Have you seen this document before?

19 A Yes, sir.

20 Q Okay. Did you help draft the answers to these  
21 interrogatories?

22 A I'm sure I did.

23 Q Okay. Could you turn to Interrogatory Number 8?

24 It's on page 4. And Question Number 8 says, "State  
25 the relationship that John Harding had to THI in

1 regard to the property."

2 Does that answer pretty much reflect the --  
3 the deal you had with John Harding?

4 A I believe so.

5 Q Okay. Now, in your deal with John, what was going  
6 to be your -- how were you going to be compensated?

7 A At the end -- what I talked to him about, at the  
8 end, if there was any money left, we'd split it.

9 Q Okay. You hadn't -- you didn't come with any  
10 understanding that you would take a percentage of  
11 the money?

12 A No, sir.

13 Q All right. So to your understanding, it wasn't  
14 your -- your deal to take 10 percent of the job?

15 A Mr. Harding mentioned that in the beginning, and I  
16 said, "John, we don't know what it's going to cost.  
17 Let's just split it at the end."

18 Q Okay. So in the beginning, your involvement was  
19 pretty much just going to be a pass-through for the  
20 money?

21 A Yes, sir.

22 Q And describe to me what you anticipated the pass-  
23 through to the money going to be.

24 A Mr. Harding was -- the checks would come. I would  
25 pay -- Mr. Harding would use some of my accounts

1 for material. And I would make sure it got paid,  
2 and then he would get the remainder of the money.

3 Q Okay. Was it anticipated that you were going to be  
4 on the jobsite doing supervision?

5 A No, sir.

6 Q All right. Then tell me how it was that -- let me  
7 back up.

8 Did you have any -- did you have any contact  
9 with the Bohelers during the negotiation for the  
10 contract and the putting together scope of work and  
11 all that?

12 A No, sir.

13 Q Okay. So John Harding was the one who was the  
14 contact at that point in time?

15 A Yes, sir.

16 Q All right. Was it your intention that you were  
17 going to be providing any inspections of the  
18 project?

19 A No, sir.

20 Q All right. Tell me, if you would, how it came  
21 about that -- well, let me back up.

22 Eventually -- and I'm going to refer to -- to  
23 "THI." It's just easier for me and if --

24 A Yes, sir.

25 Q -- you understand that I'm talking --

1 A Yes, sir.

2 Q -- about your company.

3 A Yes, sir.

4 Q Eventually, THI entered into a contract with the  
5 Bohelers, correct -- for the construction of the  
6 house?

7 A The original contract, yes, sir.

8 Q Right. They entered into a contract, which you  
9 signed?

10 A Yes, sir.

11 MR. KRAWCZYK: (To the court reporter) Why  
12 don't just go ahead and put that into  
13 evidence? (To Mr. Cook) Here you go.

14 MR. COOK: Thank you.

15 MR. KRAWCZYK: Uh-huh. Don't get spoiled. I  
16 don't have copies for you on all of them, but  
17 I do for most of them. I try. Let me know if  
18 you need any.

19 Defendants' Exhibit No. 3, "Contractor  
20 Agreement."

21 MR. KRAWCZYK: (To the court reporter) Let me  
22 know when you're ready.

23 Q Okay. Mr. Terlizzi, I've shown you what's been  
24 marked as Exhibit Number 3. If you would, look  
25 through that and see if that encompasses the

1 contract and the specifications that THI entered  
2 into with the Bohelers.

3 A I believe so.

4 Q Okay. Do you know why the Bohelers contracted with  
5 THI?

6 A I don't quite understand that question.

7 Q Well, why -- why would they have entered into a  
8 contract with THI?

9 A I -- they wanted their house built.

10 Q Okay. And they needed a builder?

11 A I assume so.

12 Q All right.

13 A Yes, sir.

14 Q And they needed a -- would it be fair to say that  
15 you're a good builder?

16 A Yes, sir.

17 Q All right. Would you say you have a good  
18 reputation?

19 A Yes, sir.

20 Q Do you think that's things that the Bohelers  
21 might've been looking for?

22 A I -- yes, sir. I'm assuming they would.

23 Q Okay. And as you said, they needed to have a  
24 builder for the loan? That was your understanding?

25 A That was my understanding.

1 A I understand there were problems with the  
2 foundations. It took a lot longer with the  
3 foundation. They ran into numerous problems with  
4 rock and clay.

