

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2012-CP-02-02382
Appellate Case Tracking No.: 2015-001115

RECEIVED
FEB 22 2016
SC Court of Appeals

Prescott & Sons Construction, LLC, ... Respondent,

v.

Larry Rogers and Michelle Rogers, ... Appellants.

RECORD ON APPEAL

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Attorney for Respondent
Prescott and Sons
Construction, LLC

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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
Prescott and Sons Construction, LLC,
Plaintiff,
v.
Larry Rogers and Michelle Rogers
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2012-CP-02-2382

ORDER DENYING DEFENDANTS'
MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT

WHEREAS Defendants' motion for a judgment notwithstanding the jury verdict for the Plaintiff, entered on January 21, 2015, for the case captioned above, was filed on February 2, 2015 and came before this Court on March 16, 2015. Arguments were made on behalf of the Defendants by James Ervin, Esq., and on behalf of the Plaintiff by Lir Patrick Derieg, Esq.

NOWTHEREFOR, after hearing arguments by both Parties, it is the Order of this Court that Defendants' motion for a judgment notwithstanding the verdict is hereby DENIED.

AND IT IS SO ORDERED.


The Honorable Doyet A. Early, III
Chief Administrative Judge, 2nd Judicial Circuit

March 23^d 2015
Aiken, South Carolina

FILED 3.24.15

Lir Patrick Derieg
9:00
Deputy Clerk

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0282382

Prescott And Sons
Construction LLC

Larry Rogers

Michelle Rogers

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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Circuit Court Judge

Judge Code

3/24/2015
Date

CPFORM4Cm
SCCA SCRPC Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on 3-24-15, and a copy mailed first class or placed in the appropriate attorney's box on 3-24-15, to attorneys of record or to parties (when appearing pro se) as follows:

Lir Patrick Derieg 1924 Barnwell St Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

James McLeod Ervin PO Box 6276 Columbia, SC 29260-6276

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Clerk

Court Reporter

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS
	)	
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
PRESCOTT & SONS CONSTRUCTION, LLC,	)	CASE No.: 2012-CP-02-2382
	)	
Plaintiffs,	)	
	)	
-vs-	)	ORDER DENYING DEFENDANT'S
	)	MOTION FOR NEW TRIAL
LARRY ROGERS AND MICHELLE ROGERS,	)	
	)	
Defendants.	)	

WHEREAS Defendant's motion for a New Trial was made after judgment for Plaintiff was entered on January 21, 2015, for the case captioned above, and came before this court on March 16, 2015 wherein arguments were made on behalf of the Defendants by James Ervin, Esquire, and on behalf of Plaintiff by Lir Derieg, Esquire. Upon examination of the evidence and upon application of South Carolina Jurisprudence, and for reasons set forth below, the court denies Defendant's motion for new trial.

ISSUE

Defendants contend the jury verdict rendered in favor of Plaintiff in the amount of \$18,166.03 was confused, is not absolutely clear what was intended and contrary to the weight of the evidence.

DISCUSSION

A trial judge has the power to grant a new trial. However, this power may be exercised only when the verdict "is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded." *Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 635, 529 S.E.2d 758, 761

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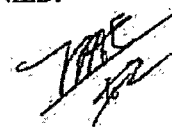
FILED 5-18-15
[Handwritten signature]
 C.C.C.P. & O.S.
[Handwritten signature]
 Deputy Clerk

(2000). A jury's determination of damages is entitled to "substantial deference." *Todd v. Joyner*, 385 S.C. 509, 517, 685 S.E.2d 613, 618 (Ct. App. 2008). *aff'd*, 385 S.C. 421, 685 S.E.2d 595 (2009). The decision to grant or deny a "new trial motion rests within the discretion of the circuit court," *Brinkley v. S.C. Dep't of Corrs.*, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009).

If the trial court determines that the verdict is "merely excessive," the court has the power to reduce the verdict by granting a new trial nisi remittitur. "A motion for a new trial nisi remittitur asks the trial court to reduce the verdict because the verdict is merely excessive." *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006). Even as to a new trial nisi remittitur, the trial judge's discretion is broad. "The denial of a motion for a new trial nisi is within the trial court's discretion and will not be reversed on appeal absent an abuse of discretion." *Id.*; see also *Bailey v. Peacock*, 318 S.C. 13, 14, 455 S.E.2d 690, 691 (1995) ("If an award is merely inadequate or unduly liberal, the trial judge alone has the discretion to grant a new trial nisi additur.").

Turning to the case at bar Defendants state the Jury verdict is contrary to the weight of the evidence. *Daniels v. Bernard*, 270 S.C. 51, 240 S.E.2d 518 (1978). They claim the amount of \$18,166.03 could only have been reached if the jury included the balance of builder's fee, which they deem was expressly and specifically unavailable to Plaintiff by the terms of the contract. Additionally they claim the only other damages asserted were unpaid invoices in an amount no larger than \$5,089.82. Defendants move for a new trial asserting error in the amount of the verdict and for the verdict being excessive by clear and convincing evidence presented at trial.

On the contrary it appears the evidence presented to the jury includes the signed contract stating the Defendants would pay Plaintiff \$25,000.00 in addition to costs of materials and labor. Therefore the award is not excessive given the jury could have awarded more and is therefore upheld. The Defendants motion for a new trial is DENIED.

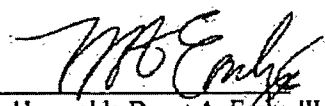
A handwritten signature in black ink, appearing to be "JAC" followed by a flourish.

CONCLUSION

NOWHEREFORE, after hearing arguments and reviewing evidence by both parties, and after applying applicable South Carolina jurisprudence, it is the Order of this Court that Defendant's motion for a new trial is DENIED and the jury verdict for Plaintiff is confirmed.

Aiken, SC

May 12, 2015


The Honorable Doyel A. Early, III
Circuit Court Judge for the
Second Judicial Circuit October

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0202382**

**Prescott And Sons
Construction Llc**

Larry Rogers

Michelle Rogers

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
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☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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Circuit Court Judge

Judge Code

5/18/2015

Date

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

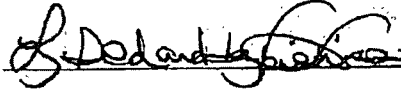
This judgment was entered on May 18, 2015, and a copy mailed first class or placed in the appropriate attorney's box on May 18, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Lir Patrick Derieg 1924 Barnwell St Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

James McLeod Ervin PO Box 6276 Columbia, SC 29260-6276

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED 29 April 2015
J.C.C.P. & G.S.
9:45am

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Prescott and Sons Construction, LLC,

Plaintiff,

v:

Larry Rogers and Michelle Rogers

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL
CIRCUIT

Case No. 2012-CP-02-2382

ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES
AND COSTS

WHEREAS Plaintiff's motion for attorney's fees and costs was made after a judgment for Plaintiff was entered on January 21, 2015, for the case captioned above, and came before this Court on March 16, 2015, arguments were made on behalf of the Defendants by James Ervin, Esq., and on behalf of the Plaintiff by Lir Patrick Derieg, Esq. Upon an examination of the evidence and an application of South Carolina jurisprudence, and for the reasons set forth below, the court awards Plaintiff an award of attorney's fees in the amount of \$10,469.13.

ISSUE

Defendants contend that because Plaintiff failed to introduce evidence to the jury of attorney's fees and costs, Plaintiff has waived the right to receive such fees and costs, and therefore that this court should deny Plaintiff's motion. This court disagrees.

DISCUSSION

The general rule in the State of South Carolina is that attorney's fees are not recoverable unless authorized by contract or by statute. *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989); *Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 243 S.E.2d 443 (1978); *Collins v. Collins*, 239 S.C. 170, 122 S.E.2d 1 (1961). When there is a contract, the award of attorney's fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown. *Baron, supra*.

There is no dispute of fact that the contract (herein after "Contract") which

DAE
H

governed this Breach of Contract case provided, in Paragraph 17, that attorney's fees be awarded to the prevailing Party in the event that either Party is held to have breached the Contract. Nor is there a dispute that Defendants were held to have breached the Contract. This dispute, rather, centers on whether Plaintiff waived the recovery of attorney's fees by making a post-trial motion for such fees, rather than present evidence of attorney's fees to the jury during the trial phase of this case.

An examination of South Carolina case law reveals a South Carolina Supreme Court decision directly on point with the issue presented, specifically, *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d ⁶⁵⁹ 492 (1993). In *Blumberg*, Blumberg and Nealco executed a lease, in September 1987, which provided for attorney's fees if Nealco failed to comply with its terms. In August 1988, Blumberg filed a complaint seeking monetary damages for past and future rent and an award attorney's fees. The trial court awarded Blumberg past due rent and reasonable attorney's fees. Nealco appealed, among other things, the award of the attorney's fee. *Id* at 660.

"The Court of Appeals reversed and remanded for reconsideration both the award of damages and attorneys' fees. Nealco moved for a rehearing on the issue of remanding the award of attorney's fees claiming that Blumberg had failed to establish any attorney's fees and should not be permitted to "reopen" the record and introduce evidence on remand. The Court of Appeals modified its holding and reversed the award of attorney's fees and remanded for reconsideration only the award of damages. Blumberg then appealed the Court of Appeals' failure to remand the issue of attorney's fees." *Id*.

The Court went on to discuss that when an award of attorney's fees is requested and such request is supported by contract or by statute, the trial court should make specific findings of fact on the record for each of the six of the *Collins* factors. *Id*. Ultimately, the Court modified the holding of the Court of Appeals and remanded the issue of attorney's fees to the trial court to make specific findings of fact in regards to the *Collins* factors. *Id* at 661.

In its discussion, the *Blumberg* Court specifically addressed the question of whether an award of attorney's fees was waived by Blumberg offering no proof of

attorney's fees at trial. The Court specifically disagreed with Nealco, and held that a waiver of attorney's fees did not occur when evidence as to attorney's fees was presented to the trial judge, at the conclusion of the trial, rather than to the jury during trial. *Id* at 660.

Turning to the case at Bar, Plaintiff, like in *Blumberg*, waited until after the jury awarded a judgment in its favor to move for an award of attorney's fees. At the hearing on March 16, 2015, Plaintiff offered evidence to this court to document the fees requested. Given the precedent set forth in *Blumberg*, this court finds that Plaintiff did not waive its right for an award of attorney's fees by offering evidence at a post-trial motion instead of at trial, and that this court must make specific findings as to each *Collins* factor.

There are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. *Collins, supra*.

In applying the *Collins* factors to this case and the evidence presented to the court by Plaintiff, this court finds that:

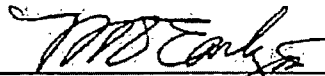
1. The nature, extent, and difficulty of the legal services rendered in this case are reasonably related to the amount of the attorney's fee requested;
2. The time and labor devoted to this case are reasonably related to the amount of the attorney's fee requested;
3. Plaintiff's counsel of record and Defendants' counsel of record are both in good professional standing, and this case was ably handled on both sides;
4. The attorney's fee requested was not contingent upon the outcome of this case. Plaintiff incurred its attorney's fee regardless of the outcome at mediation or at trial;

5. The fees charged, and now requested, are in accordance with fees customarily charged in this locality for similar services. In fact, Defendants' attorney's fee, as presented to the court by Defendants' counsel, was actually greater than the Plaintiff's attorney's fee; and
6. Beneficial results were clearly obtained on Plaintiff's behalf in the form of a jury verdict in favor of Plaintiff.

CONCLUSION

NOWTHEREFORE, after hearing arguments and receiving evidence by both Parties, and after applying the six factors set forth in *Collins*, it is the Order of this court that Plaintiff's motion for attorney fees and costs is hereby **GRANTED in the amount of \$10,469.13.**

AND IT IS SO ORDERED.



The Honorable Doyet A. Early, III
Chief Administrative Judge, 2nd Judicial Circuit

April 7, 2015
Aiken, South Carolina

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0202382**

**Prescott And Sons
Construction Llc**

Larry Rogers

Michelle Rogers

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

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Circuit Court Judge

Judge Code

4/29/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on 29 April, 2015, and a copy mailed first class or placed in the appropriate attorney's box on 29 April, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Lir Patrick Derieg 1924 Barnwell St Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

James McLeod Ervin PO Box 6276 Columbia, SC 29260-6276

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Opal Bracco/De
Liz Godard - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

PRESCOTT AND SONS
CONSTRUCTION, LLC)

Plaintiff(s),)

v.)

LARRY ROGERS AND
MICHELLE ROGERS,)

Defendant(s).)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Civil Action No. 2012-CP-02-02382

VERDICT

[Signature]
Deputy Clerk

✓ We find for the Plaintiff, PRESCOTT AND SONS CONSTRUCTION, LLC in the
amount of \$ 18,166.23 damages

 We find for the Defendants', LARRY ROGERS AND MICHELLE ROGERS in the
amount of \$ actual damages

-OR-

 We find that the contract was not breached by either the Plaintiff or the Defendant
and therefore no damages are awarded.

WE UNANIMOUSLY AGREE.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this
21 day of January 2015
C.C.P. & G.S., Aiken County, S.C.
Deputy Clerk

[Signature]
Foreperson

January 21, 2015

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0202382

Prescott And Sons
Construction Llc

Larry Rogers

Michelle Rogers

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

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Circuit Court Judge

Judge Code

1/21/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on 21st day of January, 2015, and a copy mailed first class or placed in the appropriate attorney's box on 21st day of January, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Lir Patrick Derieg 1924 Barnwell St Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

James McLeod Ervin PO Box 6276 Columbia, SC 29260-6276

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Shannon Jones
Liz Godard - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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DERIEG LAW FIRM, LLC



Physical Address:
1924 Barnwell St
Columbia, SC 29201
Office: (803) 658-0298
Fax: (803) 244-8630

Attorney Lir Patrick Derieg

Mailing Address:
PO Box 5479
Columbia, SC 29250
Mobile: (803) 206-3140
Lir@DeriegLaw.com

September 19, 2012

VIA PERSONAL SERVICE

Michelle Rogers
28 Plantation Court
North Augusta, SC 29841

Re: Prescott & Sons Construction, LLC v. Larry Rogers and Michelle Rogers

Dear Mrs. Rogers,

Herewith enclosed and served upon you is a Summons for Relief and Verified Complaint, both of which have been filed with the Aiken Clerk of Court in conjunction with the above referenced matter.

Please accept my kindest regards..

Sincerely,

A handwritten signature in black ink, appearing to read "L. P. Derieg".

Lir P. Derieg

Enclosures (as stated)

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

PRESCOTT AND SONS CONSTRUCTION, LLC

Plaintiff(s)

vs.

LARRY ROGERS AND MICHELLE ROGERS

Defendant(s)

Submitted By: LIR P. DERIEG

Address: 1924 BARNWELL STREET
COLUMBIA, SC, 29201

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012 -CP-02-22382

SC Bar #: 76135

Telephone #: 803-658-0298

Fax #: 803-244-8630

Other: 803-206-3140

E-mail: LIR@DERIEGLAW.COM

NOTE: The coversheet 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 coversheet 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)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	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) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (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: L.P.D.

Date: 9/19/12

Note: Frivolous civil proceedings may be subject to sanctions pursuant to 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, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, 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 AIKEN)
PRESCOTT AND SONS)
CONSTRUCTION, LLC)

Plaintiff(s),)

v.)

LARRY ROGERS AND)
MICHELLE ROGERS,)

Defendant(s).)

IN THE COURT OF COMMON PLEAS

2012CP0202382
CIVIL ACTION NO:

SUMMONS

(BREACH OF CONTRACT)

(JURY TRIAL)

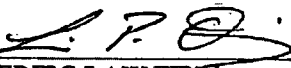
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TO THE DEFENDANT ABOVE-NAMED:

AIKEN COUNTY
CLERK OF COURT

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber at his office at 1924 Barnwell Street, Columbia, South Carolina 29201 within thirty days after the service hereof, exclusive of the day of such service; and, if you fail to appear and defend by filing an answer to the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.


DERIEG LAW FIRM

By: Lir Patrick Derieg
1924 Barnwell Street
Columbia, South Carolina
803-206-3140

Attorney for Plaintiff

Columbia, South Carolina
September 19, 2012.

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for Plaintiff's services, Defendants were to pay Plaintiff a percentage of the estimated total cost of the job, which was two hundred thousand dollars (\$200,000).

7. On or about May 1, 2012, Defendants informed Plaintiff that Defendants would not be able to pay the agreed upon percentage. Plaintiff agreed to take a flat consultation fee of twenty-five thousand dollars (\$25,000), to be paid in five (5) monthly installments of five thousand dollars (\$5,000) each, in lieu of the previously agreed upon percentage. Defendants also agreed to reimburse Plaintiff for all costs and expenses associated with the construction of the Residence on the Lot, again estimated at two hundred thousand dollars (\$200,000). Plaintiff and Defendants memorialized this new agreement in a second written construction and consultation agreement (hereinafter styled "Agreement"), dated May 1, 2012.

8. On or about May 15, 2012, Plaintiff began construction of the Residence on the Lot.

9. Shortly thereafter, Defendants demanded that Plaintiff include a walk-out basement in the plans of the Residence, which was never previously discussed or agreed to by Plaintiff and Defendants, but refused to agree to an increase of Plaintiff's consultation fee. Defendants would only agree to pay for the purchase of any additional materials and for the fees of any subcontractors hired by Plaintiff to complete the walk-out basement.

10. Plaintiff declined to agree to Defendants' demands for a walk-out basement without an increase to Plaintiff's consultation fee, and notified Defendants that a new written agreement between Plaintiff and Defendants would need to be entered into before it would direct the construction of the walk-out basement.

11. Because Plaintiff refused to accept the Defendants' demands for a walk-out basement without an increase of Plaintiff's consultation fee and without a new written agreement, Defendants informed Plaintiff that it could no longer oversee the construction of the Residence on the Lot.

FIRST CAUSE OF ACTION:
(Breach of Contract)

12. The Plaintiff hereby incorporates by reference all allegations previously set forth herein.

13. Upon information and belief, Plaintiff contends that Defendants are in violation of a properly executed contract.

14. Article 2 of the Agreement defines, in part, the work to be done by the Builder (Plaintiff) as "Builder shall procure *for Buyers [Defendants]*, as part of Builder's work, *at Buyers' expense*, all labor, materials, taxes, equipment, tools, construction equipment and machinery, utilities, transportation and other facilities and services, whether temporary or permanent, necessary for the proper execution and completion of the Residence (the "Work") as included in and specifically limited to the items, services, and materials listed on Exhibit B attached hereto..."(emphasis added).

15. In performance of its obligations under Article 2 of the Agreement, Plaintiff hired subcontractor "Crazy Joe's Containers" and paid invoices of three hundred nine dollars and thirty-eight cents (\$309.38), three hundred fifty-four dollars and twenty-three cents (\$354.23), and two hundred ninety-one dollars and thirty-five cents (\$291.35) to said subcontractor for its services during construction of the Residence.

16. In performance of its obligations under Article 2 of the Agreement, Plaintiff hired subcontractor "Cornerstone Concrete" and paid an invoice of one hundred seventy-seven dollars and eighty-eight cents (\$177.88) to said subcontractor for its services during construction of the Residence.

17. In performance of its obligations under Article 2 of the Agreement, Plaintiff hired subcontractor "Ruvalcubu's Masonry" and paid an invoice of five hundred dollars (\$500) to said subcontractor for its services during construction of the Residence.

18. In performance of its obligations under Article 2 of the Agreement, Plaintiff hired subcontractor "Hutto Roofing" and paid an invoice of three thousand dollars (\$3,000) to said subcontractor for its services during construction of the Residence.

19. In performance of its obligations under Article 2 of the Agreement, Plaintiff hired subcontractor "Barrett Windows and Doors" and paid an invoice of three hundred sixty-seven dollars and sixty-eight cents (\$367.68) to said subcontractor for its services during construction of the Residence.

20. In performance of its obligations under Article 2 of the Agreement, Plaintiff hired subcontractor "Portable Services" and paid an invoice of eighty-nine dollars and thirty cents (\$89.30) to said subcontractor for its services during construction of the Residence.

21. Defendants have failed to offer payment for the work completed, have failed to give adequate reasoning as to why they have refused to pay, have failed to identify any legitimate problems with the completed work, and have in "bad faith" refused to pay for the subcontractors hired by Plaintiff on Defendants' behalf.

22. Plaintiff has lost substantial time in furtherance of the execution of this contract, has accumulated substantial expense, and has not yet been compensated for his time, expense and skill despite the fact that the Plaintiff agreed to pay for this time, expense and skill and has benefitted from said time, expense and skill.

23. Plaintiff believes it is entitled to repayment of eight thousand, four hundred dollars and eighty-two cents (\$8,400.82) from Defendant based on Plaintiff's performance and Defendants' obligations under Article 2 of the Agreement, as well as all costs incurred in pursuing this action, including a reasonable attorneys' fee, pursuant to Article 17 of the Agreement.

SECOND CAUSE OF ACTION:
(Breach of Contract)

24. The Plaintiff hereby incorporates by reference all allegations previously set forth herein.

25. Article 6 of the Agreement defines the "Buyers' [Defendants'] Services," in part, as "Buyer shall provide or cause to be provided, *at its sole expense*, the following services and materials for completion of the Residence in a timely manner....(b) Prompt payment of submitted invoices for all of this Work and all costs, fees, and expenses related to the Residence upon the completion of the Work and at time of closing" (emphasis added).

26. All invoices listed in Paragraphs 15 through 20 have been submitted by Plaintiff to Defendants for prompt payment

27. Defendants have failed to offer payment for the work completed, have failed to give adequate reasoning as to why they have refused to pay, have failed to identify any legitimate problems with the completed work, and have in "bad faith" refused to pay for the subcontractors hired by Plaintiff on Defendants' behalf.

28. Plaintiff has lost substantial time in furtherance of the execution of this contract, has accumulated substantial expense, and has not yet been compensated for his time, expense and skill despite the fact that the Plaintiff agreed to pay for this time, expense and skill and has benefitted from said time, expense and skill.

29. Plaintiff believes it is entitled to repayment of eight thousand, four hundred dollars and eighty-two cents (\$8,400.82) from Defendant based on Plaintiff's performance and Defendants' obligations under Article 6 of the Agreement, as well as all costs incurred in pursuing this action, including a reasonable attorneys' fee, pursuant to Article 17 of the Agreement.

THIRD CAUSE OF ACTION:
(Breach of Contract Accompanied by Fraudulent Act)

30. The Plaintiff hereby incorporates by reference all allegations previously set forth herein.

31. Article 7 of the Agreement states that "Buyers agree that direction and supervision of construction personnel, including material suppliers and subcontractors, rests exclusively with Builder and its duly designated agent, and Buyers agree not to issue any instructions or to otherwise interfere with same. During construction of the Residence, Buyers agree not to negotiate with Builder's subcontractors for additional work, nor to engage another subcontractor or other subcontractors except with Builder's prior written consent, and then only in such a manner as will not interfere with the completion of the Work under the supervision of Builder."

32. On one or more occasions since Defendants discontinued use of Plaintiff's services, Defendants have acted in "bad faith" by willfully and wantonly disregarding their obligations under Article 7 of the Agreement in that they contacted one or more of the subcontractors hired by

Plaintiff for construction of the Residence in an effort to get said subcontractors to complete work on the Residence without the supervision, or payment, of Plaintiff.

33. Defendants have only paid to Plaintiff ten thousand dollars (\$10,000) of the agreed upon twenty-five thousand dollar (\$25,000) consultation fee.

34. Plaintiff believes it is entitled to payment of fifteen thousand dollars (\$15,000) from Defendant based on Plaintiff's performance and Defendants' obligations under the Agreement, as well as all costs incurred in pursuing this action, including a reasonable attorneys' fee, pursuant to Article 17 of the Agreement.

35. Plaintiff believes it is entitled to repayment of eight thousand, four hundred dollars and eighty-two cents (\$8,400.82) from Defendant based on Plaintiff's performance and Defendants' obligations under the Agreement, as well as all costs incurred in pursuing this action, including a reasonable attorneys' fee, pursuant to Article 17 of the Agreement.

36. Plaintiff believes it is entitled to an award for all costs incurred in pursuing this action, including a reasonable attorneys' fee, and an award for punitive damages due to Defendants' willful and wanton disregard of its obligations and Plaintiff's rights under Article 7 of the Agreement.

FOURTH CAUSE OF ACTION:
(Breach of Contract)

37. The Plaintiff hereby incorporates by reference all allegations previously set forth herein.

38. Article 8 of the Agreement states that "Buyers shall pay all costs of the Work, estimated by Buyers and Builder to be \$200,000, and a fee to the Builder (the "Builder's Consultation Fee") of \$25,000 payable as \$5,000 per month for (5) months as estimated by the builder."

39. Defendants properly made the first two (2) payments of five thousand dollars (\$5,000), however they did not make the final three (3) payments as agreed upon in Article 8 of the Agreement.

40. Defendants still owe Plaintiff fifteen thousand dollars (\$15,000) in unpaid construction consultation fees.

41. Plaintiff believes it is entitled to payment of fifteen thousand dollars (\$15,000) from Defendant based on Plaintiff's performance and Defendants' obligations under Article 8 of the Agreement, as well as all costs incurred in pursuing this action, including a reasonable attorneys' fee, pursuant to Article 17 of the Agreement.

FIFTH CAUSE OF ACTION:
(Quantum Meruit / Unjust Enrichment)

42. The Plaintiff hereby incorporates by reference all allegations previously set forth herein.

43. If the Court finds that the Plaintiff is in breach of the Agreement, or if the Court finds there to be no enforceable agreement at all, Plaintiff believes it is still entitled to reimbursement of expenses incurred and compensation for services rendered in the construction of the Defendants' residence.

44. Plaintiff has conferred upon Defendants the benefits of substantial time in furtherance of the construction of Defendants' residence, and accumulation of substantial expense in the form of hiring and paying subcontractors for materials and labor, and yet has not been fully compensated for its time, expense and skill.

45. Plaintiff believes Defendant has been "unjustly enriched" by the use of the Plaintiff's unique skills and resources without compensating the Plaintiff for these skills or resources, and that the conditions outlined above are such that retention of the aforementioned benefits would be unjust.

46. Plaintiff believes it is entitled to payment of fifteen thousand dollars (\$15,000) from Defendants based on Plaintiff's services conferred upon Defendants, without full compensation, in the construction of Defendants' residence, as well as all costs incurred in pursuing this action, including a reasonable attorneys' fee.

47. Plaintiff believes it is entitled to repayment of eight thousand, four hundred dollars and eighty-two cents (\$8,400.82) from Defendant based on Plaintiff's costs incurred during the construction of Defendants' residence, as well as all costs incurred in pursuing this action, including a reasonable attorneys' fee.

WHEREFORE, the Plaintiff prays for the following:

As to the first cause of action:

- (a) A judgment against the Defendants in an amount sufficient to compensate it for its injuries and damages as described above, in an amount equal to not less than eight thousand, four hundred dollars and eighty-two cents (\$8,400.82);
- (b) An award to Plaintiffs of all costs, including a reasonable attorneys' fee, associated with this action and are described by Article 17 of the Agreement; and
- (c) Any other such other relief as the court may deem just and proper.

As to the second cause of action:

- (a) A judgment against the Defendants in an amount sufficient to compensate it for its injuries and damages as described above, in an amount equal to not less than eight thousand, four hundred dollars and eighty-two cents (\$8,400.82);
- (b) An award to Plaintiffs of all costs, including a reasonable attorneys' fee, associated with this action and are described by Article 17 of the Agreement; and
- (c) Any other such other relief as the court may deem just and proper.

As to the third cause of action:

- (a) A judgment against the Defendants in an amount sufficient to compensate it for its injuries and damages as described above, in an amount equal to not less than eight thousand, four hundred dollars and eighty-two cents (\$8,400.82);
- (b) A judgment against the Defendants in an amount sufficient to compensate it for services rendered as described above, in an amount equal to not less than fifteen thousand dollars (\$15,000);
- (c) A judgment against the Defendants for an amount of punitive damages as authorized by law;
- (d) An award to Plaintiffs of all costs, including a reasonable attorneys' fee, associated with this action and are described by Article 17 of the Agreement; and

(e) Any other such other relief as the court may deem just and proper.

As to the fourth cause of action:

(a) A judgment against the Defendants in an amount sufficient to compensate it for services rendered as described above, in an amount equal to not less than fifteen thousand dollars (\$15,000);

(b) An award to Plaintiffs of all costs, including a reasonable attorneys' fee, associated with this action and are described by Article 17 of the Agreement; and

(c) Any other such other relief as the court may deem just and proper.

As to the fifth cause of action:

(a) A judgment against the Defendants in an amount sufficient to compensate it for its injuries and damages as described above, in an amount equal to not less than eight thousand, four hundred dollars and eighty-two cents (\$8,400.82);

(b) A judgment against the Defendants in an amount sufficient to compensate it for services rendered as described above, in an amount equal to not less than fifteen thousand dollars (\$15,000);

(c) An award to Plaintiffs of all costs, including a reasonable attorneys' fee, associated with this action; and

(d) Any other such other relief as the court may deem just and proper.

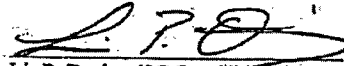
(Attorneys' Signature Block on Following Page)

Respectfully Submitted,

LAW OFFICES OF
CHRISTOPHER CORLEY, P.C.



Christopher A. Corley
436 Greene Street
Augusta, GA 30901
Telephone (706) 925-3686
Facsimile: (706) 724-9633
Attorneys for the Plaintiff



Lir P. Derieg (SC Bar #76135)
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1924 Barnwell Street
Columbia, SC 29201
Telephone: (803) 206-3140
Facsimile: (803) 244-8630
Attorneys for the Plaintiff

September 19, 2012
Aiken County, South Carolina

) IN THE COURT OF COMMON PLEAS

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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

PRESCOTT & SONS
CONSTRUCTION, LLC,

Plaintiff,

v.

LARRY ROGERS AND MICHELLE
ROGERS,
Defendants.

IN THE COURT OF COMMON PLEAS
OF THE SECOND JUDICIAL CIRCUIT

C/A NO.: 2012-CP-02-2382

**DEFENDANT LARRY ROGERS AND
MICHELLE ROGERS' ANSWER AND
COUNTERCLAIMS
(Jury Trial Demanded)**

COMES NOW, Defendant Larry Rogers and Michelle Rogers ("Defendants"), and files Defendant Larry Rogers and Michelle Rogers' Answer and Counterclaims to the Complaint of Plaintiff Prescott & Sons Construction, LLC ("Prescott"). Any allegations made in the Complaint not hereinafter specifically or expressly admitted or admitted with qualifications are hereby denied. Defendants state as follows:

**GENERAL ALLEGATIONS INCORPORATED INTO
ALL DEFENSES AND COUNTERCLAIMS**

1. At all times relevant to this action, Prescott provided general contractor coordination services to Defendants in connection with the construction of a residential dwelling located at 28 Plantation Court, North Augusta, SC ("Residence").

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OCT 26 2012
AIKEN COUNTY
CLERK OF COURT

2. The terms and conditions of the services to be provided by Prescott were memorialized by that writing attached hereto as Exhibit A, and incorporated herein by reference ("Construction Contract").

3. Prescott performed its work in a deficient manner and Defendants have been damaged in an amount to be determined at trial.

FIRST AFFIRMATIVE DEFENSE

(Failure to State Claim Upon Which Relief Can Be Granted)

4. All allegations contained in this pleading are incorporated herein by reference.

5. Defendants were not in breach of any contract with Prescott.

SECOND AFFIRMATIVE DEFENSE

(Mitigation of Damages)

6. All allegations contained in this pleading are incorporated herein by reference.

7. The debt complained of and any allegations contained herein concerning Defendants alleged breach of contract should be offset by Defendants duty to mitigate its damages.

THIRD AFFIRMATIVE DEFENSE

(Waiver)

8. All allegations contained in this pleading are incorporated herein by reference.

9. Prescott has waived its right, if any, to the relief requested in the Complaint by failing to complete the contract in accordance with the agreement of the parties and failing to demand strict compliance with the Construction Contract.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

10. All allegations contained in this pleading are incorporated herein by reference.

11. The Plaintiff is estopped to assert the relief requested in the complaint in that the Plaintiff has failed to complete the contract in accordance with the agreement of the parties.

FIFTH AFFIRMATIVE DEFENSE
(Offset)

12. The Plaintiff abandoned the contract forcing the Defendants, to incur expenses above the amount of any sums that the Plaintiff might otherwise be entitled to recover.

SIXTH DEFENSE -
ANSWER TO INDIVIDUAL ALLEGATIONS OF
PRESCOTT'S COMPLAINT

13. All allegations contained in this pleading are incorporated herein by reference.

14. Upon information and belief, Defendants admit the allegations contained in paragraph number 1.

15. Defendants deny the allegations contained in paragraph number 2 only to the extent it alleges Plaintiff is a corporation. By way of further response, Defendants state Plaintiff is a limited liability company.

16. Defendants admit the allegations contained in paragraphs number 3 and 4.

17. Defendants admit the allegations contained in paragraph number 5 of the Complaint.

18. Defendants admit the allegations contained in paragraph number 6 insofar as it alleges an initial contract was formed between Defendants and Prescott that provided Prescott would provide his construction coordination services on a cost plus basis.

19. Defendants deny the allegations contained in paragraph number 7 to the extent it alleges Defendants stated they would not be able to pay the construction contract on a cost plus basis. By way of further response, Defendants requested a construction agreement that reflected a fixed monthly coordination services fee in lieu of a cost plus construction contract. Defendants deny the allegations contained in paragraph number 7 to the extent it alleges that Prescott would be paid a flat fee of \$25,000 under the terms of the Construction Contract. By way of further response, the Construction Contract provides Prescott would be paid \$5,000 per month for the first 5 months it provided construction coordination services in connection with the project and would be paid \$2,500 per month thereafter until the project was completed. With regard to the remaining allegations contained in paragraph number 7, Defendants state the writing signed by the parties attached hereto as Exhibit A speaks for itself.

20. Defendants admit the allegations contained in paragraph number 8 of the Complaint.

21. Defendants deny the allegations contained in paragraph number 9 of the complaint insofar as it alleges Defendants demanded that Prescott include a walk-out basement in the plans of the Residence and that a walk-out basement had never been previously discussed or agreed to by Prescott and Defendants. By way of further response, Defendants state that at all times relevant to this action, a walk-out basement was contemplated by the parties as being included in the original scope of work for the project. Defendants admit the allegations contained in paragraph number 9 insofar as it alleges Defendants refused to agree to alter the terms of the Construction Contract and pay Prescott a

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higher consultation fee. Defendants admit the allegations contained in the second sentence of paragraph number 9 insofar as it alleges that Defendants demanded strict compliance with the terms of the Construction Contract concerning Changes in Scope (as defined in the Construction Contract) of work.

22. Defendants admit the allegations contained in paragraph number 10 only insofar as it alleges Prescott breached the Construction Contract by failing to honor the terms of the Construction Contract relative to Changes in Scope of work.

23. Defendants admit the allegations contained in paragraph number 11 only insofar as it alleges Prescott breached the terms of the Construction Contract concerning Changes in Scope. By way of further response, Defendants were under no obligation to agree to modify the terms of the Construction Contract. Defendants deny the allegations contained in paragraph number 11 to the extent it alleges Defendants informed Plaintiff could no longer oversee the construction of the Residence. By way of further response, Prescott walked off the job when Defendants would not agree to alter the terms of the Construction Contract.

24. In response to paragraph number 12, all allegations contained in this pleading are incorporated herein by reference.

25. Defendants deny the allegations contained in paragraph number 13.

26. In response to paragraph number 14, Defendants state the Construction Contract speaks for itself and no response is required. To the extent the Court deems otherwise, Defendants deny the allegations contained in said paragraph.

27. Defendants are without knowledge sufficient to form a belief of the allegations contained in paragraph number 15 and, as such, must deny the allegations contained in said paragraph.

28. Defendants are without knowledge sufficient to form a belief of the allegations contained in paragraph number 16 and, as such, must deny the allegations contained in said paragraph.

29. Defendants are without knowledge sufficient to form a belief of the allegations contained in paragraph number 17 and, as such, must deny the allegations contained in said paragraph.

30. Defendants are without knowledge sufficient to form a belief of the allegations contained in paragraph number 18 and, as such, must deny the allegations contained in said paragraph.

31. Defendants are without knowledge sufficient to form a belief of the allegations contained in paragraph number 19 and, as such, must deny the allegations contained in said paragraph.

32. Defendants are without knowledge sufficient to form a belief of the allegations contained in paragraph number 20 and, as such, must deny the allegations contained in said paragraph.

33. In response to the allegations contained in paragraph 21, Defendants state Prescott never provided copies of the invoices referenced in paragraphs 15 through 20 for payment as required under the Construction Contract. Defendants deny the remaining allegations in paragraph 21.

34. Defendants deny the allegations contained in paragraph 22.

35. Defendants deny the allegations contained in paragraph 23.

36. In response to paragraph number 24, all allegations contained in this pleading are incorporated herein by reference.

37. In response to paragraph number 25, Defendants state the Construction Contract speaks for itself and no response is required. To the extent the Court deems otherwise, Defendants deny the allegations contained in said paragraph.

38. Defendants deny the allegations contained in paragraph number 26. By way of further response, Defendants did not receive the invoices referenced in said paragraph until it received a letter from Prescott's attorney claiming payment was due.

39. In response to the allegations contained in paragraph 27, Defendants state Prescott never provided copies of the invoices referenced in paragraphs 15 through 20 for payment as required under the Construction Contract. Defendants deny the remaining allegations in paragraph 27.

40. Defendants deny the allegations contained in paragraph 28.

41. Defendants deny the allegations contained in paragraph 29.

42. In response to paragraph number 30, all allegations contained in this pleading are incorporated herein by reference.

43. In response to paragraph number 31, Defendants state the Construction Contract speaks for itself and no response is required. To the extent the Court deems otherwise, Defendants deny the allegations contained in said paragraph.

44. Defendants deny the allegations contained in paragraph number 32.

45. Defendants admit the allegations contained in paragraph number 33 only insofar as it alleges Defendants paid Prescott \$10,000.00.

46. Defendants deny the allegations contained in paragraph number 34.

47. Defendants deny the allegations contained in paragraph number 35.

48. Defendants deny the allegations contained in paragraph number 36.

49. In response to paragraph number 37, all allegations contained in this pleading are incorporated herein by reference.

50. In response to paragraph number 38, Defendants state the Construction Contract speaks for itself and no response is required. To the extent the Court deems otherwise, Defendants deny the allegations contained in said paragraph.

51. Defendants admit the allegations contained in paragraph number 39 only insofar as it alleges Defendants paid Prescott \$10,000.00. By way of further response, before completing its obligations under the Construction Contract, Prescott pulled off the job in or around July, 2012 and, as such, is not entitled to any further payments from Defendants.

52. Defendants deny the allegations contained in paragraph number 40.

53. Defendants deny the allegations contained in paragraph number 41.

54. In response to paragraph number 42, all allegations contained in this pleading are incorporated herein by reference.

55. Defendants deny the allegations contained in paragraph number 43.

56. Defendants deny the allegations contained in paragraph number 44.

57. Defendants deny the allegations contained in paragraph number 45.

58. Defendants deny the allegations contained in paragraph number 46.

59. Defendants deny the allegations contained in paragraph number 47.

SEVENTH DEFENSE BY WAY OF FIRST COUNTERCLAIM

(Slander of Title)

60. All allegations contained in this pleading are incorporated herein by reference.

61. Prescott filed the mechanic's lien against the property that is attached hereto as Exhibit "B".

62. Prescott claims a mechanic's lien for its lost profits under the Construction Contract and also for amounts allegedly owed to other subcontractors but has no legal justification for asserting its mechanic's lien for these amounts.

63. As a result of the filing of its Mechanic's Lien, Defendants are prevented from closing its construction loan with Regions Bank and, as such, have been unable to complete the construction of the Residence due to Prescott's wrongfully filed lien.

64. Defendants are entitled to an award of actual and punitive damages in an amount to be determined at trial together with attorneys' fees.

EIGHTH DEFENSE AND BY WAY OF SECOND COUNTERCLAIM
(Wrongfully Filed/Frivolous Lien – S.C. Code Sections 29-5-100 and 29-5-15)

65. All allegations contained in this pleading are incorporated herein by reference.

66. Prescott has willfully and knowingly claimed more than is their due and, as such, its Complaint should be dismissed.

67. Defendants are entitled to an award of damages for violation of S.C. Code Section 29-5-15 in the amount of \$5,000.00.

NINTH DEFENSE BY WAY OF THIRD COUNTERCLAIM
(Breach of Contract)

68. All allegations contained in this pleading are incorporated herein by reference.

69. Prescott abandoned the job prior to completion when Defendants required Prescott to strictly comply with the Construction Contract.

70. Prescott failed to complete its contractual obligations to the Defendants and the work was performed in a deficient manner.

71. Prescott's breach and subsequent filing of a Mechanic's Lien prevented Defendants from closing its Construction Loan and prevented the ultimate completion of the project.

72. As a result of Prescott's breaches of contract, Defendants have incurred and will incur in the future expenses and damages in an amount to be determined by the jury at trial.

73. As a result of such breach, Defendants has been damaged in an amount to be determined at trial.

TENTH DEFENSE BY WAY OF FOURTH COUNTERCLAIM
(Attorneys' Fees)

74. Defendants incorporate all allegations contained herein as if fully rewritten herein.

75. Defendants allege the debt claimed by Prescott in its Mechanic's Lien bears no relation to the value of materials actually used and furnished for the erection and/or alteration of the Residence.

ELEVENTH DEFENSE BY WAY OF FIFTH COUNTERCLAIM
(Expense of Litigation)

76. All allegations contained in this pleading are incorporated herein by reference.

77. Prescott has acted in bad faith, has been stubbornly litigious, and has caused Defendants unnecessary trouble and expense in order to effectuate their rights described herein.

78. Accordingly, Defendants are entitled to their expenses of litigation, including but not limited to attorneys' fees.

WHEREFORE, Defendants respectfully request this Court:

- a) To issue an order cancelling the Mechanic's Lien filed by Prescott;
- b) With regard to the counterclaims asserted herein, for an order of judgment.

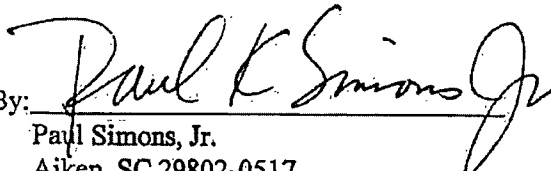
against Prescott for actual and punitive damages in an amount to be determined at trial;

c) For all costs of litigation incurred by Defendants in connection with the filing of the Notice of Mechanic's Lien and the within Complaint.

d) For such other and further relief as the Court shall deem equitable and just under the circumstances.

Hull Barrett PC

October 16, 2012

By: 
Paul Simons, Jr.
Aiken, SC 29802-0517
(803) 648-4213
(803) 648-2601 (facsimile)
Attorneys for Defendants

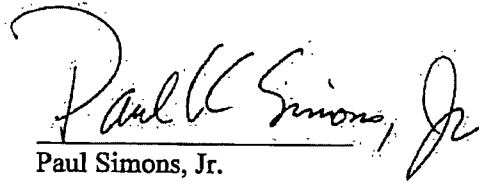
CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing "DEFENDANT LARRY ROGERS AND MICHELLE ROGERS' ANSWER AND COUNTERCLAIMS" upon opposing counsel by depositing a copy of same in the United States Mail with proper postage affixed thereto to ensure proper delivery to the following:

Mr. Christopher A. Corley
436 Greene Street
Augusta, GA 30901

Mr. Lir P. Derieg
Derieg Law Firm, LLC
1924 Barnwell Street
Columbia, SC 29201

This 26th day of October, 2012



Paul Simons, Jr.
Aiken, SC 29802-0517
(803) 648-4213
(803) 648-2601 (facsimile)
Attorneys for Defendants

C O P Y
ORIGINAL FILED
OCT 26 2012
VNO: dsc
AIKEN COUNTY
CLERK OF COURT

CONSTRUCTION AND CONSULTATION AGREEMENT

THIS CONSTRUCTION AND CONSULTATION AGREEMENT (this "Agreement") is made as of this 1st Day of May, 2012, by and between Prescott & Sons Construction, LLC, a South Carolina ("Builder"), with an address at 30 Whispering Woods Dr, North Augusta SC 29860, and Larry & Michelle Rogers husband and wife (collectively the "Buyers"), with an address at 28 Plantation Dr, North Augusta SC,

RECITALS:

- A. Buyers desire that Builder construct a residence on the Lot in accordance with this Agreement.
- B. Buyers agree to provide to Builder the Project Cost and the Buyers' Services and the Builder's Fee (as defined in section 6 and 8), respectively as set forth in this Agreement.
- C. Builder agrees to provide the Work (as defined in Section 2 hereof) in exchange for the Builder's Fee (as defined in Section 8 hereof).

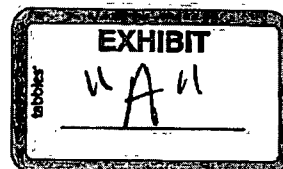
AGREEMENT:

In consideration of the mutual covenants and agreements herein contained, the parties do hereby agree as follows:

1. Residence. The "Residence" shall include the construction of a single-family residence addition of approximately 2300 square feet of total area as well as porches, deck, and garage, all to be constructed on the Lot as set forth in the plans and the specifications prepared by the Builder both of which are attached hereto and are incorporated herein as Exhibit A (the "Plans") and Exhibit B (the "Specifications") both having been reviewed and signed by the Buyers and Builder. Both Builder and Buyers acknowledge that the Plans may be revised to include additional items or more detail and that such revision shall constitute either Change Order or a Change in Scope (as defined below), potentially increasing the estimated Project Cost.
2. Work. Builder shall procure for Buyers, as part of Builder's work, at Buyers' expense, all labor, material, taxes, equipment, tools, construction equipment and machinery, utilities, transportation and other facilities and services, whether temporary or permanent, necessary for the proper execution and completion of the Residence (the "Work") as included in and specifically limited to the items, services, and material listed on Exhibit B attached hereto. Builder agrees to provide construction supervision of, and management services for, the Work (the "Builder's Services") for the Residence, including obtaining bids from subcontractors, (including material suppliers) scheduling and overseeing the performance of each subcontractor, and coordinating the subcontractors' efforts to provide and construct the Residence in accordance with the Plans and Specifications and in compliance with applicable building codes and regulations. Builder shall use reasonable efforts to perform all of the

Initials: LR Buyer MR Buyer PS Builder

Page 1 of 6



Builder's Services and the Work in a good and workmanlike manner.

The Builder shall act as an independent contractor and shall supervise and direct the Work, using its reasonable skill and attention. The Builder shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement. The Builder shall at all times enforce good order among its employees and shall not employ on the Residence any unfit person or anyone not skilled in the task assigned to him.

The Builder will secure all permits and licenses necessary for the work, the cost of which shall be deemed part of the Work.

The Builder will give all notices and comply with all ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work.

3. Insurance. Builder shall obtain and maintain on personnel employed directly by Builder, insurance required under the Worker's Compensation Law. Builder shall also maintain general liability insurance on its operations on the Lot. Buyers shall, at Buyers' own expense, obtain and maintain on any personnel employed by Buyers on the Lot general liability insurance and Worker's Compensation Insurance. Buyers' insurance shall name Buyers and Builder as co-insured to the extent of the interests of each. Buyer shall obtain and maintain Builder's Risk Insurance on the Residence. Builder shall indemnify Buyers for injuries or death to anyone or damage to property caused by Builder (or its suppliers or contractors) in the performance of the Work. This indemnity is independent of insurance requirements.
4. Laws. Builder shall use reasonable efforts to comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the Work.
5. Property. Builder shall keep the Lot free from accumulation of waste material or rubbish caused by the construction of the Residence. At completion of the Work, Builder shall remove all tools, construction equipment, machinery and surplus material from and about the Lot.
6. Buyers' Services. Buyers shall provide or shall cause to be provided, at its sole expense, the following services and materials for completion of the Residence in a timely manner:
 - (a) Plans and copies as required completing construction.
 - (b) Prompt payment of submitted invoices for all of this Work and all costs, fees, and expenses related to the Residence upon the completion of the Work and at time of closing.
 - (c) Insurance as noted in Section 3.
 - (d) Any other Materials or Services not listed in Exhibit B or added by Approved Change Orders or Changes in Scope.
 - (e) Any Buyers provided materials or services.

Buyers agree to indemnify and hold harmless Builder from any costs, claims or damage not caused by personnel employed directly by Builder.