5 Q Uh-huh.

6 A Also, I understand there was a lot of rain and  
7 weather problems.

8 Q All right. And your understandings come from John  
9 Harding?

10 A And some from Mr. Boheler.

11 Q Okay. Because you weren't on the jobsite?

12 A No, sir.

13 Q And so to the extent that any of that would've  
14 happened, you would agree that Mr. Harding and Mr.  
15 Boheler would have better knowledge than you?

16 A Yes, sir.

17 Q All right. This was not a cost-plus job, was it?

18 A No, sir.

19 Q This was a fixed price for \$225,000?

20 A Yes, sir.

21 Q Now, did you have an understanding of how much the  
22 loan for the construction of this house was going  
23 to be?

24 A Not at the time, no, sir.

25 Q Okay. When did you first learn what the -- what

1 construction." Same thing, correct?

2 A Yes, sir.

3 Q And the next one, 5226, says "For building  
4 permits."

5 A Uh-huh.

6 Q Is that something normally that builder would pay  
7 for?

8 A The builder would, yes, sir.

9 Q Okay. And the next one is "For house  
10 construction," which is 5227.

11 A Uh-huh.

12 Q And the next one doesn't say "house construction,"  
13 but it is -- looks like September -- and this  
14 doesn't have a -- a date, but if you look at the --  
15 the -- the next page, it does talk about -- I mean,  
16 the back side, it was endorsed on September 24th,  
17 2010. Would that also be during the time of this  
18 construction?

19 A It seems to be. I -- again, I don't know when the  
20 construction started.

21 Q Okay. Well, in looking at these checks, you knew  
22 when you got your first draw that John Harding had  
23 been paid some money from the Bohelers, correct?

24 A I do now, yes, sir.

25 Q Okay. But you did at the time as well? You didn't

1 A That's right. But that's all that I'm saying.

2 But, as a fact, I don't know that it was done is  
3 what I'm trying to say. I -- I --

4 Q Well, John told you it had been done?

5 A Yes, sir. That --

6 Q And the work had been done?

7 A The work had been done.

8 Q So the reasonable conclusion is that he had been  
9 paid money for this house?

10 A He had been paid some money, yes, sir.

11 Q And the reasonable conclusion is that money  
12 would've been paid by the Bohelers pursuant to the  
13 contract, correct?

14 A Again, a -- I assume so, yes, sir.

15 Q All right. Now, let's assume this house had all  
16 gone to plan, all right? no problems, no issues.

17 A Yes, sir.

18 Q The Bohelers would've paid a 200 -- \$22,500  
19 deposit, correct?

20 A Yes, sir.

21 Q And the bank would've paid out \$225,000 in loan  
22 proceeds?

23 A Yes, sir. Right.

24 Q All right. So at the end of the job, if everything  
25 had gone according to plan, the Bohelers would be

1 getting \$22,500 back?

2 A Yes, sir. If there were no change orders or no  
3 problems or anything.

4 Q Okay.

5 A Yes, sir.

6 Q And that's really how it was supposed to work?

7 A Yes, sir.

8 Q All right. Looking at Article V of the contract.

9 Look at Section 1 of Article V. It talks about the  
10 work being done and the -- says, "The work shall be  
11 completed in a workmanlike manner and in compliance  
12 with all building codes and other applicable laws,"  
13 correct?

14 A Yes, sir.

15 Q And that's part of the builder's responsibility,  
16 correct?

17 A Yes, sir.

18 Q So to the extent something did not meet code or it  
19 was done in a workmanlike manner, that would be the  
20 responsibility of the builder to correct?

21 A Correct.

22 Q Now, should the homeowner have to pay a second time  
23 to correct work that's not done in accordance to  
24 code?

25 A Shouldn't have to.

1 Q Okay. Now, was that part of your contract with the  
2 Bohelers?

3 A There's nothing broken down about that anyway.

4 Q Okay. Did you discuss that with the Bohelers at  
5 any time?

6 A No, sir.

7 Q All right. If the amount is more than 3,000, then  
8 you're basically charging a 35 percent overhead?

9 A Yes, sir.

10 Q Okay. So what I've been trying to get you, at this  
11 point now, is -- let's talk about the base cost  
12 less any credit due in connection with the change  
13 order, and, explicitly, as it gets to the top: How  
14 did you come up with the base cost?

15 A It's a good-faith estimate on the original. I did  
16 not have, when we -- when I -- when we originally  
17 did the change orders -- and I gave it to Keith  
18 Myers -- I hadn't purchased anything yet, so it's a  
19 good-faith estimate of what I figured everything  
20 was going to cost.

21 Q All right. But it didn't cost you that.

22 A I --

23 Q I mean it's not -- this number isn't based on what  
24 your material and labor costs were?

25 A At that -- not right then.

1 Q And when I say "this," I'm talking about the  
2 numbers that you used in filing your lien.

3 A The numbers I used in filing my lien was what I had  
4 given Keith Myers.

5 Q Okay.

6 A That's what was agreed to.

7 Q And -- but it's not what -- all right. Okay. As I  
8 understand -- now, maybe this is a bad one, and  
9 we'll have to come back to this. But for this  
10 particular change order, you're not saying you  
11 followed "H" on the supplemental interrogatories.  
12 You're saying that before you entered -- before you  
13 agreed to do it, you used some other estimation.  
14 You gave that to Keith Myers, and he agreed to pay  
15 it.

16 A Yes, sir.

17 Q Okay. So for this particular change order -- that  
18 being the flooring -- it was based upon that  
19 calculation that you did for Keith Myers, not this  
20 calculation H?

21 A I would have to look back at -- I'm not going to  
22 say yes or no because I --

23 Q Okay.

24 A -- honestly don't know.

25 Q Well, because you told me you -- it wasn't based

1 A Okay.

2 Q Fair enough?

3 All right. When you got to the job, at that  
4 point in time, was -- did you do analysis to see if  
5 the house was on budget or not?

6 A I know I talked with Mr. Boheler and Ms. Boheler on  
7 the jobsite, and we went over different items. And  
8 they told -- or we both agreed to what was left on  
9 the contract. And I told them what we could do to  
10 finish it. We could not give them all these  
11 things. That's when I was told all the things that  
12 John had promised. And I told them I could not do  
13 that, but we could get them in their house.

14 Q Okay. Did you tell them you could get them in  
15 their house for what remained on the construction  
16 loan?

17 A Yes, sir.

18 Q Okay. So -- and, again, if you look at 5 -- I'm  
19 not trying to trick you --

20 A Uh-huh.

21 Q -- as I -- as I understand your account --

22 A I'm sorry. Uh-huh.

23 Q -- in May -- if you use May 31 as a -- as a guide  
24 point or, actually, if you use -- if you use March  
25 11th as a guide point, somewhere in between

1 I'm -- just don't know. I don't quite know exactly  
2 how to answer that question.

3 Q Well, you filed the lien?

4 A And it was -- what was filed is what we said we  
5 were due.

6 Q But it wasn't based on what work, material, and  
7 labor you did on the job?

8 A Again, I don't know how to answer that, sir.  
9 Because if you're telling me I'm only due this  
10 amount, I disagree.

11 Q I didn't say that.

12 A Okay.

13 Q Now, you understand the lien, as you said, is for  
14 -- which you -- which you put in your affidavit, is  
15 for material and labor on the job? This details  
16 the material and labor you have on the job.

17 A Okay.

18 Q It details -- even if you agree with your numbers,  
19 it says that you were entitled -- that you were  
20 made a loss on material and labor \$48,719.23. Why  
21 wasn't your lien filed for that amount?

22 A I don't know how to answer that. I filed my liens  
23 to the best that I could and the knowledge that I  
24 had at the time or the way I understood it.