Initials: JK Buyer TMR Buyer JEP Builder

Page 2 of 6

7. Subcontractors. Buyers agree that direction and supervision of construction personnel, including material suppliers and subcontractors rests exclusively with Builder and its duly designated agent and Buyers agree not to issue any instructions or to otherwise interfere with same. During construction of the Residence, Buyers agree not to negotiate with Builder's subcontractors for additional work, nor to engage another subcontractor or other subcontractors except with Builder's prior written consent, and then only in such manner as will not interfere with the completion of the Work under the supervision of Builder.
8. Project Cost. In accordance with the provisions of this contract, Buyers shall pay all costs of the Work, currently estimated by Buyers and Builder to be \$ 200,000.00, and a fee to the Builder (the "Builder's Consultation Fee") of \$25,000 payable as \$5,000 per month for (5) months as estimated by the builder. If project does not last 5 months, remaining balance of \$25,000 is due upon issuance of Certificate of Occupancy. Any excess time exceeding 5 months will be payable to the builder at a rate of \$2,500 per month until completion of the project. If the job is not complete within 5 months due to no fault of the Buyer, the builder will waive the \$2,500 per month fee. Payments to the builder are due on the 15th day of each month. The Project Cost includes without limitation (a) all of Seller's "hard costs" incurred in connection with the Work including without limitation the amount paid by Seller to Builder's employees working on the Residence; the amounts paid to Builder's subcontractors, and the costs of materials and equipment and supplies; (b) all of Seller's "soft costs" incurred in connection with the Residence including without limitation engineering fees, surveys and staking, permits fees, application fees, dumpsters, property taxes, and utilities; (c) the amounts paid to Builder's full-time employed laborers on this Project; The Builder will supply the subcontractors and material suppliers invoices to the Buyer. The Builder agrees to a fixed fee for his project management. Any other expense is cost only to be paid by the Buyer. As a sign of good faith binding this Agreement, Buyers give a deposit of \$ 5,000.00 deposit on the execution of the Construction and Purchase Agreement to begin work.

Builder reserves the right to cease work if "Builder's Consultation Fee" payment, in full, is not received by the 15th of each month due and Builder may seek all legal remedies available for collection of any outstanding amount.

The estimated Project Cost (and any modifications thereto estimated from time to time by Builder and Buyers) constitutes an estimate only, based on information available from time to time and will not include costs resulting from (i) unknown conditions on the Lot including rock or dirt removal, (ii) materials and services in excess of Allowances or expected amounts, and (iii) "Changes in Scope," as defined below.

9. Not Contingent. **THIS AGREEMENT IS NOT CONTINGENT ON BUYER OBTAINING FINAL FINANCING ONCE CONSTRUCTION HAS STARTED.**
10. Final Payment. Within five (5) days following notice from Builder to Buyers that the Work is substantially complete such that Buyers can occupy the Residence, Buyers shall (i) inspect the Residence and, together with Builder, shall prepare a list of items, if any, to be corrected or

Initials: ZZ Buyer MR Buyer GR Builder

Page 3 of 6

completed (the "Punch List") by only subcontractors secured by the Builder. No punch lists will be prepared on items completed by subcontractors not hired by the builder. Within five days following notice from Builder that items on the Punch List have been completed, Buyers shall inspect the Residence and, if acceptable, acknowledge completion of the Punch List. Buyers shall clearly specify in writing the grounds for any rejection of the Work, including the reasonable amount attributable thereto.

11. Changes in Scope. Buyers shall pay to Builder the full invoiced amount of all costs submitted by subcontractors and material suppliers for additional costs associated with Changes in Scope or that are otherwise approved by Buyers.
12. Construction. Builder shall commence construction of the Residence within two weeks after signing this Agreement and receiving deposit. Builder shall use reasonable efforts to complete construction of the Residence within five (5) months of the date hereof, except for delays caused by changes or other acts of Buyers, or persons employed by Buyers, arbitration, fires, labor disputes, acts of public authority, inclement weather, allocation of material priorities, delay or default by public or private carriers, shortage of material or labor, acts of God or other work stoppages, casualties or other causes beyond the control of Builder. Builder reserves the right to make changes and substitutions in the Residence as may be necessary because of the unavailability of material through Builder's ordinary and usual sources of supply, or as may be required by law, provided changes or substitutions are of equal or better quality and subject to Buyers' approval, not to be unreasonably withheld.
13. Warranty. Upon completion of the Work and full payment to Builder of the Project Cost, Builder shall execute and deliver to Buyers a Buyer's Limited Warranty, on work performed by Builder only. Builder and Buyers agree that the Warranty shall constitute the sole warranty from Builder to Buyers, and the Warranty is given in lieu of all other warranties, express or implied, relating to the Residence. If defects are claimed by Buyers, Builder and Buyers shall comply with the claim procedures in the Warranty.
14. Trees. Builder shall make reasonable efforts to preserve the trees on the Lot. However, Builder gives no assurance that some or all of such trees or shrubbery shall not be damaged or removed during construction or grading of the lot or installation of utilities and pipes. The trees that are to be left on the Lot will be fenced off in such away to attempt to protect the trees from damage. Builder shall not be responsible for removal of any dead or dying trees or shrubbery prior to, during or after completion of the Work.
15. Possession. Possession of the lot and Residence shall be given on the closing date. At the time of closing, Buyers, if so requested by Builder, shall execute and deliver to Builder an acknowledgement of completion and release in form satisfactory to Builder certifying that the lot and Residence have been accepted by Buyers and are entirely completed in every detail and releasing Builder from any and all claims hereunder. The acceptance of key or deed or entry into possession of the Residence and lot by Buyers is acceptance by Buyers of the Residence and lot and, except for matters covered by the limited warranty, constitutes a complete release and discharge of all obligations and liabilities of Builder with respect to the construction, completion and delivery of the Residence and lot and every part thereof.

Initials: MR Buyer MR Buyer JR Builder

Page 4 of 6

16. Builder Default. If the Builder is adjudged a bankrupt, or if the Builder persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or persistently disregards laws, ordinances, rules or regulations or otherwise is guilty of a substantial violation of a provision of this Agreement, then the Buyers may deliver to Builder written notice of such condition and, if Builder has not cured (or if such condition may not be immediately cured, begun to cure) such condition thirty days after receipt of such notice, Buyers may terminate the employment of the Builder, take possession of the Residence and of all materials and may finish the Residence by whatever reasonable method Buyers may deem expedient. Before taking such possession, Buyers shall pay to Builder an amount equal to the portion of the Project Cost and the Builder Fee earned to the date of Buyers' termination.

17. Buyers Default. If Buyers default on any obligation under this Agreement, Builder may at its option treat this Agreement as null and void and retain all payments made under this Agreement. In addition, Builder may pursue any other legal or equitable remedy available including specific performance.

In the event of a breach of the Agreement, the party in default or guilty of said breach shall be responsible and liable for all costs incurred by the non-breaching party in enforcing this Agreement, including all reasonable attorneys' fees.

18. Successors and Assigns. The rights and obligations granted and assumed under this Agreement shall apply to the heirs, administrators, executors, successors and assigns of Builder and Buyers.

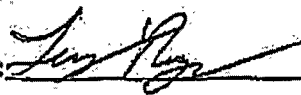
19. Agreement. Builder and Buyers certify that they have read the entire contents of this Agreement and acknowledge receipt of a copy of same. This Agreement shall be governed by the Laws of the Commonwealth of South Carolina. This Agreement is the entire and only agreement between the parties with respect to the subject matter hereof, and no verbal agreements of any kind shall be binding. Any deletions from, additions to or modifications of this Agreement must be in writing and signed by both parties. The use of headings herein shall not be considered in the interpretation of this Agreement. Notices and request given pursuant to this Agreement shall be in writing and shall be deemed delivered upon (i) personal delivery or (ii) within three (3) days following deposit of postage prepaid, certified or registered mail, return receipt requested, addressed to the parties at the address set forth on the first page of this Agreement.

IN WITNESS WHEREOF, Builder and Buyers have executed this Agreement as of the day, month, and year first above written.

Initials: 22 Buyer me Buyer JRP Builder

Page 5 of 6

By: 
Prescott & Sons Construction, LLC
("Builder")

By: 
("Buyers")

By: Michelle Rogers
("Buyers")

Initials: 2L Buyer MR Buyer JR Builder

Page 6 of 6

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE REGISTER OF DEEDS OFFICE

Prescott and Sons Construction)

Petitioner,)

vs.)

Larry Rogers and Michelle Rogers,)

Respondent(s).)

MECHANICS LIEN
Pursuant to S.C. Code Ann. § 29-5-90

COMES NOW, Claimant, Prescott and Sons Construction and files this mechanics lien pursuant to S.C. Code Anno. § 29-5-90. This lien is placed against Larry Rogers and Michelle Rogers as owners of property described hereinafter as:

Aiken County, South Carolina Tax Map # 00-003-0.01-023 or as Lot 4 of the River Plantation Subdivision in North Augusta, South Carolina.

Claimant attests that due to improvements by way of construction to the home located at Lot 4 Rover Plantation Subdivision, North Augusta, South Carolina, Claimant is owed \$23,660.92 for labor, supplies, and improvements. Claimant attests that he is well within the ninety (90) day limit by which to file this lien as his last day of labor was June 26, 2012.

Dated this the 9th day of July, 2012 .



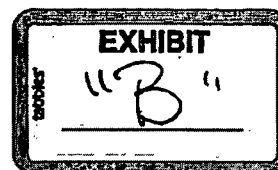
2012016807
MECHANICS LIEN
RECORDING FEES \$10.00
PRESENTED & RECORDED
07-10-2012 08:30 AM
JUDITH WARNER
REGISTER OF MORTGAGE CONVEYANCE
AIKEN COUNTY, SC
BY: MARILYN SEIGLER DEPUTY
ML - 12-754

BY:

Josh Prescott
Josh Prescott o/b/o
Prescott and Sons Construction
708 West Avenue
North Augusta, SC 29841

SUBSCRIBED AND SWORN TO BEFORE ME THIS 9th day July of, 2012.
Notary Public for Georgia *fallin mcdonald*
My Commission Expires:

MY COMMISSION EXPIRES
JANUARY 10, 2018



STATE OF SOUTH CAROLINA)

PRESCOTT AND SONS
CONSTRUCTION,)

Petitioner,)

LARRY ROGERS AND
MICHELLE ROGERS,)

Respondent(s).)

IN THE REGISTER OF DEEDS OFFICE

VERIFIED STATEMENT OF ACCOUNT

The Plaintiff, Josh Prescott o/b/o Prescott and Sons Construction, personally appearing before me, who, being duly sworn, states that he is the plaintiff in this action, and that the itemization which follows is true and correct.

He further states that no part of the sum included has been paid or satisfied in any fashion, and is today due and owed to him.

ITEMIZATION

Balance of Contractor's Fee	\$ 15,000.00
Crazy Joe's Containers	\$ 309.38
Crazy Joe's Containers	\$ 354.23
Cornerstone Concrete	\$ 177.88
Buvalcube's Masonry	\$ 500.00
Hutto Roofing	\$ 3,000.00
Barrett Windows and Doors	\$ 367.68
Portable Services	\$ 90.00
Prescott and sons	\$ 89.30
Crazy Joe's Containers	\$ 291.35
TOTAL	\$ 23,490.82

Sworn before me, this 9th day
of July, 2012

Kelli McDonald
Notary for Georgia

My Commission Expires
1-19-2016

MY COMMISSION EXPIRES
JANUARY 19, 2016

Josh Prescott
PLAINTIFF



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	
	)	
Prescott & Sons Construction, LLC	)	Civil Case No. 2012-CP-02-2382
	)	
Plaintiff,	)	PLAINTIFF'S REPLY TO ANSWER AND
	)	COUNTERCLAIM OF DEFENDANT
vs.	)	
	)	
Larry Rogers and Michelle Rogers,	)	
	)	
Defendants.	)	

TO: DEFENDANTS LARRY AND MICHELLE ROGERS AND THEIR ATTORNEY:

The Plaintiff, replying to the answer and counterclaim of the defendants named above, would respectfully show that:

AS TO THE FIRST DEFENSE

1. The Plaintiff reaffirms and reiterates all of the allegations contained in the Complaint.

AS TO THE SECOND DEFENSE

2. The Plaintiff reaffirms and reiterates all of the allegations of the Complaint in this reply and denies the allegations of the Second Defense inconsistent therewith.

AS TO THE THIRD DEFENSE

3. The Plaintiff reaffirms and reiterates all of the allegations of the Complaint in this reply and denies the allegations of the Third Defense inconsistent therewith.

AS TO THE FOURTH DEFENSE

4. The Plaintiff reaffirms and reiterates all of the allegations of the Complaint in this reply and denies the allegations of the Fourth Defense inconsistent therewith.

AS TO THE FIFTH DEFENSE

5. The Plaintiff reaffirms and reiterates all of the allegations of the Complaint in this reply and denies the allegations of the Fifth Defense inconsistent therewith.

AS TO THE SIXTH DEFENSE

6. The Plaintiff reaffirms and reiterates all of the allegations of the Complaint in this reply and denies the allegations of the Sixth Defense inconsistent therewith.

AS TO THE SEVENTH DEFENSE AND FIRST COUNTERCLAIM

7. Further replying to the Answer and Counterclaim of this defendant, Plaintiff denies the allegation of any slander of title and demands strict proof thereof.

8. All allegations that are inconsistent with this response are denied.

AS TO THE EIGHTH DEFENSE AND SECOND COUNTERCLAIM

9. Further replying to the Answer and Counterclaim of this defendant, Plaintiff denies the allegation of any wrongfully filed or frivolous lien and demands strict proof thereof.

10. All allegations that are inconsistent with this response are denied.

AS TO THE NINTH DEFENSE AND THIRD COUNTERCLAIM

11. Further replying to the Answer and Counterclaim of this defendant, Plaintiff denies the allegation of any breach of contract as alleged in the Ninth Defense and Third Counterclaim and demands strict proof thereof.

12. All allegations that are inconsistent with this response are denied.

AS TO THE TENTH DEFENSE AND FOURTH COUNTERCLAIM

13. Further replying to the Answer and Counterclaim of this defendant, the Plaintiff reaffirms and reiterates all of the allegations of the Complaint in this reply and denies the allegations of the Tenth Defense and Fourth Counterclaim inconsistent therewith.

AS TO THE ELEVENTH DEFENSE AND FIFTH COUNTERCLAIM

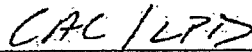
14. Further replying to the Answer and Counterclaim of this defendant, the Plaintiff strongly denies any allegation of acting in bad faith or acting frivolously litigious and demands strict proof thereof.

15. All allegations that are inconsistent with the response are denied.

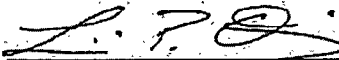
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Respectfully Submitted,

LAW OFFICES OF
CHRISTOPHER CORLEY, P.C.



Christopher A. Corley
436 Greene Street
Augusta, GA 30901
Telephone (706) 925-3686
Facsimile: (706) 724-9633
Attorney for the Plaintiff



Lir P. Derieg (SC Bar #76135)
DERIEG LAW FIRM, LLC
1924 Barnwell Street
Columbia, SC 29201
Telephone: (803) 206-3140
Facsimile: (803) 244-8630
Attorney for the Plaintiff

December 4, 2012
Aiken County, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Prescott & Sons Construction, LLC

Plaintiff,

vs.

Larry Rogers and Michelle Rogers,

Defendants.

) IN THE COURT OF COMMON PLEAS

)

)

)

) Civil Case No.2012-CP-02-2382

)

)

)

) **CERTIFICATE OF SERVICE**

)

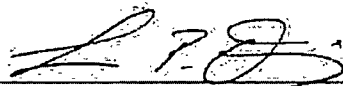
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This is to certify that I, Lir P. Derieg, have this day caused to be served upon the opposing counsel named below the Plaintiff's Reply to Answer and Counterclaim of Defendant in the foregoing matter by placing a copy of the same in the United States Mail in an envelope, with adequate postage affixed thereto, addressed as follows:

Mr. Paul Simons, Jr.
Hull Barrett, PC
PO Box 517
Aiken, SC 29802-0517



Lir P. Derieg

Derieg Law Firm, LLC
1924 Barnwell St
Columbia, South Carolina 29201
Telephone: (803)658-0298
Facsimile: (803)422-8630

Columbia, South Carolina

This 4th day of December, 2012

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

PRESCOTT & SONS CONSTRUCTION, LLC

☐ Plaintiff

v.

Larry Rogers And Michelle Rogers

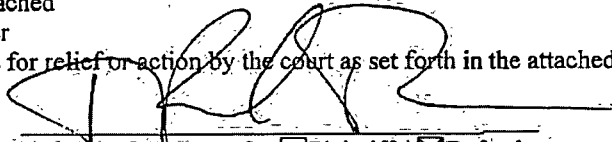
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-02-2382

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Lir Derieg, Bar No. Address: phone: fax: e-mail: other:		Defendant's Attorney: T. Paul Timmerman, Bar No. 69452 Address: 111 Park Avenue, SW, Aiken, SC 29801 phone: 803-648-4213 fax: e-mail: ptimmerman@hullbarett.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Compel Discovery Estimated Time Needed: 10 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant May 13, 2014 Date submitted			
SECTION III: Motion Fee			
☒ PAID – AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ 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, SCRCP) ☐ 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: _____		C O P Y ORIGINAL FILED MAY 13 2014 AIKEN COUNTY CLERK OF COURT	

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

PRESCOTT & SONS
CONSTRUCTION, LLC,

Plaintiff,

v.

LARRY ROGERS AND MICHELLE
ROGERS,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE SECOND JUDICIAL CIRCUIT

DEFENDANTS' NOTICE OF MOTION AND
MOTION TO COMPEL

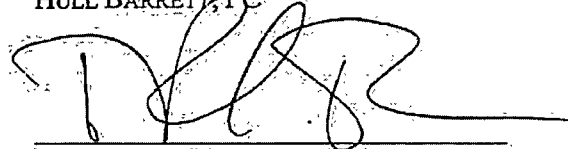
C/A NO.: 2012-CP-02-2382

YOU WILL PLEASE TAKE NOTICE that the undersigned on the eleventh day following service hereof, or at such other time and place as may be set by the Court, will move before the Presiding Judge of the Second Judicial Circuit, for an Order compelling the Plaintiff to answer the First Set of Interrogatories and Requests for Production attached as Exhibit "A" which were served on Plaintiff's counsel on January 22, 2014. The Defendants further request that the Court issue its Order granting Defendants' costs and attorneys' fees associated with the filing and arguing of this motion.

This motion will be made pursuant to Rule 37 of the South Carolina Rules of Civil Procedure and other applicable statutory and case law of the State of South Carolina.

The undersigned attorney hereby certifies that he has contacted Plaintiff's counsel regarding the outstanding discovery responses prior to filing this motion to no avail.

HULL BARRETT, PC



Paul Simons, Jr.
T. Paul Timmerman
Counsel for Defendants

111 PARK AVENUE, SW
AIKEN, SOUTH CAROLINA 29801
(803) 648-4213

May 13, 2014

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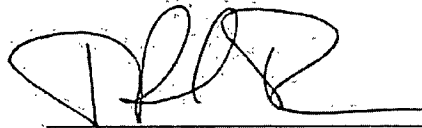
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MAY 13 2014
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AIKEN COUNTY
CLERK OF COURT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing **NOTICE OF MOTION AND MOTION TO COMPEL** was forwarded to all counsel of record listed below by depositing a copy of same in the United States Mail with proper postage affixed thereto this 13 day of May, 2014:

Lir P. Derieg, Esquire
Derieg Law Firm, LLC
Post Office Box 5479
Columbia, SC 29250

A handwritten signature in black ink, appearing to read 'T. Paul Timmerman', written over a horizontal line.

T. Paul Timmerman

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

PRESCOTT & SONS
CONSTRUCTION, LLC,

Plaintiff,

v.

LARRY ROGERS AND MICHELLE
ROGERS,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE SECOND JUDICIAL CIRCUIT

DEFENDANTS' FIRST SET OF
INTERROGATORIES TO PLAINTIFF

C/A NO.: 2012-CP-02-2382

TO: THE PLAINTIFF AND ITS ATTORNEY, LIR DERIEG, ESQUIRE:

You are requested to answer the following interrogatories within the time permitted under Rule 33 of the South Carolina Rules of Civil Procedure.

INSTRUCTIONS

1. Each interrogatory and request is addressed to the personal knowledge of the Plaintiff, as well as to the knowledge and information of the Plaintiff's attorneys, agents, and other representatives.

2. These interrogatories or requests shall be deemed continuing so as to require supplemental answers if the persons to whom these interrogatories and requests are addressed obtain further or different information between the time answers are served and the time of trial, as required by law.

3. In lieu of identifying any document, it shall be a sufficient response to produce such document and attach a copy thereof to your answers to these interrogatories.

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Exhibit "A"

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AIKEN COUNTY
CLERK OF COURT

4. With regard to the terms defined herein, all terms used in the singular shall include the plural, and all terms used in the plural shall include the singular.

5. Whenever these interrogatories or requests request information which was furnished in response to a previous interrogatory, such information need not be restated, and it is sufficient to identify, by number, the previous answer which contains the information requested.

6. Whenever these interrogatories or requests seek information which is not available to the Plaintiff in the form requested, but is available in another form or can be obtained elsewhere, so state or either supply the information requested in the form in which it is available or supply the data from which the information requested can be obtained.

7. Each interrogatory and request should be construed independently and not with reference to any other interrogatory for purposes of limitation, except where specifically so designated.

8. If any information requested by these interrogatories or requests is withheld because Plaintiff claims that the information is privileged, state the basis upon which any privilege is claimed and the general subject matter of the information withheld.

DEFINITIONS

As used herein, the terms listed below are defined as follows:

A. "Document" means every writing or record of every type and description that is or has been in your possession, custody, or control or of which you have knowledge, including but not limited to correspondence, memoranda, tapes, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures, drawings and photographs, films, microfilms, voice recordings, maps, reports, surveys, minutes or statistical compilations, or any other reported or graphic material in whatever form, including copies, drafts, and reproductions. "Document" also

refers to any other data compilations from which information can be obtained, and translated, if necessary, by you through computers or detection devices into reasonably usable form.

B. "Person" means any natural person, corporation, partnership, proprietorship, association, limited liability company, governmental entity, agency, group, organization, or group of persons.

C. To "identify" a "document" means to provide the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- (a) The title or other means of identification of each such document;
- (b) The type of document (e.g., letter, memorandum, record);
- (c) The date of each such document;
- (d) The author of each such document;
- (e) The recipient or recipients of each such document, including but not limited to Plaintiff or anyone who purports to represent the Plaintiff;
- (f) The present location of any and all copies of each such document in the care, custody, or control of the Plaintiff;
- (g) The names and current addresses of any and all persons who have custody or control of each such document or copies thereof; and
- (h) If all copies of the document have been destroyed, the names and current addresses of the person or persons authorizing the destruction of the document and the date the document was destroyed.

In lieu of "identifying" any document, it shall be deemed a sufficient compliance with these interrogatories to attach a copy of each such document to the answers hereto and

reference said document to the particular interrogatory to which the document is responsive.

D. To "identify" a natural person means to state that person's full name, title, or affiliation, and last known address and telephone number. To "identify" a person that is a business, organization, or group of persons means to state the full name of such business, organization, or group of persons, the form of the business, organization, or group of persons (e.g., government agency, corporation, partnership, joint venture, etc.), and to "identify" the natural person who would have knowledge of the information sought by the interrogatory.

E. "Plaintiff," "you," or "your" refers to, without limitation, to the named Plaintiff on whom these discovery requests are served, as well as the Plaintiff's employees, attorneys, agents, and other representatives.

F. "Communication" means any oral or written exchange of words, thoughts or ideas with another person(s), whether person to person, in a group, in a meeting, by telephone, letter, telefax, electronic mail, or otherwise, including without limitation any printed, typed, handwritten or other readable document and any tape recording, correspondence, memorandum, report, contract, diary, logbook, minutes, note, study, survey and forecast.

G. Terms in the singular shall be deemed to include the plural and terms in the plural shall be deemed to include the singular.

H. Use of feminine pronouns shall be deemed to include the masculine and neuter and use of masculine pronouns shall be deemed to include the feminine and neuter.

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or 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.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

3. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

4. For each person known to the parties or 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 statements taken from such witnesses.

5. Describe in detail any and all communications, both oral and written, between Plaintiff and Defendants, or any agent of the Plaintiff or Defendants, including the date, the parties to such communication, and the substance of the communication.

6. Set forth an itemized statement of all damages claimed to have been sustained by the Plaintiff, stating with specificity the following:

- a. a general description of each item or category of damages claimed;
- b. the specific amount being sought for each item or category of damages;
- c. a detailed description of the precise manner by which you have calculated or claimed for each item or category of damage;
- d. the identity of each written document, memorandum, bill, check, or other writing pertaining to your claim for each item or category of damage; and
- e. the name, address and telephone number of each person who will be a witness or who has knowledge concerning each item or category of

damage you are claiming.

7. Identify all documents which reference or relate to the allegations contained in the Complaint.

8. State whether you have at any time, been a party to any lawsuit or litigation. If so, for each such lawsuit, set forth:

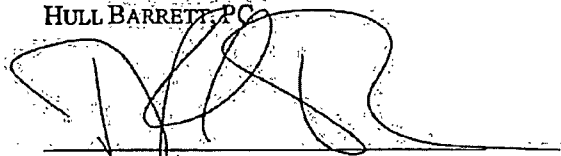
- a. the caption of the action including the name of the court in which the action was filed or pending along with all corresponding case or action numbers;
- b. the name and address of the plaintiff(s) in each action and the attorney(s) for the plaintiff(s) in each action;
- c. a summary of the fact alleged in the action either by way of complaint, third-party complaint, counter-claim or reply;
- d. the manner in which you were brought into the action and the facts alleged in regards to your liability; and
- e. the outcome of each case whether by way of verdict, judgment, settlement or otherwise, including monetary amounts, if any, therein.

9. List the names, addresses, and phone numbers of all subcontractors who provided services on the project which is the subject of this action.

111 PARK AVENUE, SW
AIKEN, SOUTH CAROLINA 29801
(803) 648-4213

January 22, 2014

HULL BARRETT, P.C.



Paul Simons, Jr.
T. Paul Timmerman
Counsel for Defendants

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

PRESCOTT & SONS
CONSTRUCTION, LLC,

Plaintiff,

v.

LARRY ROGERS AND MICHELLE
ROGERS,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE SECOND JUDICIAL CIRCUIT

DEFENDANTS' REQUEST FOR PRODUCTION
TO PLAINTIFF

C/A NO.: 2012-CP-02-2382

TO: THE PLAINTIFF AND ITS ATTORNEY, LIR DERIEG, ESQUIRE:

You are requested to produce the documents described hereinbelow at the offices of Hull Barrett P.C., 111 Park Avenue, S.W., Aiken, South Carolina 29801, within the time proscribed by and pursuant to the requirements of Rule 34 of the South Carolina Rules of Civil Procedures. These requests are deemed to be continuing so as to require supplementation by Defendant and their attorney pursuant to Rule 26(e), SCRCF. For purposes of this discovery, the meaning of "document" includes, but is not limited to, any written, printed, graphic, or electronic materials or any other physical items or items of personal property of any kind. Capitalized terms used herein but not expressly defined shall have the meaning ascribed to such terms in Plaintiff's Complaint.

1. All photographs, plats, sketches, or other prepared documents that relate to the claim of the Plaintiff as set forth in the Complaint.

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2. All statements or recordings of witnesses, persons who have knowledge or any facts, statements of account, invoices, bills, canceled checks, estimates, and other documents, writing or recordings pertaining to the claims of this case as set forth in the Complaint.

3. All subcontractor invoices received by Plaintiff for work performed at Defendants' residence that is the subject of this lawsuit.

4. All bid sheets and/or proposals submitted by subcontractors in connection with work to be performed at Defendants' residence that is the subject of this lawsuit.

5. All documents you are asked to identify in Defendants' First Set of Interrogatories to Plaintiff.

HULL BARRETT, PC



Paul Simons, Jr.
T. Paul Timmerman
Counsel for Defendants

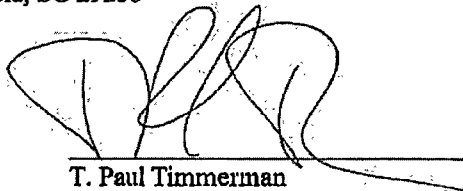
111 PARK AVENUE, SW
AIKEN, SOUTH CAROLINA 29801
(803) 648-4213

January 22, 2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing **INTERROGATORIES AND REQUEST FOR PRODUCTION** was forwarded to all counsel of record listed below by depositing a copy of same in the United States Mail with proper postage affixed thereto this 22 day of January, 2014:

Lir P. Derieg, Esquire
Derieg Law Firm, LLC
Post Office Box 5479
Columbia, SC 29250



T. Paul Timmerman

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AIKEN COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

PRESCOTT AND SONS CONSTRUCTION,
LLC

Plaintiff,

vs.

LARRY ROGERS AND MICHELLE ROGERS

Defendant.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NO.: 2012-CP-02-2382

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: <u>James M. Ervin</u> , Bar No. <u>72551</u> Address: <u>1824 Bull Street Columbia, SC 29201</u> Phone: <u>803.708.8471</u> Fax <u>803.708.4771</u> E-mail: <u>james@ervinandmcguire.com</u> Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____ Estimated Time Needed: _____		Court Reporter Needed: ☐ YES/ ☐ NO	
SECTION II: Motion/Order Type			
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☒ Defendant		<u>2/5/2015</u> Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ 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, SCRCP) ☐ 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: \$ _____		COPY ORIGINAL FILED 000 FEB 09 2015 8:30am AIKEN COUNTY CLERK OF COURT	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
PRESCOTT AND SONS	)	C/A NO.: 2012-CP-02-2382
CONSTRUCTION, LLC,	)	
	)	
PLAINTIFF,	)	
	)	MOTION FOR JUDGMENT
-VS-	)	NOTWITHSTANDING
	)	THE VERDICT AND
LARRY ROGERS AND MICHELLE	)	MOTION FOR NEW TRIAL
ROGERS,	)	
	)	
DEFENDANTS.	)	
	)	

NOW COMES Defendants above named, by and through their undersigned attorney who move before this court pursuant to Rules 50(b) and 59(a) for judgment notwithstanding the verdict and a new trial. This motion is based on the record of testimony and evidence entered at trial. Defendants properly and timely raised the following issues at trial during their motions for directed verdict:

1. Plaintiff failed to carry its burden of establishing facts for which the jury could grant relief on the issue of breach of contract and damages stemming therefrom and rendered a verdict in excess of evidence to support it;
2. Defendant failed to enter any evidence regarding reasonable attorneys fees or costs of their action into the record of this trial and should therefore be barred from recovery of the same.

PROCEDURAL HISTORY

The above captioned matter was called for trial before a jury in the Aiken County Courthouse on January 21, 2015. Before the court were Plaintiff's cause of action for breach of contract and Defendants' counterclaim for breach of contract. All claims stemmed from a contract entered in to by the parties for residential construction and renovation of Defendants' home. Plaintiff presented its case with

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CLERK OF COURT

testimony and evidence including the contract between the parties entered into on May 1, 2012.

At the conclusion of Plaintiff's case, Defendants made a motion for directed verdict claiming Plaintiff had not presented facts sufficient to establish a breach of contract or damages stemming therefrom. The trial judge denied this motion.

The Defendants presented testimony and evidence to support their claim for breach of contract. At the conclusion of Defendants' case, Plaintiff made a motion for directed verdict, which was denied. Defendants renewed their motion for directed verdict stating Plaintiff had failed to present any evidence of attorney's fees. The trial judge, granting Defendants' motion in part, instructed Plaintiff to refrain from arguing before the jury in his closing any prayer for attorney's fees.

After deliberation the jury returned a verdict for Plaintiff in the amount of \$18,166.03. Defendants move for a judgment notwithstanding the verdict as well as for a new trial.

DISCUSSION/ STANDARD OF REVIEW

In reviewing a motion for judgment notwithstanding the verdict (JNOV), the trial court must view the evidence and its inferences in light most favorable to the non-moving party. *Shupe v. Settle*, 315 S.C. 510, 445 S.E.2d 651 (Ct. App. 1994). The jury's verdict must be upheld if there is any evidence to sustain the factual findings implicit in the verdict. *Id.*

It is well settled in this state that the trial judge has the authority and responsibility to grant a new trial when, in his judgment, the verdict of the jury is contrary to the fair preponderance of the evidence. *Adams v. Duffie*, 244 S.C. 365, 137 S.E.2d 276 (1969).

ANALYSIS

I. Balance of \$25,000.00 Builder's Fee (\$15,000.00)

During the trial of the above captioned matter, Plaintiff asserted damages for unpaid invoices totaling no more than \$5,089.82. Evidence presented by Plaintiff showed Defendants actually receive only three of the five invoices prayed for. Additionally, Plaintiff prayed for \$15,000.00 from Defendants as a balance of his builder's fee. However Plaintiff's exhibit 2, the Contract and Agreement between the

parties (hereinafter referred to as the "Agreement"), clearly states in paragraph 7 on page 2 that Defendants would pay "a fee to the Builder [Plaintiff] ("Builder's Consultation Fee") of \$25,000 payable as \$5,000 per month for (5) months as estimated by the builder. *If project does not last 5 months, remaining balance of \$25,000.00 is due upon issuance of Certificate of Occupancy.*" [Emphasis added].

Plaintiff testified that he did not work beyond 2 months and that he was paid \$5,000.00 for both months on the project. Plaintiff then testified that he did not himself nor was he aware if or when a Certificate of Occupancy was issued to Defendants or any person for this project. Under the contract between the parties the evidence shows that Plaintiff was not entitled to the balance of \$15,000.00 because he did not facilitate the issuance of a Certificate of Occupancy. As the Jury in this case returned a verdict in the amount of \$18,166.03 it appears the \$15,000.00 balance of the builder's fee was included in this award. This calculation takes into account that Plaintiff only asked for the outstanding invoices of not more than \$5,089.82. For the jury to award any part of the balance of builder's fee would be contrary to the evidence presented and the Agreement (Plaintiff exhibit 2).

Furthermore, paragraph 16, page 5 of the Agreement states that, in the event of the builder's default, after buyers terminate the Agreement, Buyers shall pay to Builder an amount equal to the portion of the Project Cost and the Builder Fee *earned to the date of Buyers' termination.*" Testimony of Plaintiff and all witnesses corroborate that Plaintiff only worked two months on the Project thereby earning only the initial \$10,000.00, which Defendants paid.

Finally, paragraph 17, page 5 of the Agreement states that in the event the buyer's default "Builder may ...*retain* all payments made under this Agreement." The word "retain" as it is used here has the same and usual meaning, which is to keep what is already in one's possession. *Online Dictionary.* In this case Defendants had paid Plaintiff \$10,000.00 of the \$25,000.00 builder's fee. The balance was not earned, a Certificate of Occupancy was not issued and Plaintiff did not have the funds to retain. Based on the foregoing and the evidence and testimony taken in light most favorable to the non-moving party, there is no circumstance set forth in

the Agreement that would allow Plaintiff to recover the balance of the builder's fee listed in Paragraph 7, page 2 of the Agreement.

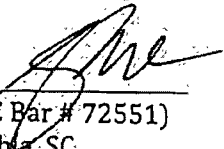
II. Plaintiff barred from an award of attorney's fees

After the conclusion of the trial, Plaintiff moves for an award of attorney's fees. Defendants made a motion for directed verdict seeking to dismiss Plaintiff's demand for attorney's fees on the basis that at no time during Plaintiff's case or any other time during the pendency of this trial did Plaintiff present evidence or testimony that he incurred any amount of attorney's fees. This motion was granted in part and the trial judge instructed Plaintiff not to address attorney's fees before the jury. Defendants reiterate this prohibition of attorney's fees as Plaintiff failed to establish any basis for such an award and the record is void of the same.

III. Motion for New Trial

Defendants move for a new trial. It appears the jury verdict rendered was confused and it is not absolutely clear what was intended (see paragraphs I and II above). *Anderson v. Aetna Casualty and Surety*, 175 S.C. 254, 178 S.E. 819 (1934). The Jury verdict is contrary to the weight of the evidence. *Daniels v. Bernard*, 270 S.C. 51, 240 S.E.2d 518 (1978). The amount of \$18,166.03 could only have been reached if the jury included the balance of builder's fee, which is expressly and specifically unavailable to Plaintiff by the terms of the contract. Under no circumstance presented at trial or contemplated by the parties in the Agreement would Plaintiff be entitled to the balance of the builder's fee. Additionally, the only other damages asserted were unpaid invoices in an amount no larger than \$5,089.82. Defendants should be granted a new trial for error in the amount of the verdict and for the verdict being excessive by clear and convincing evidence presented at trial.

Respectfully submitted,

s/ James Ervin (email) 

James McLeod Ervin (SC Bar # 72551)
1824 Bull Street, Columbia, SC
(803) 708-8471
(803) 708-4771
james@ervinandmcguire.com

February 2, 2015
Columbia, SC

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Prescott and Sons Construction, LLC,

Plaintiff,

v.

Larry Rogers and Michelle Rogers

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL
CIRCUIT

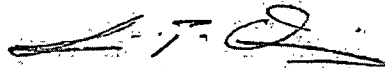
Case No. 2012-CP-02-2382

MOTION FOR ATTORNEYS' FEES AND
COSTS

Pursuant to *Hegler v. Gulf Insurance Co.*, 270 S.C. 548, 243 S.E.2d 443 (1978), and its progeny, Plaintiff respectfully moves this Court award Plaintiff its attorneys' fees and costs of litigation. The general rule is that attorney's fees are not recoverable unless authorized by contract or statute. *Id.*

Paragraph 2 of Article 17 of the contract between the Rogers and Prescott states, "In the event of a breach of the Agreement, the party in default or guilty of said breach shall be responsible and liable for all costs incurred by the non-breaching party in enforcing this Agreement, including all reasonable attorneys' fees."

Respectfully submitted,



Lir Patrick Derieg (SC Bar # 76135)
1924 Barnwell Street
Columbia, SC 29201
(803) 658-0298
Facsimile (803) 244-8630
lir@derieglaw.com

January 24, 2015
Aiken, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR
	)	THE SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
Prescott and Sons Construction, LLC,	)	C/A No. 2012-CP-02-2382
	)	
	)	
Plaintiffs,	)	AFFIDAVIT FOR PLAINTIFF'S
	)	ATTORNEY'S
Versus	)	FEES AND COSTS
	)	
Larry Rogers and Michelle Rogers	)	
	)	
	)	
	)	
Defendants.	)	

Personally appeared before me, Lir P. Derieg, who, after being duly sworn, deposes and says:

1. Affiant submits this affidavit pursuant to statutory and case law of the State of South Carolina. See Bond v. Bond, 252 S.C. 363, 166 S.E.2d 302 (1969); Smith v. Smith, 252 S.C. 350, 170 S.E.2d 650 (1969). Under the case of Collins v. Collins, 239 S.C. 170, 122 S.E.2d 1 (1959), as well as other South Carolina cases and the Code of Professional Responsibility, the standard for measuring the amount of attorney fees is as follows: (1) the nature, extent, and difficulty of the services rendered, (2) the time necessarily devoted to the matter, (3) the professional standing of counsel; (4) the contingency of the compensation, and (5) the beneficial result accomplished. This court unquestionably has the right to consider these factors in determining a reasonable temporary fee for plaintiff's attorney, who has rendered services in connection with an action involving paternity and related issues.

2. I graduated from the University of South Carolina in 2004 and from the University Of South Carolina School Of Law in 2008. I have been licensed to practice law in

the State of South Carolina since 2009. I clerked for the Honorable W. Barney Giese at the Fifth Circuit Solicitor's Office from 2004 - 2008. I was an assistant Solicitor for the Fifth Circuit from 2009 - 2011. On March 10, 2011, I opened my own firm. I devote 80% of my practice to criminal defense. I devote the remaining 20% of my practice to civil litigation and appellate practice. I am in good standing with the South Carolina Bar Association.

3. This case was accepted for a flat fee of \$8,000, \$4,000 of which went to Christopher A. Corley and \$4,000 went to Lir P. Derieg. I have additionally incurred \$2,469.13 in costs and expenses. Those costs and expenses are as follows:

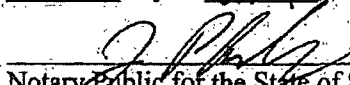
- A. Mediator (Crowe LaFave) - \$822.50
- B. Creel Court Reporting - \$665.20
- C. Augusta Scribes Court Reporting - \$282.55
- D. Process Server (Gene Staulcup) - \$525 (paid by Mr. Corley)
- E. Shipping - \$23.88
- F. Filing Fee - \$150

The total attorneys' fees and costs for this litigation are \$10,469.13.

I hereby certify that the time spent in preparation of this case was necessary to represent the interests of the Plaintiff properly, according to my professional judgment.


Lir Patrick Derieg

Subscribed and sworn to before me this
27th day of Jan, 2015.


Notary Public for the State of South Carolina
My Commission expires: 5-23-2023

CONSTRUCTION AND CONSULTATION AGREEMENT

THIS CONSTRUCTION AND CONSULTATION AGREEMENT (this "Agreement") is made as of this 5 Day of April 2012, by and between **Prescott & Sons Construction, LLC**, a South Carolina ("Builder"), with an address at 30 Whispering Woods Dr, North Augusta SC 29860, and **Larry & Michelle Rogers** (collectively the "Buyer"), for work to be performed at **28 Plantation Ct, North Augusta SC**.

RECITALS:

- A. Buyers desire that Builder construct an attached garage, sunroom, patio, & basement pad on the Lot in accordance with this Agreement.
- B. Buyers agree to provide to Builder the Project Cost and the Buyers' Services and the Builder's Fee (as defined in section 6 and 8), respectively as set forth in this Agreement.
- C. Builder agrees to provide the Work (as defined in Section 2 hereof) in exchange for the Builder's Fee (as defined in Section 8 hereof.)

AGREEMENT:

In consideration of the mutual covenants and agreements herein contained, the parties do hereby agree as follows:

1. **Residence.** The "Residence" shall include all renovations to the single-family residence as set forth in the plans and description attached. Both Builder and Buyers acknowledge that the Plans may be revised to include additional items or more detail and that such revision shall constitute either Change Order or a Change in Scope (as defined below), potentially increasing the estimated Project Cost.
2. **Work.** Builder shall procure for Buyers, as part of Builder's work, at Buyers' expense, all labor, material, taxes, equipment, tools, construction equipment and machinery, utilities, transportation and other facilities and services, whether temporary or permanent, necessary for the proper execution and completion of the Residence (the "Work") as included in and specifically limited to the items, services, and material listed on Exhibit B attached hereto. Builder agrees to provide construction supervision of, and management services for, the Work (the "Builder's Services") for the Residence, including obtaining bids from subcontractors, (including material suppliers) scheduling and overseeing the performance of each subcontractor, and coordinating the subcontractors' efforts to provide and construct the renovations in accordance with the Plans and Specifications and in compliance with applicable building codes and regulations. Builder shall use reasonable efforts to perform all of the Builder's Services and the Work in a good and workmanlike manner.

The Builder shall act as an independent contractor and shall supervise and direct the Work,

using its reasonable skill and attention. The Builder shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement. The Builder shall at all times enforce good order among its employees and shall not employ on the Residence any unfit person or anyone not skilled in the task assigned to him.

The Builder will secure all permits and licenses necessary for the work, the cost of which shall be deemed part of the Work.

The Builder will give all notices and comply with all ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work.

3. Insurance. Builder shall obtain and maintain on personnel employed directly by Builder, insurance required under the Worker's Compensation Law. Builder shall also maintain general liability insurance on its operations on the Lot. Buyers shall, at Buyers' own expense, obtain and maintain on any personnel employed by Buyers on the Lot general liability insurance and Worker's Compensation Insurance. Buyers' insurance shall name Buyers and Builder as co-insured to the extent of the interests of each. **Homeowner shall obtain and maintain Builder's Risk Insurance on the Residence.** Builder shall indemnify Buyers for injuries or death to anyone or damage to property caused by Builder (or its suppliers or contractors) in the performance of the Work. This indemnity is independent of insurance requirements.
4. Laws. Builder shall use reasonable efforts to comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the Work.
5. Property. Builder shall keep the Lot free from accumulation of waste material or rubbish caused by the construction of the Residence. At completion of the Work, Builder shall remove all tools, construction equipment, machinery and surplus material from and about the Lot.
6. Buyers' Services. Buyers shall provide or shall cause to be provided, at its sole expense, the following services and materials for completion of the renovation in a timely manner:
 - (a) Plans and copies as required completing construction.
 - (b) Prompt payment of submitted invoices for all of this Work and all costs, fees, and expenses related to the renovation upon the completion of the Work.
 - (c) Insurance as noted in Section 3.
 - (d) Any other Materials or Services not listed in Exhibit B or added by Approved Change Orders or Changes in Scope.
 - (e) Any Buyers provided materials or services.

Buyers agree to indemnify and hold harmless Builder from any costs, claims or damage not caused by personnel employed directly by Builder.

7. Subcontractors. Buyers agree that direction and supervision of construction personnel, including material suppliers and subcontractors rests exclusively with Builder and its duly designated agent and Buyers agree not to issue any instructions or to otherwise interfere with

same. During construction of the Residence, Buyers agree not to negotiate with Builder's subcontractors for additional work, nor to engage another subcontractor or other subcontractors except with Builder's prior written consent, and then only in such manner as will not interfere with the completion of the Work under the supervision of Builder.

8. Project Cost. In accordance with the provisions of this contract, Buyers shall pay all costs of the Work, plus an additional 15% contractors fee to the builder upon receipt of every invoice. The project cost includes without limitation (a) all of Seller's "hard costs" incurred in connection with the Work including without limitation the amount paid by Seller to Builder's employees working on the Residence, the amounts paid to Builder's subcontractors, and the costs of materials and equipment and supplies; (b) all of Seller's "soft costs" incurred in connection with the Residence including without limitation engineering fees, surveys and staking, permits fees, application fees, dumpsters, and utilities; (c) the amounts paid to Builder's full-time employed laborers and project supervisor working on this Project;

The estimated Project Cost (and any modifications thereto estimated from time to time by Builder and Buyers) constitutes an estimate only, based on information available from time to time and will not include costs resulting from (i) unknown conditions on the Lot including rock or dirt removal, (ii) materials and services in excess of Allowances or expected amounts, and (iii) "Changes in Scope," as defined below.

9. Not Contingent. **THIS AGREEMENT IS NOT CONTINGENT ON BUYER OBTAINING FINAL FINANCING.**
10. Final Payment. Within five (5) days following notice from Builder to Buyers that the Work is substantially complete, Buyers shall (i) inspect the renovations and, together with Builder, shall prepare a list of items, if any, to be corrected or completed (the "Punch List") by only subcontractors secured by the Builder. No punch lists will be prepared on items completed by subcontractors not hired by the builder. Within five days following notice from Builder that items on the Punch List have been completed, Buyers shall inspect the renovations and, if acceptable, acknowledge completion of the Punch List. Buyers shall clearly specify in writing the grounds for any rejection of the Work, including the reasonable amount attributable thereto.
11. Changes in Scope. If any Change Orders, charges in excess of Allowances or other changes requested by Buyers ("Changes in Scope") cause Builder or Builder's suppliers or subcontractors to incur costs in addition to the Project Cost, then Buyers shall pay to Builder within fifteen (15) days of billing for such Changes in Scope, the actual cost of such Changes in Scope plus an additional fee to Builder of 15% of such cost. Late payments will incur interest at the then current prime rate at Security Federal Bank, plus two percent (2%) per annum. Buyers shall pay to Builder the full invoiced amount of all costs submitted by subcontractors and material suppliers for additional costs associated with Changes in Scope or that are otherwise approved by Buyers, together with an additional Builder's Fee equal to seventeen percent (15%) of such costs.