25 Q All right. So, instead, you used the estimates

1 that you put -- that we discussed earlier?

2 A I used the figures that we discussed earlier.

3 Q And those were based on a good-faith estimate on  
4 what you thought it should be?

5 A Some were. Some were based on material and labor,  
6 as we've already discussed.

7 Q Now, tell me, you filed a lien for \$106,000.

8 A Yes, sir.

9 Q How is it that you believe that you are entitled to  
10 \$106,000 in addition to funds from the Bohelers?

11 A It's spelled out. It's --

12 Q It's spelled out where?

13 A Well, right in the -- where we requested. I said  
14 why: for the extras.

15 Q Okay. Extras that you don't have any written  
16 contract or agreement with?

17 A Agree.

18 Q Extras that you have admittedly -- many of which  
19 were good-faith estimates of what it should be?

20 A True.

21 Q Do you think the Bohelers should be penalized for  
22 paying \$22,500 to John Harding?

23 A I don't know what the Bohelers paid to John  
24 Harding, so I couldn't answer that question.

25 Q You think they should -- should they -- should they

1 that said that he agreed to pay the additional --

2 A I do not know. Keith Meyers had it.

3 Q All right.

4 A Keith Meyers had copies of just everything.

5 Q And it -- and it added up to \$106,000?

6 A No, sir. The other two don't. It adds up to  
7 whatever these two add up to.

8 Q Okay.

9 A These are what he had -- Keith Meyers had a copy  
10 of.

11 Q So, according to you, Keith Meyers told you that  
12 the Bohelers would pay -- one, which is \$44,306,  
13 and the other -- how much is the other one?

14 A Twenty-seven --

15 Q Twenty-seven thousand --

16 A -- five hundred and seventy.

17 Q -- five hundred dollars?

18 And that -- this work had already been done,  
19 correct?

20 A Yes, sir.

21 Q Why would the Bohelers agree to pay what amounts to  
22 seventy-some-odd-thousand dollars for work that had  
23 already been done?

24 A They knew it was --

25 MR. COOK: Object to the form. (To the

1 deponent) Go ahead and answer.

2 A They knew it was extra work that was asked. And  
3 when you ask for extra stuff, you -- I would assume  
4 you expect to pay for it.

5 Q It says, "Including all the items that you and  
6 Keith Meyers discussed pursuant to our contract."  
7 What does that mean?

8 A It's what I got.

9 Q Is it possible that Mr. Boheler was agreeing to pay  
10 you the amount of money pursuant to the contract?

11 A I read it a little differently than that. I'm sure  
12 he's going to -- was going to pay me for everything  
13 of the contract plus any other extras.

14 Q But you had already stated that you could've  
15 finished the house as it was for \$85,000. Again,  
16 I'm trying to understand why -- and that -- that  
17 was going to be your understanding when you stepped  
18 into the job. Why, all of a sudden, would you be  
19 seeking all this additional money?

20 A The job that -- there were extras that were added  
21 at the time. There was things that changed  
22 throughout.

23 Q Subsequent to getting --

24 A Misunderstandings, I assume.

25 Q All right. So, "The house," it says, "however must

1 A Yes, sir.

2 MR. KRAWCZYK: (To the court reporter) Let me  
3 go ahead and mark that.

4 Defendants' Exhibit No. 20, Checks and  
5 balances list.

6 Q So you were given a spreadsheet, or something like  
7 that Exhibit Number 20; is that 20?

8 A Yes, sir.

9 Q Okay. And that listed, in the beginning, payments  
10 to John Harding; did it not?

11 A It did.

12 Q Well, even though you were told about those you  
13 didn't take those into account when giving credit  
14 for the amount of money that was paid by the  
15 Bohelers on this job.

16 A No, sir.

17 Q Okay.

18 A Because that money didn't come to me.

19 Q Now, did -- did you have a discussion with the  
20 Bohelers about what John may or may not have done  
21 with that money when you first took over the job?