12. Construction. Builder shall commence construction of the renovations within two weeks after signing this Agreement and receiving deposit. Builder shall use reasonable efforts to complete construction of the renovations within five (6) months of the date hereof, except for delays caused by changes or other acts of Buyers, or persons employed by Buyers, arbitration, fires, labor disputes, acts of public authority, inclement weather, allocation of material priorities, delay or default by public or private carriers, shortage of material or labor, acts of God or other work stoppages, casualties or other causes beyond the control of Builder. Builder reserves the right to make changes and substitutions in the renovations as may be necessary because of the unavailability of material through Builder's ordinary and usual sources of supply, or as may be required by law, provided changes or substitutions are of equal or better quality and subject to Buyers' approval, not to be unreasonably withheld.
13. Warranty. Upon completion of the Work and full payment to Builder of the Project Cost, Builder shall execute and deliver to Buyers a Buyer's Limited Warranty, on work performed by Builder only. Builder and Buyers agree that the Warranty shall constitute the sole warranty from Builder to Buyers, and the Warranty is given in lieu of all other warranties, express or implied, relating to the Residence. If defects are claimed by Buyers, Builder and Buyers shall comply with the claim procedures in the Warranty.
14. Trees. Builder shall make reasonable efforts to preserve the trees on the Lot. However, Builder gives no assurance that some or all of such trees or shrubbery shall not be damaged or removed during construction or grading of the lot or installation of utilities and pipes. The trees that are to be left on the Lot will be fenced off in such a way to attempt to protect the trees from damage. Builder shall not be responsible for removal of any dead or dying trees or shrubbery prior to, during or after completion of the Work.
15. Builder Default. If the Builder is adjudged a bankrupt, or if the Builder persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or persistently disregards laws, ordinances, rules or regulations or otherwise is guilty of a substantial violation of a provision of this Agreement, then the Buyers may deliver to Builder written notice of such condition and, if Builder has not cured (or if such condition may not be immediately cured, begun to cure) such condition thirty days after receipt of such notice, Buyers may terminate the employment of the Builder, take possession of the Residence and of all materials and may finish the Residence by whatever reasonable method Buyers may deem expedient. Before taking such possession, Buyers shall pay to Builder an amount equal to the portion of the Project Cost and the Builder Fee earned to the date of Buyers' termination.
16. Buyers Default. If Buyers default on any obligation under this Agreement, Builder may at its option treat this Agreement as null and void and retain all payments made under this Agreement. In addition, Builder may pursue any other legal or equitable remedy available including specific performance.

In the event of a breach of the Agreement, the party in default or guilty of said breach shall be responsible, and liable for all costs incurred by the non-breaching party in enforcing this Agreement, including all reasonable attorneys' fees.

Successors and Assigns. The rights and obligations granted and assumed under this Agreement shall apply to the heirs, administrators, executors, successors and assigns of Builder and Buyers.

Agreement. Builder and Buyers certify that they have read the entire contents of this Agreement and acknowledge receipt of a copy of same. This Agreement shall be governed by the Laws of the Commonwealth of South Carolina. This Agreement is the entire and only agreement between the parties with respect to the subject matter hereof, and no verbal agreements of any kind shall be binding. Any deletions from, additions to or modifications of this Agreement must be in writing and signed by both parties. The use of headings herein shall not be considered in the interpretation of this Agreement. Notices and request given pursuant to this Agreement shall be in writing and shall be deemed delivered upon (i) personal delivery or (ii) within three (3) days following deposit of postage prepaid, certified or registered mail, return receipt requested, addressed to the parties at the address set forth on the first page of this Agreement.

IN WITNESS WHEREOF, Builder and Buyers have executed this Agreement as of the day, month, and year first above written.

By: _____
Prescott & Sons Construction, LLC
("Builder")

By: _____
("Buyers")

By: _____
("Buyers")

CONSTRUCTION AND CONSULTATION AGREEMENT

THIS CONSTRUCTION AND CONSULTATION AGREEMENT (this "Agreement") is made as of this 1st Day of May 2012, by and between **Prescott & Sons Construction, LLC**, a South Carolina ("Builder"), with an address at 30 Whispering Woods Dr, North Augusta SC 29860, and Larry & Michelle Rogers husband and wife (collectively the "Buyers"), with an address at 28 Plantation Dr, North Augusta SC,

RECITALS:

- A. Buyers desire that Builder construct a residence on the Lot in accordance with this Agreement.
- B. Buyers agree to provide to Builder the Project Cost and the Buyers' Services and the Builder's Fee (as defined in section 6 and 8), respectively as set forth in this Agreement.
- C. Builder agrees to provide the Work (as defined in Section 2 hereof) in exchange for the Builder's Fee (as defined in Section 8 hereof.)

AGREEMENT:

In consideration of the mutual covenants and agreements herein contained, the parties do hereby agree as follows:

1. Residence. The "Residence" shall include the construction of a single-family residence addition of approximately 2300 square feet of total area as well as porches, deck, and garage, all to be constructed on the Lot as set forth in the plans and the specifications prepared by the Builder both of which are attached hereto and are incorporated herein as Exhibit A (the "Plans") and Exhibit B (the "Specifications") both having been reviewed and signed by the Buyers and Builder. Both Builder and Buyers acknowledge that the Plans may be revised to include additional items or more detail and that such revision shall constitute either Change Order or a Change in Scope (as defined below), potentially increasing the estimated Project Cost.
2. Work. Builder shall procure for Buyers, as part of Builder's work, at Buyers' expense, all labor, material, taxes, equipment, tools, construction equipment and machinery, utilities, transportation and other facilities and services, whether temporary or permanent, necessary for the proper execution and completion of the Residence (the "Work") as included in and specifically limited to the items, services, and material listed on Exhibit B attached hereto. Builder agrees to provide construction supervision of, and management services for, the Work (the "Builder's Services") for the Residence, including obtaining bids from subcontractors, (including material suppliers) scheduling and overseeing the performance of each subcontractor, and coordinating the subcontractors' efforts to provide and construct the Residence in accordance with the Plans and Specifications and in compliance with applicable building codes and regulations. Builder shall use reasonable efforts to perform all of the

Initials: LR Buyer MR Buyers JA Builder

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Builder's Services and the Work in a good and workmanlike manner.

The Builder shall act as an independent contractor and shall supervise and direct the Work, using its reasonable skill and attention. The Builder shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement. The Builder shall at all times enforce good order among its employees and shall not employ on the Residence any unfit person or anyone not skilled in the task assigned to him.

The Builder will secure all permits and licenses necessary for the work, the cost of which shall be deemed part of the Work.

The Builder will give all notices and comply with all ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work.

3. Insurance. Builder shall obtain and maintain on personnel employed directly by Builder, insurance required under the Worker's Compensation Law. Builder shall also maintain general liability insurance on its operations on the Lot. Buyers shall, at Buyers' own expense, obtain and maintain on any personnel employed by Buyers on the Lot general liability insurance and Worker's Compensation Insurance. Buyers' insurance shall name Buyers and Builder as co-insured to the extent of the interests of each. Buyer shall obtain and maintain Builder's Risk Insurance on the Residence. Builder shall indemnify Buyers for injuries or death to anyone or damage to property caused by Builder (or its suppliers or contractors) in the performance of the Work. This indemnity is independent of insurance requirements.
4. Laws. Builder shall use reasonable efforts to comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the Work.
5. Property. Builder shall keep the Lot free from accumulation of waste material or rubbish caused by the construction of the Residence. At completion of the Work, Builder shall remove all tools, construction equipment, machinery and surplus material from and about the Lot.
6. Buyers' Services: Buyers shall provide or shall cause to be provided, at its sole expense, the following services and materials for completion of the Residence in a timely manner:
 - (a) Plans and copies as required completing construction.
 - (b) Prompt payment of submitted invoices for all of this Work and all costs, fees, and expenses related to the Residence upon the completion of the Work and at time of closing.
 - (c) Insurance as noted in Section 3.
 - (d) Any other Materials or Services not listed in Exhibit B or added by Approved Change Orders or Changes in Scope.
 - (e) Any Buyers provided materials or services.

Buyers agree to indemnify and hold harmless Builder from any costs, claims or damage not caused by personnel employed directly by Builder.

Initials: ZK Buyer MM Buyer JPP Builder

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7. Subcontractors. Buyers agree that direction and supervision of construction personnel, including material suppliers and subcontractors rests exclusively with Builder and its duly designated agent and Buyers agree not to issue any instructions or to otherwise interfere with same. During construction of the Residence, Buyers agree not to negotiate with Builder's subcontractors for additional work, nor to engage another subcontractor or other subcontractors except with Builder's prior written consent, and then only in such manner as will not interfere with the completion of the Work under the supervision of Builder.
8. Project Cost. In accordance with the provisions of this contract, Buyers shall pay all costs of the Work, currently estimated by Buyers and Builder to be \$ 200,000.00, and a fee to the Builder (the "Builder's Consultation Fee") of \$25,000 payable as \$5,000 per month for (5) months as estimated by the builder. If project does not last 5 months, remaining balance of \$25,000 is due upon issuance of Certificate of Occupancy. Any excess time exceeding 5 months will be payable to the builder at a rate of \$2,500 per month until completion of the project. If the job is not complete within 5 months due to no fault of the Buyer, the builder will waive the \$2,500 per month fee. Payments to the builder are due on the 15th day of each month. The Project Cost includes without limitation (a) all of Seller's "hard costs" incurred in connection with the Work including without limitation the amount paid by Seller to Builder's employees working on the Residence, the amounts paid to Builder's subcontractors, and the costs of materials and equipment and supplies; (b) all of Seller's "soft costs" incurred in connection with the Residence including without limitation engineering fees, surveys and staking, permits fees, application fees, dumpsters, property taxes, and utilities; (c) the amounts paid to Builder's full-time employed laborers on this Project; The Builder will supply the subcontractors and material suppliers invoices to the Buyer. The Builder agrees to a fixed fee for his project management. Any other expense is cost only to be paid by the Buyer. As a sign of good faith binding this Agreement, Buyers give a deposit of \$ 5,000.00 deposit on the execution of the Construction and Purchase Agreement to begin work.

Builder reserves the right to cease work if "Builders Consultation Fee" payment, in full, is not received by the 15th of each month due and Builder may seek all legal remedies available for collection of any outstanding amount.

The estimated Project Cost (and any modifications thereto estimated from time to time by Builder and Buyers) constitutes an estimate only, based on information available from time to time and will not include costs resulting from (i) unknown conditions on the Lot including rock or dirt removal, (ii) materials and services in excess of Allowances or expected amounts, and (iii) "Changes in Scope," as defined below.

9. Not Contingent. **THIS AGREEMENT IS NOT CONTINGENT ON BUYER OBTAINING FINAL FINANCING ONCE CONSTRUCTION HAS STARTED.**
10. Final Payment. Within five (5) days following notice from Builder to Buyers that the Work is substantially complete such that Buyers can occupy the Residence, Buyers shall (i) inspect the Residence and, together with Builder, shall prepare a list of items, if any, to be corrected or

Initials: ZZ Buyer me Buyer gdp Builder

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completed (the "Punch List") by only subcontractors secured by the Builder. No punch lists will be prepared on items completed by subcontractors not hired by the builder. Within five days following notice from Builder that items on the Punch List have been completed, Buyers shall inspect the Residence and, if acceptable, acknowledge completion of the Punch List. Buyers shall clearly specify in writing the grounds for any rejection of the Work, including the reasonable amount attributable thereto.

11. Changes in Scope. Buyers shall pay to Builder the full invoiced amount of all costs submitted by subcontractors and material suppliers for additional costs associated with Changes in Scope or that are otherwise approved by Buyers.
12. Construction. Builder shall commence construction of the Residence within two weeks after signing this Agreement and receiving deposit. Builder shall use reasonable efforts to complete construction of the Residence within five (5) months of the date hereof, except for delays caused by changes or other acts of Buyers, or persons employed by Buyers, arbitration, fires, labor disputes, acts of public authority, inclement weather, allocation of material priorities, delay or default by public or private carriers, shortage of material or labor, acts of God or other work stoppages, casualties or other causes beyond the control of Builder. Builder reserves the right to make changes and substitutions in the Residence as may be necessary because of the unavailability of material through Builder's ordinary and usual sources of supply, or as may be required by law, provided changes or substitutions are of equal or better quality and subject to Buyers' approval, not to be unreasonably withheld.
13. Warranty. Upon completion of the Work and full payment to Builder of the Project Cost, Builder shall execute and deliver to Buyers a Buyer's Limited Warranty, on work performed by Builder only. Builder and Buyers agree that the Warranty shall constitute the sole warranty from Builder to Buyers, and the Warranty is given in lieu of all other warranties, express or implied, relating to the Residence. If defects are claimed by Buyers, Builder and Buyers shall comply with the claim procedures in the Warranty.
14. Trees. Builder shall make reasonable efforts to preserve the trees on the Lot. However, Builder gives no assurance that some or all of such trees or shrubbery shall not be damaged or removed during construction or grading of the lot or installation of utilities and pipes. The trees that are to be left on the Lot will be fenced off in such away to attempt to protect the trees from damage. Builder shall not be responsible for removal of any dead or dying trees or shrubbery prior to, during or after completion of the Work.
15. Possession. Possession of the lot and Residence shall be given on the closing date. At the time of closing, Buyers, if so requested by Builder, shall execute and deliver to Builder an acknowledgement of completion and release in form satisfactory to Builder certifying that the lot and Residence have been accepted by Buyers and are entirely completed in every detail and releasing Builder from any and all claims hereunder. The acceptance of key or deed or entry into possession of the Residence and lot by Buyers is acceptance by Buyers of the Residence and lot and, except for matters covered by the limited warranty, constitutes a complete release and discharge of all obligations and liabilities of Builder with respect to the construction, completion and delivery of the Residence and lot and every part thereof.

Initials: ZA Buyer me Buyer JJB Builder

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16. Builder Default. If the Builder is adjudged a bankrupt, or if the Builder persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or persistently disregards laws, ordinances, rules or regulations or otherwise is guilty of a substantial violation of a provision of this Agreement, then the Buyers may deliver to Builder written notice of such condition and, if Builder has not cured (or if such condition may not be immediately cured, begun to cure) such condition thirty days after receipt of such notice, Buyers may terminate the employment of the Builder, take possession of the Residence and of all materials and may finish the Residence by whatever reasonable method Buyers may deem expedient. Before taking such possession, Buyers shall pay to Builder an amount equal to the portion of the Project Cost and the Builder Fee earned to the date of Buyers' termination.

17. Buyers Default. If Buyers default on any obligation under this Agreement, Builder may at its option treat this Agreement as null and void and retain all payments made under this Agreement. In addition, Builder may pursue any other legal or equitable remedy available including specific performance.

In the event of a breach of the Agreement, the party in default or guilty of said breach shall be responsible and liable for all costs incurred by the non-breaching party in enforcing this Agreement, including all reasonable attorneys' fees.

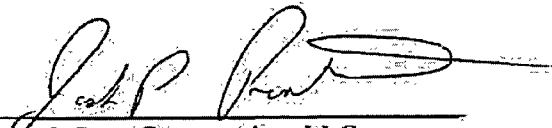
18. Successors and Assigns. The rights and obligations granted and assumed under this Agreement shall apply to the heirs, administrators, executors, successors and assigns of Builder and Buyers.

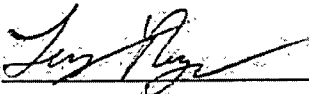
19. Agreement. Builder and Buyers certify that they have read the entire contents of this Agreement and acknowledge receipt of a copy of same. This Agreement shall be governed by the Laws of the Commonwealth of South Carolina. This Agreement is the entire and only agreement between the parties with respect to the subject matter hereof, and no verbal agreements of any kind shall be binding. Any deletions from, additions to or modifications of this Agreement must be in writing and signed by both parties. The use of headings herein shall not be considered in the interpretation of this Agreement. Notices and request given pursuant to this Agreement shall be in writing and shall be deemed delivered upon (i) personal delivery or (ii) within three (3) days following deposit of postage prepaid, certified or registered mail, return receipt requested, addressed to the parties at the address set forth on the first page of this Agreement.

IN WITNESS WHEREOF, Builder and Buyers have executed this Agreement as of the day, month, and year first above written.

Initials: 22 Buyer MR Buyer JRP Builder

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By: 
Prescott & Sons Construction, LLC
("Builder")

By: 
("Buyers")

By: Michelle Rogers
("Buyers")

Initials: 2C Buyer MR Buyer JPP Builder

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2012-CP-02-02382

3
4 PRESCOTT & SONS, LLC,
Plaintiff,

5 -vs-

TRANSCRIPT OF RECORD

6 LARRY AND MICHELLE ROGERS,
7 Defendant.

8 Heard on Monday, January 20, 2015

9 & Tuesday, January 21, 2015

10 Aiken, South Carolina

11
12
13 BEFORE:

THE HONORABLE DOYET A. EARLY, III

14 AND A JURY

15
16 APPEARANCES:

17 Counsel on Behalf of the Plaintiff:
Lir Patrick Derieg, Esq.

18
19 Counsel on Behalf of the Defendant:
James McLeod Ervin, Esq.

20
21
22 Cheri L. Young, RPR
23 Circuit Court Reporter
P O Box 5232
24 Aiken, SC 29804-5232
25

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1 ON MONDAY, JANUARY 20, 2015 AT 10:29 A.M.:

2 THE COURT: Good morning, ladies and gentlemen. We
3 are down to one case. It's a civil case, so what I intend
4 to do is draw the jury here right now in just a few
5 minutes after we go through some preliminary matters.
6 I'll need 12 jurors. Y'all agree to go with less than 12
7 if we lose somebody or do you want two alternates,
8 gentlemen?

9 MR. ERVIN: I can proceed, Judge, I'll make sure my
10 clients are okay with that but I don't see a problem with
11 that.

12 THE COURT: I'll need 12 jurors so I'll get 12 of
13 you. The case will last probably a day, day and a half.
14 Those who are not drawn will be excused for the balance of
15 the week. Fair enough?

16 UNIDENTIFIED SPEAKER: Amen.

17 THE COURT: Even if it's not fair that's what we're
18 going to do.

19 My name is Jack Early. I am your Resident Judge of
20 the Second Circuit which is Aiken and Barnwell and
21 Bamberg. And I've been assigned to hold court here this
22 week. You're fortunate that you got chosen this week.
23 Next week they are starting a three-week trial. So you
24 obviously got the right week, I think.

25 All right. Here's what we have to do so we can

1 move right along and get those out who are not going to be
2 selected and get started with the trial.

3 I have to qualify you. Your state senators and
4 legislators have enacted or passed certain qualifying
5 requirements. I have to go through that with you and then
6 we'll go through exemptions with you to make sure you're
7 qualified. Once we do that then I'll ask you some
8 questions about the first case and then once we do that
9 we'll draw the jury. And then we should have all of that
10 completed no later than 11 o'clock, maybe before that.

11 So if you would, please, stand and raise your right
12 hands so the clerk can swear you in.

13 (Jury sworn.)

14 THE CLERK: Please be seated.

15 THE COURT: The first step is we call the roll. So
16 as the clerk calls your name, please stand. Please give
17 us your number and identify yourself. If you are
18 employed, please tell us where you are working. And if
19 you are married, please tell us where your spouse is
20 employed. It's very simple. Stand up and say: My name
21 is Jack Early. I'm employed by the judicial department.
22 My wife's a homemaker.

23 We'll go through the roll call and as soon as that
24 is over then I'll go through the qualifying questions and
25 exemptions. Then we'll qualify you for the first case.

1 Ma'am?

2 (Roll call conducted.)

3 THE CLERK: We have 69, Your Honor.

4 THE COURT: Now, ladies and gentlemen, please
5 listen carefully. Let me go through the qualifying
6 questions. If any of these questions apply to you, please
7 stand, once again, identify yourself by name and number
8 and answer the question.

9 Do I have any member of the jury panel who is not a
10 citizen of the United States? If so, please stand.

11 Do I have any member of the jury panel who is not a
12 citizen and resident of Aiken County, South Carolina? If
13 so please stand.

14 Do I have any member of the jury panel who is
15 unable to read, write, speak or understand the English
16 language? If so, please stand.

17 Do I have any member of the jury panel who has less
18 than a sixth-grade education or its equivalent? If so,
19 please stand.

20 Do I have any member of the jury panel who is
21 unable to perform jury service because of a physical or
22 mental infirmity which normally requires an excuse? If
23 so, please stand.

24 Do I have any member of the jury panel who has been
25 convicted by guilty plea or trial in a state or federal

1 court of record of a crime punishable by imprisonment for
2 more than one year and your civil rights have not been
3 restored by pardon or amnesty? Punishable by more than
4 one year means that you could have received a sentence of
5 more than one year regardless of what sentence you
6 actually received. If so, please stand.

7 Do I have any member of the jury panel who is a
8 clerk or deputy clerk of court, a constable, sheriff or
9 other commissioned law enforcement officer, a probate
10 judge, a county commissioner, a magistrate, or other
11 county officer or employed within the walls of any
12 courthouse? If so, please stand.

13 Do I have any member of the jury panel who served
14 on jury duty this calendar year of the year 2015? I doubt
15 that would apply.

16 Any member of the jury panel who has been a member
17 of the Aiken County Grand Jury during the last several
18 calendar years? If so, please stand.

19 All right. Ladies and gentlemen, let's move on now
20 to jury exemptions. State law provides for several
21 exemptions for jury service. An exemption means that not
22 withstanding the fact that you are qualified it simply
23 means you have the right to say, Judge, I choose not to
24 serve.

25 First exemption are those of you who may be 65

1 years or older. If you are 65 and older you're welcome
2 to serve, we welcome you with open arms, but you have the
3 option to say, I choose not to serve. So do I have anyone
4 who is 65 or older who does not want to serve? Please
5 stand.

6 You're not required to serve as a juror more often
7 than once every three calendar years. Therefore, if any
8 member of the jury panel has served on jury duty during
9 the last two calendar years then this year you may be
10 exempt. 2015, '14, '13. Does that apply to anyone?

11 Likewise you may be exempt if you have been on the
12 grand jury during the last five calendar years. Does that
13 apply to anyone?

14 You may be exempt if you have a small child or
15 children under the age of seven, and you are the principal
16 custodial parent and have legal custody of that child, and
17 you are unable to make arrangements for the care of the
18 child while performing jury trial. Does that apply to
19 anyone? If so, please stand.

20 Do I have any member of the jury panel who would
21 like to be exempt if you are the primary caretaker of a
22 person 65 years or older, and he or she is unable to care
23 for themselves while you are performing jury duty? If so,
24 please stand.

25 Do I have any member of the jury panel who is a

1 caretaker of a severely disabled person who is unable to
2 care for himself or herself and cannot be left
3 unattended?

4 The next exemption deals with those of you who may
5 be attending school at this time or working in some
6 capacity with the school. If this exemption applies to
7 you, I cannot excuse you but I can transfer you to another
8 term of court which would not interfere with your school
9 activities. So do I have anyone who is a full-time
10 teacher, student, or works in any other capacity with the
11 school and who's unable to serve on jury duty this week as
12 a result of that school involvement? I can transfer you.
13 This is an easy week to serve. One case, short case.

14 Do I have any member of the jury panel who's
15 employed with the Department of Corrections and would like
16 to be excused?

17 Do I have any member of the jury panel who performs
18 services for a business and your services are so essential
19 to the operation of that business that if you were
20 required to serve the business would stop operating?

21 Yes, ma'am, your name?

22 THE JUROR: Michelle Adams. Juror Number One. I
23 own an escort service that we are a pilot car service and
24 I work through my cell phone to line up the escorts for
25 the customers. And I --

1 THE COURT: What kind of escorts?

2 THE JUROR: Pilot car service. Oversize loads.
3 C'mon now.

4 THE COURT: I heard that this morning, I said ...

5 THE JUROR: Yeah. That's the name of my company.
6 If I need to go and bring documents back to show that I
7 can.

8 THE COURT: I understand. I can't excuse you but I
9 can transfer you to another term if you'd like to do that.

10 THE JUROR: Yeah, because I believe I would be
11 distracted by having to work. I could work silently on my
12 cell phone to be on the jury, I don't mind that, but I
13 would -- my attention would be drawn away.

14 THE COURT: Well, I can't excuse you. I can
15 transfer you. So you may be distracted that next time.

16 THE JUROR: Yeah, I know.

17 THE COURT: This is an easy week.

18 THE JUROR: Let me go with the easy week.

19 THE COURT: That's a good idea.

20 THE JUROR: Perfect. Thank you.

21 THE COURT: I could transfer you to next week and
22 you may get stuck for three weeks.

23 THE JUROR: No, because then you'd take my cell
24 phone and sell it.

25 THE COURT: No, ma'am. No, ma'am.

1 THE JUROR: I want to stay.

2 THE COURT: That's -- call the escort service. I
3 saw all the jurors. They sort of perked up.

4 THE JUROR: I'm sitting down now.

5 THE COURT: Thank you for allowing a little
6 levity. We normally have to be very serious about
7 everything but every now and then we can have a laugh. It
8 does us good.

9 All right. It may very well be that you are
10 qualified and no exemption applies to you but this week
11 constitutes a severe hardship. I cannot excuse you but I
12 can transfer you to another term. If you got something
13 that's just pressing this week and need to get off, I'd be
14 more than happy. You come up and tell me in private here
15 or you can stand there and tell me. Okay.

16 You got a voir dire witness list, Mr. Derieg?

17 MR. DERIEG: Your Honor, I do have a witness list.
18 I read over the proposed voir dire from the Defendant and
19 we are in agreement with those.

20 THE COURT: All right. Ladies and gentlemen, we're
21 going to start the trial of a civil case. Last week we
22 had criminal court. In criminal court obviously a jury is
23 asked to determine whether or not the State's able to
24 prove someone guilty beyond a reasonable doubt. In a
25 criminal case then obviously if the jury finds the person

1 guilty, then that person is sentenced by the court.

2 On the other side of the courtroom we have what we
3 call civil cases or common pleas. And that is where we
4 try to resolve disputes between citizens or between two
5 citizens or a citizen and a business, et cetera, et
6 cetera.

7 And in this case the case is entitled Prescott &
8 Sons Construction, LLC. Mr. Prescott, you're the head
9 honcho at Prescott & Sons Construction?

10 MR. PRESCOTT: Yes, sir.

11 THE COURT: Would you stand and face the jury panel
12 please? Your name is Joshua Prescott?

13 MR. PRESCOTT: Yes, sir.

14 THE COURT: Thank you. You may be seated.

15 And the Defendants in the case are Larry Rogers and
16 Michelle Rogers. I assume that's the Rogerses? If you'd
17 stand and face the jury panel, please. Thank you. You
18 may be seated.

19 In this case it's a dispute concerning the
20 construction of a house and whether or not one person owes
21 the other or the other person owes the other. It's a home
22 construction dispute case. I'll let the lawyers tell you
23 more about it when we get started.

24 But this is a case brought in the civil courtroom.
25 And what we'll do is we'll get our jury in this case.

1 We'll draw 20 names and then the lawyers get to strike
2 four each and give us a 12-member jury panel.

3 But let me ask you some questions before we get too
4 far down the road. And, once again, if any of the
5 questions involve you, please stand and we will go over
6 them.

7 As I told you the parties in the case is Prescott &
8 Sons who's represented by -- Mr. Joshua Prescott, he's the
9 representative for that limited liability corporation.
10 The other side is Larry and Michelle Rogers. Question:
11 do I have any member of the jury panel who is related by
12 blood or marriage or do you now or have you in the past
13 had a close personal or social relationship with either
14 the Plaintiff or the Defendants? If so, please stand.

15 I am told the proposed witnesses -- these may not
16 all be called but I have to name them all at this time.
17 The potential witnesses in the trial of the case are:
18 Mr. Joshua Prescott, Ashley Prescott. Is that you?

19 MS. PRESCOTT: (Nods head.)

20 THE COURT: Stand and face the jury, please. Thank
21 you, ma'am.

22 Jeremy Kelley. Phil Padgett. Joe Voight,
23 V-O-I-G-H-T. Chris Allen. Samuel Ruvucalbus. I'm
24 butchering that. R-U-V-U-C-A-L-B-U-S. Floyd Hutto.
25 Robbie Barrett. Jan Bentley. Steve Smith. Matthew

1 McGee. Allen Marshall, Sherry Anderson. Sanford
2 Campbell. Those are the potential witnesses in the trial
3 of the case.

4 Any member of the jury panel related by blood or
5 marriage, now or in the past, or do you now or have you in
6 the past had a close personal or social relationship with
7 any of the potential witnesses in the trial of the case?
8 If so, please stand.

9 Prescott & Sons Construction is represented by
10 Mr. Lir Patrick Derieg. Thank you.

11 The Defendants are represented by Mr. James Ervin,
12 E-R-V-I-N, of Columbia. Thank you.

13 Any member of the jury panel now or in the past
14 have had legal services performed by either of the
15 lawyers? Please, stand.

16 Do I have any member of the jury panel who's
17 related by blood, now or in the past, or do you now or
18 have you in the past had a close personal or social
19 relationship with either of the lawyers? If so, please
20 stand.

21 As I told you, this case involves a dispute
22 concerning the construction of a house here in Aiken
23 County back in 2011 located at 28 Plantation Court in
24 North Augusta, was to be built by Prescott & Sons
25 Construction for Larry Rogers and Michelle Rogers and

1 certain disputes have arisen which caused this lawsuit.

2 Does anybody know anything about this? Anybody
3 talked about it or anybody talked to you about it?
4 Anybody heard anything about it? Anybody know anything
5 about it, about a house being constructed for these people
6 by this company?

7 The way the system works, ladies and gentlemen,
8 when we have a dispute between two citizens we try to, and
9 we do, attempt to resolve those disputes in a civilized
10 manner. Hence we have civil court. And when two people
11 can't do it they don't get out in the street and have a
12 duel. They don't get out in the street and have a fight
13 and they don't get some dictator telling them what to do.
14 They get their dispute resolved by 12 citizens of their
15 community.

16 And here's how the system works. Obviously both
17 sides will present their side of the story. And
18 oftentimes -- I've been doing this a long time.
19 Oftentimes one's going to say A and one's going to say B
20 and one's going to say C and one's going to say D. And
21 you're going to get all kinds of evidence in the case.
22 And the jury, 12 citizens from the community are called
23 upon to decide what the true facts are in the case.

24 You judge the credibility or the believability of
25 the witnesses who testify. And the 12 of you collectively

1 acting as the finders of the facts, you are the judges of
2 the facts. You determine what the true facts are. And
3 then once you determine what the true facts are you apply
4 it to the law as I instruct you and then you'll be in a
5 position to render a verdict. It's the best system of
6 justice in the world. Seriously. And when we have
7 disputes that we can't settle we let 12 citizens help us
8 do that.

9 Now do I have anybody who cannot perform that civic
10 duty for any political reason, personal reason, political,
11 religious, anything, that you can't do that? I need to
12 know now.

13 Do I have any member of the jury panel who has been
14 involved in civil litigation in the past whether you sued
15 someone or whether somebody sued you? If so, please
16 stand.

17 Yes, ma'am, in the blue and black. Your name?

18 THE JUROR: Marie Whitlock, Juror Number 190.

19 THE COURT: Tell us a little bit about it, ma'am.

20 THE JUROR: My son drowned at the YMCA in
21 Lexington, South Carolina, and we sued the Y.

22 THE COURT: Okay. I'm sorry for that. The fact
23 that you've been involved in civil litigation in the past,
24 ma'am, would that in any way preclude or keep you from
25 being a fair and impartial juror in the trial of this

1 case?

2 THE JUROR: No, sir.

3 THE COURT: Thank you, ma'am. Anyone else?

4 Ladies and gentlemen, one of my main
5 responsibilities as a Trial Judge is to ensure that both
6 sides receive a fair trial, that both sides are able to
7 present their side of the story by calling witnesses and
8 asking questions under the rules of evidence and under our
9 rules of civil procedure. And as I just said, you serve
10 as the judge of the facts in the case.

11 This is the last question. Do I have anybody, for
12 any reason, if they don't think they can do that, can't
13 perform that civic duty, you have personal beliefs against
14 lawsuits, anything? Because I don't want to get to the
15 end of the day and then somebody tells me, Judge, I can't
16 do this, and we've already tried the case. If you know of
17 any reason why you can't be fair both to the Plaintiff and
18 the Defendant I need to know now.

19 All right. Give me 20 names, please, ma'am, and
20 each of you have four strikes. Any additional questions
21 by the Plaintiff?

22 MR. DERIEG: No, Your Honor.

23 THE COURT: By the Defendant?

24 MR. ERVIN: None, Your Honor.

25 THE COURT: Thank you.

1 THE CLERK: No alternates?

2 THE COURT: N-O, zero.

3 THE CLERK: Zero.

4 THE COURT: They've agreed to go with less than 12
5 if I lose a juror.

6 THE CLERK: Okay.

7 THE COURT: Last week we had general sessions or
8 criminal court. We tried a case last week dealing with
9 armed robbery and grand larceny, a bunch of people backed
10 into a firearm place and stole all the firearms out of
11 it. It was a big shoot-out and one person was killed. In
12 those kind of cases when we got to drawing the jury we
13 would pull out one name at a time on a random basis and
14 that juror would have to come up and stand in front of the
15 prosecutors and the defense lawyer and the State had five
16 strikes and the defendant had 10. And we drew the jury
17 like that.

18 That's how you do it in a criminal case. In a
19 civil case the clerk has just put 20 names, she's put them
20 in a computer program and they're randomly selected. Now,
21 each side has four strikes. When we have the 20 less
22 eight we wind up with our 12. Give them just a second or
23 a minute or two to select a jury and we should have that
24 done here in just a few minutes and then we'll be in a
25 position to start the trial.

1 (Pause from 11:05 until 11:08 A.M.)

2 THE COURT: Gentlemen, are y'all ready?

3 MR. DERIEG: Yes, Your Honor.

4 THE COURT: All right. Please -- the Plaintiff

5 strikes first. Gentlemen, please listen carefully.

6 Please use the number to the far left. Far left.

7 Plaintiff may strike first.

8 MR. DERIEG: Your Honor, Number Seven and Number

9 11.

10 THE COURT: Nope. You get four. You go one at a

11 time. Number seven is the first strike.

12 MR. DERIEG: Oh.

13 THE COURT: All right. Defendant?

14 MR. ERVIN: Judge, strike number three.

15 THE COURT: All right. Now, Mr. Plaintiff, you

16 have your second strike.

17 MR. DERIEG: Number 11.

18 THE COURT: Mr. Defendant?

19 MR. ERVIN: Judge, strike Number 12.

20 THE COURT: Mr. Plaintiff, your third strike?

21 MR. DERIEG: Your Honor, we have no more strikes.

22 THE COURT: You got to take two more. I got to

23 have 12.

24 MR. DERIEG: I'll take 19.

25 MR. ERVIN: 14, Judge.

1 THE COURT: Last strike by the Plaintiff.

2 MR. DERIEG: Number 20, Your Honor.

3 THE COURT: Mr. Defendant?

4 MR. ERVIN: Number Five, Judge.

5 THE COURT: Please listen carefully as the clerk
6 reviews the strikes. Madam Clerk?

7 THE CLERK: For the Plaintiff I have Number Seven,
8 11, 19 and 20.

9 THE COURT: Is that correct?

10 MR. DERIEG: Yes, Your Honor.

11 THE COURT: Defendant?

12 THE CLERK: For the Defendant, I have Number Three,
13 Number Five, Number 12, and Number 14.

14 THE COURT: Is that correct?

15 MR. ERVIN: That's correct, Judge.

16 THE COURT: As your name is called, please come
17 forward. If you have any personal belongings, please
18 bring those with you.

19 THE CLERK: 136, Deandra McDuffie.

20 (Black female comes forward.)

21 THE CLERK: 96, Bradford Hicks.

22 (White male comes forward).

23 THE CLERK: 112, Courtney Johnson.

24 (White female comes forward).

25 THE CLERK: 97, Bonnie Hodges.

1 (White female comes forward).

2 THE CLERK: 59, Rachael Dry.

3 (White female comes forward.)

4 THE CLERK: 144, Janet Mumford.

5 (White female comes forward).

6 THE CLERK: 110, Debra Jay.

7 (Black female comes forward).

8 THE CLERK: 44, Pauline Cheselka.

9 (White female comes forward.)

10 THE CLERK: 29, Beverly Lynn Bulfinch.

11 (White female comes forward.)

12 THE CLERK: 118, Sharron Jones.

13 (Black female comes forward.)

14 THE CLERK: 70, Sharyn Franklin.

15 (White female comes forward.)

16 THE CLERK: And 113, Frances Johnson.

17 (Black female comes forward.)

18 THE COURT: Any motions by the Plaintiff in
19 connection with the selection of the jury?

20 MR. DERIEG: Nothing from the Plaintiff, Your
21 Honor.

22 THE COURT: By the Defendant?

23 MR. ERVIN: Nothing from the Defense, Judge.

24 THE COURT: Ladies and gentlemen, we're going to
25 start here in about 15 minutes. I'm going to let

1 Mr. Whittle take you back to the jury room, show you where
2 we are, stretch your legs a little bit. We'll start back
3 in about 15 minutes in the trial of the case.

4 Do you want me to buy you lunch?

5 THE JURY (COLLECTIVELY): Yes.

6 THE COURT: All right. We're going to give you
7 some menus from the?

8 THE BAILIFF: Stoplight.

9 THE COURT: Stoplight Deli.

10 THE JUROR: Yes, it sounds good.

11 THE COURT: So while you're waiting on me for about
12 15 minutes, fill out the menu. Thank you. I'll be right
13 back with you.

14 (Jury exits courtroom at 11:13 a.m.)

15 THE COURT: All right. Ladies and gentlemen, as
16 represented, when we started this term of court, we had 13
17 cases on the trial docket. And all but one has been
18 resolved one way or the other. And I'm down to this one
19 case. I had two cases this morning but the other one
20 resolved right when I got here this morning. But
21 obviously we can't run court without citizens being ready,
22 willing, and able to serve. And I appreciate you being
23 here this morning. The system runs great but it doesn't
24 run without you.

25 And, every now and then it gets sort of testy.

1 Like next week, they're going to start a trial involving
2 one of the police officers who was killed here in Aiken.
3 They anticipate that lasting about three weeks. So
4 sometimes those things happen. But you, you dodged that
5 one. So anyway, thank you.

6 If you need a work excuse, you have to go back to
7 the jury assembly room and the clerks will be sure and
8 give you one. A check will be mailed, notwithstanding
9 it's not a very big check but it will be mailed to you
10 sometime quickly, this week perhaps. And I'm going to now
11 excuse and thank you for coming.

12 (Jury panel exits courtroom at 11:15 a.m.)

13 THE COURT: Are they witnesses?

14 MR. DERIEG: Yes, Your Honor.

15 THE COURT: I'm going to ask you to step out just
16 for a second, please. Sir, just y'all stand outside for
17 a second for me.

18 (People exit courtroom.)

19 THE COURT: John, how about close that door?

20 THE BAILIFF: All right.

21 THE COURT: All right. Mr. Prescott and Mr. and
22 Mrs. Rogers, you've got 12 jurors, they're going to try to
23 decide this case. Construction cases are probably the
24 most difficult cases we try because most people, like me,
25 don't know a thing about construction. And, you know,

1 it's just -- they're tough. I know you're suing them for
2 what you claim they owe you. Y'all are suing him for what
3 you claim he didn't do right.

4 Y'all got coverage involved in this thing? Anybody
5 got coverage?

6 MR. ERVIN: We do not, Judge.

7 THE COURT: Well, here's what's going to happen.
8 After it's all over said and done somebody's going to
9 lose. And more than likely -- I mean, they could find
10 that neither one of you have proven your case and end up
11 with just walking away, but, I know y'all mediated it and
12 tried to resolve it. And I appreciate y'all doing that.

13 But I'm just telling you that the jury system
14 normally works very good but somebody's going to lose and
15 somebody's going to have a judgment against them. And if
16 it's you two without anybody to pay it, it's going to
17 create a huge problem for you for 10 years. They stay on
18 the record for 10 years. And they can attempt to satisfy
19 it out of any assets that you may now own or accumulate in
20 the next 10 years including any savings you have, any
21 retirement accounts you have, any assets you have. I'm
22 not saying you're going to lose but I'm saying if you do
23 and it's without coverage it's a tough thing to do. Just
24 make sure you understand that.

25 MS. ROGERS: Yes, sir.

1 MR. ROGERS: Yes, Your Honor.

2 THE COURT: I know y'all have tried to mediate it
3 and I think it got as close as both of you walking away
4 and just sort of what we call a dog fight sometimes. But
5 just please y'all understand everything. It's not too
6 late to walk away but that's y'all's decision. You want
7 to discuss it with your lawyer because once we get started
8 it's, you know, we get started.

9 So, you got any questions you want to ask me? I'll
10 be more than happy to try to answer them. I practiced law
11 for 30 years and I've been a judge now for going on 11.
12 And, when you sit there naked and when I say that what I
13 mean by that is when you sit there with no coverage,
14 insurance coverage and if you happen to lose it will
15 affect you for 10 years. That judgment remains in effect
16 for 10 years and it's a lien against anything that you may
17 have and they can satisfy it with some rules involved.
18 Likewise, Mr. Prescott, if they're successful against you,
19 I don't know if you got coverage that will cover it all or
20 not but it can create some problems for you as well.

21 Most of the time we try these cases, they're car
22 wreck cases or somebody suing a doctor or a lawyer and,
23 you know, the doctor or lawyer or the car driver he has
24 coverage. And if they win a big verdict against you all
25 they have to do is turn it over to the insurance company.

1 So just be mindful that you never know what a jury is
2 going to do.

3 So I'm not preaching to you. Just make sure you
4 understand where we are. Okay? You got any questions you
5 want to ask me?

6 MS. PRESCOTT: No, Your Honor.

7 MR. PRESCOTT: No, Your Honor.

8 THE COURT: Your lawyer, he'll give you good
9 advice. I assume that where you were at mediation it's
10 still a viable way of resolving it but these things are
11 not palatable and not fun. And, it's not fun for y'all.
12 I know it's not fun for him. It's not fun. Just -- but
13 it's better than going out in the street and slugging it
14 out. Just, please, I want to make sure you understand
15 what could happen. I have no idea what's going to happen
16 but somebody's going to end up on the short string.

17 All right. We're going to take about five more
18 minutes for you to stretch your legs, let the jury get
19 their lunch order. I'm going to probably go until about
20 one o'clock and we'll take about a 30- or 45-minute lunch
21 break. So if you want to make some lunch plans, get it
22 done. And if y'all want to come back and talk with me and
23 ask me any questions, I'm going to be back here for
24 another five or 10 minutes before we get started. So make
25 sure your clients understand what I said.

1 MR. ERVIN: Yes, sir.

2 THE COURT: Ma'am, I'm not preaching to y'all. I
3 tell that to everybody, particularly people who come in
4 without coverage.

5 MS. PRESCOTT: Yes, sir.

6 THE COURT: I want you to be fully aware of what
7 may or could happen.

8 (Break taken from 11:22 a.m., until 11:33 a.m.,
9 when the trial resumed:)

10 THE COURT: Plaintiff ready to proceed?

11 MR. DERIEG: We're ready, Your Honor.

12 THE COURT: Defendant ready to proceed?

13 MR. ERVIN: We are, Judge.

14 THE COURT: Bring the jury in.

15 (Jury enters courtroom at 11:34 a.m.)

16 THE COURT: You got to stand up one more time and
17 raise your hand and take the oath for this particular
18 case.

19 (Jury impaneled.)

20 THE CLERK: You may be seated.

21 THE COURT: Well, you got 11 women be telling you
22 what to do.

23 THE JUROR: Best day of my life.

24 THE COURT: It probably is. That's odd to get
25 just one male in. We don't get that often, do we?

1 Just about ready to start the trial of this case --
2 12:30, quarter to one, one, whatever, about 12:45.

3 Getting ready to start the case. And since this
4 is a civil case it's unlike criminal cases. If we were
5 trying that criminal case last week, that guy who was the
6 defendant he pled not guilty and the State had to prove to
7 the jury that he had committed these crimes beyond a
8 reasonable doubt by showing evidence beyond a reasonable
9 doubt.

10 So by these scales of justice, when he came into
11 the courtroom because of his constitutional right being
12 presumed to be innocent but the scales were tipped in this
13 manner. The State had to prove his guilt beyond a
14 reasonable doubt. That's just sort of an illustration of
15 how you have to do it.

16 In a civil case the parties come in on equal
17 footing and for the parties to prevail they have to prove
18 their case by what we call the preponderance or greater
19 weight of the evidence which simply means tipping the
20 scales ever so slightly in their favor.

21 This case is a little different in that in this
22 case the Plaintiff is suing the homeowners, allegedly had
23 a contract to build a house for them. And apparently --
24 I'll let the lawyers tell you but something happened
25 during the construction of the house that they had a

1 disagreement and he's brought a lawsuit claiming that they
2 still owe him money.

3 So in order to prove that, he has to prove his case
4 by the preponderance or greater weight of the evidence.
5 If they start on the 50 yard line, he'd just have to move
6 that ball ever so slightly over the 50. So that's where
7 we are.

8 In response to his suit against them saying that
9 y'all owe me money for what I've done and when we walked
10 away, when we departed on terms or without having any
11 terms the homeowners have said, well, you messed up. What
12 you were doing. You didn't build the house properly, or
13 something like that, and you owe us money for the problems
14 you've caused us.

15 So they filed a counterclaim back against them. So
16 you got one suing for one thing, one suing back for the
17 other. And for them to prove their counterclaim, they too
18 have to push the evidence. So you're going to be hearing
19 sort of conflicting matters coming out of a home
20 construction.

21 The lawyers will be able to tell you much, much
22 more about it than I know because they've been living with
23 it for a few years. To do that and to get where we're
24 going the Plaintiff will go first. He will introduce
25 relevant exhibits. He'll testify. I assume he'll have

1 witnesses who'll testify. They go first. They have to
2 play it within the rules of evidence. As long as they
3 play within the rules of evidence that testimony comes
4 into the trial of the case.

5 After they've completed their side of the story or
6 their presentation, the Defendant in pursuit of their
7 counterclaim will present their evidence. They too have
8 to ask their questions under the rules of evidence. So it
9 may be that you have two or three witnesses who will, the
10 questions are proper and they're within the rules but each
11 witness will give you a different answer.

12 So that's where your job comes in. You're to
13 determine what the true facts are in the case, what's the
14 bottom line in this case, what's going on. Y'all decide
15 that. And then I'll give you the law in the case at the
16 conclusion of the case and then y'all apply those facts to
17 the law.

18 So the Plaintiff will go first followed by the
19 Defendant and then the Plaintiff has a right to reply
20 after that.

21 Before we start anything both lawyers will be able
22 to make an opening statement. That is simply what they
23 intend to show you, what they intend to prove. Sort of a
24 road map to their position. The lawyers' opening
25 statement, that is not evidence in the case. So don't

1 rely on that as evidence. That's just them telling you
2 what to look for and what the issues are. But we'll do
3 the opening statements here in just a few minutes and then
4 following that the Plaintiff will present their testimony
5 followed by the Defendants.

6 We will take some breaks during the trial of the
7 case. We're going to probably go until lunch comes here
8 today but every time we take a break I'll ask you, please
9 don't start any deliberations, don't start discussing the
10 case, because you're not supposed to do that until you've
11 completed the evidence and I've given you the law on the
12 case and the lawyers have argued their final arguments.
13 So don't discuss the case when you go back to the jury
14 room.

15 I try to run an efficient courtroom, try to start
16 right on time, try to keep everything pushed along, pushed
17 along. But I'm not trying to run a race. So if at any
18 time during the trial of the case you become
19 uncomfortable, you need a bathroom break, need something
20 to drink, just to stretch your legs, walk down the hall,
21 whatever, don't get uncomfortable, if you get hot, cold,
22 please raise your hand. I'll make sure you're taken care
23 of.

24 I will ask you when we take the lunch break to
25 please select a foreperson from the 12 of you. That's

1 simply the person who acts as the spokesman for the jury,
2 heads up the deliberations. So I need a foreperson. If
3 y'all can't do it, I'm just going to randomly select
4 somebody.

5 This is an important case to both of these
6 parties. They've been unable to resolve the dispute
7 involving this house and they brought it to you for
8 resolution. So I ask that you pay close attention and I
9 would suspect we'll be winding it up sometime tomorrow.
10 So it won't be a real, real long case. We'll move it
11 right along.

12 Any objections to my opening remarks by either
13 side?

14 MR. DERIEG: Nothing from the Plaintiff.

15 THE COURT: The Plaintiff may make an opening
16 statement.

17 MR. DERIEG: Thank you, Your Honor. May it please
18 the Court.

19 THE COURT: Yes, sir.

20 MR. DERIEG: Nothing in this life is free or, if
21 it's put another way, you can't get something for nothing.
22 It's an age-old saying that, two age-old sayings that most
23 people subscribe to and they understand that to get things
24 in life you have to pay for them.

25 What this case is about is that Mr. Rogers thinks

1 that he can get things for free. He thinks that he can
2 have work done to his house and he thinks that he can fire
3 the people that did the work to his house and he believes
4 that he doesn't have to pay.

5 Ladies and gentlemen, my name is Lir Patrick
6 Derieg. And I have the honor and pleasure to represent
7 Prescott & Sons Construction, LLC. This is Josh
8 Prescott. He's the owner of Prescott & Sons Construction
9 and this is his wife Ashley.

10 What you will see and hear today, Mr. Prescott will
11 tell you about entering into a contract with Mr. and
12 Mrs. Rogers back in May of 2012 -- or, excuse me, April of
13 2012 was their first contract. Then when finances were
14 difficult for the Rogers, Mr. Prescott tried to help them
15 out, changed the contract, made it more affordable for
16 them. So in May they entered into a new contract.

17 And this is a breach of contract case, and it will
18 be that second contract. And you will hear from the stand
19 that Mr. Rogers and Mrs. Rogers breached by firing my
20 client in June of 2012, approximately a month after
21 construction had begun.

22 You'll hear an independent third party who does
23 work both for Mr. Prescott and had a contract with
24 Mr. Rogers. His name is Jeremy Kelley. He will come in
25 here and sit on that stand and he will tell you that he

1 was with Mr. Rogers on the day that Mr. Prescott got
2 fired. He'll tell that you he was with Mr. Rogers and
3 Mr. Rogers said, if Josh Prescott doesn't put that
4 basement in for free he can't come back on my property.
5 Forty-five minutes later Mr. Kelley is with Mr. Prescott.
6 Mr. Prescott gets the phone call from Mr. Rogers saying,
7 you can't come back to my property.

8 There were a series of unpaid invoices,
9 approximately eight, from six different subcontractors.
10 Those subcontractors, they received money from Josh
11 Prescott because when Josh Prescott gets a bill he pays
12 it. In the contract as you'll see from the stand, the
13 contract clearly states that when Mr. Prescott gets
14 invoices from his subs on Mr. and Mrs. Rogers' house for
15 28 Plantation Courthouse (sic), he pays them.
16 Mr. Prescott pays the subcontractors and gets reimbursed
17 by Mr. Rogers.

18 You'll hear sometimes that Mr. Prescott instructed
19 the Rogers to pay the subcontractor fees directly to them.
20 You'll hear that there are eight invoices that remain
21 unpaid. That Mr. Prescott has come out of his company's
22 pocket for over -- it's between 5- and \$6,000 that he's
23 come out of his pocket for, for work done. Just materials
24 and labor with the subcontractors. Not a dime of profit
25 for Mr. Prescott. It's all money out of his pocket.

1 You're going to hear that after Mr. Prescott got
2 fired it was the job of the City of North Augusta
3 inspector named Steve Smith to come and inspect the work
4 that had been done to give Mr. Rogers -- or excuse me,
5 Mr. Prescott a clean bill of health so to speak saying
6 that he had done what he was supposed to do at the house.
7 So he came and he found -- you'll -- so there's a punch
8 list of about 10 minor corrections that needed to be made
9 to the house when Mr. Prescott was fired.

10 But you'll also hear testimony that those are very,
11 very common mistakes that are not even mistakes. Very
12 common things that need to be cleaned up or fixed prior to
13 a house being done and the value of that work and labor is
14 approximately zero. It's stuff the subcontractors already
15 should have done and all Josh would have had to have done
16 is picked up a phone call -- pick up the phone, make a
17 call and say, hey, will you guys go fix XY and Z. But he
18 wasn't allowed to do that because he got fired.

19 You'll also hear that there's a part of this second
20 contract that we're talking about where Mr. and Mrs. Roger
21 aren't allowed to contract these subcontractors
22 directly. You'll hear from multiple of these
23 subcontractors, even some of them, the very first time
24 they set foot on 28 Plantation Court, Larry Rogers pulled
25 them off to the side and tried to hire them away out from

1 under Mr. Prescott trying to cut his prices, trying to
2 make sure Mr. Prescott doesn't get paid. From the very
3 start, the very first time many of these subcontractors
4 came onto the property Larry was already trying to cut out
5 Prescott.

6 That's a breach of contract. Not paying the
7 invoices, breach of contract.

8 And Josh Prescott from the first contract was
9 supposed to receive significantly more than he would have
10 under the second contract. In the first contract there
11 was, the house was estimated at about 200-, \$250,000 and
12 Josh was going to get a sizable percentage of that money
13 as his contractor's fee. But when Mr. Prescott or Mr. and
14 Mrs. Rogers couldn't afford that they changed, changed to
15 a new contract Josh accepted a flat \$25,000 fee instead of
16 the 40- or \$50,000 that he could have made on the original
17 contract. It was supposed to be a paid in five monthly
18 installments. 5,000, 5,000, 5,000, 5,000, 5,000. When
19 they got through two of those payments then they fired
20 Mr. Prescott.

21 There's another breach of contract, \$15,000 still
22 left unpaid.

23 Now at the end of this case it will be y'all's job
24 to decide who you believe. This case is very much about
25 credibility and believability. There will be, you'll have

1 some paper evidence. You'll see those invoices. You'll
2 see those contracts. But a lot of this case has to do
3 with what people said, what people heard. And it will be
4 your job to sit as the judge of the facts, to determine
5 the credibility and the believability of the witnesses
6 that come to this stand.

7 What do they have to gain, what do they have to
8 lose, how do they present themselves on the stand to you,
9 are they forthcoming, or do they seem to be searching for
10 answers. And that's your job as the judge of the facts to
11 sit and judge these witnesses as to whether or not you
12 believe them. And at the end of the day, ladies and
13 gentlemen, and into tomorrow most likely, I'll stand
14 before you again and we'll go over the evidence that
15 you'll hear from that stand that goes to prove all the
16 different points that I just went over.

17 At the end of this case, I'll ask you to return a
18 judgment on behalf of Mr. Prescott and let Larry and
19 Michelle Prescott know that nothing in this life is free.
20 Thank you.

21 MR. ERVIN: If it please the Court, Judge.

22 Good morning, ladies and gentlemen of the jury.
23 First and foremost, thank you so much for being here.
24 You've answered the call of duty, your civic duty of being
25 on a jury. You have the privilege of weighing the facts

1 in this case and seeing who do you believe, what you deem
2 credible, and judging the issues in this case.

3 My colleague Mr. Derieg has explained to you a
4 pretty good generalization of the case but I want to
5 clarify a few things.

6 Mr. and Ms. Rogers did hire Mr. Prescott to do a
7 job. They did not expect to do it for free. And they
8 actually paid him a great deal of money, over \$70,000 was
9 already paid to Mr. Prescott. They did have a month-to-
10 month payment schedule with Mr. Prescott and after two
11 months they didn't fire Mr. Prescott. Mr. Prescott quit.
12 He walked off the job.

13 That's going to be a pivotal point in this case.
14 You need to determine whether or not that actually
15 happened. What you are going to hear is Mr. Prescott and
16 some of his subcontractors continually telling you how
17 difficult Larry Rogers is to work with. It's going to be
18 very clear; they don't like him. And they're going to try
19 to make you not like him.

20 But what you need to understand is this is a
21 business deal. This is not a fraternity. This is not
22 beer-drinking buddy or a softball game. This is a
23 business deal.

24 Mr. and Mrs. Rogers are paying Mr. Prescott to do a
25 job. Mr. Prescott didn't get along with Larry. Larry

1 worked from his house. So when these guys were working at
2 his house, he was working in his office there, he did have
3 contact with the subcontractors. One, because he was
4 there all the time, two, because Mr. Prescott wasn't there
5 all the time. And on many occasions Mr. Prescott told
6 Larry and Michelle to deal with the subcontractors while
7 he wasn't there.

8 But all of that's going to come out in the evidence
9 and the facts and the testimony. But what I want to make
10 clear is Mr. Prescott walked off the job. And there was
11 no breach. In fact, you're going to see that Larry and
12 Michelle paid every invoice that Mr. Prescott presented to
13 them.

14 The invoices he's referring to now were presented
15 to Mr. Rogers and Ms. Rogers in the form of a mechanic's
16 lien and then a lawsuit. They never saw these invoices
17 until they were sued for them. Had they seen them prior
18 to, they would have had an opportunity to pay them and
19 they did not get that opportunity.

20 Mr. Prescott walks off the job leaving unfinished
21 work and exposed work. So Larry and Michelle have to
22 figure out how to finish this job. Find a new contractor,
23 right? Well, in addition to just walking off the job,
24 Mr. Prescott pulls his permits which affects the Rogers'
25 ability to keep their loan. So they can't have a loan.

1 In addition to that, he files a mechanic's lien for
2 invoices they've never seen. That too prohibits them from
3 getting a loan. And then he tells every contractor within
4 earshot and within the region that Larry and Michelle
5 don't pay contractors. So for three months they seek
6 someone to finish this job and none of them will work for
7 them because Mr. Prescott makes it very clear that he
8 doesn't like Larry Rogers.

9 So, as a result my clients, who thought they were
10 hiring Mr. Prescott to do a job, ended up paying him over
11 \$70,000, losing a significant amount of money trying to
12 get another loan, and then had to hire somebody not
13 until -- let's see. Prescott walks off the job June 26.
14 They did -- not until November 14th could they find
15 someone else to do this job and even that contractor said,
16 yes, Mr. Prescott said you don't pay your bills.

17 Well, that cost my clients a great deal more money
18 than they were planning to spend. And we'll show you that
19 today too.

20 Thank you for being here. I trust your judgment
21 and we're very privileged to have you here. Thanks a lot
22 for listening.

23 THE COURT: You may call your first witness.

24 MR. DERIEG: If it please the Court. Your Honor,
25 Plaintiffs call Josh Prescott.

JOSH PRESCOTT - DIRECT BY DERIEG

1 JOSH PRESCOTT, having been duly sworn, was examined
2 and testified as follows:

3 THE CLERK: Please take a seat in the witness box
4 and state your full name for the Court.

5 THE WITNESS: I'm Josh Prescott, owner of Prescott
6 & Sons Construction.

7 THE COURT: Please have a seat, Mr. Prescott.
8 You'll need to speak a little bit louder than that because
9 that guy's got to hear you talk and all the other jurors.

10 DIRECT EXAMINATION

11 BY MR. DERIEG:

12 Q. Good morning, Josh.

13 A. Good morning.

14 Q. Please introduce yourself to the jury. Tell them
15 where you're from, where you grew up, and where you went
16 to school. Just kind of give your background as to who
17 you were growing up.

18 A. I'm -- born and raised in Augusta. From the
19 Langeley area, graduated Midland Valley High School in
20 '97. Grew up building houses, framing and roofing. From
21 the time I was 12 years old every weekend, holiday and
22 summer, I had a hammer in my hand.

23 My dad left when I was real young so my uncle
24 brought me up in the framing business. So, all through
25 school it was just driven into me, you know, framing,

JOSH PRESCOTT - DIRECT BY DERIEG

1 roofing, framing, roofing, framing, roofing, every
2 weekend, holiday, summer. I would hate it. I wanted to
3 go to the lake with my friends and my uncle would make me
4 go to work, long story short.

5 So, when the -- growing up framing houses and
6 roofing and stuff like that, you know, contractors come on
7 the job. We was just a framer and, you know, I said
8 that's what I want to do. I'm tired of swinging a
9 hammer. I want to be a contractor. So, you know, I went
10 to Columbia and took my test and got my residential
11 contractor's license and --

12 Q. And when was that?

13 A. That was probably 2004, -5, somewhere in there, I
14 guess.

15 Q. So approximately how -- after you took that test
16 and got your license, is that when you opened Prescott &
17 Sons?

18 A. I had always, you know, did a little handyman
19 stuff, you know, on the weekends and stuff like that.
20 Working for my uncle, you know, we was framing six days a
21 week so I didn't get a lot of free time but when we
22 started our business, going on 11 years now, after
23 receiving a residential contracting license I went ahead
24 and pursued a little farther to get my unlimited GC
25 license to be a general contractor, to get more in

JOSH PRESCOTT - DIRECT BY DERIEG

1 commercial work and, you know, keep the residential
2 business as well.

3 Q. So you said you've been in business for about 11
4 years?

5 A. Going on 11 years.

6 Q. In that 11 years, have you ever sued one of your
7 clients?

8 A. No, sir. This is the first time I ever had to go
9 to court.

10 Q. In those 11 -- well, in those 11 years has any of
11 your clients ever sued you?

12 A. No, sir.

13 Q. Do you have any family?

14 A. Yeah.

15 Q. Tell us about your family, wife, kids.

16 A. Ashley my wife there, going on 12 years of
17 marriage. I have a 20-year-old son, a 10-year-old son and
18 this weekend will be six-year-old little girl. That's
19 where the Prescott & Sons Construction came from. I just,
20 you know, when we got licensed and the LLC I just figured,
21 you know, Prescott Builders was taken, Prescott Roofers
22 was taken. I didn't realize how many Prescotts there were
23 in the State of South Carolina. So Prescott & Sons
24 Construction was the only thing available so it made sense
25 being I had two boys.

JOSH PRESCOTT - DIRECT BY DERIEG

1 Q. So it's a family business?

2 A. Oh, absolutely.

3 Q. Now turning to the subject of this lawsuit, when is
4 the first time that you met Larry or Michelle Rogers?

5 A. I'm not, not sure on the day but I know I met the
6 Rogers, probably -- I would say probably three, six
7 months -- you know, the way it works is you call the
8 office, hey, I want to get an estimate on building a
9 garage. And so the girls in the office make an
10 appointment. I go out. So I would say that probably took
11 place three or four, maybe six months before, before we
12 actually ever entered into a contract.

13 Q. So sometime in 2011?

14 A. It was before we started construction, yes, sir.
15 So I met them, you know, hey, I want to get a price on a
16 driveway. I want to get a price on a garage, a price on a
17 sunroom. It was a lot of stuff.

18 So, I would present a proposal. And, you know,
19 it's hard to -- you estimate a job so you get as much
20 scope of work as possible. So an estimate is not a
21 contract. It's just a list of, hey, this is what we're
22 going to do. But everything's according to the blueprints.
23 At the time we had no blueprints so it was just an
24 estimate, you know, to get the customer an opportunity to
25 say, okay, this is our budget, can we afford to do it or

JOSH PRESCOTT - DIRECT BY DERIEG

1 not afford to do it.

2 Q. And after you gave them the estimate and they were
3 able to look at the prices and all, did they immediately
4 proceed?

5 A. Not right away. You know, it was kind of strange
6 because, you know, I knew they was real excited about it.
7 And we was looking to get started. They had actually went
8 ahead -- and the next step after I give an estimate is I
9 arrange for the architect to come out to meet with the
10 homeowners to draw up a set of plans to give the customer
11 something to approve. And keep in mind this was just a
12 garage addition. This wasn't a whole house. This was
13 adding a garage on and a sunroom. So I allowed them to
14 pay the architect to have the blueprints drawn up.

15 After that took place, you know, after you pay for
16 blueprints and you give an estimate, I mean, it's like,
17 okay, let's get started. That wasn't the case.

18 Q. What happened?

19 A. Just out of the blue, you know, we do call back.
20 We'll call the customer back, hey, we just wanted to touch
21 base with you. You know, are you ready to move forward,
22 you know, kind of get a schedule together.

23 You know, I don't think I got a phone call back but
24 I knew Michelle Rogers had e-mailed me and said that her
25 and Larry was having problems, she was leaving. You know,

JOSH PRESCOTT - DIRECT BY DERIEG

1 they was basically splitting up. I'm not sure of the
2 reason but I did receive the e-mail.

3 Q. So that put any sort of renovations on 28
4 Plantation Court on hold?

5 A. Oh, I had just -- I figured it was over with. So
6 I just put the plans up, filed them and never bothered
7 them again.

8 Q. When was the next time after this e-mail from
9 Michelle that you had occasion to come into contact with
10 Mr. and Mrs. Rogers?

11 A. I would say, probably they called back the office
12 or either they e-mailed and say, you know, hey, we're
13 looking to move forward. Can you come on back, you know.
14 Give us another price. Let's sit down and talk about what
15 we're going to do and what we're not going to do.

16 Q. And, ultimately were you guys able to come up with
17 an initial agreement to move forward?

18 A. You know, I think before we moved forward on the
19 garage they had me come in and lay a bunch of tile and
20 stuff like in the kitchen and the hallway, do some
21 interior work. So we was able to -- I know they had
22 Lowe's put new cabinets in. So they just hired me and my
23 guys to just lay the tile for the floor. So we had did a
24 previous job before. No problem, you know. Everything
25 was in black and white. I'm like, you know, the people,

JOSH PRESCOTT - DIRECT BY DERIEG

1 they're going to be good to work for. So we completed the
2 interior job and they said, hey, we're ready to move
3 forward and go with the garage.

4 (Plaintiff's Exhibit No. 1, April 5, 2012,
5 contract, and No. 2, May 1, 2012, contract, marked for
6 identification.)

7 BY MR. DERIEG:

8 Q. Mr. Prescott, I'm going to hand you what's been
9 marked as Plaintiff's Exhibit Number One. Can you tell me
10 whether or not you recognize that?

11 A. Yes. This is one of our contracts.

12 Q. Specifically, who was that contract with?

13 A. Larry and Michelle Rogers at 28 Plantation Court.

14 Q. And is that the first contract that you and the
15 Rogers entered into?

16 A. This is our first contract for a cost-plus basis.
17 So what that means is if -- well, at the time if I'm going
18 to do \$30,000 of work and I work off 10 percent then you
19 know it's 30,000 plus 10 percent contractor's fee.

20 MR. DERIEG: Your Honor, at this time I'd move to
21 admit Plaintiff's Number One into evidence.

22 THE COURT: Any objection?

23 MR. ERVIN: No objection, Judge.

24 THE COURT: All right. Move along.

25 (Plaintiff's Exhibit No. 1, April 5, 2012 contract,

JOSH PRESCOTT - DIRECT BY DERIEG

1 received into evidence.)

2 BY MR. DERIEG:

3 Q. Mr. Prescott, what's the date on that first
4 contract?

5 A. It is the 5th day of April 2012.

6 Q. And what is this contract for?

7 A. This contract here was, Section A, attached garage,
8 sunroom, patio, basement pad on lot in accords with 28
9 Plantation Court. So this is the basement. To build a
10 garage with a sunroom, patio, and concrete basement pad.

11 Q. And, what are the price specifications for this
12 contract?

13 A. The estimated cost for the total job was plus 15
14 percent. I'm sorry. I said 10. It's plus 15 percent,
15 but it was, everything was cost-plus basis. It was just
16 cost plus 15 percent.

17 Q. So, how would you know how much you were going to
18 get paid on this job from the first contract?

19 A. It was -- they would throw us so many different
20 things at me. And one reason for entering into a
21 cost-plus basis when I had brought my landscape contractor
22 in, you know, it was going to be a simple estimated
23 \$25,000 worth of landscaping based off the, you know, the
24 estimate that the landscaper had gave. And then it grew
25 and grew and grew to where it was over \$150,000 in

JOSH PRESCOTT - DIRECT BY DERIEG

1 landscaping. And it was, I mean, this -- there -- you
2 can't put an estimate on when someone asks you to dig up
3 their front yard and bring in a hundred dump trucks and
4 dig dirt and move dirt to the back yard because they don't
5 like the hole in the back yard, they picked the whole
6 elevation up. The back yard now is, like, taller. It's
7 almost eye level with the main body of the house. So
8 there's no way in the world to give a price on, you know,
9 somebody keeps telling you to keep moving dirt until I
10 tell you to stop.

11 Q. So how did you and the Rogers come to having a
12 second agreement?

13 A. Well, me and Larry we talked every day because, I
14 mean, one of the things I would do I spend the first four
15 hours every day, six days a week, I personally go to every
16 one of my jobs because I want to know what's going on.
17 Just briefly talking with the landscape contractor, you
18 know, just, you know, this is getting way out of -- this
19 is getting blown way out of proportion. The money is,
20 like, going to be way out there.

21 So Larry and I, we met and talked. And I'm, like,
22 Larry, this is -- he just said I can't do -- he knew he
23 wanted to spend a whole lot more money than the 25,000 we
24 originally talked about. And when we started bringing in
25 heavy equipment and started bringing all the dump trucks

JOSH PRESCOTT - DIRECT BY DERIEG

1 he's like, hey, I can't pay you 15 percent.

2 Q. So under that original contract you would have
3 gotten 15 percent of what ultimately ended up being
4 approximately \$150,000 worth of labor?

5 A. The agreement was that basically he's getting my
6 cost. Me -- you know, it's taking me 17 years to
7 basically get, to get framers, roofers, landscapers. And
8 I had a business relationship with them so they give me a
9 better deal than what they're going to give the
10 homeowner. So, I mean, it's taken me 17 years to get that
11 discount. I was basically giving that to the Rogers to
12 keep costs down. Like here, you're getting my lumber
13 prices, you're getting my landscape prices, you're getting
14 my roofing prices. So I'm giving you my discount so I'm
15 receiving the 15 percent off the cost. The 15 percent was
16 based off the invoices. So the arrangement was the
17 invoices that I received was on Thursdays, so all my guys
18 knew, hey, have your bill turned in by Thursday at five
19 o'clock and they get a check Friday at two.

20 So, I would take \$100,000 of bills or whatever, you
21 know, whatever it was, and, okay, here's the costs for the
22 landscaper, roofer, framer, here's the concrete bill,
23 here's the dumpster bill. You know, cost plus 15 percent.
24 Very simple, very simple agreement.

25 Q. I've handed you what's been marked as Plaintiff's

JOSH PRESCOTT - DIRECT BY DERIEG

1 Exhibit Number Two. Do you recognize Plaintiff's Number
2 Two?

3 A. Yes. This is after Larry and I and Michelle, we
4 all talked. You know, the landscape budget was going to
5 be four or five times more than what we originally talked
6 about. And, you know, I try to be very easy. Maybe
7 that's why I never had to go to court, never tried to sue
8 anybody but I try to keep the process simple, fun and, you
9 know, I love remodeling. I love building houses. I enjoy
10 what I do --

11 THE COURT: Mr. Prescott, let's stick to this case
12 at hand.

13 THE WITNESS: There's -- but the second contract
14 was when we met with the Rogers and --

15 BY MR. DERIEG:

16 Q. Before you go any further about that, is that the
17 second contract that you and the Rogers signed?

18 A. Yes.

19 MR. DERIEG: Your Honor, at this time I'd like to
20 move Plaintiff's Number Two into evidence.

21 THE COURT: Any objection?

22 MR. ERVIN: No objection, Judge.

23 THE COURT: All right. Move along.

24 MR. DERIEG: Thank you, Your Honor.

25 (Plaintiff's Exhibit No. 2, May 1, 2012 contract,

JOSH PRESCOTT - DIRECT BY DERIEG

1 received into evidence.)

2 BY MR. DERIEG:

3 Q. Tell me about how contract number two is different
4 from contract number one.

5 A. Contract two basically clearly states I'm not
6 involved in the landscaping no more. I agree to work for
7 a flat fee. So, I mean, I basically agreed to a \$25,000
8 flat fee. And the scope of work is only to do the garage,
9 the porch, do a little patio and the sunroom. So it
10 clearly states what I was doing and only what I was doing
11 and exactly what the profit I would receive.

12 Q. When -- what's the date on that second contract?

13 A. This is the 1st date of May 2012.

14 Q. Now, had construction begun on 28 Plantation Court
15 before May the 1st?

16 A. Yes.

17 Q. So by both of y'all's agreement you tore up the
18 first contract and agreed to proceed from May 1st on under
19 that contract?

20 A. That's right.

21 Q. How did that contract proceed for that first
22 month? What did you to do?

23 A. You know, we had already put the foundation in,
24 framed the garage, tore off the roof, start putting new
25 shingles on, roofing the house. You know, basically

JOSH PRESCOTT - DIRECT BY DERIEG

1 started putting everything together. Getting it done in
2 stages. You know, you frame it, you roof it, you put in
3 the concrete foundation, and then you start to -- well,
4 then you would have started mechanical work, electrical,
5 plumbing, heating, air, so on.

6 Q. Now when the contractor's fee is broken up into
7 five equal payments of \$5,000 --

8 A. Uh-huh.

9 Q. -- does each month represent 20 percent of the
10 work? Like, is the work done 20 percent of the first
11 month?

12 A. No, sir. No, sir. You know, you know, once you
13 say go, we go with it. And I had already did probably 50
14 percent of the work, and I was only a month in.

15 Q. So as of June 26, 2012, you had estimated that
16 about 50 percent of the work had been done?

17 A. Yes, it was. The framing was done. The roof
18 was -- the roof 99 percent done.

19 Q. But to this point, what percentage of your
20 contractor's fee had been paid?

21 A. Ten percent.

22 THE COURT: How much?

23 THE WITNESS: About 10 percent.

24 THE COURT: Which is 2500?

25 THE WITNESS: I got two draws.

JOSH PRESCOTT - DIRECT BY DERIEG

1 BY MR. DERIEG:

2 Q. You got two draws?

3 A. Two draws.

4 Q. So 5,000 and 5,000?

5 A. That's right.

6 Q. So we're about 40 percent?

7 A. Yeah.

8 Q. So you're 10 percent ahead of him --

9 A. Yeah.

10 Q. -- already?

11 MR. ERVIN: Judge, I'm going to object. He's being
12 very speculative and leading.

13 THE COURT: Well, show us. He got to have
14 something where he paid, doesn't he?

15 MR. DERIEG: Your Honor?

16 THE COURT: Does he not have the receipts where he,
17 or checks that he received or anything? Where is the
18 10,000 coming from?

19 MR. DERIEG: The two -- the 10,000 or the two
20 \$5,000 payments that the Rogers made.

21 THE COURT: Well, that's not speculative.

22 MR. ERVIN: I withdraw the objection, Judge.

23 BY MR. DERIEG:

24 Q. So what happened in middle of June of 2012?

25 A. You know, if you go back to the first contract

JOSH PRESCOTT - DIRECT BY DERIEG

1 where originally we was going to do, pour a little bit of
2 concrete. I call it the basement area of his house. He's
3 got eight-foot tall walk underneath, you know. It was
4 eight-foot tall or so. We was going to pour a little bit
5 of concrete.

6 Enter into the second contract, he removed that
7 concrete from the basement area. And we was only going to
8 do the construction because he said basically it's out.
9 We ain't got the money. You know, we talked about rough
10 estimates, what it would cost to basically, like, jack the
11 house up and dig it out and move all the dirt, move the
12 piers and pour concrete. It was going to be way out
13 there. So we said, flag that, let's just concentrate on
14 the garage.

15 That basement stayed stuck. I mean, that basement
16 would come up every day. You know, what if we do this,
17 what if we do that. I'm like, you know what, Larry, I
18 said, if you're really serious about this basement, I
19 said, let's get the engineer involved, get some blueprints
20 drawn up and then we'll get an exact price and I'll give
21 you a price on it and we'll go from there.

22 Q. And did in fact you guys go get blueprints or did
23 the Rogers go get blueprints?

24 A. Yeah. We both -- I think I sat in on one meeting
25 but we went and talked to the local engineer, got some

JOSH PRESCOTT - DIRECT BY DERIEG

1 blueprints drawn up. During the process -- the plans took
2 a little while for the engineer to be able to get
3 everything designed together because he had to send people
4 out to look and calculating. I mean, if you can literally
5 think about if you picture in your mind removing all the
6 support from under your house and the dirt and being able
7 to have a living space downstairs.

8 That's the kind of job I was asked to do. And
9 there's no way I would attempt that. I mean, I have a lot
10 of experience with building but I wouldn't have done that
11 without an engineer being involved. So, yes, they had
12 plans drawn up.

13 Q. And what happened after the plans got drawn?

14 A. I mean, basically, you know, at this time we're
15 done with the framing process. You know, we haven't put
16 the stairs in but we was almost done with the framing.
17 And at the point we was getting inspection.

18 In order to get to inspection the frame's got to be
19 done. You know, the felt paper's got to be on. Windows
20 and doors got to be set. But, man, that basement came up
21 again and it was, like, you know, like we mentioned
22 before, I said, I will give you a price on it. If you're
23 serious about it, get the plans drawn up, I'll get with
24 the landscaper because he's already there with his
25 equipment and we will give you a price to go over the

JOSH PRESCOTT - DIRECT BY DERIEG

1 house and remove the dirt and, you know, add a couple
2 bedrooms and bathrooms downstairs.

3 Q. And did you give him the price?

4 A. I was never given an opportunity because, I mean,
5 the day that I was fired, you know, I wasn't fired until,
6 I guess, 11, 12 o'clock. It was before lunch. But the
7 landscaper was already in contact with Mr. Rogers because
8 I had backed out of the landscaping portion of it because
9 he had decided to spend a lot more money, couldn't afford
10 to pay me 15 percent. So --

11 Q. That --

12 A. -- I backed out.

13 Q. That being one of the major difference between the
14 first and the second contract?

15 A. Oh, big major difference, yeah.

16 Q. You're making a lot less because the landscaping's
17 not involved?

18 A. Yeah, I probably wouldn't -- basically half of what
19 I should have made.

20 So with that being said, the landscaper, you know,
21 he checked on his own jobs. So he's going over there
22 first thing that morning to check on the job, to look at
23 all the dirt they got removed from the front yard placed
24 in the back yard. And I had called him said, hey, you
25 know, Larry finally, finally gave me the plans --

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1 MR. ERVIN: Judge, I'm going to object to this
2 conversation with the landscaper.

3 THE COURT: He's talking about what he said. He
4 didn't say what the landscaper said. Can't say what the
5 landscaper said but you can say what you said.

6 MR. ERVIN: Thank you, Your Honor.

7 THE WITNESS: So I call the landscaper. I said,
8 hey, Larry said that, you know, let's move forward with
9 the basement. I was excited. We got the plans drawn up.
10 We done spent the money on it. And this was like a
11 challenge for me. I said, this is going to be a good, you
12 know, good job. It's going to be an amazing before and
13 after. So c'mon over to the office and let's get a price
14 together so I can give it to Larry.

15 BY MR. DERIEG:

16 Q. And my question was: Where was, where was this
17 landscaper when you called him and asked him to c'mon over
18 to the office?

19 A. So when I called Jeremy Kelley, the landscaper, he
20 was pulling up at Larry's to check on his job.

21 Q. And about how long after -- how long after you
22 spoke with Mr. Kelley did he come to your office?

23 A. 45 minutes, an hour.

24 Q. While Mr. Kelley was at your office, did you
25 receive any phone calls?

JOSH PRESCOTT - DIRECT BY DERIEG

1 A. Yes. Yeah, I received a phone call from Larry.

2 Q. And what did Larry tell you in that phone call?

3 A. Basically if you think I'm paying you a dime more
4 than what I already agreed to pay you, the \$25,000 flat
5 fee, don't come back to my property. You're fired. I'll
6 find somebody else finish it. I'm not paying you a dime
7 more.

8 Q. What was your response?

9 A. I said, Larry, there's no way in the world, there's
10 nobody on this earth that would remove all this support
11 from under your house and dig all the dirt out and add you
12 a basement for free. I said, there's no way. And I said,
13 so you're firing me, fine, fire me, but I'm not doing that
14 for free. I said, I've given you too many other things
15 for free and not charged. There's no way I can do it.

16 Q. What else had you given Mr. Rogers for free?

17 A. There was a pool house that's not mentioned in the
18 contract. And I told Larry, I said, you know what, you
19 know, if you want to, you know, add a pool house and
20 everything, I said, you want to pay my guys to do it,
21 that's fine. That's not in my contract. I'm
22 concentrating on what we agreed to do.

23 Q. In regards to your guys, what does that second
24 contract say about contact between your subcontractors and
25 the homeowners?

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1 A. Only if I'm there. Yep. It clearly states in
2 there that you shouldn't negotiate with the contractor --
3 subcontractors. You shouldn't be asking them, you know,
4 if they're a sub, they're an employee, or ask them to do
5 extra work without me being present. You shouldn't ask
6 them how much they're charging, you know, to do a certain
7 job. You know, how much are you getting paid, well, how
8 much is he getting paid. I mean, it was just, it was
9 chaos.

10 Q. Were there any invoices that you paid that you were
11 not reimbursed for by Mr. and Mrs. Rogers?

12 A. There was concrete bills, lumber bills, dumpster
13 bill, toilet bills, framing labor, roofing labor. And it
14 was the bills that I agreed to turn in on Thursdays, and
15 get reimbursed on Fridays.

16 Q. Did you turn those bills in?

17 A. Yes, yes. Everything was e-mailed over to Michelle
18 Rogers. There was text messages from her letting me know
19 what we owe you. And so we e-mailed everything.

20 Q. And who would have done that e-mailing?

21 A. Who would e-mail me?

22 Q. Who from your company would have e-mailed those
23 invoices?

24 A. My wife Ashley. She's office manager. So she
25 keeps up with all the books and does accounting and pays

JOSH PRESCOTT - DIRECT BY DERIEG

1 all the bills.

2 (Plaintiff's Exhibit No. 3, invoices, marked for
3 identification.)

4 BY MR. DERIEG:

5 Q. Mr. Prescott, I'm handing you what's been marked as
6 Plaintiff's Exhibit Number Three. Please flip through
7 that packet of papers and tell me if you recognize that.

8 A. Yes, sir. These are the invoices that I received
9 on the unpaid work that was done at Mr. Rogers'.

10 Q. And those were all invoices that were sent to
11 Prescott & Sons?

12 A. That's right.

13 MR. DERIEG: Your Honor, at this time I'd like to
14 move Plaintiff's Number Three which is eight sheets of
15 paper, all eight separate invoices, into evidence.

16 THE COURT: Any objection?

17 MR. ERVIN: Judge, we object. These are invoices
18 produced by other subcontractors. He just testified he
19 received them from some other source. I object to their
20 authenticity and that he has the duty to authenticate
21 them.

22 THE COURT: Overruled.

23 (Plaintiff's Exhibit No. 3, eight pages of
24 invoices, received into evidence.)

25 BY MR. DERIEG:

JOSH PRESCOTT - DIRECT BY DERIEG

1 Q. Mr. Prescott, looking at the first sheet of paper
2 that's on the top of that group what is that an invoice
3 for?

4 A. This is Crazy Joe Containers.

5 Q. What is Crazy Joe Containers?

6 A. They basically bring the big dumpsters so we do a
7 job we can throw all our trash in the dumpsters and
8 basically kind of keep things clean while we're demo-ing.

9 Q. Real quick. What's the invoice number on Crazy
10 Joe's Container, the first one?

11 A. Invoice number is 673, the amount of 291-35.

12 Q. 291-35?

13 A. Yes, sir.

14 Q. All right. Flip to the second page. What is that?

15 A. This is another invoice number 678 in the amount of
16 354-23.

17 Q. And who is invoice 678 from?

18 A. Crazy Joe containers.

19 Q. Okay. Let's flip to the third page. What is that?

20 A. Another invoice from Crazy Joe's Containers.

21 Invoice number 681 for the amount of 309-38.

22 THE COURT: I'm sorry, how much?

23 THE WITNESS: 309-38.

24 BY MR. DERIEG:

25 Q. Did you pay all three of those invoices to Crazy

JOSH PRESCOTT - DIRECT BY DERIEG

1 Joe's Containers?

2 A. Yes.

3 Q. Did you ever receive any sort of reimbursement
4 from -- or, yeah, compensation, reimbursement from the
5 Rogers?

6 A. No, sir. That's why we're here.

7 Q. All right. Let's go to page four. What's that
8 one?

9 A. This is the masonry, Samuel Ruvucalbus. This was
10 to do the -- to do concrete work and pool home.

11 Q. And how much is that for?

12 A. It's \$500.

13 Q. \$500. And did you pay that 500?

14 A. Yes, sir.

15 Q. Did you receive any reimbursement for that?

16 A. No, sir.

17 Q. What's the next one?

18 A. This is the Portable Service. That's the little
19 bathroom that goes on the job site. It's invoice number
20 51625, the amount of \$89.30.

21 Q. Did you pay that?

22 A. Yes.

23 Q. Did you receive any compensation for it?

24 A. No, sir.

25 Q. What's the next one?

JOSH PRESCOTT - DIRECT BY DERIEG

1 A. The next one is some windows from Barrett Windows &
2 Door. These were special-ordered windows after the first
3 delivery. Invoice number 6309 in the amount of 367-68.

4 THE COURT: \$367.68?

5 THE WITNESS: Yes, sir.

6 BY MR. DERIEG:

7 Q. Did you pay that to Barrett?

8 A. I did.

9 Q. Did you receive that back from the Rogers?

10 A. No, sir.

11 Q. What's the next one?

12 A. This is Floyd Hutto, Hutto Roofing. The remaining
13 20 squares that was paid for \$3,000.

14 Q. Did you pay that 3,000 to Hutto Roofing?

15 A. I did.

16 Q. Did you receive that back from the Rogers?

17 A. No, sir.

18 Q. And, finally, what's that last one?

19 A. The last one is Cornerstone Concrete. I'm trying
20 to see the invoice number.

21 Q. And that one is?

22 A. It's kind of cut off.

23 Q. Right. It's kind of cut off the page. Do you
24 remember approximately how much that invoice was for?

25 A. 1.75 yards of concrete. Most concrete's \$100 a

JOSH PRESCOTT - DIRECT BY DERIEG

1 yard, so I would probably say around \$200.

2 MR. ERVIN: Judge, I'm going to object to that
3 statement as speculative.

4 THE COURT: Sustained. You got to either prove it
5 to us or -- you can't speculate.

6 THE WITNESS: Okay.

7 BY MR. DERIEG:

8 Q. Did you pay Cornerstone Concrete every invoice that
9 was submitted to you by them?

10 A. Yes.

11 Q. And on the final invoice that you paid Cornerstone
12 regarding 28 Plantation Court, did you ever receive any
13 sort of reimbursement from the Rogers?

14 A. None at all.

15 Q. After you were fired in, on June the 26th, did the
16 property have to get inspected?

17 A. At the Rogers' request, yes.

18 Q. How did that happen?

19 A. They had actually called and asked for an
20 inspection by the city building department. The day I was
21 fired, that day or the next day I called the local
22 building official at the time and explained the situation,
23 what was going on and asked to have my name and company
24 released from the permit because I wasn't allowed back to
25 the property and wasn't allowed to finish the job and they

JOSH PRESCOTT - DIRECT BY DERIEG

1 was going to hire somebody else. So I can't be
2 responsible for someone else being on the job.

3 Q. And, did an inspection ultimately happen?

4 A. Two weeks after I was fired.

5 Q. Okay.

6 A. I think that was the date.

7 Q. And who was it that did that inspection?

8 A. Steve Smith who's the local building official at
9 the time. Him and another inspector came out and did a
10 basic framing inspection.

11 Q. Did you ever --

12 MR. ERVIN: Judge, I'm going to object to that.
13 He's testifying as to what other individuals did. I don't
14 think he testified he was there and saw them do this
15 inspection or that he had any actual knowledge that any of
16 that occurred.

17 THE COURT: Just who was hired to do the
18 inspection? Do you know who that is? Mr. Smith --

19 THE WITNESS: Yes.

20 THE COURT: -- came out to do an inspection?

21 THE WITNESS: The building official, yeah.

22 THE COURT: He can identify who did an inspection.

23 THE WITNESS: Uh-huh.

24 THE COURT: He can't testify about it unless he
25 knows about it.

JOSH PRESCOTT - DIRECT BY DERIEG

1 BY MR. DERIEG:

2 Q. Did you ever get a copy of Mr. Smith's report?

3 A. Way after the fact.

4 Q. But you have gotten a copy of it?

5 A. Yes, yes, I saw the list, yeah.

6 (Plaintiff's Exhibit No. 4, building inspection
7 letter, marked for identification.)

8 BY MR. DERIEG:

9 Q. Mr. Prescott, I'm going to show you what's been
10 marked as Plaintiff's Exhibit Number Four. Do you
11 recognize that?

12 A. Yes, sir.

13 Q. What is that?

14 A. This is the letter from the building official
15 department recognizing what I had asked to have my name
16 released from the permit.

17 Q. And what's on the second page?

18 A. It is a correction notice for toe boards and
19 blocking and fire blocking, stuff like that.

20 Q. So that would have been the results of Mr. Smith's
21 inspection?

22 A. Oh yes, sir, yeah. I mean it was 10 --

23 MR. ERVIN: Judge --

24 THE COURT: All right. You can't testify about the
25 inspection now. C'mon.

JOSH PRESCOTT - DIRECT BY DERIEG

1 MR. ERVIN: Continue my objection. This is --

2 THE COURT: Sustained. You have to put the person
3 who did the inspection to testify about it.

4 BY MR. DERIEG:

5 Q. And did you receive any fines from the inspection
6 that was done?

7 A. Not from the city. From the LLR I got fined \$500.

8 Q. What happened with the LLR inspection?

9 A. They had -- the Rogers contacted the licensing
10 board. They came out, did an investigation.

11 MR. ERVIN: Judge, again, he's asking to testify
12 about an inspection from LLR.

13 THE COURT: Well, he can say they came out and did
14 an inspection but he can't testify about what they said.
15 As a result of it you were fined \$500?

16 THE WITNESS: Yes, yes.

17 MR. ERVIN: Thank you.

18 THE WITNESS: I got fined \$500 because --

19 THE COURT: You can't say why because unless you --
20 the inspector has to tell about what he found.

21 THE WITNESS: Okay. Yes, sir.

22 BY MR. DERIEG:

23 Q. So did you receive any fines from the city?

24 A. No, no.

25 Q. In what was Plaintiff's Exhibit Number Three, were

JOSH PRESCOTT - CROSS BY ERVIN

1 all eight of those invoices submitted to the Rogers?

2 A. Yes.

3 MR. DERIEG: Beg the Court's indulgence just a
4 moment, Your Honor.

5 Q. Did Mr. Rogers or Mrs. Rogers ever have occasion to
6 speak to your subcontractors?

7 A. Yes. They -- well, they spoke with them, whether I
8 was there or not, every day.

9 Q. Did you ever give them permission to speak to your
10 subcontractors?

11 A. No.

12 Q. Did you ever give them permission to directly pay
13 your subcontractors?

14 A. No, sir.

15 MR. DERIEG: Your Honor, I think that's all the
16 questions I have at this time.

17 THE COURT: Cross-examination?

18 MR. ERVIN: Thank you, Judge. Court's indulgence
19 briefly.

20 CROSS-EXAMINATION

21 BY MR. ERVIN:

22 Q. Mr. Prescott, at any point in 2012 did your
23 contractor's license lapse?

24 A. No, sir.

25 Q. Do you know what it means for a contractor's

JOSH PRESCOTT - CROSS BY ERVIN

1 license to lapse?

2 A. Didn't pay your fees.

3 Q. Okay. Has your subcontractors -- I mean, has your
4 contractor's license ever lapsed?

5 A. Never.

6 Q. Okay. Mr. Prescott, you said the second contract
7 entered into was a flat fee based contract; is that
8 correct?

9 A. That's right.

10 Q. So that -- and that was broken up into five
11 payments of \$5,000 each, correct?

12 A. Yes.

13 Q. Okay. And that is set out in your contract signed
14 May 1st in paragraph eight, correct? You can refer to
15 your exhibit there.

16 A. That's right.

17 Q. Okay. And paragraph eight sets forth pretty much
18 how you were to be paid and how the Rogers are to pay you
19 throughout the project, correct?

20 A. That's right.

21 Q. If you could read for the jury and the Court
22 beginning the fourth line down, first full sentence with
23 the word 'if'. If you could begin there.

24 A. If the project does not last five months remaining
25 balance of 25,000 is upon assurance of the certificate of

JOSH PRESCOTT - CROSS BY ERVIN

1 occupation (verbatim). Any exceeding time exceeding five
2 months will be payable to the builder at a rate of 2500 a
3 month until completion of the project.

4 Q. Okay. That's enough. So that sentence said
5 remaining balance of the \$25,000 due upon the issuance of
6 a certificate of occupancy?

7 A. Uh-huh.

8 Q. Did you ever issue a certificate of occupancy or
9 see the certificate of occupancy issued to the Rogers?

10 A. No, sir.

11 Q. All right. In the invoices that were submitted as
12 exhibits -- well, hold on. How did the Rogers pay you for
13 invoices?

14 A. By check on Fridays.

15 Q. And how did you present the invoices to them to get
16 paid?

17 A. Through e-mail.

18 Q. Okay. So you would scan and e-mail them to them?

19 A. That's right. Sometimes be forwards, just forward
20 e-mails.

21 Q. Crazy Joe's Containers, three invoices to Crazy
22 Joe's. Do you have any proof here today that you ever
23 sent this to the Rogers prior to your not working for them
24 any more?

25 A. Through e-mail or scanning the bills that I have

JOSH PRESCOTT - CROSS BY ERVIN

1 here in my hand?

2 Q. Do you have an e-mail showing that you sent this to
3 them?

4 A. Oh, yes.

5 Q. Do you have it in the courtroom here today? You
6 don't have it in front of you right now?

7 A. I don't have it in front of me.

8 Q. And do you have any proof that you ever sent them
9 an invoice for Ruvucalbus? Do you have any proof that you
10 sent them an invoice for \$500 for them to pay you?

11 A. Just the one you have in your hand.

12 Q. When did you send them this invoice?

13 A. When I was fired we immediately gathered everything
14 that week and sent everything to them.

15 Q. How did you send it to them?

16 A. Through e-mail.

17 Q. What date, time, place? Do you have a time and
18 proof that that e-mail was ever sent and received by the
19 Rogers?

20 A. Not in front of me.

21 Q. Is it possible they never got these invoices?

22 A. No, sir.

23 Q. How is -- can you prove right now with what's in
24 front of you that it's impossible for them to never have
25 received these invoices?

JOSH PRESCOTT - CROSS BY ERVIN

1 A. I don't have it in front of me.

2 Q. Isn't it true that the Rogers have said throughout
3 this litigation that they actually never did receive these
4 invoices; is that what they said?

5 A. That's what they claim.

6 Q. Okay. And you submit these invoices today with no
7 proof that they ever actually received it, correct?

8 A. That's right.

9 MR. ERVIN: Beg the Court's indulgence, Your Honor.

10 Q. Mr. Prescott, would it be a normal event for you to
11 text message with the Rogers?

12 A. Yes.

13 Q. Okay. And frequently you would text them about the
14 job, correct?

15 A. Yes.

16 Q. Okay. Do you recognize this document?

17 A. Yes, sir.

18 Q. Okay. What is that document?

19 A. These are a lot of text messages from Michelle and
20 I back and forth.

21 Q. Does that represent an accurate copy of the text
22 messages you sent with the Defendants?

23 A. That's right.

24 MR. ERVIN: Judge, we'd like to present this as
25 Defense Exhibit Number One.

JOSH PRESCOTT - CROSS BY ERVIN

1 THE COURT: Have it marked. Any objection?

2 MR. DERIEG: Yes, Your Honor. I object. This is
3 an incomplete document. There is -- there's a series of
4 about three pages of text messages that if we're going to
5 enter one of the three pages I would ask that all three of
6 them be entered.

7 THE COURT: Do you got the rest of them?

8 MR. ERVIN: I do, Judge. I would say that they all
9 can be taken separately and I really only need this first
10 page.

11 THE COURT: Well, you can put them in to complete
12 them or let's just make the record. However you want to
13 do it. He has the right to have them all in.

14 MR. ERVIN: Okay. If he has a full copy of the
15 rest of them, I'd be happy --

16 THE COURT: Do you have the rest of them?

17 MR. DERIEG: Yes, Your Honor.

18 THE COURT: You can put them in when you redirect.

19 MR. ERVIN: Thank you, Judge.

20 (Defendant's Exhibit No. 1, text messages, received
21 into evidence.)

22 BY MR. ERVIN:

23 Q. Mr. Prescott, you claim that you were fired by
24 Larry Rogers, correct?

25 A. That's right.

JOSH PRESCOTT - CROSS BY ERVIN

1 Q. Okay. And these texts are between you and who?

2 A. Michelle Rogers.

3 Q. Okay. And then on the very last segment of this
4 page, the third text down, what does that say and who is
5 it from?

6 A. This is from me to Michelle: I guess we're done.
7 I will let you know what you owe me.

8 Q. Okay. And what date was that?

9 A. June the 26th at 12:26.

10 Q. Okay. On the top of the page in the middle
11 section, this bottom text, what does that say?

12 A. Do you need a roof bill too?

13 Q. I'm sorry. Let me see this real quick. In this
14 area right here.

15 A. Oh. Got some more bills in for you. Your total is
16 now 3659.03.

17 Q. Okay. And in any of these texts do you tell
18 Michelle to go ahead and pay one of the subcontractors
19 directly?

20 A. No, there's none of them that they're paid direct.

21 Q. You never told the Rogers to pay any of the
22 subcontractors direct because you weren't there or you
23 couldn't be there?