22 A I really don't remember. We had numerous  
23 discussions.

24 Q Do you recall any statements that you might've made  
25 that you thought John may have used some of that

COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	CIVIL ACTION NO. 2012-CP-36-00090
Terlizzi Home Improvement, LLC,	)	
Plaintiff,	)	
vs.	)	AFFIDAVIT OF JOHN HARDING
Michael L. Boheler, Jeannette A. Boheler, and The Palmetto Bank as Assignee of Midlands Mortgage Corp.,	)	FILED NEWBERRY COUNTY 2012 MAR 6 AM 10 28 JACKIE S. BOWERS CLERK OF COURT
Defendants,	)	
vs.	)	
William Terlizzi,	)	
Third Party Defendant.	)	

PERSONALLY APPEARED BEFORE ME, John Harding, who, being duly sworn, deposes and states the following:

1. I have personal knowledge of the facts and matters stated therein, and all are true to my own personal knowledge except as to the matters described as having been stated upon information and belief, and as to those matters, I believe them to be true.

2. I was the agent/partner for Terlizzi Home Improvement LLC ("THI") involved in all phases of construction of the Home at 365 Blackberry Lane, Pomaria South Carolina (the "Home") which is the subject of the Notice and Certificate of Mechanic's Lien and the Statement of Account and Affidavit in Support of Mechanic's Lien filed September 6, 2011 (collectively referred to as the "Lien") filed by William Terlizzi ("Terlizzi")

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3. Upon information and belief THI is a South Carolina Limited Liability Company which is owned by Terlizzi.

4. Pursuant to my agreement with THI and with the consent of Mr. Terlizzi, I had the authority to and solicited the Bohelers for the job of constructing the Home. Pursuant to my agreement with THI, I would perform the supervision of the construction, hire and fire subcontractors, alter the plans and specifications and have authority over all aspects of the construction of the Home and Terlizzi and I would share in the profits.

5. While soliciting the construction job, I had authority to and worked with the Bohelers in developing construction plans and specifications. I worked out a fixed price and with THI's authority I presented the Bohelers the Contractor Agreement of April 30, 2010 (Agreement) to which Terlizzi had already affixed his signature. During all of this time I was the only contact that the Bohelers had with THI.

6. The Bohelers, paid to me \$22,500 which was the deposit required under the Agreement. That money was used to begin the construction of the home.

7. Before money was available from the bank, the Bohelers paid to me as agent for THI a sum total of \$31,283.00 in checks which were funds paid for the construction of the Home.

8. Before THI was able to make the first draw from the bank, the Bohelers had paid approximately \$32,500 toward the construction of the home. I told Mr. Terlizzi that I had received those payments and were using them for the construction of the home. This was part of my agreement with Mr. Terlizzi as he was not going to contribute any money for the upfront costs to begin construction.

9. I have read the Lien filed by Mr. Terlizzi.

10. The Lien amount is incorrect in that it fails to give credit for the initial money paid by the Bohelers for the construction of the Home which were used by me to construct the home.

11. Both during the initial construction and just prior to the filing of the Lien I told Mr. Terlizzi that those moneys were paid to me and were used to begin construction of the Home and Terlizzi had acquiesced to that arrangement.

12. As the agent of THI, I had the authority to make changes to the construction of the Home as I felt necessary to fulfill the intent of the Contractor Agreement, plans and specifications as well as what I as an agent of THI knew to be included in the \$225,000 fixed price agreement.

13. I understood that any change orders or extras above and beyond the fixed price in the Agreement were to be in writing signed by the Bohelers and either myself or another agent of THI.

14. I have been involved in the entire construction of the Home from the beginning until the end and there have been no change orders signed for any extras or add-ons.

15. In September of 2010, I showed the final house plans for the Boheler residence to Mr. Terlizzi that I intended to construct for the same fixed price of \$225,000. I told him that these were the final plans for the house and he did not object.

16. The items which Mr. Terlizzi included in his lien as "changes in plans" were all included in the September plans I showed him, and which I had agreed to construct for the Bohelers for the fixed price of \$225,000.00.