24 A. Other than the landscaper.

25 Q. So you actually did tell them to pay someone

JOSH PRESCOTT - CROSS BY ERVIN

1 direct?

2 A. And when we entered into the second contract, I was
3 no longer involved in landscaping.

4 Q. Okay. Thank you.

5 Judge, beg your indulgence.

6 Mr. Prescott, this is another list of texts. Does
7 this represent an accurate copy the texts that you sent
8 Michelle Rogers?

9 A. That's right.

10 MR. ERVIN: Judge, we'd like to enter that as
11 Exhibit Number Two from the Defense.

12 THE COURT: Any objection?

13 MR. DERIEG: None, Your Honor.

14 (Defendant's Exhibit No. 2, text messages, received
15 into evidence.)

16 BY MR. ERVIN:

17 Q. If you would look in the bottom row, middle
18 section, and read that entire round of texts, please.

19 A. Just e-mail Phillip a cost breakdown. I will pick
20 up the check Saturday. Don't forget about my contractor's
21 fee from last month. Thanks.

22 The response back was: Got it. Thanks. Tell
23 Larry I miss him. Can you write Phillip a check. No
24 problem.

25 Q. Okay. And continue on to the next set of texts.

JOSH PRESCOTT - CROSS BY ERVIN

1 A. All these texts are way out of sequence. They're
2 not in order.

3 Q. Okay.

4 A. Do you want me to read it?

5 Q. Let me see.

6 A. Yeah. They're not -- they're -- kind of left some
7 things out.

8 Q. Well in that last text you say can you write
9 Phillip a check. Who is Phillip?

10 A. Framer.

11 Q. And he is one of your subcontractors, correct?

12 A. That's right.

13 Q. And you're asking Michelle Rogers to write Phillip
14 a check?

15 A. That's right.

16 Q. Because she's paying him directly, correct?

17 A. That's right.

18 Q. And you just testified that they've never paid one
19 of your subcontractors directly.

20 A. That's right.

21 Q. Except for the landscaper and except for Phillip?

22 A. Uh-huh.

23 Q. Okay. Do you want to change your testimony with
24 regard to whether or not they've paid a subcontractor
25 directly?

JOSH PRESCOTT - CROSS BY ERVIN

1 A. The pool house that I was fined for not pulling a
2 permit that wasn't in my contract, yes, they paid him
3 direct.

4 Q. Was there ever a situation where you were out of
5 town and you couldn't pay your subcontractors directly,
6 and you had Larry and Michelle pay them for you at your
7 direction?

8 A. Possible. I doubt it.

9 Q. I'm sorry. Say that again.

10 A. If I was out of town, yes.

11 Q. So that's another instance where --

12 A. Uh-huh.

13 Q. -- Larry and Michelle were paying your
14 subcontractors directly at your direction, correct?

15 A. Yes.

16 Q. So again you're claiming that the term in the
17 contract that says they're never to deal with your
18 subcontractors and that they never did, well, that's not
19 in fact true. They on at least three occasions dealt with
20 your subcontractors without you being there and at your
21 direction; is that correct?

22 A. At that point there was no stopping it.

23 Q. I'm sorry?

24 A. At that point there was no stopping Larry from
25 dealing with contractors even when he was asked not to and

JOSH PRESCOTT - CROSS BY ERVIN

1 even when Phillip Padgett said, let me do my job, don't
2 talk to me about prices.

3 Q. I didn't ask what Mr. Padgett said.

4 A. Uh-huh.

5 Q. I'm asking you what you and the Rogers did with
6 regards to the progress in this project. And you've told
7 the jury that Mr. Rogers dealt with your subcontractors
8 constantly without your permission. Yet, isn't it true
9 that you gave him permission routinely to deal with your
10 subcontractors?

11 A. That one time.

12 Q. Well, you've testified that there were three times,
13 either one time or three times.

14 A. I think I was out of town. They should know. I
15 think I was out of town and wasn't able to write Phillip a
16 check.

17 Q. So is it true that you gave them permission on more
18 than one occasion to deal with your subcontractors?

19 A. That one occasion.

20 Q. And, Mr. Prescott, you said frequently your company
21 would e-mail the Rogers, correct?

22 A. That's right.

23 Q. Does that represent an accurate representation of
24 e-mails from your office to the Prescotts regarding their
25 project?

JOSH PRESCOTT - CROSS BY ERVIN

1 A. Yes.

2 Q. Okay. And what's the date on that top e-mail?

3 A. August the 22nd, 2011.

4 Q. Okay. And in that e-mail do you discuss -- I'm
5 sorry.

6 Judge, I'd like to submit this as Defense Exhibit
7 Number Three.

8 THE COURT: Any objection?

9 MR. DERIEG: No, Your Honor.

10 (Defendant's Exhibit No. 3, e-mail, received into
11 evidence.)

12 BY MR. ERVIN:

13 Q. Mr. Prescott, isn't it true that in this e-mail and
14 several e-mails that we can produce that as early as
15 August of 2011 you had discussed with Larry Rogers
16 building out the basement?

17 A. Yes.

18 Q. Okay. And your testimony earlier was that the
19 basement became a new project that was overly burdensome
20 in May of 2012?

21 A. That's right.

22 Q. Okay. You had already discussed the basement in
23 August of 2011, right?

24 A. Yes.

25 Q. You knew the project was going to take significant

JOSH PRESCOTT - CROSS BY ERVIN

1 work as early as August of 2011, correct?

2 A. The original contract it has in there concrete
3 pad. So there was a big difference in concrete pad,
4 pouring concrete under the house, and putting a livable
5 space downstairs.

6 Q. How much would you charge to pour a concrete pad?

7 A. At that time it was very little.

8 Q. How much? 5,000? 10,000? 20,000? 30,000?

9 A. Depends on size.

10 Q. The size of their concrete pad as foreseen, how
11 much would you estimate pouring that for?

12 A. 5,000. I don't know.

13 Q. Okay. Again, does this represent an accurate
14 e-mail chain between you and the Rogers?

15 A. That's right.

16 Q. Okay.

17 THE COURT: Is that Number Three?

18 MR. ERVIN: This will be Number Four, Judge,
19 Defense Exhibit Number Four.

20 MR. DERIEG: Without objection.

21 MR. ERVIN: Mr. Prescott, if you can hand that to
22 Madam Clerk (verbatim) for labeling.

23 (Defendant's Exhibit No. 4, e-mails, received into
24 evidence.)

25 BY MR. ERVIN:

JOSH PRESCOTT - CROSS BY ERVIN

1 Q. Mr. Prescott, what is the date on this e-mail at
2 the very top?

3 A. August 29th.

4 Q. August 29, 2011, correct?

5 A. Yes.

6 Q. And in that e-mail you list several estimates,
7 correct?

8 A. That's right.

9 Q. Within that estimate you say the basement will cost
10 \$28,000, correct?

11 A. Ballpark. That's right.

12 Q. So as early as August of 2011 you had already
13 priced and told Larry Rogers how much the basement would
14 cost, correct?

15 A. For a concrete pad. There's a big difference in
16 removing piers and jacking a house up than just pouring a
17 concrete pad.

18 Q. Well, you just testified the concrete pad would
19 cost about \$5,000.

20 A. This is two and a half years ago.

21 Q. So the price was much more?

22 A. Two and a half years ago, trying to remember 5,000,
23 10,000, 28,000 or so. It was, 28,000 was an estimate to
24 do a concrete pad.

25 Q. Okay. So --

JOSH PRESCOTT - CROSS BY ERVIN

1 A. No blueprints, just guessing.

2 Q. So \$28,000 just for the pad?

3 A. That's right.

4 Q. Yet you just testified that it wouldn't be that
5 expensive to pour a concrete pad for Larry Rogers'
6 project?

7 A. 28,000 for pouring a concrete pad under a house
8 compared to what we did, no, that wasn't expensive to him.

9 Q. Mr. Prescott, your testimony earlier was that Larry
10 Rogers fired you because you had finally given him an
11 estimate for the basement that was expensive and over
12 budget and that you had never had that discussion with him
13 before; is that right?

14 A. No. I was fired because I wouldn't do the basement
15 for free. That's why I was fired.

16 Q. Okay. What did you estimate the basement to cost?

17 A. We never came up with a, a -- completion of a
18 basement. This is talking about pouring a concrete floor.

19 Q. Okay.

20 A. This don't -- this ain't walls. This ain't beams.
21 This ain't bathrooms. This ain't bedrooms. This is just
22 to pour a concrete pad under an unfinished crawl space.

23 Q. For \$28,000?

24 A. That's right.

25 THE COURT: Anything else?

JOSH PRESCOTT - CROSS BY ERVIN

1 MR. ERVIN: Briefly, Judge. I'm sorry. I'm going
2 through these e-mails.

3 Q. Mr. Prescott, do you recognize this as an e-mail
4 from your office? The bottom portion.

5 A. That's right.

6 Q. And who is that to?

7 A. This was to Michelle. She did all the e-mailing.

8 Q. Okay. And there's a bottom e-mail. Is that from
9 your office?

10 A. Yes.

11 Q. Okay. Is that an accurate representation of an
12 e-mail from your office?

13 A. Oh, yes. Yeah.

14 Q. I'd like to admit this as Exhibit Number Five,
15 Judge.

16 MR. DERIEG: Without objection.

17 THE COURT: Move along.

18 (Defendant's Exhibit No. 5, four pages of text
19 messages, received into evidence.)

20 BY MR. ERVIN:

21 Q. Mr. Prescott, what is the content of the bottom
22 e-mail from your office and who is it to?

23 A. This is to notify Michelle that we're pulling off
24 the job ASAP and pulling our permits.

25 Q. And you're saying this to, is it the bank? Regions

JOSH PRESCOTT - CROSS BY ERVIN

1 Bank?

2 A. Yes.

3 Q. And was Regions Bank where the Rogers got their
4 construction loan?

5 A. No. They hadn't gotten it. We had just filled out
6 the paperwork the day before to help them get their loan.

7 Q. Okay. Well you say help them, but a contractor's
8 required to fill out paperwork for a bank to give them a
9 loan on a construction job; isn't that right?

10 A. That's right.

11 Q. So that would have been a requirement for you to do
12 that to proceed; correct?

13 A. That's right, but we help with appraisals and met
14 the appraiser and banker and tried to help as much as we
15 could.

16 Q. So the Rogers hadn't gotten the loan yet. To get
17 the loan from the bank the bank needs your --

18 A. License.

19 Q. -- license and your information to approve the
20 loan; is that correct?

21 A. That's right.

22 Q. And at this time when you notified the bank that
23 you were pulling your permits, how did that affect the
24 loan?

25 A. The loan hadn't been approved but I'm not going to

JOSH PRESCOTT - REDIRECT BY DERIEG

1 be on somebody's loan and not be the contractor especially
2 when I'm fired and told not to come back.

3 Q. Okay.

4 A. So I had my name and my business removed from that
5 loan. I can't, can't do that.

6 Q. Did you get along with Larry?

7 A. Me and Larry had a good relationship to start off
8 with. I mean, we'd laugh and cut up. You know, he'd take
9 my little boy riding on his little four-wheeler. And, you
10 know, it was just a business relationship.

11 Q. Okay. Nothing further at this time, Judge.

12 THE CLERK: How much redirect do you have?

13 MR. DERIEG: Very limited. Like five minutes in
14 questions.

15 THE COURT: I was asking if the jury's hungry.

16 REDIRECT EXAMINATION

17 BY MR. DERIEG:

18 Q. Mr. Prescott, I'll hand you what's been marked as
19 Plaintiff's Number Five. Do you recognize this?

20 A. This is more text messages.

21 Q. Between you and Michelle?

22 A. That's right.

23 Q. Would it be in the same series of text messages
24 that you were shown by Mr. Ervin earlier?

25 A. Yes.

JOSH PRESCOTT - REDIRECT BY DERIEG

1 MR. DERIEG: Your Honor, I move -- at this time I'd
2 like to move Plaintiff's Number Five into evidence.

3 THE COURT: Any objection?

4 MR. ERVIN: No objection, Judge.

5 THE COURT: All right. Move along.

6 (Plaintiff's Exhibit No. 5, text messages, received
7 into evidence.)

8 BY MR. DERIEG:

9 Q. Mr. Prescott, will you look at the third page,
10 please? I believe it's the top line middle. The very
11 first text message on that page on the top left-hand
12 corner, is that between you and Michelle?

13 A. That's right.

14 Q. What does that text message say?

15 A. I have not quit. I am just -- I have not quit.
16 I'm just not going to do any more work for free and put up
17 with all the BS.

18 Q. Thank you. Defendant's Exhibit Number Three,
19 what's the date on that?

20 A. August the 22nd, 2011.

21 Q. Did you guys have a contract then?

22 A. No contract.

23 Q. No contract in August of 2011?

24 A. Uh-huh. It's just, this is the process of going
25 back and forth to try to come up with a budget.

JOSH PRESCOTT - REDIRECT BY DERIEG

1 Q. Was it before or after that e-mail that Michelle
2 Rogers told you that they were scrapping the project?

3 MR. ERVIN: Objection, Judge. He's leading the
4 witness and testifying.

5 THE COURT: Overruled.

6 THE WITNESS: So this is probably before.

7 BY MR. DERIEG:

8 Q. I'm sorry. What?

9 A. You're asking me was this before the contract, or?

10 Q. In relation, in relation to the contract -- excuse
11 me. In relation to Ms. Rogers telling you that they
12 weren't going to go forward because they were having
13 marital issues, was it before or after?

14 A. This is -- this is -- this is afterwards, yeah.

15 Q. When you guys started talking again?

16 A. Yes.

17 Q. Okay. And you talked about -- in response to
18 Mr. Ervin's questions you were talking about Michelle
19 making some payments. How did she make payments?

20 A. How did she pay us?

21 Q. Yes.

22 A. On Fridays by check.

23 Q. Is that the only way that she paid you guys?

24 A. There -- I mean, for me, I can talk for me. Larry
25 would always dispute the invoices. And I would consider

JOSH PRESCOTT - REDIRECT BY DERIEG

1 her as a peacemaker. So if the estimate was, if the bill
2 was for 5,000, she'd say send it for 4,000 and then I
3 would pay the other thousand in cash.

4 Q. And did that happen?

5 A. Yes.

6 Q. Do you know where the cash came from?

7 A. From -- my understanding she borrowed it from her
8 boss, and --

9 Q. Did Larry know anything about it to your knowledge?

10 A. Oh, no, no, no. He didn't know. He didn't know.

11 Q. And finally we talked about the paperwork that was
12 being filled out literally the day before you got fired?

13 A. That's right.

14 Q. Who filled out that paperwork?

15 A. My wife. She, you know, she had spent a couple
16 hours filling out all the paperwork. I mean, trust me, we
17 wanted to get the loan so we could get paid. We wanted to
18 move forward but we -- I got the phone call and don't come
19 back.

20 Q. If you were going to quit, would you have had your
21 wife spend a couple hours the day before filling out
22 paperwork?

23 A. Oh, no. No way.

24 Q. And this is paperwork -- what was this paperwork
25 for?

1 A. For the construction loan. That was a third or
2 fourth attempt for a construction loan.

3 Q. And, do you know how the Rogers had planned on
4 paying you going forward?

5 A. Through the construction loan.

6 Q. So she was doing paperwork so you could get paid?

7 A. That's right.

8 MR. DERIEG: Thank you. Your Honor, that's all I
9 have.

10 THE COURT: All right. You may step down.

11 We're going to take a break. Your lunch is back
12 there. You're welcome to take it back there, you can take
13 it outside, however you want to do it. We're going to
14 break until two o'clock. I know that's an hour and 10
15 minutes. I've got a 1:30 to finish up something from last
16 week, a plea in a murder case. I've got two other little
17 small things so I'm going to gobble my sandwich and work.
18 Yes, ma'am?

19 THE JUROR: Can I go out to the car and use my cell
20 phone out of my car? I need to call my job and let them
21 know.

22 THE COURT: Here's what you do. At lunch you can
23 eat back here, you go out to your car and eat your lunch,
24 however you want to. If you need to make a phone call
25 that's perfectly fine. Don't talk about the case with

1 anybody. Your own personal business, that's fine.

2 We'll start right back at two o'clock. Y'all have
3 a pleasant lunch. Don't discuss the case, don't
4 deliberate. And don't forget you got to get me a foreman
5 for your leader.

6 (Jury exits courtroom at 1:04 p.m.)

7 THE COURT: Anything for the record before we break
8 for lunch by the Plaintiff?

9 MR. DERIEG: Nothing, Your Honor.

10 THE COURT: By the Defendant?

11 MR. ERVIN: No, sir.

12 THE COURT: Over the lunch break, please mark your
13 exhibits so we don't have to be sitting here marking
14 exhibits while we go along. Thank you. We'll stand at
15 ease until two o'clock.

16 MR. DERIEG: Thank you, Your Honor.

17 (Lunch break taken at 1:10 p.m. Afterwards,
18 another unrelated matter was heard. The trial resumed at
19 2:13 p.m.:)

20 MR. DERIEG: I do have a matter of law that I need
21 to take up outside of the presence of the jury.

22 THE COURT: Go ahead.

23 MR. DERIEG: Your Honor, I have reason to believe
24 that one of my witnesses, Samuel Ruvucalbus, is not going
25 to -- he has been properly served. I'd show the Court the

1 service. I have belief that he's not going to show up. I
2 was just curious as to how Your Honor would like me to
3 handle that.

4 THE COURT: How do you want to handle it?

5 MR. DERIEG: I would like to be able to at least
6 mark that service as a Plaintiff'S Exhibit so I can argue
7 it to the jury.

8 THE COURT: Or I can send the sheriff for him. How
9 about that?

10 MR. DERIEG: Or we can try to get him.

11 THE COURT: What, you want to mark that so you can
12 show it to the jury that he didn't show up?

13 MR. DERIEG: Yes, sir. That we've at least made
14 the attempt. I'd like to at least call him, and when he
15 doesn't get on the stand mark that.

16 THE COURT: I'll do it just like that.

17 MR. DERIEG: Thank you.

18 THE COURT: Anything else?

19 MR. DERIEG: No, sir.

20 THE COURT: Anything from the Defendant?

21 MR. ERVIN: Nothing, Your Honor.

22 THE COURT: All right. Bring the jury in, please.

23 (Jury enters courtroom at 2:15 p.m.)

24 THE BAILIFF: Jury's present, Your Honor.

25 THE COURT: Did y'all enjoy your lunch?

1 THE JURY (COLLECTIVELY): Yes. Thank you.

2 THE COURT: Who did y'all select as the
3 foreperson?

4 THE JUROR: The male thorn among the roses.

5 THE COURT: You got to make friends.

6 FOREPERSON OF THE JURY: I had a good hair day.

7 THE COURT: You need to be sweet now. Show them
8 what a good guy you are.

9 THE JUROR: He's already blown that.

10 FOREPERSON OF THE JURY: Got lucky.

11 THE COURT: Y'all want to send him on packing?

12 THE JUROR: No, no, we need him.

13 THE COURT: Y'all switch.

14 (Juror and Foreperson switch seats.)

15 THE COURT: Okay. We're going to continue on. And
16 you may call your next witness.

17 MR. DERIEG: Your Honor, if it please the Court.

18 THE COURT: Yes, sir.

19 MR. DERIEG: The Plaintiff's call Jeremy Kelley to
20 the stand.

21 JEREMY KELLEY, having been duly sworn, was examined
22 and testified as follows:

23 THE CLERK: Please take a seat in the witness box
24 and state your full name for the court.

25 THE COURT: And I got some complaints that y'all

JEREMY KELLEY - DIRECT BY DERIEG

1 were a little cool?

2 THE CLERK: I did it.

3 THE COURT: My wonderful air conditioning lady has
4 taken care of that.

5 All right, sir. Your witness.

6 DIRECT EXAMINATION

7 BY MR. DERIEG:

8 A. I'm Jeremy Kelley, owner of Between the Edges
9 Lawncare and Landscape.

10 THE COURT: I'm sorry, what?

11 THE WITNESS: Between the Edges Landscaping.

12 THE COURT: Oh.

13 MR. DERIEG: You got a Georgia fan, Your Honor.

14 THE COURT: You got to be kidding. That's why you
15 named it Between the Hedges (verbatim)?

16 MR. ERVIN: Objection, Your Honor.

17 THE WITNESS: I guess that's how it come about.

18 THE COURT: Everybody in here -- you don't have a
19 Georgia fan in the crowd.

20 THE JUROR: Yes, you do.

21 THE COURT: You're fine. What was the score of the
22 Carolina-Georgia game?

23 THE JUROR: Forgot.

24 THE WITNESS: I don't remember.

25 THE COURT: Between the Hedges. Let's go.

JEREMY KELLEY - DIRECT BY DERIEG

1 BY MR. DERIEG:

2 Q. Mr. Kelley, please introduce yourself to the jury.
3 Tell them where you're from, where you live, where you
4 work, what you do.

5 A. My name is Jeremy Kelley. I'm the owner of Between
6 the Edges Landscaping. I live in North Augusta. We do
7 all types of landscaping from residential landscaping,
8 which is what we have here, to commercial landscaping and
9 we also do a lot of military landscaping on bases for new
10 development. It's kind of an oversight of what our
11 company does.

12 Q. In fact, you coming in here to testify with us in
13 the middle of a military job, right?

14 A. Yes, sir.

15 Q. We appreciate you being here. I want to turn your
16 attention to May of 2012. Did you do any work at 28
17 Plantation Court in North Augusta?

18 A. Yes.

19 Q. Tell the jurors how you originally came to be
20 working on that piece of property or going to be doing
21 some work on that piece of property.

22 A. Mr. Prescott called me up, said he was doing an
23 extension on a garage, had some dirt work needed to be
24 done so the garage could be extended. So, I met Josh and
25 Mr. Larry and kind of got an idea of what was going on. I

JEREMY KELLEY - DIRECT BY DERIEG

1 come up with an estimate. I -- of course I gave my
2 estimate to Josh. He come back and said everything was
3 approved and I was working as a subcontractor through him.

4 Q. And originally what were you going to be doing as a
5 subcontractor on that plot of land?

6 A. Originally we were going to take down and I can't
7 remember the exact amount, but we were going to take down
8 a couple hundred feet of fence. There was a hill there
9 that had to be cut into and swelled out so the garage
10 could extend over.

11 And then we were going to have to replace the grass
12 that was disturbed, do a little bit of irrigation work
13 from where that was going to get disturbed, and then put
14 the fence, you know, redirect the fence to meet up with
15 the new garage. Somewhere in the -- and, you know, it was
16 20- to \$30,000 range of amount of work that I had quoted.

17 Q. And, how did that job proceed?

18 A. Whatever -- I didn't mention this, but there was
19 also some trees that had to be removed. So we removed
20 those trees and got the fence tore down, did a little bit
21 of work so Mr. Prescott could get started with the slab.
22 And as it was said earlier, ideas and the project just
23 started growing and it went from there.

24 Q. How did you end up specifically proceeding in terms
25 of your relationship as a subcontractor versus becoming

JEREMY KELLEY - DIRECT BY DERIEG

1 the actual contractor for the landscaping? How did that
2 go?

3 A. Mr. Larry had come up to me and, like I said, it
4 had gotten so big of what we were planning on doing that
5 Mr. Larry and myself felt that instead of him going
6 through Josh with his ideas and then Josh trying to relay
7 it to me that a lot of the communication just went
8 straight between me and Mr. Larry.

9 Then we started getting numbers together on this
10 new plan. And Larry asked me how would I feel working
11 directly for him. At that time I told him, you know, I
12 didn't have a problem with it, but out of respect for
13 Mr. Prescott I felt like it needed to be approved through
14 him since he was the one who brought me into the job. I
15 told him if, if Josh didn't have a problem with it, I
16 didn't have a problem with it. Him and Josh spoke and I
17 guess nobody had a problem with me going straight to
18 Larry.

19 Q. And whose idea was it for you to become directly
20 contracted for the landscaping outside of Josh Prescott?

21 A. Whose idea was it? I guess Larry's, but my
22 understanding it was more of a collective -- you know,
23 Larry was the one who brought it to me first I guess would
24 be the only way I could answer that.

25 Q. Do you know whether Larry had spoken to Josh about

JEREMY KELLEY - DIRECT BY DERIEG

1 this before he came to you?

2 A. Not before he came to me but he did call Josh about
3 it that day after I told him that he needed, I needed
4 Josh's approval, yeah.

5 Q. So after you told him that he needed to talk to
6 Josh he called Josh?

7 A. Yes.

8 Q. So, ultimately what, what did you come to contract
9 with the Rogers to do?

10 A. We came to contract to move a lot of dirt and build
11 a few retaining walls was, you know, the plan that we had.

12 Q. Did you through your work at the site ever become
13 aware of a dispute between Josh and Larry regarding a
14 basement?

15 A. Well, the one day I was there -- we had talked
16 about the basement, as said before. I mean, the basement
17 was something that had been talked about from day one of
18 when I was there. Now I do know that the first time I
19 looked at the basement with Josh and then the final look,
20 it had changed a lot.

21 But I had met Mr. Larry on the job site one
22 morning. I do not know the date. We were talking and I
23 made the comment that, hey, I hear we're back on the
24 basement, something in those words. I said, Josh has
25 called me for me to go by his office and pick up the new

JEREMY KELLEY - DIRECT BY DERIEG

1 plans.

2 That, Mr. Larry told me that he had a feeling that
3 Josh thought or -- I can't remember exactly how something
4 about, Josh, if Josh didn't do the basement under the
5 current contract that they had he wouldn't be allowed back
6 on the property. As far as what their contract, I don't
7 know. I've never -- but it was those lines of, if he
8 doesn't do this basement under the current agreement that
9 we have he's not going to be allowed back on the project.

10 Q. And you personally heard Mr. Rogers say that?

11 A. Yeah, I was face to face with him.

12 Q. Did you have occasion to speak with Mr. Prescott
13 after that conversation with Mr. Rogers?

14 A. I left Mr. Rogers and went straight to Josh's
15 office. Kind of an odd coincidence but immediately when
16 I walked in Ashley handed me the plans and Mr. Prescott's
17 phone rang. It was Larry. He walked out on the porch. I
18 stayed in with Ashley. And when he come back in I said
19 something about the plan. He said, well, you can take
20 them plans and do what you want to with them. I just got
21 fired.

22 But I didn't -- he was on the porch when he had the
23 conversation so I didn't hear either side of what was
24 going on in the conversation. He just walked in and told
25 me, you can have those plans, do what you want. I just, I

JEREMY KELLEY - DIRECT BY DERIEG

1 just got fired.

2 Q. And approximately how long after Mr. Rogers told
3 you that if Mr. Prescott didn't do the basement under the
4 current agreement that he couldn't come back on the
5 property, how long after that conversation was
6 Mr. Prescott's phone call?

7 A. It couldn't have been more than 20 minutes because
8 I left Mr. Larry's house and drove straight to Josh's
9 office which is three, four miles, five miles down the
10 road.

11 Q. Now, did you ever see a text message or a video
12 text that had come from Mr. Rogers -- or, excuse me,
13 Mr. Prescott to Mr. Rogers?

14 A. I can't remember if I actually seen that video,
15 that text. I know about it, but I don't know if I
16 actually seen the actual. I seen other things blowed up
17 but I don't know if I seen the one you're talking about.

18 Q. How do you know about it?

19 A. Michelle brought it to my attention. It got sent
20 on a weekend or something.

21 Q. And just --

22 MR. ERVIN: Judge, I'm going to object to this line
23 of questioning. It's very vague and ambiguous and
24 certainly speculative. At this point we don't even know
25 what he's talking about.

JEREMY KELLEY - DIRECT BY DERIEG

1 THE COURT: Overruled.

2 BY MR. DERIEG:

3 Q. So the jury knows what we're talking about, tell
4 the jury what this video text is that Michelle brought to
5 your attention.

6 A. Josh had found some app on his phone where you
7 could take a picture of something and send it to somebody
8 and it would look like a missile blowing it up. Like I
9 said, I didn't see the one for the Rogers' house but he
10 sent me pictures of Ruby Tuesday's and everything in North
11 Augusta got blowed up that weekend so.

12 Q. So what was this, like a cartoon-type missile
13 blowing up, blowing things up?

14 A. It actually looked pretty real. I don't know.

15 THE COURT: Hold on. What's this got to do with
16 this case?

17 MR. DERIEG: It's a big part of the Defendant's --

18 THE COURT: Well, he's talking about Applebee's
19 (verbatim) and other places.

20 MR. DERIEG: Yes, Your Honor.

21 THE COURT: Move along.

22 BY MR. DERIEG:

23 Q. How did Michelle bring this up to you?

24 A. The day we talked about it it was more of a
25 jokingly, you know, laughing-type situation when me and

JEREMY KELLEY - DIRECT BY DERIEG

1 her spoke about it.

2 Q. Can you remember what she told you about it?

3 A. She asked me did I see what Josh had done. I told
4 her no but what I just told the jury, I had seen
5 everything else get blowed up. She said it was kind of
6 funny and said that Larry had gotten a kick out of it.

7 Q. Said Larry had gotten a kick out of it?

8 A. Or said she had sent it to Larry and had thought it
9 was funny, but I've never spoken to Mr. Larry about it.

10 Q. Did you ever witness any of the interaction between
11 Mr. Prescott and Mr. Rogers?

12 A. I seen them talk every day, I mean, yeah, I guess.

13 Q. How would you describe that interaction?

14 A. At the beginning it was pretty normal. At the end
15 it was a little tense.

16 Q. Was there ever any screaming or yelling?

17 A. Not that I heard of, no.

18 Q. How did your -- how did your contract end up there
19 at 28 Plantation Court?

20 A. Long. But, I mean, I guess -- what are you asking
21 me?

22 Q. Did you do any work for free?

23 MR. ERVIN: Judge, I'm going to object.

24 Relevance. This is not Mr. Prescott's contract nor is

25 Mr. Kelley suing the Defendants in this case.

JEREMY KELLEY - CROSS BY ERVIN

1 THE COURT: Sustained. Move along.

2 MR. DERIEG: Beg the Court's indulgence, Your
3 Honor.

4 Q. Last question. When you and Mr. Rogers entered
5 into your own contract, was Mr. Prescott present?

6 MR. ERVIN: Same objection, Judge. I don't see
7 what that has to do with this case.

8 THE COURT: What's it got to do with this case?

9 MR. DERIEG: My next question was: Did
10 Mr. Prescott specifically eliminate himself from the
11 landscaping portion of that contract.

12 THE COURT: Do you know the answer to those two
13 questions?

14 THE WITNESS: Yeah. He wasn't involved in any --
15 at that date when we made the agreement, my involvement
16 with Larry was between me and Larry and me and him only.

17 MR. DERIEG: Thank you, Your Honor.

18 THE COURT: All right. Anything on cross?

19 MR. ERVIN: Yes, sir. Briefly, Judge.

20 CROSS-EXAMINATION

21 BY MR. ERVIN:

22 Q. Mr. Kelley, you testified that Mr. Prescott and
23 Larry's relationship was tense towards the end of the,
24 towards the end of their involvement together; is that
25 correct?

JEREMY KELLEY - CROSS BY ERVIN

1 A. Yes, sir.

2 Q. What do you mean by tense?

3 A. A lot of this is just hearsay but, you know --

4 THE COURT: Tell us what you know of your own
5 firsthand knowledge, not hearsay.

6 THE WITNESS: Well, I mean, from them, there was a
7 lot of disagreements going on.

8 BY MR. ERVIN:

9 Q. Okay. How long have you known Mr. Prescott?

10 A. Probably since 2009, 2010.

11 Q. Have you done a lot of work with him?

12 A. I do about one, maybe two jobs a year.

13 Q. Okay. Have you ever had a conversation with
14 Michelle Rogers about Mr. Prescott and his business?

15 A. No, not that I know of.

16 Q. Well, did you ever say to Ms. Rogers that if
17 Mr. Prescott were ever to be audited he'd be in big
18 trouble?

19 A. No, I don't know anything about it.

20 MR. DERIEG: Your Honor, I'm going to object to
21 that. Relevance.

22 THE COURT: That's sustained. Disregard that,
23 ladies and gentlemen. We're not trying a tax case or
24 anything else in here.

25 MR. ERVIN: I'll -- just goes into the veracity of

JEREMY KELLEY - CROSS BY ERVIN

1 the claim, Judge, but I'll move on.

2 Q. Did you -- did Ms. Rogers ever talk to you about
3 Mr. Prescott filing a mechanic's lien against them?

4 A. I think. I mean, she told me about it, yeah.

5 Q. What did -- did you ever talk to Mr. Prescott or
6 did he ever talk to you about the mechanic's lien he filed
7 against the Rogers?

8 A. Not in detail, I mean, other than he filed one.
9 That would be all, you know.

10 Q. Did he say to you why he filed it, that he filed it
11 out of spite or that he filed it legitimately?

12 A. Oh, he said he filed it out of them wanting more
13 money.

14 Q. Okay. Now, you were at Mr. Prescott's office when
15 you say you heard Mr. Prescott say he got fired; is that
16 right?

17 A. Yes, sir.

18 Q. Did you hear Larry say to Mr. Prescott, you're
19 fired?

20 A. No. That's not what I said. He was on the porch.
21 I was inside when the phone call happened.

22 MR. ERVIN: Okay. No further questions, Judge.

23 THE COURT: Anything on redirect?

24 MR. DERIEG: One question, Your Honor.

25

CHRIS ALLEN - DIRECT BY DERIEG

REDIRECT EXAMINATION

BY MR. DERIEG:

Q. How did you get paid?

A. By check, credit card.

MR. ERVIN: Objection, Judge. Again, he's testified that his contract was with the Rogers directly. Had nothing to do with --

THE COURT: Sustained. Move along.

MR. DERIEG: Your Honor, I'm asking about during --

THE COURT: I've ruled. Move along.

MR. DERIEG: No further questions.

THE COURT: Thank you. Step down. Next witness.

MR. DERIEG: Your Honor, the Plaintiff calls Chris Allen to the stand.

THE COURT: Mr. Allen, please come around. May Mr. Kelley be excused from his subpoena?

MR. DERIEG: I was just going to ask that.

THE COURT: Mr. Kelley, you're free to go.

CHRIS ALLEN, having been duly sworn, was examined and testified as follows:

THE CLERK: Please take a seat in the witness box and state your full name for the Court.

THE WITNESS: Chris Allen, Cornerstone Ready Mix in North Augusta.

CHRIS ALLEN - DIRECT BY DERIEG

DIRECT EXAMINATION

BY MR. DERIEG:

Q. Mr. Allen, please tell the -- introduce yourself to the jury. Where you're from, where you grew up, where you live, where you work, what you do.

A. Well, I'm from Edgefield originally. I used to be in the landscaping business for a good many years. I sold out in 2009 when I started Cornerstone Ready Mix in North Augusta. And we supply concrete, dirt and aggregate to Mr. Prescott's jobs.

Q. In May-June of 2012, did you have occasion to work at a job on 28 Plantation Court, North Augusta?

A. Yes, I did.

Q. What were you hired to do?

A. We were hired to bring concrete to the job, to pour the foundation of the new addition and, I'd say, the slab in the garage, and I think we might have poured some concrete at the pool house they mentioned.

Q. And, were you hired by the Rogers or were you a subcontractor for Mr. Prescott?

A. I was a sub for Josh.

Q. Did you ever have any contact with either Mr. or Mrs. Rogers?

A. Yeah, briefly, you know. Hey, how are you doing, you know, just formalities.

CHRIS ALLEN - DIRECT BY DERIEG

1 Q. I'm going to show you what's been marked as
2 Plaintiff's Exhibit Three. If you would please flip
3 through those invoices and tell me if you find any one
4 that you issued.

5 A. Yeah. One on the very last page.

6 Q. The last page?

7 A. Uh-huh.

8 Q. And that's Cornerstone Concrete?

9 A. That's right.

10 Q. Can you tell by that page what the amount was?

11 A. The dollar amount or the --

12 Q. Yeah, the dollar amount.

13 A. It looks like 166-25.

14 Q. 166-25?

15 A. Plus add tax to it, so maybe 170, like, around
16 about 177 probably after tax.

17 Q. And judging by what the materials are on that page,
18 does that, do those numbers square up?

19 A. Yeah, it squares up. To tell you the truth it was
20 probably -- I remember we did pour some concrete on the
21 back stoop. So that's probably what that was for.

22 Q. So it's, what, 165 plus tax?

23 MR. ERVIN: Judge, I'm going to object. It sounds
24 like he's speculating.

25 THE WITNESS: I'm not speculating.

CHRIS ALLEN - DIRECT BY DERIEG

1 THE COURT: Do you know what it is, 177 with tax?

2 THE WITNESS: Yeah, it's 177.

3 THE COURT: Thank you. Move along.

4 BY MR. DERIEG:

5 Q. And how did you get paid?

6 A. Josh pays me.

7 Q. Did he pay the \$177 on that account?

8 A. Yeah, Josh pays everything promptly. I mean, even
9 if he doesn't get paid he takes care of his subs.

10 MR. DERIEG: Thank you. That's all I have.

11 THE COURT: Anything on cross?

12 MR. ERVIN: Nothing, Your Honor.

13 THE COURT: You may step down. You're free to go.

14 Next witness.

15 MR. DERIEG: Plaintiffs would call Joe Voigt.

16 THE COURT: Spell the last name.

17 MR. DERIEG: V-O-I-G-H-T.

18 UNIDENTIFIED SPEAKER: No H, V-O-I-G-T.

19 JOHN VOIGT, having been duly sworn, was examined
20 and testified as follows:

21 THE CLERK: Please take a seat in the witness box.
22 State your full name for the Court.

23 THE COURT: Sir, your witness.

24

25

JOHN VOIGT - DIRECT BY DERIEG

DIRECT EXAMINATION

BY MR. DERIEG:

Q. Mr. Voigt, please introduce yourself to the jury.
Tell them where you're from, where you live, what you do.

A. My name is Josef Voigt. I've been living here
since '63 in Aiken, South Carolina. I've worked numerous
jobs around here: Savannah River Plant; heavy equipment;
through the union halls; I was a carpenter. I've got one
wife and one child. And I've been here working as Crazy
Joe's Roll-Off Containers for almost seven years now.

Q. What does Crazy Joe Roll-Off Containers do?

A. Basically what we are is a service that we set a
container down for new building materials for houses,
construction material or demolition. And that's what we
do. Take it to the dump, dump it and then send the person
the bill.

Q. Sitting in front of you is a packet of papers
marked as Plaintiff's Exhibit Number Three.

A. Uh-huh.

Q. Could you flip through those eight pages and tell
me if any of those invoices are from your company?

A. The first three, the first three are.

Q. And what are those three invoice amounts?

A. 291-35, 354-23, and 309-38.

Q. Did Mr. Prescott pay those invoices?

JOHN VOIGT - CROSS BY ERVIN

1 A. He sure did.

2 Q. In fact, do you know the check numbers that
3 Mr. Prescott used to pay?

4 A. I've only got one. The other one I don't have but
5 he paid two of the invoices with check number 3419.

6 Q. 3419?

7 A. Uh-huh.

8 Q. Are you sure that all three of those invoices got
9 paid?

10 A. Yes, sir.

11 MR. DERIEG: That's all I have, Your Honor.

12 THE COURT: Cross if any?

13 MR. ERVIN: Briefly, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. ERVIN:

16 Q. Mr. Voigt, while you were working on the property,
17 was there ever an incident where a vehicle or a piece of
18 machinery was run over the pool area that broke up some
19 concrete that was already there?

20 A. Yes, I was.

21 Q. What happened then?

22 A. From what I gathered and what I looked at, somebody
23 blamed me and I went back and looked and I looked where
24 the track hoe which was about nine foot wide, eight and a
25 half, something like that, had run from one side up over

1 the corner and then went back. And they called me and
2 told me I had done it. And my truck if it would have went
3 across there would have left some kind of a rubber mark
4 across the concrete, so I knew I hadn't done it.

5 Q. Did Mr. Prescott mention how he was going to handle
6 that situation?

7 A. No, not to me.

8 MR. ERVIN: Okay. Thank you, sir.

9 THE COURT: All right. You may step down. Do you
10 have anything else?

11 MR. DERIEG: One question.

12 REDIRECT EXAMINATION

13 BY MR. DERIEG:

14 Q. Do you know who it was that said they were
15 responsible for that corner and said that they would take
16 care of it?

17 A. No, I don't have any idea, but I heard later --

18 THE COURT: No, sir. Don't tell me what you heard.

19 THE WITNESS: Okay. Okay.

20 THE COURT: All right. You're free to go. Thank
21 you.

22 THE WITNESS: All right.

23 THE COURT: Next witness.

24 MR. DERIEG: Your Honor, at this time I would call
25 Samuel Ruvucalbus.

JAN BENTLEY - DIRECT BY DERIEG

1 THE COURT: Is this the one you subpoenaed?

2 MR. DERIEG: Yes, Your Honor.

3 THE COURT: Ladies and gentlemen, this witness is
4 not present. However, he was subpoenaed to be here
5 today. I'll have to deal with that later on, but it's
6 through no fault of the attorney he's not here. He's just
7 disregarding the subpoena.

8 Do you want to introduce the subpoena and the
9 service?

10 MR. DERIEG: Yes, Your Honor.

11 THE COURT: Thank you. Make it a Court's Exhibit.

12 MR. ERVIN: Certainly without objection, Judge.

13 THE COURT: Thank you.

14 (Court's Exhibit No. 1, subpoena and service,
15 received into evidence.)

16 THE COURT: Next witness, please.

17 MR. DERIEG: Your Honor, at this time we call Jan
18 Bentley.

19 JAN BENTLEY, having been duly sworn, was examined
20 and testified as follows:

21 THE COURT: Ms. Bentley, please have a seat in the
22 witness stand.

23 DIRECT EXAMINATION

24 BY MR. DERIEG:

25 Q. Good afternoon, Ms. Bentley. Thank you for being

JAN BENTLEY - DIRECT BY DERIEG

1 here. Please introduce yourself to the jury, where you're
2 from, where you live, what you do.

3 A. My name is Jan Bentley. I'm from Plum Branch,
4 South Carolina.

5 THE COURT: From where?

6 THE WITNESS: Plum Branch, South Carolina. Ever
7 heard of it?

8 THE COURT: Yes, ma'am. That's in McCormick
9 County.

10 THE WITNESS: It is. I am -- I live in Lincolnton,
11 Georgia now. And I own a portable restroom company called
12 Portable Services and we provide portable restrooms for
13 construction sites and special events.

14 BY MR. DERIEG:

15 Q. Back in May and June of 2012, did you have occasion
16 to have any of your Portable Services on 28 Plantation
17 Court in North Augusta?

18 A. Yes, I did.

19 Q. How did you come to have some of your Portable
20 Services there?

21 A. Josh had called and ordered a portable restroom for
22 that construction site.

23 Q. And when you say Josh, you mean Josh Prescott?

24 A. Yes.

25 Q. In front of you is Plaintiff's Exhibit Number

1 Three. Would you please flip through those sheets and
2 tell me whether or not you recognize any of the invoices?

3 A. Yes, I do.

4 Q. And is it an invoice issued by your company?

5 A. It is.

6 Q. And how much is that for?

7 A. \$89.30.

8 Q. Did Mr. Prescott pay that?

9 A. He most certainly did.

10 Q. And did you or anybody from your company have
11 occasion to have any contact with Mr. and Mrs. Rogers?

12 A. Not to the best of my knowledge, no.

13 MR. DERIEG: Thank you. That's all I have.

14 THE COURT: Any cross?

15 MR. ERVIN: No, Your Honor.

16 THE COURT: Ms. Bentley, you may go back to Plum
17 Branch or to Lincolnton, Georgia.

18 THE WITNESS: All right. Thank you.

19 THE COURT: Take care of the port-a-let business.

20 MS. BENTLEY: I'll try my best.

21 THE COURT: May she be excused? Thank you, ma'am.

22 MS. BENTLEY: Bye-bye.

23 THE COURT: Between the hedges and the port-a-let,
24 we're covered.

25 All right. Next witness.

ROBBIE BARRETT - DIRECT BY DERIEG

1 MR. DERIEG: Plaintiff calls Robbie Barrett to the
2 stand, Your Honor.

3 ROBBIE BARRETT, having been duly sworn, was
4 examined and testified as follows:

5 THE CLERK: Please take a seat in the witness box
6 and state your name for the record.

7 THE COURT: Mr. Barrett, have a seat please.

8 DIRECT EXAMINATION

9 BY MR. DERIEG:

10 Q. Good afternoon, Mr. Barrett. Thank you for being
11 here. Please introduce yourself to the jury, where you're
12 from and where you live.

13 A. My name is Robbie Barrett. I'm the owner of
14 Barrett Window & Door Company. I'm from Augusta, Georgia.

15 Q. Did you have any occasion in May or June of 2012 to
16 do any work at 28 Plantation Court in North Augusta?

17 A. Yes, sir.

18 Q. What were you hired to do?

19 A. To furnish the windows and door units.

20 Q. Would you please look through what's in front you
21 that's marked as Plaintiff's Exhibit Number Three and tell
22 me whether or not you recognize any of those invoices
23 included in that packet?

24 A. (Complying). Yes, sir.

25 Q. And what is the invoice number on that?

ROBBIE BARRETT - CROSS BY ERVIN

1 A. 6309.

2 Q. And how much is that for?

3 A. 367-68.

4 Q. And what does the 367-68 represent?

5 A. It's the twin with the seven percent sales tax.

6 Q. And did Mr. Prescott pay that invoice?

7 A. Yes, sir.

8 MR. DERIEG: I don't have any further questions,

9 Your Honor.

10 THE COURT: Cross, if any?

11 MR. ERVIN: Yes, sir. Briefly, Judge.

12 CROSS-EXAMINATION

13 BY MR. ERVIN:

14 Q. You worked on the property for the Prescotts, for
15 Mr. Prescott at the Rogers' property, correct?

16 A. Yes, sir.

17 Q. And you were to bring in windows and doors; is that
18 right?

19 A. Yes, sir.

20 Q. Were any of the windows deemed problematic or not
21 up to code that you brought on the property?

22 A. We did a service call later on where we went back
23 and fixed some glazing bead and replaced a screen that was
24 either torn or bent. I don't remember the details.

25 Q. Do you know if those, the windows that you brought

FLOYD HUTTO - DIRECT BY DERIEG

1 to the property stayed on the property and are currently
2 being used today or do you know if any of them had been
3 taken off and replaced because they were not up to code?

4 A. I don't know, sir.

5 MR. ERVIN: No further questions, Judge.

6 THE COURT: Redirect?

7 MR. DERIEG: Yes, Your Honor. Briefly.

8 REDIRECT EXAMINATION

9 BY MR. DERIEG:

10 Q. When you were called back for that service call,
11 did you fix the windows?

12 A. Yes, sir.

13 Q. Did you have to remove the windows?

14 A. No, sir.

15 Q. And were you paid in full for the windows?

16 A. Yes, sir.

17 MR. DERIEG: That's all I have.

18 THE COURT: You are free to go from your subpoena.
19 You may step down. Next witness, please.

20 MR. DERIEG: Your Honor, the Plaintiffs would call
21 Floyd Hutto.

22 FLOYD HUTTO, having been duly sworn, was examined
23 and testified as follows:

24 THE CLERK: Please take a seat in the witness box.
25 State your full name.

FLOYD HUTTO - DIRECT BY DERIEG

1 THE WITNESS: My name's Floyd Hutto. I lived in
2 Langeley for 47 years. Been doing roofing for 30, been
3 knowing Mr. Prescott for about 22 years. We pretty much
4 grew up together and framed houses together, and we
5 worked from daylight to dark six and seven days a week.

6 DIRECT EXAMINATION

7 BY MR. DERIEG:

8 Q. Mr. Hutto, back in May-June of 2012, did you do any
9 work at 28 Plantation Court, North Augusta?

10 A. Yes, sir.

11 Q. What work did you do?

12 A. Well, we started off roofing the garage. And then
13 Mr. Prescott came to me and said that Mr. Rogers wanted to
14 tear all the plywood off the house and re-sheet the whole
15 house with plywood, but there wasn't nothing wrong with
16 the plywood but he wanted to change the plywood. So I
17 done what Mr. Prescott asked me to do because he's my
18 boss.

19 I was sitting there thinking, I said, Josh, I don't
20 know why he wants to change this. So somehow or another
21 we got in to talking and all at once Josh said they'd come
22 to an agreement to change all the plywood. So we started
23 taking the plywood off and, you know, with the shingles
24 and throwing out in the yard because the dumpster, you
25 know, it was a two-story house so everything had to hit

FLOYD HUTTO - DIRECT BY DERIEG

1 the ground.