17. Any changes made to the construction of the Home were done at my request to be completed within the \$225,000 fixed price agreement. To the extent that any extra costs were

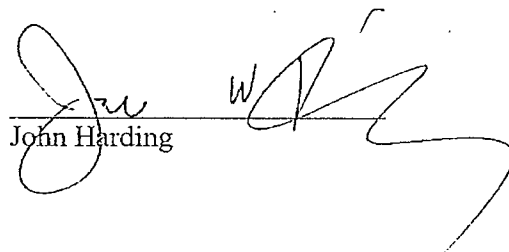
incurred for changes it is not as a result of requests by the Bohelers, and they are not responsible for any additional payments. I told Mr. Terlizzi that this was my position before he filed the Lien.

18. Terlizzi approached me before filing the Lien and asked me to be complicit in what I believed to be an intentionally overstated and fraudulent lien. Mr. Terlizzi wanted for us to "stick together" to file the Lien for this overstated amount because it would effectively put the Bohelers "over a barrel", and they would be forced to negotiate with him because they could not afford to bond off the Lien or hire an attorney.

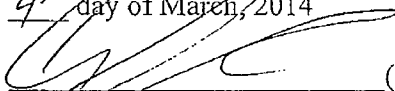
19. I told Mr. Terlizzi that I would not be involved in an action in which an improper lien would be used to foreclose upon the property. I told Mr. Terlizzi that I could not support his plan nor would I participate in something I knew to be wrong.

20. I discussed with Mr. Terlizzi that those things which he intended to and ultimately did include as "extras" and changes in plans on the Lien were incorrect and that I had agreed to construct the house as built for the fixed price of \$225,000.

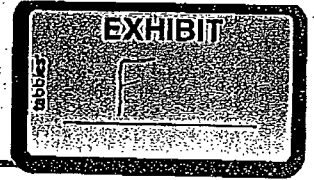
FURTHER AFFIANT SAYETH NOT.

  
John Harding

SWORN TO me this  
4<sup>th</sup> day of March, 2014

  
(seal)

Notary Public for South Carolina  
My Commission Expires: 11/22/2022



Charles Krawczyk

From: Robert Cook <robcook1965@yahoo.com>  
Sent: Thursday, September 15, 2011 12:09 PM  
To: Charles Krawczyk  
Subject: Re: Terlizzi Home Improvement v. Boheler

Charley,

Sounds like our clients have inconsistent and perhaps irreconcilable accounts of the building of this house. I guess that's why we have courts. Look forward to meeting with you at some point and trying this case. Let me know if you have any questions.

**ROBERT M. COOK II**

ATTORNEY AT LAW  
KENNEDY LAW FIRM, LLC  
P.O. BOX 2559  
BATESBURG-LEESVILLE, SOUTH CAROLINA 29070  
803-532-4100

NEWBERRY COUNTY  
2011 MAR 11 AM 10:32  
JACQUE S. BOWERS  
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From: Charles Krawczyk <ckrawczyk@FinkelLaw.com>  
To: Robert Cook <robcook1965@yahoo.com>  
Sent: Wednesday, September 14, 2011 6:55 PM  
Subject: RE: Terlizzi Home Improvement v. Boheler

Robert,

I understand what your client has told you, but as usual there are two sides to every story. If there were not, you and I would have very little business. It was Mr. Terlizzi who quit the job, would not come to the job and would not return calls and told his agents and subs to stop work (and even remove already completed work). He finally indicated that he would not return to the job until he was paid more money despite having agreed to have the job complete by the August 24 closing date (months after the April 30 contract date). Evidently he was angry that some money was withheld from the last draw despite the fact that the Construction Loan agreement says that 10% of the construction contract amount will be withheld by the lender until closing and despite being informed that he had already been paid all but a couple thousand dollars of the contracted amount. He was given the opportunity to complete the job pursuant to the Contract and chose not to perform the remainder of the contract. The meeting at Burger King took place after these facts.

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The facts will show that, Terlizzi was overpaid for the job when many defects and code violations were discovered on the job. The Bohelers were forced to hire a consultant to ensure that Terlizzi would correct those errors, some of that work was paid for at my client's expense. It was only at this point that Mr. Terlizzi took any interest in this home. Prior to that, the job was run by John Harding who was introduced as Mr. Terlizzi's "partner". It was this individual who was the salesman for Terlizzi builders, who did the takeoff, who ordered the plans, who presented the construction contract which was signed by Mr. Terlizzi and who has been involved on the job since the beginning. He was Terlizzi's agent on the job and was paid the \$22,500 deposit by personal checks as indicated in the Contract, a fact of which Mr. Terlizzi was well aware. He was certainly made aware of these payments in April 2011 When Mr. Terlizzi finally took a personal interest in this job. The Bohelers gave Mr. Terlizzi a copy of the accounting with the check numbers and amounts. He has never denied the validity of these payments, in fact the contrary is true. That Mr. Terlizzi should now disclaim these payments and infer that he does not know what they are is inconstant with his previous statements to the Bohelers. My understanding is that there is documented evidence and many witnesses to this effect. If Mr. Terlizzi has issue with those payments he needs to seek recourse against his employee/agent/partner, but they were made and Mr. Terlizzi knew about them.

My understanding is that there is only one set of plans by which this house was constructed. Those plans were ordered from the draftsman for Terlizzi care of Mr. Harding. There have never been any changes to those plans. Even more telling is that there has been no mention of these costs at any time during the construction of the home until now. Again even if the contentions were true they would be change orders subject to the contractual limitations that they must be in writing, and already included in the change orders claim. Otherwise his claim is in equity and so far I have not seen any evidence of any associated costs regarding such alleged changes.

As for change orders there have been none pursuant to the contract. Mr. Terlizzi sprang these changes on the Bohelers. If your client wants to pursue a claim in equity my client may not agree with his contentions or amounts but I understand why they are made. He may have some argument in equity, and that argument may be offset by other issues. That is why I indicated that I expected your client to reduce the lien amount to reflect a more accurate accounting of what he is owed rather than to insist on its removal. If he does that the Bohelers will bond off the lien and the parties can let the courts decide who owes what to whom. But Mr. Terlizzi knows that he is not entitled to \$106,000 on this home and has willfully and intentionally claimed more than he is due. This is in violation of the Mechanics Lien Statute and may subject him to attorneys fees and costs. If he is unwilling to reduce it then so be it. He has been given the opportunity to do so.

Thanks for your reply.

Charley

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From: Robert Cook [mailto:robcook1965@yahoo.com]  
Sent: Wednesday, September 14, 2011 4:37 PM  
To: Charles Krawczyk  
Subject: Re: Terlizzi Home Improvement v. Boheler

Charley,

From: Robert Cook [mailto:robcook1965@yahoo.com]  
Sent: Thursday, January 05, 2012 11:29 AM  
To: Charles Krawczyk  
Subject: Re: Terlizzi Home Improvement v. Boheler

Charley,

I think bonding it off per the statutory procedure would be the safest thing to do, rather than the extra-statutory mechanism we had discussed earlier which would have required outright dismissal of the lien. I don't think there would be any problem with our meeting to discuss the claim/defenses in an effort to resolve this matter. January 19 and 26 look pretty good to me, so let me know. Also, can you confirm that you can accept service of the lien foreclosure suit for the Bohelers? Thanks.

**ROBERT M. COOK II**

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803-532-4100

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From: Charles Krawczyk <ckrawczyk@FinkelLaw.com>  
To: Robert Cook <robcook1965@yahoo.com>  
Sent: Thursday, January 5, 2012 10:46 AM  
Subject: RE: Terlizzi Home Improvement v. Boheler

Robert,

I have not heard from you as to our proposal. The Bohelers will be bonding the lien hopefully as early as next week. As I have stated before, the Bohelers are also curious as to the nature of your client's claims. They are unable to make a fair and reasonable investigation as to the value of your client's claims without some back-up information. Perhaps you and I could sit down and you explain how each claim for extras and change in plans were calculated, show us proof of the costs your client incurred that are associated with the claims (invoices, payments, contracts etc) and how your client believes that the Bohelers agreed to the changes and are responsible for payment of your demand for \$106,000.00. Without that information I am afraid that there is no way to for us to evaluate what may or may not be legitimate claims.