2 So when we was doing, tearing the plywood off the
3 house a sheet of plywood hit the steps and broke a couple
4 bricks. And I called Josh and told Josh what happened
5 because we don't try to hide things, you know. When we
6 make mistakes we just go to our boss who hired us and
7 he'll make it right. That's something I can always say
8 about Mr. Prescott; he never cut corners.

9 But Mr. Prescott always, you know, if we had a
10 problem we always came to him. We didn't go to the
11 homeowner because that's not my place to go to a
12 homeowner. My place is, is go to Mr. Prescott. That's
13 who hired me and paid me.

14 But, we was sitting there and we talked. And I
15 said, well, whatever you want to do that's what we'll do.
16 So I told my boys, my crew, I said, tomorrow we'll just
17 start taking off the plywood on the front side and go get
18 new plywood and put it back on.

19 Q. How did that job end?

20 A. How did it end?

21 Q. Yes, sir.

22 A. It wasn't good. We all got run off. Mr. Prescott
23 told me to get my tools because I worked for him, you
24 know, that there wasn't no money going to be settled.

25 So, and what I done was felt the whole house with

FLOYD HUTTO - DIRECT BY DERIEG

1 titanium felt. And we run out of felt on the back side.
2 There was a little bitty area and I told Mr. Prescott that
3 we needed some more titanium felt. He said, well, I'll
4 tell Larry to go get it, because I didn't talk to him.
5 Only thing I said was good morning. And then that's time
6 for me to go to work.

7 And I sat there and I told Mr. Prescott that we
8 needed some more and he told Mr. Larry so they was calling
9 for thunderstorms. I think it was 80 or 90 percent that
10 day. And one of my boys just started, it wasn't about
11 three or four shingles didn't have no felt, no titanium
12 there. So Josh -- Larry called Josh and Josh called me
13 and I went to the store buying some drinks and I took them
14 three or four shingles off. And I told them, I said, go
15 back down there and get some tie-backs since we ain't got
16 no felt, no titanium felt. We'll put it up there and I
17 put probably seven, eight shingles over that. And then we
18 didn't have none so we put a tarp over the rest of it.

19 Q. And that was to try -- what was that for? Why did
20 you guys put those shingles and tarp on there?

21 A. Because we didn't have no titanium felt. I told
22 Josh and Mr. Larry to rush to get it and we never did get
23 it so we was in a bind. If it would've poured down rain
24 it would've ruined the inside. So I had to do something.
25 It wasn't my place to buy the titanium felt.

FLOYD HUTTO - DIRECT BY DERIEG

1 Q. When you got run off from the job --

2 MR. ERVIN: Objection, Your Honor.

3 THE COURT: What's your objection?

4 MR. ERVIN: He just said, when he got run off the
5 job. I don't think he testified he got run off the job.

6 MR. DERIEG: Those are exactly his words.

7 THE COURT: That's exactly what he said.

8 MR. ERVIN: Withdraw the objection, Judge.

9 THE COURT: Thank you.

10 BY MR. DERIEG:

11 Q. When you got run off from the job, how was the roof
12 left?

13 A. The roof was left. We didn't have enough titanium
14 felt to finish roofing it. It wasn't our problem. Our
15 problem was, as I told my boss and my boss told his boss,
16 the man that he was working for. And he said -- I don't
17 know what happened. Josh, Mr. Prescott told me to just
18 tarp it. Just put a tarp over it and I done what he told
19 me to do because he's the one that pays me.

20 Q. Please look through the packet of invoices that's
21 in front of you labeled as Plaintiff's Number Three and
22 tell me if you recognize any of those invoices.

23 A. Yes.

24 Q. Is it an invoice from your company?

25 A. Hold on. I can't see. I ain't got my glasses.

FLOYD HUTTO - DIRECT BY DERIEG

1 THE COURT: Where are your glasses?

2 THE WITNESS: Sir?

3 THE COURT: You got some out there?

4 THE WITNESS: No, sir. I got them at the house.

5 (The Judge hands witness his glasses.)

6 THE WITNESS: You're a good judge. Yes, sir.

7 BY MR. DERIEG:

8 Q. What was the invoice for?

9 A. It was for \$3,000.

10 Q. 3,000?

11 A. Yes, sir.

12 Q. Did Mr. Prescott pay you that money?

13 A. Sure. He's always paid his bills.

14 Q. Those bricks that you say got broken by the
15 plywood, do you know whether or not there were plans on
16 fixing those bricks?

17 A. Yes, sir. I told Mr. Prescott. He said, I'll
18 order some more bricks to fix it. That's what he told
19 me. And we was straight up. When we make mistakes we
20 make it right.

21 Q. And do you know when in the process that
22 Mr. Prescott intended on fixing those bricks?

23 A. Yeah. He was going to fix it whenever the, I
24 reckon the steps or -- whatever, whatever, you know. I
25 don't know. I know he was going to fix it.

FLOYD HUTTO - CROSS BY ERVIN

1 Q. And had you been allowed to keep working would that
2 roof had been finished?

3 A. Sir?

4 Q. Had you been allowed -- if you had been allowed to
5 keep working on that 28 Plantation Court, would that roof
6 have been finished?

7 A. Yes, sir.

8 MR. DERIEG: No further questions, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. ERVIN:

11 Q. You had testified that you got run off the job.
12 Explain to me how that --

13 A. This is how -- this is how it happened.

14 Q. Yes, sir.

15 A. I work for Mr. Prescott. And if he comes out there
16 and tells me quit driving a nail, that's what I do because
17 he pays me. Mr. Rogers don't pay me. Mr. Prescott pays
18 me.

19 Q. Did Mr. Rogers ever tell you to stop working?

20 THE COURT: Hold on. Let him finish the question.

21 THE WITNESS: All right. All right.

22 THE COURT: Go ahead.

23 BY MR. ERVIN:

24 Q. Did Mr. Rogers ever tell you to stop working?

25 A. I didn't talk to Mr. Rogers.

FLOYD HUTTO - CROSS BY ERVIN

1 Q. Okay. Thank you.

2 A. Uh-huh.

3 Q. One last question.

4 A. Uh-huh.

5 Q. You never went back to finish the roofing job; is
6 that correct?

7 A. Well, we would have finished it. If -- he told us
8 don't come back. He told Mr. Prescott, and if
9 Mr. Prescott wasn't welcome, that's who I work for, I'm
10 not welcome.

11 Q. As you left the roof the way you left it --

12 A. I didn't left it. It was his fault because we
13 didn't have no felt, so how did I left it?

14 Q. I understand. But let me try to ask you this
15 question.

16 THE COURT: Just let him finish his whole question
17 now.

18 THE WITNESS: All right.

19 BY MR. ERVIN:

20 Q. You did not finish the roof, correct?

21 A. Right.

22 Q. And the way you left the roof, the condition you
23 left the roof in --

24 A. Uh-huh.

25 Q. -- would you say that would allow water to get in

1 the building, would it --

2 THE WITNESS: We had it in with a tarp --

3 THE COURT: Hold on. Hold on. Finish your
4 question.

5 BY MR. ERVIN:

6 Q. The question is: Did you leave the roof in a
7 condition to where damage could occur to the structure?

8 A. No, sir.

9 Q. Okay. Now, how -- did you put a tarp under it or
10 titanium felt, is that -- how did you finish the roof?

11 A. We didn't have no titanium felt. That was the last
12 little bit we had to do. We told Mr. Rogers to go get
13 it. I told Josh and Josh told Mr. Rogers. And then after
14 that he said, just felt it in, throw a tarp over it. We
15 tarped it and we knowed it wasn't going to get wet.

16 Q. So when you put the tarp on, that would not have
17 been a permanent fix, correct?

18 A. No, sir.

19 MR. ERVIN: Thank you. No further questions,
20 Judge.

21 THE COURT: Hold on. Anything you want to ask
22 him?

23 MR. DERIEG: No, Your Honor.

24 THE WITNESS: Let me down.

25 THE COURT: Go back to Langeley.

PHILLIP DWAYN PADGETT - DIRECT BY DERIEG

1 THE WITNESS: Thank you, buddy. Y'all have a good
2 day.

3 THE COURT: Thank you, sir. Don't forgot your
4 glasses now.

5 THE WITNESS: I got them.

6 THE COURT: Next witness.

7 MR. DERIEG: Your Honor, the Plaintiffs call Phil
8 Padgett.

9 PHILLIP DWAYN PADGETT, having been duly sworn, was
10 examined and testified as follows:

11 THE CLERK: Please take a seat in the witness box
12 and state your full name.

13 THE WITNESS: Phillip Dwayn Padgett.

14 DIRECT EXAMINATION

15 BY MR. DERIEG:

16 Q. Good afternoon, Mr. Padgett. Thank you for being
17 here. Please introduce yourself to the jury, where you're
18 from, where you live, what you do.

19 A. I'm Phillip Padgett. I'm from here in Langeley.
20 I'm a carpenter. I've been a carpenter all my life, about
21 32 years or something.

22 Q. If you don't mind, please speak up so the jury and
23 the court reporter can hear everything that you say.

24 A. Yes, sir.

25 Q. And, I'm sorry. What was it you said you do?

PHILLIP DWAYN PADGETT - DIRECT BY DERIEG

1 A. I'm a carpenter.

2 Q. Carpenter?

3 A. Yes, sir.

4 Q. Looking back at May-June 2012, did you work at 28
5 Plantation Court --

6 A. Yes, sir --

7 Q. -- in North Augusta?

8 A. -- I did.

9 Q. How did you come to work at that residence?

10 A. Mr. Prescott had called me and we had looked at a
11 set of plans on a garage, building a garage onto a garage,
12 and putting a bonus room above the original garage also.

13 Q. What did you ultimately end up doing at this
14 property?

15 A. Building the garage addition and putting a bonus
16 room above the old garage. Of course tearing the old --
17 I'm not going to go through every detail. We did what was
18 first discussed and then we built a pool house on the
19 back, sheeted the attic upstairs, the attic space
20 upstairs, set a beam underneath of the existing to hold a
21 bonus room floor that wasn't, that we didn't know to begin
22 with. And to the best of my recollection that's it, but
23 I really don't know the extent of everything, you know,
24 every little detail. In general that's what we did.

25 Q. How was the work that you were hired to do left

PHILLIP DWAYN PADGETT - DIRECT BY DERIEG

1 when -- strike that. Did you finish your job?

2 A. We were finished. We had the glass set and there
3 were some discussion on another set of steps coming from
4 the main house up that wasn't originally on the plans that
5 we had all discussed and had planned on. I had planned --
6 I had planned on going back to do that work, you know. It
7 was beyond the scope but we had planned on doing it. And
8 there had been some discussion on a basement but I haven't
9 seen, I had not seen any plans or anything to it, but
10 there had been some discussion about finishing out a
11 basement.

12 So when we left we had the windows set and it was
13 completed, the framing on the sunroom that was underneath
14 the original bonus room that we extended where the sunroom
15 was. And the framing was basically done but the spec --
16 it wasn't inspected yet. It had to get an inspection.

17 Q. Did that inspection happen?

18 A. I've heard it did but I wasn't present or seen any
19 kind of work order from the inspector. I haven't been
20 back to the job.

21 Q. If the inspector had found deficiencies in your
22 work, how much would it have cost Josh Prescott for you to
23 go back and fix it?

24 A. Not -- nothing. He had paid me. Usually there's a
25 punch list with any inspector. There's minor -- I mean,

PHILLIP DWAYN PADGETT - DIRECT BY DERIEG

1 that's their job. They try to find, you know, up to code
2 as far as fire blocking. And at the time, to be quite
3 honest, they had changed the fire blocking codes and
4 such. I was getting accustomed to what the inspectors
5 were looking for.

6 Q. Were you ever given an opportunity to go back and
7 correct any mistakes that were made?

8 A. No, sir. I was not.

9 Q. Are you aware of this text message, video message
10 with the missiles or the rockets that Mr. Prescott sent to
11 Mr. Rogers or Mrs. Rogers?

12 A. Yes, sir, I am. I was present when it was sent.

13 Q. You were present when Mr. Prescott sent it?

14 A. Yes, I was.

15 Q. And tell the jury about that.

16 A. Well it was just, it was a new app that he had
17 gotten that blew things up. And we had just finished
18 building the roof of the garage. The plywood wasn't on it
19 yet. And we were standing up on a hill and you had a real
20 good picture of it from like above. He had told me, you
21 know, watch this. It was a missile that come down and
22 blew the whole house up. It was, you know, it was funny.
23 We joked about it. And we laughed and he said, I'm going
24 to send this to Michelle and he sent it and that's how it
25 come about.

PHILLIP DWAYN PADGETT - DIRECT BY DERIEG

1 Q. Did you ever have occasion to hear Mr. and
2 Mrs. Rogers talk about that text?

3 A. No, sir. I never heard any comment on that text
4 from them.

5 Q. So all you know about it is you being there with
6 Mr. Prescott when he sent it?

7 A. Yeah, yeah. Yes, sir.

8 Q. How was Mr. Prescott acting when he sent that?

9 A. We was joking. We was laughing. I mean, I don't
10 remember what day of the week it was. It seemed like it
11 may have been a Friday. You know, it was the end of the
12 day and we were just kind of cutting up, talking about the
13 job, talking about what we planned on, you know, what was
14 going on, you know, next. And, you know, like we always
15 do.

16 Q. While you were working there at 28 Plantation
17 Court, did you have an opportunity to observe the
18 interaction between Mr. Prescott and Mr. Rogers?

19 A. Somewhat, yes.

20 Q. Could you describe that interaction, please?

21 A. Cordial at the beginning, you know. Josh is a busy
22 man. He's in and out, you know. He pays us to take care
23 of things for him the way he wants them took care of. But
24 he's in and out. He checks it daily and, you know, comes
25 by. Cordial, you know, except for building. I mean, you

PHILLIP DWAYN PADGETT - DIRECT BY DERIEG

1 know, to be honest, when it come to the end of the week
2 there seemed to be a lot of friction on Mr. Rogers' part.
3 There seemed to be a lot of commotion that wasn't there
4 the rest of the week. And I've seen it, you know, on a
5 couple occasions.

6 Q. Did Mr. Rogers ever approach you personally?

7 A. Oh, many times. You know, I was working on his
8 house so, yes, he approached me.

9 Q. What did he talk to you about when he approached
10 you?

11 A. Well, you know, the first day on the job, you know,
12 he did ask about the pricing and asked if I worked for
13 myself or if I worked by the hour for Mr. Prescott. And,
14 you know, I couldn't comment. You know, you told him I
15 did work for myself and that, you know, I gave him, you
16 know, told him who I was and introduced myself but I told
17 him, you know, I'm not allowed, you know, I could discuss
18 anything job related on his house and work with him but I
19 couldn't discuss no business, you know, that was between
20 him and Mr. Prescott. It's part of my agreement with any
21 contractor that I work for. It's not abnormal.

22 Q. Was there ever a time where Mr. and Mrs. Rogers
23 attempted to hire you outside of Josh Prescott's
24 supervision?

25 A. Well, yes, sir. I believe -- now, I'm not good at

PHILLIP DWAYN PADGETT - DIRECT BY DERIEG

1 dates, but I believe I received an e-mail and I believe it
2 was, we had done left the job. It was, I don't know if he
3 had fired Josh. I wasn't present. Whatever happened
4 after that day, I did receive an e-mail.

5 Q. And what did that e-mail say?

6 A. That they were, you know, that they appreciated
7 what me and my crew had done and that, and that -- I
8 cannot remember the exact words. I'm sure you have it
9 because I did forward it to Mr. Prescott, you know, and I
10 didn't reply to the e-mail. I just forwarded it out
11 because I knew there was some kind of problem, you know,
12 between Mr. Prescott and Mr. Rogers and I just wasn't
13 getting in the middle of it.

14 Q. And while you were working at 28 Plantation Court,
15 did Mr. Rogers ever ask you if he could pay you directly
16 for certain jobs?

17 A. Well, he would ask what would I charge. So, I took
18 that as an offer, yes, sir.

19 MR. DERIEG: Beg the Court's indulgence, Your
20 Honor.

21 Q. And you said that you can't remember the exact
22 wording of that e-mail that you got?

23 A. No, sir.

24 Q. Do you remember the general gist of it?

25 A. Yes. Well, you know, that -- in other words, they

PHILLIP DWAYN PADGETT - CROSS BY ERVIN

1 didn't have a problem with me, you know, and if I would
2 come and finish performing the work that needed, the steps
3 we had planned on, I guess, is what he was referring to or
4 maybe the basement. I don't know.

5 Q. Excuse me. That e-mail was trying to hire you?

6 A. I took it as so. Yes, sir.

7 MR. DERIEG: Thank you. Your Honor, that's all I
8 have.

9 THE COURT: Cross?

10 MR. ERVIN: Yes, sir. Briefly.

11 CROSS-EXAMINATION

12 BY MR. ERVIN:

13 Q. Did -- the Prescott's never paid you directly; is
14 that correct?

15 A. They paid me directly, the Prescott's did.

16 Q. I'm sorry. I'm getting the names mixed up. Please
17 excuse me. The Rogers never paid you directly; is that
18 correct?

19 A. They did one time Mr. Prescott was out of town.

20 Q. That's right. And Mr. Prescott directed him to pay
21 you?

22 A. Yes. My draw for that week. Yes, sir, they did.

23 Q. And that was the one time that they paid you and
24 that was at Mr. Prescott's direction, correct?

25 A. Yes, sir.

PHILLIP DWAYN PADGETT - CROSS BY ERVIN

1 Q. You mentioned an e-mail about them that they sent
2 you. May I approach, Judge? Does this look like the
3 e-mail that they're referring to?

4 A. I brought my glasses.

5 Q. Good call. Is that an accurate representation of
6 the e-mail that you received from the Rogers?

7 A. Yes, sir. It does. It does appear to be.

8 MR. ERVIN: I'd like to submit this as Exhibit Six,
9 Your Honor.

10 THE COURT: Any objection?

11 MR. DERIEG: No, sir. I have no objection.

12 (Defendant's Exhibit No. 6, e-mail, received into
13 evidence.)

14 BY MR. ERVIN:

15 Q. Mr. Padgett, this e-mail is dated June 27, correct?

16 A. Yes, sir, it is.

17 Q. And the first sentence in your e-mail, could you
18 read that for the jury?

19 A. This is their e-mail to me. It's not mine.

20 Q. That's okay.

21 A. Josh let me know today that you did not want to
22 come back and do any work since he was not coming back and
23 you didn't trust that we would pay you. We have paid the
24 framing in full.

25 Q. Okay. Thank you. So in this e-mail it says Josh

PHILLIP DWAYN PADGETT - REDIRECT BY DERIEG

1 stated he wasn't going back to the property, correct?

2 A. Correct.

3 Q. Did you ever go back to the property to finish any
4 work?

5 A. No, sir.

6 Q. And what was the condition that you left the
7 property, left the work in on the property?

8 A. It was dried in. It was felted in and the glass
9 was set, so it was framed.

10 Q. Okay.

11 A. And it should have been cleaned up. We clean up
12 daily so the framing materials should have been cleaned
13 up. It was clean.

14 Q. It had been cleaned up or it had not been?

15 A. It had been.

16 MR. ERVIN: No further questions.

17 MR. DERIEG: Briefly, Your honor.

18 REDIRECT EXAMINATION

19 BY MR. DERIEG:

20 Q. Had you -- did you see a copy of the city
21 inspection report?

22 A. I have seen a punch list. I don't remember if it
23 was the actual inspection list but it was sometime later,
24 you know, after the fact. Mr. Prescott had let me know,
25 well, this is what they're saying. You know, you want to

BRIAN STEPHEN SMITH - DIRECT BY DERIEG

1 look at this. This is what they're saying that we need
2 to, you know, that you missed. Just so I would know that
3 we would know, you know, what the inspectors --

4 Q. In that list you saw, how much would you charge
5 Mr. Prescott to fix that?

6 A. Nothing. The list I saw was fire blocking and
7 there was some floor leveling to level out. So it would
8 have been nothing because it was on me. I was paid for
9 the framing.

10 Q. Do you know regarding that text message whether,
11 what the Rogers did about it?

12 A. Which text?

13 Q. The video message.

14 A. The video message? I could tell you what I heard.

15 THE COURT: No, sir.

16 BY MR. DERIEG:

17 Q. Only what you know.

18 A. I don't know, you know. All I know is what I've
19 heard.

20 THE COURT: You can't testify -- all right. You
21 can step down. You're free from your subpoena.

22 THE WITNESS: Thank you, sir.

23 THE COURT: Next witness.

24 MR. DERIEG: Brian Steve Smith.

25 BRIAN STEPHEN SMITH, having been duly sworn, was

BRIAN STEPHEN SMITH - DIRECT BY DERIEG

1 examined and testified as follows:

2 THE CLERK: Please take a seat in the witness box
3 and state your full name for the Court.

4 THE WITNESS: My name is Brian Stephen Smith and I
5 go by Steve.

6 DIRECT EXAMINATION

7 BY MR. DERIEG:

8 Q. Good afternoon, Mr. Smith. Thank you for being
9 here. Could you please introduce yourself to the jury and
10 tell them where you live and what you do?

11 A. Like I said, everybody calls me Steve so that's
12 what I go by, Steve Smith. I live at Clarks Hill, South
13 Carolina. Presently retired. Prior to retirement I
14 worked for 15 years as a building official in the City of
15 North Augusta.

16 Q. And you're holding in your hand what I've placed in
17 front of you as Plaintiff's Exhibit Number Four. Do you
18 recognize that?

19 A. Yes, I do.

20 Q. What is that?

21 A. This is a reply to Mr. Josh Prescott. He had given
22 me a call and said that he was no longer going to be
23 working on this house and he wanted to be relieved of his
24 responsibilities as the permit holder for that project.

25 Q. Is this -- did you create those documents in front

BRIAN STEPHEN SMITH - DIRECT BY DERIEG

1 of you?

2 A. I did.

3 Q. And what are those two sheets of paper?

4 A. The first one is a letter in response to his asking
5 to be relieved from the permit. And the second one here
6 is a correction notice for an inspection that was
7 performed at 28 Plantation Court.

8 MR. DERIEG: Your Honor, at this time the
9 Plaintiffs would seek to move Exhibit Number Four into
10 evidence.

11 MR. ERVIN: No objection, Your Honor.

12 (Plaintiff's Exhibit No. 4, building inspection
13 letter and correction notice, received into evidence.)

14 BY MR. DERIEG:

15 Q. Now you said that Mr. Prescott informed you that he
16 was no longer going to be working at 28 Plantation Court?

17 A. That's correct.

18 Q. Did he tell you why he was no longer going to work
19 there?

20 A. Yes, sir, he did. He told me he had been fired
21 from that project.

22 Q. Did he tell you who fired him?

23 A. Yes, he did; Larry Rogers.

24 Q. Now, turning to the inspection that you did --

25 A. Uh-huh.

BRIAN STEPHEN SMITH - DIRECT BY DERIEG

1 Q. -- are any defects in the property memorialized in
2 that corrections notice?

3 A. Memorialized?

4 THE COURT: Written down.

5 BY MR. DERIEG:

6 Q. On that sheet of paper.

7 A. Yes. Yes, there's several inspections here that
8 was done but I guess the main one we are interested in is
9 that final one. And that was done at the request of Larry
10 Rogers because he called me and told me that Josh was no
11 longer going to be allowed on the project and he needed an
12 inspection for it.

13 So -- and it's something we normally would do is,
14 when we're changing contractors we do an inspection at
15 that point to see what needs to be done to get everything
16 passed before we can continue.

17 Q. Did you say that Mr. Rogers told you that he wasn't
18 going to let Mr. Prescott back on the property?

19 A. He did.

20 Q. When you went and did -- well, what's the date on
21 that last inspection?

22 A. Looks like 7-2-2012. No, excuse me. It's
23 6-29-2012.

24 Q. 6-29?

25 A. Uh-huh.

BRIAN STEPHEN SMITH - DIRECT BY DERIEG

1 Q. And on 6-29, what defects did you find?

2 A. It was some toe boards on the roof. Looks like
3 some fire block in the ceiling in the garage wall, needed
4 double studs under some headers, fire block off three exit
5 gable ends, the bottom sash of the windows at the stairs
6 needed tempered glass, two by six upstairs ceiling joists
7 nailed to the rafter for support, level upstairs floors at
8 three areas with drop downs, clean up shingles around the
9 home on the ground, repair roof shingles at the rear where
10 material was dragged across the roof. Looks like that
11 was about it.

12 Q. Do you have any idea how much that list that you
13 just, that you just read, do you have any idea how much
14 value that is, how much it would cost to fix those things?

15 A. I have no idea.

16 Q. Do you know whether Mr. Prescott was allowed to go
17 back and make the corrections?

18 A. I know he was not.

19 Q. You know, he was not?

20 A. Right.

21 MR. DERIEG: Thank you. That's all I have, Your
22 Honor.

23 THE COURT: Cross?

24 MR. ERVIN: Begging your indulgence briefly, Your
25 Honor. (Conferring with client.)

BRIAN STEPHEN SMITH - CROSS BY ERVIN

1 THE WITNESS: What did he say?

2 THE COURT: Begging my indulgence. He wished to
3 speak to his client.

4 MR. ERVIN: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. ERVIN:

7 Q. You stated that Mr. Prescott ceased work on the
8 property. In what capacity did you hear Mr. Rogers let
9 Mr. Prescott go?

10 A. Well, Josh called. He just said that he had been
11 fired off that project and was not allowed back on it, and
12 he wanted his name taken off the permit on it.

13 Q. Okay. So Mr. Prescott informed you that he had
14 been fired?

15 A. Correct.

16 Q. Did Mr. Rogers ever tell you that he fired
17 Prescott?

18 A. Not in those words.

19 Q. And your statement earlier was that Mr. Rogers said
20 Mr. Prescott was not allowed on his property. Was that
21 exactly what he said?

22 A. That's what he told me.

23 Q. Is that from Mr. Prescott?

24 A. No, that's what Larry told me.

25 Q. When did Larry tell you that?

BRIAN STEPHEN SMITH - CROSS BY ERVIN

1 A. It wasn't too long after Josh had called. It may
2 have been a week or so. I don't know. I don't remember.
3 But Larry had called and was asking about getting an
4 inspection and he told me that Josh wasn't going to be
5 allowed back on the property to make any repairs.

6 Q. And repairs were needed; is that correct?

7 A. That's correct.

8 Q. And these are the repairs in the exhibit that you
9 listed?

10 A. Yes. Yes, sir.

11 Q. And the date of entry would be June 29th, 2012?

12 A. Yes, sir.

13 Q. Did Mr. Prescott ever mention -- well, let me back
14 up. You're in charge of giving general contractors like
15 Mr. Prescott permits for jobs like this, correct?

16 A. Correct.

17 Q. And in cases, in situations where -- an external
18 building like a pool house, is there an additional permit
19 required for that?

20 A. Yes, there is.

21 Q. Was there a pool house on the Rogers' property?

22 A. There was.

23 Q. Okay. Did Mr. Prescott get a permit for that?

24 A. No, sir.

25 Q. Did he tell you whether or not he built the pool

1 house on the Rogers' property?

2 A. He told me he did not.

3 Q. He told you he did not.

4 A. No.

5 MR. ERVIN: Okay. Thank you. No further
6 questions, Judge.

7 THE COURT: Anything on redirect? Any questions?

8 MR. DERIEG: Yes, Your Honor. One.

9 REDIRECT EXAMINATION

10 BY MR. DERIEG:

11 Q. Mr. Ervin, asked you about the licensing. Do you
12 have to keep up with or at least check to see whether or
13 not a general contractor has a building license or a
14 general contractor's license --

15 A. Yes, sir.

16 Q. -- or a residential license?

17 A. Yes, sir.

18 Q. If a contractor has a general -- has a residential
19 license and then he gets a general contractor's license,
20 does he still need to renew the residential license?

21 A. Not necessary.

22 Q. So that general contractor's license --

23 A. A general contractor can build a residential home,
24 yes, sir.

25 MR. DERIEG: That's all I have, Your Honor. Thank

1 you.

2 THE COURT: You may step down. And you are
3 released from your subpoena.

4 THE WITNESS: Thank you, sir.

5 THE COURT: Any more witnesses?

6 MR. DERIEG: Your Honor, I have one but there's
7 something we may need to take up, a matter of law. And I
8 think this would be a good opportunity for --

9 THE COURT: Well, hold on a second. I run the
10 show. You're just in good shape because it's time for the
11 break. I'm kidding.

12 Don't discuss the case. Don't discuss. Don't
13 deliberate, stretch yourselves. Do whatever you need to
14 do. Is it okay to go to five o'clock? Does that suit?

15 THE JUROR: Five is fine.

16 ANOTHER JUROR: No, later.

17 (Jury exits courtroom at 3:23 p.m.)

18 THE COURT: Yes, sir?

19 MR. DERIEG: Your Honor, I hand this up to the
20 Court. These are e-mails from Prescott & Sons. In fact,
21 the very e-mails are proof that Mr. Ervin was demanding of
22 Mr. Prescott.

23 THE COURT: Wait a minute. Mr. Ervin was demanding
24 of what?

25 MR. DERIEG: Proof of the e-mails, that were -- the

1 e-mailed invoices to Michelle Rogers. He kept asking
2 Mr. Prescott: Do you have proof that you sent that
3 e-mail, do you have proof that you sent that e-mail, do
4 you have proof in the courtroom today that you sent that
5 e-mail.

6 THE COURT: Correct.

7 MR. DERIEG: I saw these e-mails for the first time
8 last week, Your Honor.

9 THE COURT: Okay.

10 MR. DERIEG: These would be those e-mails that are
11 the proof that Mr. Ervin asked for.

12 THE COURT: And what's the problem now?

13 MR. DERIEG: I just wanted to give Mr. Ervin an
14 opportunity to -- I don't know that he's seen them before
15 today, so I wanted to give him the opportunity to make an
16 objection should he want to.

17 THE COURT: And you're going to call your client
18 back up and let him testify to that?

19 MR. DERIEG: I was going to call Ashley who sent the
20 e-mail.

21 THE COURT: That's fine. Let him look at it.

22 MR. ERVIN: I'd love to see it. Where are they?

23 THE COURT: Thank you. We'll take a break. You
24 got one witness left, an e-mail witness?

25 MR. DERIEG: Yes, sir.

1 THE COURT: Mrs. Prescott?

2 MR. DERIEG: Yes, sir

3 THE COURT: All right. You're ready to go with
4 your side?

5 MR. ERVIN: We would begin with the Rogers and then
6 I have a witness who I subpoenaed for tomorrow morning,
7 Judge. Hopefully that will work out for us. I think the
8 Rogers have plenty to talk about, not to belabor the
9 point.

10 THE COURT: Doesn't sound like a lot to talk
11 about. But, anyway, we'll keep going.

12 MR. ERVIN: Thank you, Judge.

13 (Break taken at 3:25 p.m. At 3:39 p.m., the trial
14 resumed:)

15 THE COURT: Plaintiff ready?

16 MR. DERIEG: We are.

17 THE COURT: Defense ready?

18 MR. ERVIN: Yes, sir.

19 THE COURT: Bring us the jury, please.

20 (Jury enters courtroom at 3:39 p.m.)

21 THE COURT: All right. You may call your next
22 witness.

23 MR. DERIEG: If it please the Court, Your Honor.

24 The Plaintiffs call Ashley Prescott to the stand.

25 THE COURT: Ms. Prescott, come forward, please.

ASHLEY PRESCOTT - DIRECT BY DERIEG

1 ASHLEY PRESCOTT, having been duly sworn, was
2 examined and testified as follows.

3 THE CLERK: Please take a seat in the witness box.
4 State your full name for the Court.

5 THE WITNESS: Ashley Prescott. I'm married to Josh
6 Prescott.

7 THE COURT: Ms. Prescott, you're going to have to
8 speak louder for me.

9 THE WITNESS: Yes, sir.

10 THE COURT: Thank you. See those ladies in the
11 very far back there? If you can't hear her, raise your
12 hand. All right. Go ahead.

13 DIRECT EXAMINATION

14 BY MR. DERIEG:

15 Q. Hey, Ashley. Please introduce yourself to the
16 jury, where you grew up, where you're from, where you went
17 to school, that kind of thing.

18 A. I grew up in North Augusta. I married Josh 12 and
19 a half years ago. We have a six year old, 10 year old and
20 my stepson is 20. Well, my little girl will be six
21 tomorrow.

22 But we've worked together in the construction
23 business pretty much since we started. I started out
24 part-time working with him in the office and I also held a
25 part-time job that had insurance for my kids, obviously.

ASHLEY PRESCOTT - DIRECT BY DERIEG

1 And then as we grew I came to work full-time in the office
2 and I do all the accounting and bookkeeping and answering
3 e-mails and phone calls and things like that. And now
4 we've grown a little bit more and we have another girl
5 that helps me in the office.

6 Q. So you're -- would it be fair to call you the
7 office manager?

8 A. Yes.

9 Q. Now turning to June of 2012, there's been testimony
10 about you having filled out some paperwork for the bank.
11 Could you tell the jury a little bit about what it was
12 actually that you were doing?

13 A. When people start a construction project in order
14 to get financing through a bank you have to have a general
15 contractor or a residential contractor assigned so you can
16 get your loan. Obviously they don't want just anybody
17 getting money from the bank and trying to build their own
18 house. So in that process we have to fill out, depending
19 on the bank, usually a stack of paperwork to get us
20 qualified and to get their process started.

21 The week that we're talking about we're already two
22 months, almost exactly two months into the process and now
23 they're trying to get a new loan to pay, to pay for this
24 project two months in. I was e-mailed on the 25th, June
25 25th a packet from the bank. I think they were trying to

ASHLEY PRESCOTT - DIRECT BY DERIEG

1 get construction financing through Regions. We got an
2 e-mail from Michelle that was forwarded from the bank,
3 please fill out this contractor paperwork for our new
4 loan, for application for our new loan or something.

5 So when I got to the office that Tuesday morning
6 which is the 26th, I began that process. Depending on how
7 busy we are in the office that day, sometimes it takes me
8 an hour, sometimes it takes me three or four hours because
9 you have to stop and go, stop and go. So...

10 Q. I want to show you what's been marked as
11 Plaintiff's Number Six and ask you if you recognize that.

12 A. Yes. These are e-mails. This shows that Monday
13 night, the 25th at 6:32, Michelle -- looks like she
14 forwarded an e-mail from the bank. That is Regions. It
15 says: Please ask your builder to complete the form and
16 return to us with proof of insurance coverage.

17 So she forwards to us that same day, the 25th, and
18 asks us to fill it out and that they need proof of our
19 insurance.

20 Q. So is all -- where did all of these papers come
21 from that's in Plaintiffs -- that's all stapled together
22 in Plaintiff's Number Six? Where were they printed from?

23 A. I had to get them -- I printed them during lunch
24 because apparently I guess the invoices came in question
25 as to whether we ever e-mailed them any invoices to pay.

ASHLEY PRESCOTT - DIRECT BY DERIEG

1 MR. ERVIN: Objection, Judge. She's testifying
2 beyond the authentication as these haven't been admitted
3 into evidence and I would object to their --

4 THE COURT: You haven't introduced them. Ask her
5 to identify them, introduce them, and she can tell us what
6 they are.

7 BY MR. DERIEG:

8 Q. These are e-mails that you either sent or received?

9 A. Yes.

10 Q. And did you in fact print out the papers that are
11 sitting in front of you right now?

12 A. Yes.

13 MR. DERIEG: Your Honor, Plaintiffs would seek to
14 move Plaintiff's Number Six into evidence.

15 MR. ERVIN: Judge, may I approach? I want to
16 clarify these are the same ones I'm reading in front of
17 me. May I see the actual --

18 THE COURT: Look at them. Hand them to him.

19 (Defense counsel reviews documents.)

20 MR. ERVIN: No objection, Your Honor.

21 THE COURT: Re-ask the question, please.

22 (Plaintiff's Exhibit No. 6, four pages of e-mails,
23 received into evidence.)

24 BY MR. DERIEG:

25 Q. Your Honor -- Ms. Prescott, will you please take a

ASHLEY PRESCOTT - DIRECT BY DERIEG

1 look at exhibit number, Plaintiff's Exhibit Number Seven
2 and Plaintiff's Exhibit Number Eight and tell me if you
3 recognize those?

4 A. Yes.

5 Q. What are they?

6 A. These are all e-mails sent back and forth the day
7 of the 26th.

8 Q. E-mails between whom?

9 A. E-mails that I received from Michelle and e-mails I
10 sent back to Michelle.

11 Q. And did you in fact print out the paper that is
12 composing Number Seven and Number Eight for the
13 Plaintiffs?

14 A. Yes.

15 MR. DERIEG: Your Honor, at this time we'd seek to
16 move Plaintiff's Number Seven and Eight into evidence.

17 THE COURT: Any objection?

18 MR. ERVIN: Judge, only that we received these
19 today and under the rules of discovery we would have a
20 little more time to review this, I would object as not
21 timely presented during discovery.

22 THE COURT: Overruled.

23 MR. ERVIN: Thank you.

24 (Plaintiff's Exhibit No 7, three pages of e-mails,
25 and Plaintiff's Exhibit No. 8, four pages of e-mails,

ASHLEY PRESCOTT - DIRECT BY DERIEG

1 received into evidence.)

2 BY MR. DERIEG:

3 Q. Ashley, what were you telling the jury or do you
4 even remember?

5 A. I did not know the issue of I-didn't-receive-
6 invoices were going to be an issue. We -- I probably
7 shouldn't say that.

8 THE COURT: Speak up for me.

9 THE WITNESS: Okay. After two and a half years you
10 would think I-didn't-have-invoices-so-I-didn't-pay would
11 not be an excuse. So I had no idea that this was going to
12 be an issue, so.

13 Q. In looking at Plaintiff's Number Six, is there
14 anything -- what if anything is attached to that e-mail?

15 THE COURT: Who's the e-mail from and to, and
16 what's it say and what's the attachment?

17 THE WITNESS: I'll walk you through it.

18 THE COURT: Please.

19 THE WITNESS: The beginning one is the bank,
20 Regions Bank, with the application for us as the builder.
21 And they sent it to Michelle. Michelle forwarded it to us
22 the night of the 25th and said I was supposed to fill it
23 out so she could get her loan.

24 When I got there the morning of the 26th on
25 Tuesday, I looked at the e-mail and began filling out

ASHLEY PRESCOTT - DIRECT BY DERIEG

1 paperwork so they could get started.

2 In the midst of all of that I had received some
3 more invoices for their job. When I got more than one
4 invoice or a group of invoices, just the way I am and I
5 run the office, I don't like to get behind so I scan
6 invoices in or I forward them in and I sent them to them
7 so you're not waiting until the last minute. We need a
8 check on Friday but you didn't send the invoices until
9 Thursday night. So I had gotten invoices in over the
10 weekend and gone through them on Monday. And in the
11 process of filling out all their paperwork I filled out
12 the invoices in that I had and e-mailed to her.

13 THE COURT: Her?

14 THE WITNESS: Michelle Rogers. I e-mailed them to
15 her on Tuesday the 26th at 11:24. And it shows the
16 attachment that says Rogers invoices dated June 26th. And
17 there's three invoices that I scanned and sent.

18 So I got that out of the way and continued on with
19 filling out the paperwork because Jeremy was coming to the
20 office to meet Josh to go over basement plans. And I'm
21 just trying to get everything organized and done so this
22 process can get started. It's a lengthy process.

23 Two minutes later at 11:26 Michelle e-mails back
24 from where I invoice -- sent her the invoices and said,
25 Josh, will you be able to fill out these forms for the

ASHLEY PRESCOTT - DIRECT BY DERIEG

1 bank. You can bring it to us or fax it if it's easier and
2 she gives the fax number.

3 At 11:49 I sent her an e-mail with an attachment
4 that had our general liability, worker's comp insurance
5 certificate, and our South Carolina license because that
6 was one of the things the bank needed.

7 So I got that portion out of the way. And then
8 that's when I start in the heavy-duty stuff because you
9 have to list trade references and, you know, job
10 references and account numbers and banks references and
11 you have to, you know, it's just a lot of paperwork.

12 So, when I got all of that done it was 11:48 that I
13 e-mailed that attachment in the whole e-mail with the
14 application filled out back to Michelle. And Jeremy was,
15 I believe, at our office then because he came to meet with
16 Josh to go over the basement plans.

17 BY MR. DERIEG:

18 Q. Approximately how long after these e-mails were
19 sent and received -- strike that.

20 Do you know about the phone call between Larry and
21 Josh on the 26th?

22 A. That he got a phone call and stepped out of the
23 office because Jeremy was in the office with me and he
24 just stepped out on the porch.

25 Q. In relation to Josh stepping out on the porch with

ASHLEY PRESCOTT - DIRECT BY DERIEG

1 this phone call, when were these e-mails sent?

2 A. During the same hour or two because I'm filling out
3 all of this stuff, Jeremy's walking in the office, Josh
4 has pulled up to meet Jeremy at the office. So all in the
5 next hour or two.

6 Q. To the best of your knowledge, did Josh intend to
7 quit?

8 A. No, or I wouldn't have wasted my time filling out
9 this paperwork.

10 Q. And looking at Plaintiff's Number Seven, do those,
11 does the attachment to Plaintiff's Number Seven -- what is
12 the attachment to Plaintiff's Number Seven?

13 A. The paper that went back to Regions, the
14 application I filled out.

15 Q. And this is the application you were filling out on
16 the 26th?

17 A. Correct, it's -- that I sent back at 11:48.

18 MR. DERIEG: Beg the Court's indulgence, Your
19 Honor.

20 Q. Do you know about this app that Josh had on his
21 phone where things were being blown up?

22 A. Yes, I think it's called --

23 THE COURT: Speak up, please, ma'am.

24 THE WITNESS: Yes. I think it was called Motion,
25 Motion Movie Maker or something like that.

ASHLEY PRESCOTT - DIRECT BY DERIEG

1 BY MR. DERIEG:

2 Q. Did you see the video text that has been talked
3 about in here today?

4 A. After the fact.

5 Q. You saw it after the fact?

6 A. Yes.

7 Q. Do you know whether that video text caused the
8 Rogers to take any action?

9 A. Over a year later.

10 Q. And a year later, what did they do?

11 A. I got a phone call from a North Augusta Police
12 Department Deputy looking for Josh because they, he said
13 that he needed to speak with him because Mr. Rogers --

14 MR. ERVIN: Objection, Your Honor. Hearsay from a
15 police officer.

16 THE COURT: Hold on. Just don't say what the
17 police officer said. Just please ask her a question so it
18 doesn't elicit hearsay.

19 BY MR. DERIEG:

20 Q. Without telling me what was said to you by the
21 officer, do you know what actions were taken by the
22 Rogers?

23 A. They filed a police report.

24 THE COURT: They did what?

25 THE WITNESS: They filed a police report pertaining

1 to the video text from a year or a year and a half prior.

2 MR. DERIEG: Thank you, Your Honor. That's all I
3 have.

4 THE COURT: All right. Any questions?

5 MR. ERVIN: Beg your indulgence, Judge. (Pause.)
6 No further questions, Your Honor.

7 THE COURT: All right. Ma'am, you may step down.
8 Your next witness? Your next witness, please.

9 MR. DERIEG: Your Honor, at this time the Plaintiff
10 rests.

11 THE COURT: All right. Mr. Foreman, ladies and
12 gentlemen, that concludes the Plaintiff's case. I need
13 about five minutes with the lawyers outside of your
14 presence. Please step back in the jury room. I'll be
15 right back with you. Don't discuss the case.

16 (Jury exits courtroom at 3:55 p.m.)

17 THE COURT: Any motions by the Plaintiff?

18 MR. DERIEG: None, Your Honor.

19 THE COURT: By the Defendant?

20 MR. ERVIN: Judge --

21 THE COURT: Yes, sir.

22 MR. ERVIN: -- I make a motion for a directed
23 verdict. I do not feel the Plaintiff has carried his
24 burden showing that the debt is owed and corroborated with
25 regards to having the proper licensing or having submitted

KAREN MICHELLE ROGERS - DIRECT BY ERVIN

1 the bills timely to my clients.

2 THE COURT: Well, I respectfully deny your motion.
3 There's ample evidence in the record, if the jury believes
4 it, to support their claim that there was a contract, your
5 client ran them off, it was still money owed, they had
6 invoices that came in that were e-mailed to your clients
7 that were unpaid.

8 So what I have at this point in the game is not --
9 I have to look at the existence of the evidence not the
10 weight of it. The evidence certainly exists for the jury
11 to give whatever weight it deems appropriate. And I
12 respectfully deny your motion.

13 MR. ERVIN: Thank you, Judge.

14 THE COURT: All right. Bring the jury back.

15 (Jury enters courtroom at 3:57 p.m.)

16 MR. ERVIN: Call Michelle Rogers to the stand.

17 KAREN MICHELLE ROGERS, having been duly sworn, was
18 examined and testified as follows:

19 THE WITNESS: My name is Karen Michelle Rogers.

20 DIRECT EXAMINATION

21 BY MR. ERVIN:

22 Q. Ms. Rogers, where do you currently live?

23 A. North Augusta.

24 Q. And what's your address?

25 A. 28 Plantation Court.

KAREN MICHELLE ROGERS - DIRECT BY ERVIN

1 Q. Is that the address that we've been discussing
2 today with regards to the Prescott Construction Company --

3 A. Yes, sir.

4 Q. -- general contractor? What do you do for a
5 living?

6 A. I'm a practice manager for a group of eye doctors.

7 Q. And how long have you lived in the area?

8 A. We moved to North Augusta in 2002. We moved to the
9 Fort Gordon area, my husband was an officer, in 1992.

10 Q. Okay. Are you married to Larry Rogers?

11 A. Yes, sir.

12 Q. All right. And how do you know the Plaintiff,
13 Mr. Prescott?

14 A. Actually someone at work had seen a billboard. She
15 knew that we were wanting to do some remodeling and so
16 Mr. Prescott and his company had signs all over North
17 Augusta. So we called and asked him to come and speak
18 with us about remodeling.

19 Q. Okay. And did you call him? And how did y'all --
20 you called him and how did y'all meet?

21 A. I called him. To be honest, it's been so long ago
22 but I think I spoke with him directly and set up a time
23 for him to come to our house and meet about the project
24 that we were wanting to do.

25 Q. And what was the project you were wanting to do?

KAREN MICHELLE ROGERS - DIRECT BY ERVIN

1 A. We wanted to have office space. Larry's business
2 is in our home so we wanted an additional two-car garage
3 with office space above it. We wanted to redo our
4 basement. You know, we were hoping that we could redo my
5 bathroom as well but, you know, we really wanted to get
6 started with the office. My husband had employees at the
7 time and we just needed more space for them to work.

8 Q. You said -- and where was your husband working at
9 the time?

10 A. For himself.

11 Q. And where was he mostly working from?

12 A. In our home. And so we had a small room above the
13 two-car garage currently and so that's where his office
14 space was but it was getting, you know, crowded in there
15 for his business.

16 Q. Okay. And briefly -- Your Honor, may I approach?

17 THE COURT: Yes, sir.

18 BY MR. ERVIN:

19 Q. The exhibits. Now, this is Plaintiff's Exhibit
20 Number Two and this is the contract entered into by you
21 and your husband and Mr. Prescott?

22 A. Yes, sir.

23 Q. Okay. And they reference that that is actually a
24 second contract. Plaintiff's Exhibit Number One would be
25 the first one; is that correct?

KAREN MICHELLE ROGERS - DIRECT BY ERVIN

1 A. Yes, sir.

2 Q. Could you tell me how the negotiations came about
3 to produce the first contract which is the April contract,
4 Plaintiff's Exhibit Number One?

5 A. Josh sat down in our kitchen with us and we just
6 kind of, he jotted down some things that we wanted done.
7 And we talked about how it would, you know, how we would
8 pay for it and how he would, you know -- I guess at that
9 time it was a cost plus. He would get a percentage of
10 whatever the job cost. And so -- but that was basically
11 it. We were just in our kitchen and explained to him what
12 we wanted done.

13 Q. And, what happened to change that arrangement that
14 resulted in a new contract?

15 A. I wasn't there for that discussion. You know,
16 since Larry works from home and I work outside of the
17 home, you know, there was a lot of times that Larry may
18 call me at work but I wasn't there for that discussion so
19 I don't know exactly why it came about that we were
20 changing it.

21 Q. Do you know what the new arrangement was with
22 regard to how Mr. Prescott would be paid pursuant to the
23 second contract?

24 A. Yes, sir. For the second contract Mr. Prescott
25 would get a \$25,000 builder's fee and we would pay all the

KAREN MICHELLE ROGERS - DIRECT BY ERVIN

1 invoices that were given. You know, the invoices would be
2 given to us from the subcontractors and the vendors and we
3 would pay Mr. Prescott for those or we would pay the
4 vendors directly for those bills.

5 Q. How many times did you pay a vendor directly?

6 A. We paid All Star for the siding; we paid Adams
7 Lumber for a huge lumber bill, nails, sand. We paid
8 Barrett windows for the sliding glass doors and windows
9 around the little sunroom. There were a few -- kind of
10 early on Mr. Prescott sent people to our home. Like,
11 there was a plumber. He told us to pay him directly.
12 Those were the ones that I can think of off the top of my
13 head.

14 Q. Okay. And at all times when you paid a
15 subcontractor directly, was this with approval from
16 Mr. Prescott?

17 A. Yes, sir.

18 Q. At any time do you think Larry or yourself went
19 behind Mr. Prescott's back to negotiate a price or pay a
20 subcontractor?

21 A. No, sir.

22 MR. ERVIN: Beg the Court's indulgence, Your Honor.

23 THE COURT: I thought we were going to get all of
24 this done over lunch.

25 MR. ERVIN: Apologize, Judge. Approach the

KAREN MICHELLE ROGERS - DIRECT BY ERVIN

1 witness, Your Honor?

2 THE COURT: You may.

3 BY MR. ERVIN:

4 Q. Ms. Rogers, do you recognize this stack of
5 documents?

6 THE COURT: You got them marked yet?

7 MR. ERVIN: Not yet.

8 THE COURT: Please mark them. You're going to mark
9 them total as one package?

10 MR. DERIEG: No objection, Your Honor.

11 THE COURT: Ms. Rogers, do you recognize that stack
12 of documents which is what, for Defendant's ID, what?

13 MR. ERVIN: Seven.

14 THE COURT: Seven. Consisting of how many pages?

15 MR. ERVIN: Nine pages.

16 THE COURT: Thank you.

17 (Defendant's Exhibit No. 7, nine pages of document,
18 marked for identification.)

19 THE WITNESS: Yes, sir. These are our cancelled
20 checks to where we paid Mr. Prescott, Prescott & Sons.

21 MR. ERVIN: Okay. If I could admit that, move to
22 admit that as Defendant's Exhibit Seven.

23 MR. DERIEG: Without objection.

24 (Defendant's Exhibit No. 7, nine pages of
25 documents, received into evidence.)

KAREN MICHELLE ROGERS - DIRECT BY ERVIN

1 BY MR. ERVIN:

2 Q. Ms. Rogers, was there ever a time when Mr. Prescott
3 presented an invoice to you prior to June 26 that you or
4 Larry did not pay it?

5 A. Not that we were aware of.

6 Q. And in that stack of checks, those are all written
7 to Mr. Prescott, right?

8 A. Yes, sir.

9 Q. Do you know what the total of those checks are?

10 A. I believe the total was close to \$80,000, around
11 \$79,000 that we wrote him directly.

12 Q. And so you paid Mr. Prescott 79-plus thousand
13 dollars (\$79,000-plus)?

14 A. Yes, sir.

15 MR. ERVIN: Approach the witness, Judge?

16 Q. Ms. Rogers, do you recognize this e-mail?

17 THE COURT: Has it been marked?

18 MR. ERVIN: Yes, sir. I'll have it marked.

19 THE COURT: You got one that's clean that's not all
20 highlighted?

21 MR. ERVIN: This is the only one I have, Judge.

22 (Defendant's Exhibit No. 8, e-mail, marked for
23 identification.)

24 MR. ERVIN: May I proceed, Your Honor?

25 THE COURT: Yes.

KAREN MICHELLE ROGERS - DIRECT BY ERVIN

1 BY MR. ERVIN:

2 Q. Do you recognize that e-mail?

3 A. Yes, sir.

4 Q. And what is that e-mail of?

5 A. This is from Josh Prescott to us.

6 Q. Okay. I'd like to move to have that Exhibit Number
7 Eight for the defense.

8 THE COURT: Can you get me a clean copy by
9 tomorrow?

10 MR. ERVIN: Yes, sir.

11 THE COURT: Just substitute it tomorrow.

12 MR. DERIEG: Without objection.

13 (Defendant's Exhibit No. 8, e-mail, received into
14 evidence.)

15 THE WITNESS: It was actually an e-mail forwarded
16 from Mr. Wayne Moore's office who was the engineer that
17 was designing our basement.

18 BY MR. ERVIN:

19 Q. Okay. So, you discussed having the basement done
20 by Prescott; is that true?

21 A. Yes, sir.

22 Q. What's the date on that e-mail?

23 A. April 23rd, 2012.

24 Q. Okay. And was that just a concrete pad for the
25 basement or was it a full finished basement?

KAREN MICHELLE ROGERS - DIRECT BY ERVIN

1 A. No, sir. This was for a full finished basement.

2 Q. So you contemplated a full finished basement in
3 your plans with Prescott prior to June 26; is that right?

4 A. Yes, sir.

5 Q. Okay.

6 THE COURT: You're going to move --

7 MR. ERVIN: I'm sorry. Move to introduce that as
8 Defendant's Exhibit Eight.

9 THE COURT: Any objection?

10 MR. DERIEG: Subject to the clean copy tomorrow, no
11 objection, Your Honor.

12 THE COURT: Okay.

13 BY MR. ERVIN:

14 Q. Ms. Rogers, your understanding was Mr. Prescott
15 would be paid a flat fee; is that correct?

16 A. Correct.

17 Q. Okay. And you heard his testimony earlier
18 regarding Larry trying to get work for free; is that
19 correct?

20 A. Correct.

21 Q. What additional work was Larry trying to get for
22 free?

23 A. I don't know of any additional work, being that our
24 job was, you know, where we paid the invoices, anything
25 that we had asked for we were going to be invoiced for and

KAREN MICHELLE ROGERS - DIRECT BY ERVIN

1 we would have paid that. So there was nothing that we
2 were trying to get for free.

3 Q. So you were absolutely willing to pay for whatever
4 was done to your house, correct?

5 A. Right.

6 Q. Did you or Larry fire Prescott?

7 A. Absolutely not.

8 Q. I'm sorry?

9 A. Absolutely not.

10 Q. How did the relationship with you and Mr. Prescott
11 end?

12 A. I received -- I was at work and I received a text
13 from Mr. Prescott that says: I guess we're done. I'll
14 let you know what y'all owe me.

15 Q. And that is in exhibit, these text messages here?

16 THE COURT: Exhibit number, please?

17 MR. ERVIN: Exhibit Number One.

18 THE COURT: Defendant's or Plaintiff?

19 BY MR. ERVIN:

20 Q. Is that Defense Exhibit Number One the text you're
21 referring to?

22 A. Yes, sir.

23 Q. Okay. Did you ever hear your husband or did you
24 ever tell Mr. Prescott he was not allowed on your
25 property?

KAREN MICHELLE ROGERS - DIRECT BY ERVIN

1 A. No. No, sir.

2 Q. Okay. June 26, when Mr. Prescott left the property
3 how was the property left? What condition?

4 A. I mean, there was debris everywhere. Part of our
5 contract said that they would clean it up daily. We
6 didn't really expect them to clean it up daily, but at
7 least by the end of the week, you know, clean up a lot of
8 debris. So there would be nails and things like that in,
9 you know, the yard.

10 When he left I got the text that said I guess we're
11 all done, I had texted him back and said, is someone going
12 to clean up this mess? There was roofing shingles, nails,
13 just trash everywhere, even food wrappers from the
14 subcontractors. So it was just a big mess.

15 Q. Did you ever contact Mr. Prescott to appeal to him
16 to come back to the property?

17 A. Yes, sir. That same day when he texted we're done,
18 I said, are you going to come finish the framing and
19 everything we have already paid you for. He had told us
20 that Mr. Padgett would finish the framing. There was some
21 step issues that were not done properly. The Barrett
22 Window that was installed bent. All these items, he, you
23 know -- I said, are you going to come back and take care
24 of those because we've already paid you for that.

25 And, at that time Mr. Prescott said, well, you can

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1 call me. Again, I was at work. I called him and he said
2 that he would let Phillip, Mr. Padgett, the framer come
3 back and finish everything. And I texted him and said,
4 will you please let Mr. Padgett know that you're allowing
5 him to come back and do that.

6 Q. Did anyone ever come back?

7 A. No, sir.

8 Q. Do you recognize this document?

9 A. Yes, sir.

10 Q. What is that?

11 A. It's the lien that was --

12 THE COURT: It's what?

13 THE WITNESS: The mechanic's lien that was put on
14 our home by Mr. Prescott.

15 THE COURT: Introduce that?

16 MR. ERVIN: I'd like to mark this as Defendant's
17 Exhibit No. 9.

18 (Defendant's Exhibit No. 9, mechanic's lien, marked
19 for identification.)

20 BY MR. ERVIN:

21 Q. Ms. Rogers, is this an accurate representation of
22 the mechanic's lien filed against you and Mr. Rogers?

23 A. It is a copy of what we received yesterday.

24 MR. ERVIN: Move to enter that into evidence,
25 Defendant's Exhibit Number Nine.

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1 THE COURT: Any objection?

2 MR. DERIEG: No, Your Honor.

3 (Defendant's Exhibit No. 9, mechanic's lien,
4 received into evidence.)

5 BY MR. ERVIN:

6 Q. Okay. When did you receive that, you or Mr. Rogers
7 receive that document?

8 A. I believe July 14th, 2012.

9 Q. And, what does that document say?

10 A. That Mr. Prescott, they are trying to collect on an
11 outstanding debt of \$23,490.82 for services rendered.

12 Q. And what do you see that figure to represent?

13 A. There were a few invoices listed and then the
14 balance of Mr. Prescott's contractor's fee.

15 Q. Okay. And what was the balance of Mr. Prescott's
16 contractor's fee?

17 A. \$15,000.

18 Q. How did Mr. Prescott deem to be owed \$15,000?

19 A. Our fee was, he was to be paid \$25,000 at \$5,000 a
20 month for the job. He had estimated five months. Our
21 contract stated if it went over five months then we would
22 pay Mr. Prescott an additional \$2,500 per month until it
23 was done.

24 Q. Okay. And this is Plaintiff's Exhibit Number Two
25 which is the contract, the second contract and final

KAREN MICHELLE ROGERS - DIRECT BY ERVIN

1 contract between you and Mr. Prescott. Paragraph eight,
2 how does it say the \$25,000 is to be paid? And if you
3 could start on the fourth line in paragraph eight, the
4 sentence that begins with if?

5 A. If the project does not last five months, the
6 remaining balance of \$25,000 is due upon issuance of a
7 certificate of occupancy.

8 Q. Okay. Did Mr. Prescott ever secure a certificate
9 of occupancy for you?

10 A. No, sir.

11 Q. Did Mr. Prescott work beyond two months?

12 A. No, sir.

13 Q. Did you pay him for the first two months being
14 \$10,000?

15 A. Yes, sir.

16 Q. And the balance would have been how much?

17 A. 15,000.

18 Q. Okay. However, did he work the additional three
19 months?

20 A. No, sir.

21 Q. Did you receive a certificate of occupancy?

22 A. No, sir.

23 Q. Do you think you owe Mr. Prescott the \$15,000
24 balance based on what paragraph eight says?

25 A. No, sir.

KAREN MICHELLE ROGERS - DIRECT BY ERVIN

1 Q. Okay. With regards to the mechanic's lien, have
2 you done the math on this page that says verified
3 statement of account?

4 A. Yes, sir.

5 Q. Could you explain to the jury how you resurrect
6 those figures and what you see to be represented there?

7 A. This is a list of the builder's fee and the
8 invoices that Mr. Prescott says that we owe him and he had
9 to list out the amounts before he took this to court. At
10 the very end of it there's a total of \$23,000, 23,490.82
11 but if you add up all of these invoices that he says that
12 we owe him, this total is \$3,311 more than what he
13 actually has invoices for.

14 Q. Okay. And then there's the additional \$15,000 that
15 he claims you owe him, right?

16 A. Yes, sir. Right.

17 Q. Okay. And then the line item that says Portable
18 Services for \$90 and Prescott & Sons for 89.30, I
19 believe. How do you do those two figures?

20 A. The Portable Services invoice was not for \$90 and
21 in the lien we received there was no invoice at all for
22 Prescott & Sons Construction.

23 Q. Okay. Since you've received this and during this
24 litigation, has Prescott & Sons explained to you why these
25 numbers don't add up?

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1 A. They said it was a mathematical error.

2 Q. Okay. You heard Ashley Prescott testify about
3 sending you an e-mail with invoices. Do you remember
4 receiving those invoices via e-mail?

5 A. I do not remember receiving those invoices via
6 e-mail.

7 Q. What she submitted today, there are only three
8 invoices attached to that e-mail that they presented
9 today, correct?

10 A. Correct.

11 Q. And he's claiming eight invoices; isn't that right?

12 A. Yes, sir.

13 Q. So prior to receiving that mechanic's lien you --
14 did you ever see any of those invoices?

15 A. No.

16 Q. You were sued by Mr. Prescott, correct?

17 A. Correct.

18 Q. When were you sued? Was it September of 2012?

19 A. Yes, sir.

20 Q. On September -- in September 2012 had you hired a
21 new contractor to fix your house or finish the project?

22 A. No.

23 Q. You had not. Had your house been fixed yet?

24 A. No, sir.

25 Q. What was left to be done?

KAREN MICHELLE ROGERS - DIRECT BY ERVIN

1 A. There were still areas.

2 THE COURT: What was your last question: Has your
3 house been fixed yet?

4 MR. ERVIN: Had the house been fixed by the time
5 they had been sued in September.

6 THE COURT: Okay. And then -- okay. Go ahead.

7 THE WITNESS: There was all of the items on the
8 city's inspection list that needed to be done. A lot of
9 those were, I guess you would call damages. On our back
10 porch there was concrete that was splattered all over our
11 brand new doors that we had just gotten from Lowe's. The
12 steps walk out to our back area. The concrete wasn't
13 smooth. So there's like jagged pieces of concrete. The
14 vinyl siding wasn't done. None of the sheet rock was put
15 up.

16 Q. There's a significant amount of work that needed to
17 be done, correct?

18 A. Correct. Yes, sir.

19 Q. I want to back up a little bit and talk about the
20 financing for this project. How had you and Larry
21 intended to pay for this project?

22 A. Well in the beginning to get started I had, my
23 office has a profit sharing that I could borrow from and I
24 borrowed from that. Larry cashed out his 401(k). We
25 cashed out two life insurance policies, all with the

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1 intentions of once we got our loan we would put all of
2 that back.

3 So that's how we had planned to get started with
4 that. And, you know, of course we were talking to the
5 bank at the time. Our plan was to get a construction
6 loan. And it's our understanding the way construction
7 loans is you're paid, you know, you submit paperwork
8 periodically to get a little bit of money to keep the
9 project going. It's not like a regular loan. You get a
10 little bit of money at a time.

11 Q. And, had you secured the loan -- well, tell me what
12 happened to the loan that you were trying to get, the
13 construction loan.

14 A. We had filled out all of our paperwork.
15 Ms. Anderson at Regions Bank said that as part of any
16 construction loan process the builders have to submit
17 paperwork to prove that they do have a license to do the
18 work, submit their license, submit a copy of their
19 insurance.

20 And so we had filled out all of our paperwork and
21 then I forwarded the information that the bank needed I
22 forwarded that to Mr. Prescott.

23 Q. Okay. And, did the Prescotts fill out the
24 paperwork?

25 A. Yes, sir.

KAREN MICHELLE ROGERS - DIRECT BY ERVIN

1 Q. Did they submit it to the bank?

2 A. Yes, sir.

3 Q. And then what happened?

4 A. After I received the text from -- I believe I would
5 have to look at the dates again. I received an e-mail
6 from Sherry Anderson at the bank with an attachment
7 saying, please let me know what's going on. And it was an
8 e-mail from Mr. Prescott to our banker saying I'm -- I'd
9 have to read to it be sure, I'm walking off this job.

10 Q. Defendant's Exhibit Number Five, is that what
11 you're referring to?

12 A. We're pulling off this job ASAP and pulling all of
13 our permits. You need to get information from the new
14 builder.

15 Q. Did you expect to see that e-mail that Mr. Prescott
16 was pulling off the job?

17 A. No, sir.

18 Q. Did you know he was pulling off the job?

19 A. I had received the text from him maybe 20 minutes
20 before this that said, I guess we're done.

21 Q. And that, again, is exhibit, Defendant's Exhibit
22 One?

23 A. Yes, sir.

24 Q. In Defendant's Exhibit Number One did Mr. Prescott
25 explain to you that he was going to pull his permits and

KAREN MICHELLE ROGERS - DIRECT BY ERVIN

1 cause your loan not to go through?

2 A. No. It just says, I guess we are done. I'll let
3 you know what all you owe me.

4 Q. What did you do in response to the text
5 Mr. Prescott sent you?

6 A. I think I immediately texted him back, you know,
7 what about the rest of the work that needs to be done that
8 we already paid you for. And then I called my husband.
9 Said, what's going on.

10 Q. What did your husband say?

11 A. He said that Josh had gotten upset and left. And
12 he said that, you know, I guess that there was a phone
13 call between the two. I wasn't there. And, you know,
14 Josh says he just wasn't going to come out and do any more
15 work for us.

16 Q. So is it your opinion that Josh quit?

17 A. Yes, sir.

18 Q. What happened to the loan after you received this
19 e-mail, Defendant's Exhibit Number Five, what happened
20 with your loan?

21 A. Well, Ms. Anderson said that if we could get
22 another builder on board then they could fill out the
23 paperwork.

24 THE COURT: Hold on a second. Please object to
25 hearsay testimony.

KAREN MICHELLE ROGERS - CROSS BY DERIEG

1 MR. DERIEG: Objection, Your Honor.

2 THE COURT: Thank you. You can't testify to what
3 other people say.

4 THE WITNESS: Sorry, Your Honor.

5 BY MR. ERVIN:

6 Q. Please don't say what Ms. Anderson said but tell me
7 what happened to your loan that you were trying to get.

8 A. It was stopped.

9 Q. Okay. And were you counting on that loan?

10 A. Absolutely.

11 Q. Okay. And what did you do to -- what did you do
12 after that to try and get the loan?

13 A. We tried to find another builder, but shortly after
14 that the mechanic's lien was put on our home and once a
15 lien is put on your home you can't get any financing
16 because you don't have clear title to your home anymore,
17 so there was nothing we could do.

18 MR. ERVIN: No further questions at this time,
19 Judge.

20 THE COURT: Cross?

21 MR. DERIEG: May it please the Court, Your Honor.

22 THE COURT: Yes, sir.

23 MR. ERVIN: Your Honor, may we approach real
24 quick?

25 THE COURT: Yeah.

KAREN MICHELLE ROGERS - CROSS BY DERIEG

1 (Off the record discussion.)

2 THE COURT: Cross.

3 MR. DERIEG: Thank you, Your Honor. May it please
4 the court.

5 CROSS-EXAMINATION

6 BY MR. DERIEG:

7 Q. Is it fair to say that you and Larry throughout
8 this process didn't always know what the other one was
9 doing; isn't it?

10 A. I wouldn't say that. Larry worked from home and I
11 was away from the home but, you know, he called me a lot.
12 So, he was telling me what was going on throughout the
13 project and definitely at night when I came home we talked
14 about everything that was going on.

15 Q. Did you ever tell Larry about the extra payments
16 that you would make to Mr. Prescott?

17 A. I told Larry about one cash payment that I gave
18 Mr. Prescott because that was the only cash payment I gave
19 him.

20 Q. So you did pay him in cash on the side?

21 A. There was one cash payment that I gave Mr. Prescott
22 because he was refusing to finish to do the roof. The
23 price of this roof just kept escalating. And Mr. Prescott
24 was not going to finish doing the roof. So, you know, at
25 this point, I mean, our roof needed to be finished. There

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1 was one time where the ceiling had caved in from the roof
2 because of the workers. There was another time the
3 ceiling had caved in. So I just wanted the roof done.
4 And so, you know, Mr. Prescott said, well, I'm not calling
5 in any favors. Mr. Hutto wants \$200 a square but, you
6 know, if you pay me in cash I'll do it for 150 per
7 square. And so that's what I did. I gave him cash to
8 finish it.

9 Q. Would you say it's a fair characterization that
10 you're the peacemaker in the family?

11 A. I would say that's fair.

12 Q. I want to show you what's been marked as
13 Plaintiff's Exhibit Five.

14 A. Okay.

15 Q. Do you see anywhere in Plaintiff's Number Five the
16 text message that you referred to in Defendant's Number
17 Two?

18 A. I guess we're done -- oh. Yes, sir. Can you
19 write Phillip a check?

20 Q. Yes, ma'am.

21 A. Yes, ma'am. I see it here.

22 Q. Which page of those, of that packet is that text
23 located on?

24 A. The third page.

25 Q. If you look at that third page in the top left-hand

KAREN MICHELLE ROGERS - CROSS BY DERIEG

1 corner, who is that text from?

2 A. Mr. Prescott.

3 Q. And who was it going to?

4 A. To me.

5 Q. What does that say?

6 A. I haven't quit. I'm just not going to do any more
7 extra work for free and put up with all the BS.

8 Q. Thank you. When you paid the vendors directly,
9 wasn't it because Josh wouldn't accept credit cards at
10 that point?

11 A. No, sir. We just wanted to be able to -- because
12 we were trying to get the financing we put some items on
13 our credit cards just to, you know, be able to keep going
14 with the project.

15 Q. Before that mechanic's lien was filed by
16 Mr. Prescott, how many attempts at financing did you make?

17 A. We had been working with Regions Bank. It was just
18 the one attempt.

19 Q. Only one?

20 A. I mean, as far as I know. Once that construction
21 loan went -- well, once we couldn't get the construction
22 loan we had to try to get, you know, other small loans,
23 just little personal lines of credit, but the Regions
24 construction loan was the main one we were trying to get
25 for the project.

KAREN MICHELLE ROGERS - CROSS BY DERIEG

1 Q. Looking at Plaintiff's Number Six, do you recognize
2 that, Ms. Rogers?

3 A. I don't recognize this to be honest with you.

4 Q. Do you recognize the names that are on that page?

5 A. Yes. My name's on it, yes.

6 Q. Does it look like the e-mail address that it's
7 being sent to is your e-mail address?

8 A. Yes.

9 Q. Is that coming from Prescott & Sons?

10 A. Yes.

11 Q. And what's the date on that?

12 A. June 26, 2012, and at the bottom June 25th, 2012.

13 Q. Thank you, ma'am. When you were talking about the
14 initial finances that you sought to obtain, did you say
15 that you got money from your office?

16 A. My profit sharing plan.

17 Q. Okay. And how much were you able to get from your
18 profit sharing plan?

19 A. \$50,000.

20 Q. 50,000?

21 A. Yes, sir. That's basically a loan that I have to
22 pay back with every paycheck.

23 Q. Okay. Is it your testimony that you have --
24 referencing Plaintiff's Number Three, if I can find it.

25 Oh, here we go. Referencing Plaintiff's Number Three, is

KAREN MICHELLE ROGERS - CROSS BY DERIEG

1 it your testimony today that you and your husband should
2 not be responsible for paying those invoices?

3 A. Correct.

4 Q. And why is that?

5 A. Well, different reasons. For example, the roofing
6 bill. The roof was not done, it was not completed. You
7 know, I had paid Mr. Prescott cash to complete it and it
8 still was not done. The Cornerstone Concrete bill and the
9 masonry bill, Mr. Ruvucalbus. All of that work had to be
10 completely torn out because it wasn't done properly. They
11 didn't put expansion joints in it. The port-a-potty bill
12 was for a time frame when there was no work being done.
13 There was no workers there.

14 And then the Crazy Joe Containers, one problem we
15 have with it it's not our address. It's Plantation
16 Point. There's a Plantation Point in our area. The dates
17 of the dumpsters are, like, the 18th and the 21st.
18 There's no work being done so there's no way the dumpsters
19 could have been filled up. Plus there was so much debris
20 and so much trash left around our house, you know, the
21 dumpsters weren't being used. They were carried off
22 empty.

23 The Barrett Window bill, that bill, that window the
24 city said was not usable. It was not tempered glass so we
25 couldn't even use it. It's sitting in our garage.

KAREN MICHELLE ROGERS - CROSS BY DERIEG

1 Q. And why was it you said specifically about the
2 Portable Services?

3 A. I believe during that time there was really no
4 workers there so there was no one using it.

5 Q. What's the date on that invoice?

6 A. It says June the 8th. It says transaction date
7 July 6. It says June 7 through July 6th.

8 Q. And the last day that Mr. Prescott worked on your
9 property was when?

10 A. June 26th is when he left.

11 Q. So --

12 A. But prior to that there was really no workers
13 there. It had rained a lot right before that so there
14 were no workers actively doing work on our house for a few
15 of those weeks.

16 Q. So you don't believe that the port-a-potty that was
17 rented to stay at your property should be paid for by you by
18 you if it's raining?

19 A. Well, if there's no workers there using it. I
20 don't think there were workers, you know, at all using --

21 THE COURT: Speak up, ma'am. I can't hear.

22 THE WITNESS: I don't believe there were workers
23 using it any time during this time the port-a-potty was
24 there.

25 BY MR. DERIEG:

KAREN MICHELLE ROGERS - CROSS BY DERIEG

1 Q. Where were they using the restroom?

2 A. I don't think they were there at my house. It's
3 possible, but --

4 THE COURT: Well, ma'am, please don't testify about
5 something you don't know about. If you were there and saw
6 it, tell us, but if you were at work --

7 THE WITNESS: I did not see workers at our house
8 during that time.

9 BY MR. DERIEG:

10 Q. From when, approximately? June 7th till?

11 A. Maybe June 25th. It was about two weeks before
12 Mr. Prescott quit.

13 Q. So for the two weeks prior there weren't any
14 workers at your house?

15 A. Not that I recall, no.

16 MR. DERIEG: Beg the Court's indulgence just a
17 moment, Your Honor.

18 Q. What was your reaction to the video text message
19 about the missile?

20 A. When I got it I was at work. I remember saying, oh
21 my gosh, look at what the builder just sent. It was
22 actually my -- our house with a missile blowing it up and
23 Mr. Prescott's voice comes on and says, don't tell me
24 there ain't nothing I can do. So just a little bit of a
25 shock wondering why is he sending this.

KAREN MICHELLE ROGERS - CROSS BY DERIEG

1 Q. At any point in time did you tell or share that
2 text message with anyone other than your husband?

3 A. No, not during that time.

4 Q. You didn't show any of the subcontractors?

5 A. No, sir. I was at work. Most of the
6 subcontractors were always gone by the time I got home at
7 the end of the day.

8 Q. Besides Larry, who did you show that video text
9 message to?

10 A. I believe I may have showed, you know, some of my
11 employees, my co-workers.

12 Q. Who else?

13 A. That's all I can think of other than maybe family
14 later on.

15 Q. Did you ever show it to the police?

16 A. Oh. I'm sorry. Yes, sir, we did.

17 Q. And when was that?

18 A. After the LLR inspector came and told us that we --

19 THE COURT: Ma'am, you can't say what someone else
20 said. Now I told you two or three times.

21 THE WITNESS: I'm sorry, Your Honor. It was
22 approximately a year later.

23 BY MR. DERIEG:

24 Q. Approximately a year later?

25 A. Yes, sir.

THOMAS MATTHEW MCGEE - DIRECT BY ERVIN

1 Q. And approximately a year later you went and showed
2 this to the police?

3 A. Yes, sir.

4 MR. DERIEG: Thank you. That's all I have, Your
5 Honor.

6 THE COURT: Anything on redirect?

7 MR. ERVIN: Nothing, Judge.

8 THE COURT: Nothing?

9 MR. ERVIN: Not at this time.

10 THE COURT: Ma'am, you may step down. Next
11 witness.

12 MR. ERVIN: Judge, the defense would like to call
13 Matthew McGee.

14 THE COURT: Come around.

15 THOMAS MATTHEW MCGEE, having been duly sworn, was
16 examined and testified as follows:

17 THE CLERK: Please take a seat in the witness box
18 and state your full name for the Court.

19 THE WITNESS: I'm Thomas Matthew McGee.

20 DIRECT EXAMINATION

21 BY MR. ERVIN:

22 Q. Mr. McGee, what do you do for a living?

23 A. I'm a contractor.

24 Q. Do you work here in the area?

25 A. I do.

THOMAS MATTHEW MCGEE - DIRECT BY ERVIN

1 Q. Okay. And what's the name of your business?

2 A. McGee Home Builders & Services.

3 Q. Okay. And do you know the Defendants here in the
4 courtroom?

5 A. I do.

6 Q. Michelle and Larry Rogers, right?

7 A. Correct.

8 Q. How do you know them?

9 A. They contacted me to work on their house after
10 Prescott and them had parted their ways.

11 Q. Did you come to their house to finish some work and
12 complete the project?

13 A. Yes.

14 MR. ERVIN: Judge, if I may approach?

15 Q. Do you recognize this document?

16 A. I do.

17 MR. ERVIN: Judge, we have that marked as
18 Defendant's Exhibit 10.

19 BY MR. ERVIN:

20 Q. Mr. McGee, is this an accurate representation of an
21 invoice that you had for the Rogers' property?

22 A. Yeah. There's two invoices here and then there's
23 one estimate that I put together.

24 Q. Okay. Move to enter this as Exhibit Number 10,
25 Defense.

THOMAS MATTHEW MCGEE - CROSS BY DERIEG

1 MR. DERIEG: No objection.

2 THE COURT: Okay.

3 (Defendant's Exhibit No. 10, two invoices and
4 estimate, received into evidence.)

5 MR. ERVIN: You can hold onto that (directed at
6 reporter).

7 Q. Mr. McGee, the -- in the estimate portion of the
8 document you have listed several line items. Was a good
9 portion of this work work that you had to repair, work
10 that Prescott had left undone?

11 A. It was work that Mr. Rogers and I -- Mr. and
12 Ms. Rogers and I discussed regarding, you know, things
13 that weren't done or things that were discovered by the
14 home inspector or the building inspector for the city or
15 whatever. And we just went around and figured out what
16 needed to be done to finish the project, and that's how we
17 came up with the estimate.

18 Q. Did you ultimately complete the project?

19 A. Excuse me?

20 Q. Did you ultimately complete the project?

21 A. I completed what they asked me to complete.

22 MR. ERVIN: Okay. No further questions, Judge.

23 THE COURT: Cross-examination?

24 MR. DERIEG: Thank you, Your Honor. May it please
25 the Court.

THOMAS MATTHEW MCGEE - CROSS BY DERIEG

CROSS-EXAMINATION

BY MR. DERIEG:

Q. Mr. McGee, you're a competitor of Mr. Prescott's, right?

A. I am.

Q. You guys compete against each other for different jobs?

A. I'm sure we went against each other before, you know, as far as jobs and that kind of thing.

Q. Would it help your business if -- would it help your business if Mr. Prescott were to lose this case?

MR. ERVIN: Objection, Your Honor. I don't see how that's relevant to the facts or --

THE COURT: Sustained.

BY MR. DERIEG:

Q. If Mr. Prescott has a reputation of quitting jobs, does that help your business?

MR. ERVIN: Again, Judge, speculative. I don't see how that's relevant at all.

THE COURT: Overruled.

THE WITNESS: So answer?

THE COURT: Yeah.

THE WITNESS: Okay. I don't necessarily think it would help my business per se. I mean, I don't really -- I mean, I'm sure that it would allow other contractors to

THOMAS MATTHEW MCGEE - CROSS BY DERIEG

1 get the business that he doesn't get, you know. But, I
2 don't know that we go head to head too often to be quite
3 honest with you.

4 BY MR. DERIEG:

5 Q. That's fair. Looking at Defendant's -- what is --
6 what's the Defendant's Exhibit Number that's in your hand?

7 A. Ten.

8 Q. Looking at Defendant's 10, what's the date of that
9 first invoice?

10 A. Let's see. The date of the first invoice is
11 September 12th, 2012.

12 Q. What is the date of the second invoice?

13 A. October 10th, 2012.

14 Q. And what is the date of the Rogers' inspection
15 estimate?

16 A. October 13th, 2012.

17 Q. In your experience as a contractor if certain work
18 is started on a home and then is not complete and then
19 approximately three months pass, would that tend to help
20 or hurt the appearance of the work?

21 A. So if the work had stopped three months prior to me
22 getting there --

23 Q. Yes, sir.

24 A. -- and nothing's been done since the other
25 contractor left?

THOMAS MATTHEW MCGEE - CROSS BY DERIEG

1 Q. Yes, sir.

2 A. Yeah, the appearance would look worse if nothing
3 has been done.

4 Q. Do you know whether anything was done between June
5 the 26th and when you set foot on the property?

6 A. No, I do not.

7 Q. When did you set foot on the property the first
8 time?

9 A. I don't have that exact date in front of me. You
10 know, this first invoice, you know, was just for some
11 general cleanup. And that was in, you know, the middle of
12 September, 2012. So I'm assuming it was, you know, a week
13 or so before that. First part of September.

14 Q. And these inspection estimates, how many of
15 these -- of these different line items that you have given
16 invoices for, how many of them did you actually do?

17 A. The estimate that is attached, you know, there's an
18 invoice missing for that. You know, so, if that -- I
19 don't have that invoice in front of me but it would tell
20 you based on each specific line item what we did. There
21 were a few things that, that were not done that the Rogers
22 didn't have me do that we had come up with, but the
23 majority of them we did actually do.

24 Q. Are these prices -- are these estimate prices
25 higher than what you would normally charge?

THOMAS MATTHEW MCGEE - REDIRECT BY ERVIN

1 A. No.

2 THE COURT: Are these estimates or is this what
3 you've done the work on?

4 THE WITNESS: The first two pages are invoices and
5 then this last document is the actual estimate that I
6 submitted and they signed, you know, said they agreed to
7 it. But it's not, I mean, it's not the actual invoice.

8 THE COURT: Well, have you done the work to create
9 an actual invoice?

10 THE WITNESS: Excuse me?

11 THE COURT: Have you done the work?

12 THE WITNESS: I've done the work on most of these
13 items but I don't have the invoice in front of me to
14 specifically tell you which ones I did.

15 MR. DERIEG: I don't have any further questions,
16 Your Honor.

17 THE COURT: Anything on redirect?

18 MR. ERVIN: Yes, sir, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. ERVIN:

21 Q. Did Mr. and Ms. Rogers pay you?

22 A. They did.

23 Q. And do you recognize these documents?

24 A. Yeah. These are checks for draws as the project
25 progressed.

THOMAS MATTHEW MCGEE - REDIRECT BY ERVIN

1 Q. And you cashed those checks, correct?

2 A. I put them in the bank.

3 MR. ERVIN: Okay. Move to admit this as Exhibit
4 11, I believe.

5 THE COURT: Any objection?

6 MR. DERIEG: I need to see it first.

7 MR. ERVIN: Okay. (Document handed to Plaintiff's
8 counsel).

9 MR. DERIEG: Without objection, Your Honor.

10 MR. ERVIN: Defendant Exhibit 11, Judge, three
11 pages.

12 (Defendant's Exhibit No. 11, three pages of copies
13 of checks, received into evidence.)

14 BY MR. ERVIN:

15 Q. And these are all payments for work done at the
16 Rogers' home, correct?

17 A. That's correct.

18 MR. ERVIN: No further questions.

19 THE COURT: You may step down.

20 THE WITNESS: All right.

21 THE COURT: Next witness.

22 MR. ERVIN: Judge, I call Mr. Larry Rogers.

23 THE COURT: Come around.

24 LARRY DALE ROGERS, having been duly sworn, was
25 examined and testified as follows:

LARRY DALE ROGERS - DIRECT BY ERVIN

1 THE CLERK: Please take a seat in the witness box
2 and state your full name.

3 THE WITNESS: My name is Larry Dale Rogers, without
4 a D.

5 DIRECT EXAMINATION

6 BY MR. ERVIN:

7 Q. Mr. Rogers, you live at 28 Plantation Court in
8 North Augusta; is that correct?

9 A. That is correct.

10 Q. And that's the property that we've been talking
11 about here all day?

12 A. That is correct.

13 Q. Do you know the Plaintiff, Mr. Prescott?

14 A. I do.

15 Q. How do you know Mr. Prescott?

16 A. We were looking to do some renovations to our
17 home. When we first talked to him the first time we were
18 trying to come up with what we wanted to do. There were a
19 couple of things in mind that we wanted. Because of my --
20 I do computer networking for businesses around town and so
21 my business, I have my business at home. So I don't have
22 walk-in traffic and stuff. I work with businesses. So I
23 needed more room on getting a bonus room above the
24 garage. So I needed that. Also this would give me two
25 more garage spaces underneath.

LARRY DALE ROGERS - DIRECT BY ERVIN

1 And the siding of the house needed to be done.
2 It's a 1991 house. And there's no way you could really
3 match it. So we wanted to redo the siding on that one.

4 And as we were going through here talking with what
5 we need, what else, you know, if we're going to do this
6 project and get in there, Mr. Prescott had stated to us
7 that while we're here doing work if we do want to do other
8 things that's the best time to do it because you're here
9 on the job doing it now versus, you know -- do it now. A
10 year later, come back, it will be more expensive to do it
11 later.

12 And so we worked with him getting a couple quotes
13 of what was going on. And so we added a couple things and
14 we had a little, an aluminum screened-in room. And we,
15 you know, had talked about making it, it's an -- it's
16 sticking out. So there's no air-conditioning but it was
17 drywalled, you know, with it. With extending the bonus
18 room we was going to extend it over, we extended the bonus
19 room long ways to the garage to add more garage but one
20 section we made it longer to get a patio underneath that
21 area there.

22 And, you know, for storage and, you know, an
23 exercise room I had it in my office at one time before I
24 started on investing in a little exercise equipment and we
25 just had it, you know, just down in the basement. And the

LARRY DALE ROGERS - DIRECT BY ERVIN

1 basement is not -- it's a crawl space. It's a two door.
2 You walk in, 10 feet tall here and dirt goes up here, to
3 about four feet.

4 THE COURT: Hold on a second. What is the
5 question: How did you meet him?

6 THE WITNESS: How did I meet him?

7 THE COURT: Yeah.

8 THE WITNESS: Yeah, I called, called about the
9 renovations and I was talking about what we talked about.

10 BY MR. ERVIN:

11 Q. You hired Mr. Prescott to do what you were
12 discussing, correct?

13 A. That is correct.

14 Q. And, when did you first meet and formally make
15 acquaintance with Mr. Prescott?

16 A. It was somewhere mid of 2011 but it was past the
17 midpoint of 2011. Exact month and date, I don't know if
18 it was July or August kind of time frame.

19 Q. All right. And you were discussing the scope of
20 work that you were hiring him for; is that correct?

21 A. That is correct.

22 Q. And from the start of your meeting Mr. Prescott you
23 had discussed the finished basement, correct?

24 A. I mean, the very first day we were talking about
25 what we wanted for the building. And when he was talking

LARRY DALE ROGERS - DIRECT BY ERVIN

1 about is there anything else you would like to be done,
2 that's when I mentioned, you know, it would be nice to
3 have this basement for, I can have this exercise room and
4 stuff like that.

5 Q. Okay.

6 A. Yeah. And that's how that came up.

7 Q. And, we won't belabor the point too much. We'll go
8 ahead and skip to the second contract you entered into
9 with Mr. Prescott, right?

10 A. Correct.

11 Q. That would be the May 1st, 2012, contract, correct?

12 A. Correct.

13 Q. Explain to the jury again how you were to pay
14 Mr. Prescott.

15 A. In this second contract we estimated based on the
16 first contract of approximately how much this was going to
17 be. And he was approximating about, you know, he would
18 make -- his part would be 25,000. And so, he said it
19 would take about five months is what he's estimating to do
20 everything we talked about including the basement.

21 And, and so we agreed since his was a flat fee he
22 was going, it was going to be paid over a period of five
23 months. And weekly he was going to give the invoices for
24 the subcontractors to us on Thursday and we were to pay
25 him on Friday.

LARRY DALE ROGERS - DIRECT BY ERVIN

1 Q. Was there ever an instance where he gave you
2 invoices that you did not pay for subcontractors' work?

3 A. No.

4 Q. Okay. And in paragraph eight of the second
5 contract which would be Plaintiff's Exhibit Number Two, it
6 actually contemplates this project going on indefinitely,
7 correct?

8 A. It does. Going on indefinitely. During the first
9 contract, you know, we had just, we had hired him before
10 the first contract started. We redone our kitchen with
11 Lowe's and so we wanted new tile. And so since we had
12 already started talking with him, you know, we asked him
13 about, hey, you know, was that something you'd be
14 interested in is putting in new tile because we're going
15 to redo our kitchen --

16 Q. Mr. Rogers, I don't mean to interrupt.

17 A. Okay.

18 Q. In the second contract you have a flat-fee rate to
19 Mr. Prescott, correct?

20 A. That's correct.

21 Q. Okay. And you set \$5,000 per month for five
22 months, correct?

23 A. Correct.

24 Q. But if it was to go over five months you'd still
25 pay on a monthly basis, right?

LARRY DALE ROGERS - DIRECT BY ERVIN

1 A. I'd still pay on a monthly basis.

2 Q. And how much would that be per month?

3 A. 2,500 per month.

4 Q. So no matter what work was done at your house, no
5 matter who was doing it, you were going to pay
6 Mr. Prescott something to be working on your house,
7 correct?

8 A. That is correct.

9 Q. And at any time did you not pay Mr. Prescott?

10 A. No, every time that I paid him he got his -- just
11 for his fee he got the two payments for the two months
12 that they were there and the invoices we paid.

13 Q. So if you had asked for an additional wing on your
14 house, Mr. Prescott would still be paid even though you
15 were paying other subcontractors to actually do the work
16 and buy the materials, correct?

17 A. That's correct.

18 MR. DERIEG: Objection, Your Honor, to leading.

19 THE COURT: Restate your question.

20 MR. ERVIN: Okay.

21 Q. What would happen if you wanted to put another wing
22 on your house, would Mr. Prescott be paid?

23 A. Yes, he would be paid. He would -- for what it
24 cost a subcontractor, he would get, the contractor would
25 get paid for them. And for Prescott if these projects

LARRY DALE ROGERS - DIRECT BY ERVIN

1 took longer than five months he would still continue to
2 get a builder's fee until this project, entire project was
3 completed.

4 Q. So, you heard Mr. Prescott testify earlier that he
5 thought you wanted him to do work for free. How does that
6 work out if you've got a flat fee every month to pay him?

7 A. Well, it does not work out.

8 Q. No matter what kind of work he wanted done he gets
9 a flat fee, correct?

10 A. That is correct.

11 Q. So what is your reaction to him saying you fired
12 him?

13 A. I mean, my reaction is he's not telling the truth.
14 I mean, that's --

15 Q. Well, let's talk about the day in question. On
16 June 26th did you call him on the telephone and have a
17 conversation with him about the job?

18 A. Did I call him or did he call me? My recollection
19 is that he called me that day.

20 Q. Okay. What did y'all talk about?

21 A. We had already been talking about, you know, this
22 basement. And it was a basement. You know, because the
23 floor was unlevel you have to dig everything out, flatten
24 it. And then the foundation of the house since some of
25 that dirt over here was higher, they would have to dig

LARRY DALE ROGERS - DIRECT BY ERVIN

1 lower and make a new foundation for that area. And so we
2 wanted the basement flat versus going from, you know, 10
3 to four-foot. And so that in itself was, you know, the
4 foundation part of it and then from there you would just
5 put walls around where you wanted and there was going to
6 be some steps coming down from the inside to the basement.

7 Q. What did Mr. Prescott say to you on the phone? Did
8 he indicate that he wasn't coming back to work for you?

9 A. He, we had discussions prior about different bills
10 with him. And he had stated before, you know, that he was
11 going to quit, you know, if we didn't pay whatever he
12 wanted. And on this telephone call, you know, he called
13 and he had stated previously to us about that he wanted to
14 get paid extra on this here, you know, because of he, you
15 know, we're trouble for him. And he wanted paid extra
16 because we're causing him headaches.

17 And he said this. And then he said the basement,
18 you know, was, it was never discussed before. And I said,
19 yeah, the basement was discussed before we were even on
20 the first project. We had got quotes from him for that.

21 Q. Now when you discussed the basement, was it just a
22 cement pad or was it a full basement?

23 A. When we first discussed it it was going to be an
24 indoor basement. We had not discussed where any walls
25 were going into, but we did discuss about how everything

LARRY DALE ROGERS - DIRECT BY ERVIN

1 would have to be leveled, you know. There's about 10
2 foundation blocks throughout the middle would have to be
3 taken down and since the dirt would be lower, make a new
4 foundation and so it would be a flat room.

5 Q. Okay.

6 A. And --

7 Q. It should not have been a surprise to Mr. Prescott
8 that you wanted to continue to do the basement, correct?

9 A. That's correct.

10 Q. Okay. After June 26th, your wife had received a
11 text from Mr. Prescott, that is in the exhibits, claiming
12 he was done. Did you have any discussions about him
13 coming back to the property?

14 A. On that phone call?

15 Q. On a phone call, by text or at all?

16 A. On the phone call, you know, he kept, you know, he
17 was saying that he was not going to do any more work
18 unless we paid more for that basement. He wanted his
19 additional fee to do that.

20 And I, you know, I kept telling him we had a
21 contract. And he was arguing about that one. And I said,
22 this is what we agreed to get done. And he kept saying
23 after that one, so you're firing me. And I said, no, I'm
24 not firing you. I need it done.

25 We've been working on a construction loan for three

LARRY DALE ROGERS - DIRECT BY ERVIN

1 months. Construction loan is taking about three months to
2 go through this whole process, you know. A regular loan
3 takes about 45 days. A construction loan is longer and,
4 you know, we're almost there. We were estimating 15 of
5 July to get that loan.

6 And we had put our own money up. I had taken my
7 401(k) out. I needed that loan to repay all of that stuff
8 that we took out to put my 401(k) back in so I wouldn't
9 have to pay a penalty. And I said, no, I need this done.
10 And he said, you know, he wants to be paid for that. And
11 I said, that's not what the contract says. He says, so
12 you're firing me. And I said, no, I am not firing you but
13 I need this work done.

14 Q. If you had fired Mr. Prescott, would you have
15 gotten that loan?

16 A. If I had fired him, no, I would not have gotten
17 that loan.

18 Q. And you ended up not getting the loan, correct?

19 A. Correct.

20 Q. And has not getting a loan caused you any financial
21 hardship?

22 A. It has tremendously.

23 Q. Explain to the jury what that hardship is.

24 A. The first part of it where we took that money out
25 of savings to start the project, this loan was going to

LARRY DALE ROGERS - DIRECT BY ERVIN

1 put that money in.

2 The addition to this house, the reason a regular
3 refinance of your existing house to something like this
4 was not enough equity for the loan in the house to do the
5 addition. And so the only way for us to come out with the
6 total money doing it was a construction loan to get, so
7 the the bank pays you throughout on that one. And that's
8 what that was for.

9 Q. Okay. When -- and you saw the e-mail from
10 Mr. Prescott to the bank pulling off the loan and that
11 caused you not to get the loan. Did you seek other
12 financing for the job at that point in time?

13 A. Well, I mean, before he actually left, you know, he
14 was always about, you know, saying, let's start the
15 basement. We had talked to him about redoing our master
16 bathroom, you know, redoing some things in there. He
17 wanted to get it started. We kept saying we have limited
18 resources until we get the construction loan so please
19 let's don't do that.

20 He ordered the siding the first part of May. And
21 the first part of May is when he'd started the foundation
22 for the house. So we ended up having to pay that on our
23 credit cards, two months later, approximately \$17,000 that
24 we could have used going to the other stuff.

25 MR. ERVIN: Judge, may I approach the witness?

LARRY DALE ROGERS - DIRECT BY ERVIN

1 I've got a document that is for recollection purposes
2 only. It's not being admitted as evidence.

3 THE COURT: You're not claiming all this money as a
4 loss, are you, that he's paying stuff on his credit card?

5 MR. ERVIN: Judge, I'm showing that this cost
6 caused my client to lose quite --

7 THE COURT: I'm asking: Is this an element of
8 damages?

9 MR. ERVIN: Yes, sir.

10 THE COURT: All right. Ladies and gentlemen, y'all
11 step out.

12 (Jury exits courtroom at 4:59 p.m.)

13 THE COURT: Mr. Ervin, are you claiming damages in
14 this lawsuit? He's gone ahead and started this
15 construction project and he takes his 401(k) out, his
16 wife's retirement account, he's paying stuff on his credit
17 cards. He's entitled to that as a loss if he wins?

18 MR. ERVIN: Well, Judge --

19 THE COURT: How in the world can that be part of a
20 breach of contract case, he decided to finance it with his
21 credit card?

22 MR. ERVIN: Well, Judge, I'm explaining to the jury
23 basically that they prevented a loan from going forward
24 that caused him to pay much more than he would have paid
25 had the contract --

LARRY DALE ROGERS - DIRECT BY ERVIN

1 THE COURT: He had already taken that money out
2 before his loan was approved.

3 MR. ERVIN: I was going -- subsequent to the loan
4 being not approved, he would have paid back all of that
5 minus the penalties. In addition to that, he had to take
6 high-interest loans to finish the job. Had Mr. Prescott
7 stayed on the contract he would have made payments at a
8 certain rate.

9 THE COURT: You got any law to support that,
10 speculative damage and consequential damage?

11 MR. ERVIN: No, sir.

12 THE COURT: Sir?

13 MR. ERVIN: No, sir.

14 THE COURT: I didn't think you did.

15 MR. ERVIN: I just think that's breach of contract
16 and he has damages.

17 THE COURT: Well, he has damages that flow from the
18 breach. The fact that he financed this thing the way he
19 did hasn't got anything to do with the breach of contract.

20 MR. ERVIN: I'll move forward, Judge, with the
21 actual damages to what he paid Mr. McGee that we have on
22 the record.

23 THE COURT: Bring the jury back. How long is your
24 cross?

25 MR. DERIEG: It will be a little while, Your Honor.

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1 THE COURT: You got any more witnesses?

2 MR. ERVIN: No, sir. Judge, I do have a subpoena
3 for someone to come tomorrow but it's up to you if you
4 allow us to continue.

5 THE COURT: I'm not trying to cut you --

6 MR. ERVIN: Then, yes, we do have another witness
7 that's subpoenaed for tomorrow.

8 THE COURT: Who is that?

9 MR. ERVIN: That is Hargrove Inspection, home
10 inspection.

11 (Jury enters courtroom at 5:03 p.m.)

12 THE COURT: We've got about 30 more minutes with
13 this witness and then one not real long witness tomorrow.
14 That will take care of all the testimony. We can go ahead
15 and finish him tonight or -- I promised y'all five
16 o'clock, or come back and finish this in the morning. The
17 next witness. We'll be in a position to go with the argue
18 and charge and then I can do the stuff I need do with the
19 lawyers tonight. Y'all can go back and sit and wait while
20 I do it or do it tomorrow. Does that suit?

21 THE JURY (COLLECTIVELY): Yes, sir.

22 THE COURT: Please don't discuss the case. Don't
23 deliberate. Don't do any kind of research on home
24 improvements. All right.

25 We got one vote. I'm going to let the man handle

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1 this. Breakfast, I'm going to get you breakfast. Your
2 choices are sausage biscuits, for the ladies they probably
3 would like some fruit and yogurt or big old donuts with
4 jelly in it. I tell you what. You don't have a vote.

5 FOREPERSON OF THE JURY: Yeah, what would you
6 like?

7 THE JUROR: Fruit and yogurt sounds great.

8 ANOTHER JUROR: And donuts, sausage biscuits with
9 yogurt. That sounds good.

10 (Off-the-record discussion.)

11 THE COURT: I'm going to have sausage biscuits and
12 hot coffee, y'all. We're going to start at --

13 THE JUROR: Seven.

14 THE COURT: 8:30?

15 THE JUROR: 8:30 would be better because school
16 traffic will be over.

17 THE COURT: We'll start at 9:30. So if you want --
18 I've got something set at nine, 9:15. If you want your
19 biscuits, I can't let you bring them out here, come in
20 time to eat them and have some hot coffee. We'll finish
21 up tomorrow. Have a pleasant evening.

22 THE JUROR: Thank you, sir.

23 THE COURT: Mr. Bill will tell you -- just go back
24 in the jury room. He'll tell you how to get in in the
25 morning. Thank you all. Be careful for that steps, those

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1 steps.

2 (Jury exits courtroom at 5:06 p.m.)

3 THE COURT: Mr. Rogers, you're right in the middle
4 of your testimony, so please don't discuss it tonight with
5 anyone including your lawyer. We'll start back in the
6 morning 9:30 sharp.

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: Thank you. You may step down.

9 Gentlemen, let's talk about where we're going to be
10 when we finish all the testimony. Obviously we got the
11 Plaintiff's breach of contract case. He's also got a
12 cause of action for breach of contract accompanied by
13 fraudulent intent. I haven't heard anything that would
14 make this a fraud case on either side. Do you agree?

15 MR. DERIEG: I agree with that, Your Honor.

16 THE COURT: So you'll go to the jury on breach of
17 contract and the damages that flow therefrom?

18 MR. DERIEG: That's correct, Your Honor.

19 THE COURT: How about you on your counterclaim?

20 MR. ERVIN: Likewise, Judge, we have the breach of
21 contract with basically he walked off the job and they had
22 to hire somebody to do the work.

23 THE COURT: I understand. So all of this stuff
24 about the statute of limitations -- mechanic's lien and
25 all of that just sort of go out the window?

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1 MR. ERVIN: That's correct.

2 THE COURT: Two breach of contract cases?

3 MR. ERVIN: That's it.

4 THE COURT: What I'll do is I'll tell the jury
5 they've got to consider each one of them separate and
6 apart from the other one. They can find that -- tell me
7 your thoughts on that. They either got to find one or the
8 other, don't they?

9 MR. ERVIN: I agree, Judge. I think that's the
10 case.

11 THE COURT: If they find that your client breached
12 the contract they can consider his damages. If they find
13 that he breached the contract they can consider your
14 client's damages. They may find it wasn't any breach of
15 contract and it will be --

16 MR. ERVIN: Awash.

17 THE COURT: -- awash.

18 MR. ERVIN: That's my view of it, Judge.

19 THE COURT: Agree?

20 MR. DERIEG: Wholeheartedly agree, Your Honor.

21 THE COURT: So it's just a simple breach of
22 contract, damages, and how they consider. The verdict
23 will be: We find for the Plaintiff blank dollars actual
24 damages; or we find for the Defendant blank dollars actual
25 damages; or we find there was no breach, no damages.

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1 MR. ERVIN: I agree.

2 THE COURT: Fair enough?

3 MR. DERIEG: Yes, Your Honor.

4 THE COURT: All right. Anything I can do to help
5 y'all over the evening?

6 MR. DERIEG: Not that I can think of at this
7 moment.

8 MR. ERVIN: No, Your Honor.

9 THE COURT: Y'all both have my e-mail addresses.
10 If there's anything I can do, don't hesitate to e-mail me
11 or my law clerk. We'll try -- and thank you. And I'll
12 see you bright and early in the morning.

13 MR. DERIEG: Thank you, Your Honor.

14 MR. ERVIN: Thank you, Your Honor.

15 END OF DAY: 5:08 P.M.

16 * * * *

17 TUESDAY, JANUARY 21, 2015 AT 9:46 A.M.:

18 THE COURT: Mr. Rogers, come on back up to the
19 witness stand.

20 MR. ERVIN: Judge -- go and take the stand.

21 THE COURT: Anything for the record by the
22 Plaintiff before we start back?

23 MR. DERIEG: Nothing from the Plaintiff, Your
24 Honor.

25 THE COURT: By the Defendant?

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1 MR. ERVIN: Your Honor, you had requested a clean
2 copy of an exhibit. I've got it here.

3 THE COURT: Thank you. If you would get with Cher
4 and just --

5 (Exhibit substituted for Exhibit No. 9.)

6 THE COURT: All right. Gentlemen, my verdict form
7 is going to be, simply: We find for the Plaintiff, blank
8 dollars actual damages; or we find for the Defendant,
9 blank dollars actual damages, and I'll explain it to them;
10 or we find that the contract was not breached by either
11 the Plaintiff or the Defendant, therefore no damages.

12 MR. ERVIN: Yes, sir.

13 THE COURT: Fair enough?

14 MR. DERIEG: Yes, Your Honor.

15 THE COURT: All right. Bring the jury in, please.

16 (Jury enters courtroom at 9:49 a.m.)

17 THE COURT: Good morning, ladies and gentlemen.

18 THE JURY (COLLECTIVELY): Good morning.

19 THE COURT: Hope you had a pleasant evening and
20 enjoyed your snack this morning.

21 THE JURY (COLLECTIVELY): Thank you.

22 THE COURT: I understand that we do not have a
23 whole lot more testimony. We'll finish that up here very
24 shortly. The lawyers will argue their final arguments and
25 I'll instruct you on the law and you'll be receiving the

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1 case very shortly. Thank you.

2 You may continue. Please do not go over anything
3 that we went over yesterday.

4 MR. ERVIN: Thank you, Your Honor. If it please
5 the Court.

6 DIRECT EXAMINATION (CONTINUED)

7 BY MR. ERVIN:

8 Q. Mr. Rogers, we would like to continue where you
9 left off talking about the project you hired Mr. Prescott
10 for and how the relationship between you and his business
11 fell apart. If you could take us to that moment. I
12 believe the date was June 26th. How did the relationship
13 between you and Mr. Prescott end?

14 A. Briefly through that, just right, you know, before
15 that when there were bills that he was giving us, you
16 know, and looking at the bills I have the right to
17 question is it right or not. And he would always get
18 upset with that.

19 On the phone call that I do recall, that he called
20 me and/or I called him, that doesn't really matter, but we
21 discussed the basement because he was, you know, looking
22 up some stuff about the basement. And he had stated that,
23 that he, again, wanted more money to him to do the
24 basement even though we had talked about it.

25 Q. Now, Mr. Rogers, did you fire Mr. Prescott?

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1 A. I did not fire him.

2 Q. Okay. Did he quit?

3 A. He did quit.

4 Q. And this is Defendant's Exhibit Number One. Is
5 that -- what is that and does that show when you feel that
6 he actually quit?

7 A. Yes, this is a -- text messages, you know, pictures
8 of, on the phone itself.

9 Q. And the last text message on the bottom right-hand
10 side says what?

11 A. It's from Prescott: I guess we are done. I'll
12 let, I'll let you know what you owe me.

13 Q. Did you try to get him back on the property after
14 that?

15 A. Yes, there were texts. When he had left there were
16 debris from the roof everywhere around that on there that
17 he was supposed to keep cleaned up weekly. I tried to get
18 him to do that one. We had fully paid for the roof and
19 the framing. And we had text him that, you know, can you
20 please come back -- or my wife is actually the one that
21 texted him. Can you come back and, you know, finish that
22 what has already been paid.

23 Q. Mr. Rogers, you heard testimony yesterday regarding
24 an app, a video that Mr. Prescott had sent you and your
25 wife. Do you recall that?

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1 A. I do recall that.

2 Q. Do you have a copy of that video?

3 A. I do have a copy of that video.

4 Q. Judge, at this time I'd like to publish to the jury
5 the video Mr. Rogers and his wife received from
6 Mr. Prescott and, by way of a laptop we have set up in
7 front of the jury.

8 THE COURT: Any objection?

9 MR. DERIEG: Without objection, Your Honor.

10 THE COURT: You may.

11 BY MR. ERVIN:

12 Q. Mr. Rogers, could you come down here and operate
13 your laptop computer so the jury can see the video that we
14 discussed yesterday, as I'm sure everybody wants to see
15 it.

16 THE COURT: No, don't be commenting.

17 MR. ERVIN: Sorry.

18 THE WITNESS: (Leaves witness stand.)

19 MR. ERVIN: Mr. Rogers, let's move it a little
20 farther this way and put it right up here so everybody can
21 --

22 THE WITNESS: Can everybody see it?

23 THE COURT: You just play the video. I'll make
24 sure everybody sees it.

25 MR. ERVIN: Yes, sir.

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1 THE COURT: Thank you.

2 THE WITNESS: This is the first video.

3 THE COURT: Sir. Can everybody see it? Raise your
4 hand if you can't. You can't see it?

5 THE JUROR: I can now.

6 THE COURT: You may have to stand up.

7 (Video played.)

8 THE COURT: Okay. Thank you.

9 MR. ERVIN: Thank you.

10 THE WITNESS: And there's a second video.

11 THE COURT: Well, wait. I think it was just one
12 text.

13 MR. ERVIN: It was actually two, Your Honor, and if
14 we may present both.

15 THE COURT: One of them. Only heard testimony
16 about one.

17 MR. DERIEG: Your Honor, I object to that. I don't
18 know anything about a second one.

19 THE COURT: There was only testimony about one
20 video. Come back up here, sir.

21 MR. ERVIN: If you can put that up.

22 THE WITNESS: (Returns to witness stand.)

23 BY MR. ERVIN:

24 Q. Mr. Rogers, was there another video sent to you by
25 Mr. Prescott?

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1 A. The other video was sent only to Michelle.

2 Q. Okay.

3 A. The first video was sent to both of us at the same
4 time.

5 Q. Okay. That's enough. Thank you.

6 Were you -- did that video make you scared or fear
7 Mr. Prescott in any way?

8 A. It made me question, it made me question what he
9 was trying to do. I don't think, I didn't think he was
10 actually going to have a missile and blow up my house but
11 I took it as somebody bullying me that says, you know, if
12 you don't pay this is what you get. Just trying to
13 threaten me to pay whatever he was asking.

14 Q. And, you heard testimony that subsequent to that, a
15 year later, you responded to that video in a more formal
16 way; is that right?

17 A. That is correct. Under advisement --

18 THE COURT: Don't give -- don't testify about what
19 somebody else told you. You can't testify as to what they
20 told you.

21 THE WITNESS: I was --

22 BY MR. ERVIN:

23 Q. Did you -- what did you do?

24 A. I went to the police department and I showed them
25 the video of the threat and filed a police report.

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1 Q. Prior to filing a police report, had you been sued
2 by Mr. Prescott?

3 A. Yes, I had.

4 Q. Okay. And Mr. Prescott filed a mechanic's lien on
5 you prior to filing the police report?

6 A. Yes, he had.

7 Q. So was your filing a police report in response to
8 being sued? I'll rephrase the question. Was the filing
9 of the police report part of litigation in your mind?

10 A. It was a part of litigation in the fact that, to
11 try to show that he done something criminally, you know,
12 against me by, you know, threat.

13 Q. Okay. Mr. Rogers, you hired a contractor -- when
14 did you hire a contractor to come back to your property
15 after Mr. Prescott left?

16 A. We signed a contract with that contractor to fix
17 the issues noted in the inspections. I do believe the
18 date was November 14th.

19 Q. What day did Mr. Prescott leave your property?

20 A. He quit on June 26th. There were a few days prior
21 to that that no work was being done, but June 26th.

22 Q. So roughly five months later you finally got
23 someone to the property?

24 A. That is correct.

25 Q. Okay. How was -- I'm going to proceed with this,

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1 Judge. What are these?

2 A. These --

3 Q. Did you take those photographs?

4 A. I took these photographs. So these are pictures
5 of --

6 THE COURT: Hold on. Let's mark them for
7 identification. You can identify the photos; is that
8 correct?

9 THE WITNESS: I do identify the photos. I took
10 them.

11 THE COURT: Mark them, please.

12 (Defendant's Exhibit No. 12, photographs, marked
13 for identification.)

14 THE COURT: Any objection?

15 MR. DERIEG: No, sir.

16 THE COURT: Without objection.

17 MR. ERVIN: Move to enter into evidence Defendant's
18 Exhibit Number 12.

19 (Defendant's Exhibit No. 12, four photographs,
20 received into evidence.)

21 BY MR. ERVIN:

22 Q. Mr. Rogers, please describe those photographs and
23 tell me what they are of.

24 A. This one photograph here is my air-conditioner unit
25 where they were taking the debris off of the roof, old

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1 shingles and just dumping it all over around the roof.
2 And when Prescott left, did not clean this up. And he was
3 supposed to have this cleaned up, you know, weekly, keep
4 it cleaned. That's that picture.

5 This picture here is the bonus room floor above the
6 garage. And so there would be a room, roof on top of that
7 one. This picture here was taken probably around the 10th
8 of May, around that time.

9 There was a meeting between Prescott, Mr. Phil his
10 framer, and me. And they pointed out a defect where they
11 done the floor to where it went this way and it went down
12 and it needed to be fixed. That's what that shows. And
13 it was never fixed. Roof and room and everything else in
14 it was still that way.

15 During this project here our existing garage, we
16 weren't going to do anything with it. There was no need
17 to do anything underneath it. We were just working on the
18 top. And they just had some tarps over top of it. And
19 there was a rainstorm. And you can see in these pictures
20 here that we have stuff in the garage.

21 So if we were going to be doing work in there that
22 stuff would not be in there. And because they did not
23 have the top tarp correctly the rain got in, damaged the
24 garage, damaged the roof, all the drywall. This is just
25 another picture here of the drywall area in that same area

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1 that got damaged. And because of this all of the drywall
2 in that garage had to be taken down and redone.

3 Q. Mr. Rogers, here's a stack of more photographs.
4 Did you take those pictures?

5 A. I did take these pictures.

6 Q. You took these pictures; is that correct?

7 A. I took these pictures.

8 MR. ERVIN: Move to have Exhibit Number 13 into
9 evidence.

10 THE COURT: Any objection?

11 MR. DERIEG: Without objection, Your Honor.

12 (Defendant's Exhibit No. 13, 20 photographs,
13 received into evidence.)

14 BY MR. ERVIN:

15 Q. Without going through every one of those pictures,
16 that's 20 pictures, correct?

17 A. That is correct.

18 Q. Did you -- and you took those pictures. What are
19 they of?

20 A. They are of pictures of different damages and also
21 some pictures of what we had to go through, corrections of
22 some of these damages.

23 Q. Let me hold these pictures real quick, Mr. Rogers.

24 A. Sure.

25 Q. Do these pictures represent the condition of your

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1 property when Prescott left?

2 A. Some of them. If it's a picture of the damage it
3 is when he left. There -- I had taken some pictures after
4 the fact that might have been before any work was done
5 that showed the damage. And then there's a couple
6 pictures in there of some corrections being done.

7 There was one picture and there's -- I have a pool
8 house. And in this pool house the pump was moved from the
9 far side of a 10-foot wide building and we added 10 or 14
10 more feet this way. And so that pump was moved here. And
11 so all plumbing and wiring, electrical had to be moved.
12 The ground wire was not over here.

13 And so that shows some of the work what had to be
14 done. They had to dig in there, you know, get the ground
15 wire from the pool, break the concrete, get it in to there
16 to pass code when I was getting it fixed later.

17 Q. And who was fixing the damage and the defects that
18 were left on your property by Mr. Prescott?

19 A. Nobody from Mr. Prescott.

20 Q. The damage that Mr. Prescott left --

21 A. Who?

22 Q. -- who repaired that?

23 A. Okay.

24 Q. Was it Mr. McGee?

25 A. Mr. McGee, you know, repaired some, the majority of

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1 it. And then there was a, the guy who does the cement
2 masonry with some of that one. And he was the other
3 contractor I used for that that would be correcting the
4 damages.

5 Q. So you hired more than one contractor to come on
6 the property to repair what Mr. Prescott left?

7 A. I did, but the pool wire -- the ground wire did not
8 -- it was not really known because there was no electrical
9 inspection until later. And then when the electrical
10 inspection came in there was no ground wire there. The
11 slab would have to come up. Mr. Prescott, his crew poured
12 that slab. So there should have been a ground wire coming
13 up to hook to the electricity that grounds that to the
14 pool itself. It's an in-ground pool.

15 (Defendant's Exhibit No. 14, four pages of repair
16 invoices, marked for identification.)

17 BY MR. ERVIN:

18 Q. Were you invoiced for work done to repair defects
19 made by Mr. Prescott?

20 A. Was I invoiced? Are you asking --

21 THE COURT: Repeat the question, please.

22 THE WITNESS: Yes, sir.

23 BY MR. ERVIN:

24 Q. Did you hire, did you hire subcontractors, workers,
25 to come repair the work Mr. Prescott left unfinished and

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1 exposed?

2 A. Yes. I had to hire other subcontractors to come
3 fix those issues.

4 Q. Are these invoices you received from those
5 subcontractors?

6 A. Yes. These are invoices, some of the invoices.

7 Q. You received those in doing business with those
8 subcontractors, correct?

9 A. Yes.

10 Q. And your name is on these invoices, correct?

11 A. That is correct.

12 Q. And you paid these invoices?

13 A. I did pay these invoices.

14 MR. ERVIN: Move to enter those into evidence as
15 Defendant's Exhibit Number 14.

16 MR. DERIEG: Without objection.

17 THE COURT: All right. Without objection.

18 (Defendant's Exhibit No. 14, four pages of repair
19 invoices, received into evidence.)

20 BY MR. ERVIN:

21 Q. And of the work done on these invoices, how much
22 was for repair done by defects of Mr. Prescott?

23 Judge, I would like to present Mr. Rogers a
24 document for purposes of recalling.

25 THE COURT: Well, just read out how much the

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1 invoices are. How much did you pay him?

2 BY MR. ERVIN:

3 Q. First invoice, Mr. Rogers, who's that to and how
4 much did you pay them?

5 A. This is to Marshall Contracting. It is -- states
6 in here remove and replace, corrections. And the total of
7 that bill is \$6,450.

8 Q. And the second page is Marshall Contracting as
9 well?

10 A. The second page is Marshall Contracting as well.

11 Q. What's the total on that invoice?

12 A. The total of this invoice, \$6,555.

13 Q. And you have an invoice, Carl Bleifuss. Who is he?

14 A. Carl Bleifuss is a plumber that we had hired to fix
15 the kitchen sink when we redone the kitchen. Prescott's
16 crew had, his plumber had done some work to there. Well
17 the sink would not fit in there. Also behind the
18 refrigerator, it's a refrigerator you can put water in so
19 there's a line going through and it was leaking to the
20 wall and the wall was all wet. So we hired this person
21 here to come fix it.

22 Q. How much did you pay him?

23 A. \$300 on this invoice here. And there's a \$40

24 invoice from him also, a second invoice from him. And

25 there is a third invoice from him, \$75 looks-like-maybe

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1 and six cents (\$75.06).

2 THE COURT: Looks like what?

3 THE WITNESS: Looks like \$75.06.

4 THE COURT: Thank you.

5 BY MR. ERVIN:

6 Q. Mr. Rogers, this is another invoice --

7 THE COURT: Are we still on Number 14 or are we on
8 something else?

9 MR. ERVIN: This is 15, Judge.

10 THE COURT: Hold on. Just identify it.

11 THE WITNESS: This is another invoice.

12 THE COURT: Do you have any objection, sir?

13 MR. DERIEG: No objection, Your Honor.

14 THE COURT: Without objection, 15.

15 MR. ERVIN: Move to enter Exhibit No. 15,
16 Defendant's.

17 THE COURT: Hold on.

18 (Defendant's Exhibit No. 15, invoice, received into
19 evidence.)

20 BY MR. ERVIN:

21 Q. What is that an invoice for, Mr. Rogers?

22 A. This here is an invoice from Polar Mick which is
23 one of his, Prescott's subcontractors. And it's on here.
24 The air-conditioner -- area where I showed you all the
25 debris was -- quit working. And in his notes here of this

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1 one says found nails in --

2 THE COURT: No, sir. No, sir. No, sir.

3 THE WITNESS: What?

4 THE COURT: Can't testify about what somebody else
5 told you.

6 THE WITNESS: This is what's written on the --

7 THE COURT: How much is the invoice?

8 THE WITNESS: \$85.

9 THE COURT: Thank you.

10 BY MR. ERVIN:

11 Q. And why did you hire that crew?

12 A. The, this unit is the downstairs air-conditioner
13 unit and it quit cooling. So I hired him to come out and
14 look to see what happened to the outside unit in that --

15 Q. And --

16 A. -- I had noticed nails from the roofing dropped all
17 down inside the AC units.

18 Q. Okay.

19 A. Which is stated on here.

20 (Defendant's Exhibit No. 16, photographs, marked
21 for identification.)

22 BY MR. ERVIN:

23 Q. Mr. Rogers, are these taken by you?

24 THE COURT: Number 16?

25 MR. ERVIN: 16, Judge.

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1 THE COURT: Photographs. How many?

2 THE WITNESS: There's two pictures -- two pages
3 here. They are taken by me.

4 MR. ERVIN: Move to enter into evidence Defendant's
5 Exhibit Number 16.

6 THE COURT: Any objections?

7 MR. DERIEG: No objection, Your Honor.

8 (Defendant's Exhibit No. 16, two pages of
9 photographs, received into evidence.)

10 BY MR. ERVIN:

11 Q. Mr. Rogers, what are those pictures of?

12 A. There two pictures of here, it's -- was taken on
13 the 28th of June. And it's these two here on this side
14 shows you the air-conditioner unit where the mess was.

15 Q. Are those -- is that the condition that the
16 property was left in?

17 A. That was the condition the property was left in.

18 Q. Did you ask Mr. Prescott to come back and finish
19 that work?

20 A. Yeah. My wife sent a text to him and asked him if
21 he'd come back and clean that up.

22 Q. When was that text sent?

23 A. It was sent the date of the 26th, the date that he
24 quit.

25 Q. Is that the same date he claims you fired him?

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1 A. That is the same day.

2 Q. Okay. Judge, I'd like to present just for
3 recollection purposes a list of these costs that
4 Mr. Rogers can recall what he spent on damages.

5 THE COURT: You want to do what now?

6 MR. ERVIN: Just for recollection purposes.

7 THE COURT: That's what he's already testified to?

8 MR. ERVIN: The calculation of these damages as
9 they relate to repairs.

10 THE COURT: Let me see.

11 (Document handed to the Judge.)

12 THE COURT: It's a lot more on here than what he
13 testified to.

14 MR. ERVIN: Judge, it's just for recollection
15 purposes so he can recall what his subsequent testimony
16 is.

17 THE COURT: You can ask him and if he can't recall
18 he can refresh his testimony but this is not going to be
19 an exhibit.

20 MR. ERVIN: No, sir. I don't want to admit it as
21 an exhibit.

22 THE COURT: Ask him a question. If he needs to
23 refresh his recollection. Here. That's how the rules
24 work.

25 MR. ERVIN: Yes, sir.

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1 Q. Mr. Rogers, do you want to explain the other
2 picture there?

3 A. This picture here, you know, it's hard to see. It
4 was taken on 18 June of '12 and up on top here there's a
5 guy here hammering shingles down to a roof. And in this
6 picture you can see there's brown wood and he's hammering
7 shingles directly to the wood. I had bought titanium felt
8 to go under there which by code you, you have to put
9 something underneath the shingles. And it shows him not
10 doing anything in it.

11 I had sent this picture to Prescott. Said, they
12 did not put titanium felt there, will you come out and
13 look at it. He had talked -- we had talked on the phone
14 and he said that, you know, to go out there and check. He
15 said that the, that this guy removed those shingles put
16 the titanium felt there and then redone it.

17 And when I went out there all the shingles had been
18 done and it had only been 10 minutes past that time and
19 there was no time to do that. And, the roofer in his
20 testimony here what he said that he ran out of titanium
21 felt. And so they put, they hammered those shingles down
22 on it to protect it.

23 On the right side of here, this is an existing roof
24 that had not been done yet. Here on 19th it shows half of
25 the top of this one had already been done. There is

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1 titanium felt under that one. So they were not done. We
2 had titanium felt on that day.

3 Q. Okay.

4 A. And then there's just another picture here of a
5 small roof going into the building that had done nothing.
6 And the last picture on there it shows the only titanium
7 felt that was needed was just for this small part here
8 because this whole roof was finished with titanium felt
9 completely.

10 Q. Mr. Rogers, so that's the condition that the roof
11 was left in?

12 A. That is the condition the roof was left in,
13 correct.

14 Q. Would you deem it to be unfinished and exposed?

15 A. Unfinished and exposed.

16 Q. Okay. Mr. Rogers, of the money you paid Mr. McGee,
17 how much did you determine was for repairs for items left
18 unfinished and exposed by Mr. Prescott?

19 A. There's \$27,225, I think 55 cents (\$27,225.55).

20 Q. Okay.

21 THE COURT: Wait a minute now. It's 27 what?

22 THE WITNESS: 27,000 --

23 THE COURT: To who?

24 MR. ERVIN: To Mark McGee.

25 THE COURT: Where is the bill? Where is it?

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1 MR. ERVIN: Judge, we have the estimate here for
2 the full price and he paid a portion of it. Was for
3 repairs, that he deemed for repairs.

4 THE COURT: That who deemed?

5 MR. ERVIN: That Mr. Prescott and Mr. McGee who --

6 THE COURT: Mr. McGee didn't testify to anything.

7 He just introduced some invoice, so it's --

8 BY MR. ERVIN:

9 Q. Mr. Rogers -- would you like for me to rephrase the
10 question, Judge?

11 THE COURT: Please.

12 Q. Mr. Rogers, you received an estimate from
13 Mr. McGee?

14 A. Correct.

15 Q. And in this estimate it lists work to be done,
16 right?

17 A. Correct.

18 Q. And in this work to be done, did you see that many
19 of these line items were items to repair work done by
20 Mr. Prescott?

21 A. Correct.

22 THE COURT: And was it done?

23 BY MR. ERVIN:

24 Q: And was the work completed by Mr. McGee?

25 A. In that quote, what was completed was invoiced and

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1 there's an invoice of what he did.

2 THE COURT: Well, how much is the invoice?

3 BY MR. ERVIN:

4 Q. How much did you pay Mr. McGee total?

5 A. Total?

6 Q. Yes.

7 A. Let's see. Total --

8 THE COURT: You don't have, you don't have your
9 check or anything you can tell us what you paid?

10 BY MR. ERVIN:

11 Q. Here's three checks to Mr. McGee. How much did you
12 pay him?

13 A. All right. One check, \$13,289.

14 Q. And what's the next check for?

15 A. \$13,289.

16 Q. And there's a third check. What is that for?

17 A. And they are two different check numbers. And this
18 one here \$13,289 and it's a different check number.

19 Q. And all of those were to Mr. McGee?

20 A. All of those were to Mr. McGee.

21 Q. Was that for work done at your property?

22 A. It was for work done on my property.

23 Q. Was any of that work done that you paid for to
24 repair work left unfinished and exposed by Mr. Prescott?

25 THE COURT: No, no, no. What of that amount was to

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1 pay him for work allegedly left undone by Mr. Prescott.

2 BY MR. ERVIN:

3 Q. What amount of that that you paid him was for work
4 Mr. McGee did to fix work left unfinished and exposed by
5 Mr. Prescott?

6 A. 27,225.55. Adding these checks up comes to more
7 than that. So I'm not asking for other stuff that was
8 done that had nothing to do with repairs.

9 Q. So Mr. McGee actually finished the project,
10 correct?

11 A. Well he finished it to a point to where I could try
12 to get my, to get my loan because I, at this point because
13 it had been so long it was no longer -- I could not get a
14 construction loan anymore because I was -- at this time
15 here it was, you know, half a year and longer and the bank
16 because of so many different things in it, they wanted to
17 do just a regular loan. And I had to have things finished
18 to get it. And so what I was doing on here was trying to
19 concentrate on getting the house to a point to where it
20 would pass the bank appraisal to get appraised.

21 Q. Did you notify Mr. Prescott that there was
22 defective work unfinished and exposed that you wanted him
23 to fix?

24 A. I had -- when Prescott quit, I had called the city
25 and said, I want an inspection of what defects because I

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1 already knew about some defects in there. And I want this
2 documented by the city to show what defects that he caused
3 and would not fix.

4 Q. Does that Plaintiff's Exhibit Number Four represent
5 that inspection that you ordered?

6 A. This does represent -- this information here --
7 what I, what I had seen and we got a copy of the --

8 Q. Did Mr. Prescott receive a copy of that?

9 A. Let me see here.

10 THE COURT: If, you know.

11 THE WITNESS: I don't know if he received a copy --

12 THE COURT: All right. Move on.

13 THE WITNESS: -- of this. The city inspector --
14 there was another document that was the on-site document.

15 MR. ERVIN: Beg the Court's indulgence, Your Honor.

16 THE WITNESS: And -- well, actually on this
17 document here --

18 THE COURT: If you know. Don't guess, please.

19 THE WITNESS: The address up here is Prescott's
20 address.

21 BY MR. ERVIN:

22 Q. Okay. To the best of your knowledge, did
23 Mr. Prescott receive a copy of the inspection done by the
24 city?

25 A. Yes.

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1 Q. What is this document?

2 (Defendant's Exhibit No. 17, inspection, marked for
3 identification.)

4 BY MR. ERVIN:

5 Q. Do you recognize that document?

6 A. I do recognize this document.

7 MR. ERVIN: Move to enter into evidence Exhibit
8 Number 17.

9 THE COURT: Any objection?

10 MR. DERIEG: Without objection, Your Honor.

11 THE COURT: What is it?

12 (Defendant's Exhibit No. 17, inspection report,
13 received into evidence.)

14 BY MR. ERVIN:

15 Q. What is that document, Mr. Rogers?

16 A. This is a correction notice. When the inspector
17 comes out during any time, there's a handwritten
18 inspection notice --

19 THE COURT: Hold on a second. He's not an
20 inspector. Just tell him what the document is. He can't
21 why they do it and all of that. C'mon, gentlemen.

22 MR. ERVIN: Yes, sir.

23 Q. Mr. Rogers, that is an inspection from the city; is
24 that correct?

25 A. This is an inspection from the city. A copy was

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1 left on the premise.

2 Q. Okay. Did Mr. Prescott receive a copy of this?

3 A. On this document here there is a, a note here on
4 the top right, copy to Prescott 7-6 of '12.

5 Q. Okay.

6 A. I had went -- this copy actually came from the
7 city. I went and asked them did they, I asked them did
8 they give a copy to Prescott --

9 THE COURT: Don't testify about what they said.
10 That's the fifth time I've told you that.

11 THE WITNESS: This is what they gave me.

12 THE COURT: Thank you. Move along.

13 MR. ERVIN: Yes, sir.

14 Q. Mr. Rogers, did you give an opportunity for
15 Mr. Prescott to come fix the defects that were on your
16 property?

17 A. I did. We sent, we sent the text message to him.
18 And he, you know -- of some of the things that, when he
19 first left.

20 Q. What was his response?

21 A. There was a small response to my wife. It was a
22 phone call between them.

23 Q. Did he ultimately come back and repair the
24 property?

25 A. He never did show up.

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1 Q. So you gave him an opportunity to fix the defects.
2 He did not do so. And you had to hire contractors to
3 eventually fix your property, right?

4 A. That is correct.

5 Q. And that was more than 90 days after you gave him,
6 after he was on notice of the defects; is that correct?

7 A. That is correct.

8 Q. Okay. In fact, it was in November when you finally
9 got the property to be repaired, correct?

10 A. Starting, starting the repair. The contract was
11 signed on November 14th, so shortly after that.

12 Q. Okay. Of the invoices we've shown you and of the
13 money that you paid on these invoices, how much is the
14 total amount that you've paid for repairs that were needed
15 due to work left unfinished and exposed by Mr. Prescott?

16 A. I'm recollecting 37,000 and something.

17 Q. Do you recall that figure exactly?

18 A. I don't recall off the top of my head.

19 MR. ERVIN: Your Honor, may I approach for his
20 recollection?

21 THE COURT: You may.

22 BY MR. ERVIN:

23 Q. On this document, does it have the calculation?

24 A. It does have the calculation added up.

25 Q. What is it?

LARRY DALE ROGERS - DIRECT BY ERVIN

1 A. \$36,193.14.

2 Q. Okay. Thank you. In the contract signed by you
3 and Mr. Prescott, do you recall a provision that allows
4 you to get attorney's fees and costs if this case were to
5 ever go to trial?

6 A. I do.

7 Q. Could you read item number 17 in the contract which
8 is Exhibit Number Two from the Plaintiff?

9 A. The entire 17 or just the --

10 Q. The second paragraph to paragraph (verbatim) 17.

11 A. Second paragraph. In the event of a breach of the
12 agreement the party in default or guilty of said breach
13 shall be responsible and liable for all costs incurred by
14 the non-breaching party in enforcing this agreement
15 including all responsible attorney fees.

16 THE COURT: That's reasonable attorney fees.

17 THE WITNESS: Reasonable. Reasonable attorney
18 fees.

19 BY MR. ERVIN:

20 Q. Okay. Did Mr. Prescott breach that agreement?

21 A. Yes, he did.

22 Q. How did he do that?

23 A. One, at the end he quit the job.

24 Q. He left the job unfinished?

25 A. He left the job unfinished.

LARRY DALE ROGERS - DIRECT BY ERVIN

1 Q. Did that cost you damages?

2 A. That did cost me damages.

3 Q. Was there ever an instance -- well, let me back up.

4 Under that contract you were to pay Mr. Prescott a flat

5 fee, correct?

6 A. Correct, a flat fee.

7 Q. And you were also to pay the invoices from the

8 subcontractors, correct?

9 A. Correct.

10 Q. Was there any other fee or moneys contemplated in

11 that agreement that would go to Mr. Prescott other than

12 the flat fee?

13 A. No.

14 Q. Was there any instance where Mr. Prescott sought to

15 get more money than the flat fee?

16 A. Yes.

17 Q. Please describe that.

18 A. This was the bonus room that I showed you. There

19 was an outside way you get into it, the staircase. And

20 there was an interior staircase at one time. It was going

21 to be demolished and redone. Prescott sent over a quote.

22 Off the top of my head I don't know the exact amount but

23 I'm estimating 12,000.

24 It was replied to Prescott that, you know, how does

25 that break down because they were breaking down the

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1 stairs, building this. I wanted it broke down so I could
2 see what was where. And, he forwarded the e-mail from his
3 framer that he had got previously and just forwarded that
4 to us. And it showed how it was kind of broke down. And
5 from the framer there was \$1,200 less that the framer was
6 charging and Prescott had added \$1,200 to his quote to us.

7 Q. Did Mr. Prescott say why he added money to that
8 invoice?

9 A. He, he had said because of all the aggravation that
10 we had given him that he's owed, you know, more money.

11 Q. Do you consider that a breach of the contract?

12 A. I do consider that a breach of the contract.

13 Q. Okay. Mr. Prescott sued you, didn't he?

14 A. He did sue me.

15 Q. You had to hire a lawyer, didn't you?

16 A. I did have to hire a lawyer.

17 Q. What was the first lawyer that you hired? Who was
18 the first attorney that you hired? Do you want to -- do
19 you need a recollection?

20 A. I need a recollection of his name.

21 MR. ERVIN: Your Honor, if I may approach the
22 witness with a recollection?

23 THE COURT: You may.

24 BY MR. ERVIN:

25 Q. Who's the first law group that you hired?

LARRY DALE ROGERS - DIRECT BY ERVIN

- 1 A. Paul Simmons.
- 2 Q. What was his name?
- 3 A. Paul Simmons.
- 4 Q. And how much did you pay Mr. Simmons in response to
- 5 Mr. Prescott's breach and lawsuit to you?
- 6 A. \$4,337.74.
- 7 Q. Okay. And when was that that you hired him? Was
- 8 that in 2012?
- 9 A. It was in 2012. In September, right after I
- 10 received the lawsuit.
- 11 Q. And subsequently you had to hire another lawyer,
- 12 didn't you?
- 13 A. That is correct.
- 14 Q. And that would be me, correct?
- 15 A. That would be correct.
- 16 Q. How much have you paid in attorney's fees and court
- 17 costs to date?
- 18 A. \$7,409.84.
- 19 Q. Okay. And under the contract you're asking for
- 20 that today, aren't you?
- 21 A. I am asking for that today. I think there's one
- 22 more check that's not on here that we've got for you --
- 23 Q. Okay.
- 24 A. -- that's not in that calculation.
- 25 Q. Okay. Thank you. So in other words, you're still

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1 incurring fees as we sit here today, right?

2 A. Yes.

3 Q. Okay. Thank you. All right. Finally you claim
4 Mr. Prescott breached the contract by quitting the job.
5 Did you -- well, did you need Mr. Prescott to get the
6 loan?

7 A. A construction loan requires a builder to get the
8 loan.

9 Q. How much was the loan you were seeking?

10 A. I don't recall the exact number but it could have
11 been \$480,000.

12 Q. Okay.

13 MR. DERIEG: Objection, Your Honor. Speculation.

14 THE COURT: Well, he had to get a construction
15 loan. The amount doesn't matter. Go ahead.

16 BY MR. ERVIN:

17 Q. So it was in excess of \$400,000; is that correct?

18 A. Yes, that is correct.

19 Q. And at that point prior to the loan being granted,
20 you had already paid Mr. Prescott how much?

21 A. We had paid him 76,000-and-some-odd cents and there
22 were a couple bills. We paid for the siding. That was 17
23 in addition. That was never even delivered to the house.
24 And then there was some wood bills that were paid that
25 were outside of that.

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1 Q. Financially, how were you going to use the loan to
2 help you finance this job and pay off what you'd already
3 paid? How were you going to resurrect those numbers?

4 A. When we would have first received that loan we
5 would have been, reimbursed everything that we had paid
6 Prescott to that point. And we were going to use that
7 money to pay back the 401(k) that I had took out prior to
8 getting the project started. I was going to put that back
9 in investments.

10 If you keep it out by the end of the year there is
11 a penalty. And for that penalty I would have to pay that
12 penalty plus I'd also have to pay income taxes on it. So
13 that money was going to pay that.

14 Q. Were you able to avoid that penalty?

15 A. I was not able to avoid that penalty. His
16 mechanic's lien lasted through January 10th.

17 Q. Let's talk about that mechanic's lien real quick.
18 Mr. Prescott claims you breached the contract, doesn't he?

19 A. He does.

20 Q. And how does he claim that you breached the
21 contract? Doesn't he claim that you didn't pay invoices?

22 A. He claims in there that I didn't pay some invoices.

23 Q. And he claims there are eight invoices you didn't
24 pay, correct?

25 A. That is correct.

LARRY DALE ROGERS - CROSS BY DERIEG

1 Q. And of the evidence submitted, when does he claim
2 you actually received those invoices?

3 THE COURT: Mr. Ervin, he's already testified to
4 all of that. You can't pit witnesses against each other.
5 The jury's got all of that information. They have to make
6 those decisions. Move along, please.

7 MR. ERVIN: I'm sorry, Your Honor.

8 Q. Mr. Rogers, in evidence there's an e-mail. Doesn't
9 it say that you received those invoices the day --

10 MR. DERIEG: Objection to leading.

11 THE COURT: Well, not only that I just ruled on
12 that. Move along.

13 MR. ERVIN: Okay.

14 Q. Mr. Rogers, is there anything else you'd like to
15 tell the jury about this case and what it's cost you?

16 THE COURT: That's an improper question. Ask
17 specific questions, please.

18 MR. ERVIN: Yes, sir. Judge, I don't have any
19 further questions.

20 THE COURT: Thank you. Cross-examination?

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

23 THE COURT: Yes, sir.

24 MR. DERIEG: May I approach the witness, Your
25 Honor?

LARRY DALE ROGERS - CROSS BY DERIEG

1 THE COURT: You may.

2 CROSS-EXAMINATION

3 BY MR. DERIEG:

4 Q. Mr. Rogers, looking at Defendant's Number 14 --
5 look at Defendant's Number 14. What's the date on --
6 well, first off. How many invoices are included in
7 Defendant's 14?

8 A. There's six invoices.

9 Q. All right. This top invoice, what's the date on
10 that?

11 THE COURT: Come point it out for him, please.

12 THE WITNESS: The date on here, 1-5-15.

13 THE COURT: 1-5-15?

14 THE WITNESS: Yeah. Looks like that's a mistake on
15 there because we received that prior in an e-mail.

16 BY MR. DERIEG:

17 Q. Let's look at the second invoice. What's the date
18 on that?

19 A. 4-29-13.

20 Q. Let's look at the next invoice. What's the date on
21 that?

22 A. 4-29-13.

23 Q. Let's look at the next invoice. What's the date on
24 that? Top right-hand corner.

25 A. Is this the Marshall one still or the next one?

LARRY DALE ROGERS - CROSS BY DERIEG

1 Q. This is in Defendant's Number 14.

2 THE COURT: Just tell him which one it is so he'll
3 know.

4 THE WITNESS: What number are we on?

5 BY MR. DERIEG:

6 Q. We're on invoice number 801166.

7 A. Okay. Yeah. That's May 24th, 2012.

8 Q. May of 2012?

9 A. Yes.

10 Q. Let's look at invoice 801170. What's the date on
11 that?

12 A. The date field is not filled out.

13 Q. And let's look at the final invoice, 801168.

14 A. The date field is not filled out.

15 Q. And looking back at that first invoice from January
16 5th of 2015, did you say you got another invoice or this
17 same invoice sometime prior?

18 A. We, we have a check where we paid this one here
19 prior, you know, to January of this year. This happened a
20 way back. We had asked the contractor to send us, you
21 know, invoices of these to make sure, you know, what we
22 had that we may not have been able to find. And these
23 here were, you know, had just sent to them -- sent to us.

24 Q. Well, if you were asking -- you asked him for
25 copies of old invoices?

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1 A. I was asking for copies, you know, for invoices
2 that was work done that he did to fix these problems.

3 Q. Well, then if he generated a copy of these invoices
4 why is this invoice January 5th, 2015?

5 A. Looks like he --

6 THE COURT: Don't speculate, please. If you know,
7 you know. If you don't, don't say what it looks like.
8 Gentlemen, y'all got to play within the rules and you
9 can't speculate. So ask the question so he doesn't have
10 to speculate.

11 MR. DERIEG: Yes, Your Honor.

12 THE COURT: Please.

13 BY MR. DERIEG:

14 Q. Looking at invoice 611 --

15 THE COURT: Which date is that one?

16 MR. DERIEG: April 29th, 2013.

17 THE COURT: Well, there's two dated that day.

18 MR. DERIEG: Your Honor, I think they're page one
19 and page two of the same invoice.

20 THE COURT: Okay.

21 BY MR. DERIEG:

22 Q. If you look at --

23 A. I see them.

24 Q. -- the numbers are both 611.

25 A. Yes.

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1 THE COURT: Well, he testified that there were two
2 on that date. 13,000-some-odd change. I'm sorry. Go
3 ahead.

4 BY MR. DERIEG:

5 Q. If the invoice is for April 29th, 2013, when did
6 the work get done?

7 A. That could have been, you know, prior to that but
8 not too far prior to that.

9 Q. In response to one of Mr. Ervin's questions
10 regarding that police report, you said that you had gone
11 and filed the police report in anticipation of litigation,
12 right?

13 MR. ERVIN: Objection, Judge. That's not what he
14 testified to.

15 THE COURT: Well, he's on cross-examination so he
16 can ask the question like he wants.

17 THE WITNESS: That's not what I testified.

18 MR. DERIEG: How did you put it then?

19 THE WITNESS: The exact words I'd have to get the
20 court reporter to read it back exactly.

21 THE COURT: Well, tell us what you think you said.
22 How about that?

23 THE WITNESS: I submitted this. I did have a Court
24 case against him. There -- this to me did seem to be a
25 criminal act. And with everything else that he was

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1 damaging that would -- submit that to the police to let
2 them look at it and file a claim on that to say, you know,
3 this is what this person sent threatening me.

4 BY MR. DERIEG:

5 Q. And did you file that police report as part of the
6 litigation?

7 A. I filed, I filed that police report from advice of
8 the LLR rep.

9 MR. DERIEG: Your Honor, I move to strike that.

10 THE COURT: I would absolutely. I've told you time
11 and time again. We talked about it a while ago when you
12 were testifying. You can't say what someone else says.
13 Ladies and gentlemen, please disregard what the LLC may
14 have said or what. That's just -- the LLC guy is not here
15 to testify.

16 BY MR. DERIEG:

17 Q. And finally on Defendant's Number 14, look back at
18 that May 24, 2012, invoice 801166. Are you there?

19 A. I'm looking for it. If you tell me -- okay. Here
20 it is.

21 Q. Are you claiming Mr. Prescott owes you this money?

22 A. Yes. I am claiming that he owes me this money.
23 This was work that he had done. The original work was
24 done when he done the flooring. There was some problems.
25 He brought in another plumber during this contract to fix

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1 it. It still did not work. And he stated to me, well, if
2 I bring the plumber again you're still going to have to
3 pay for it. And I said, well, this is a problem. It
4 wasn't fixed in the first point. Why would I have to pay
5 for it. And he said, you got to pay.

6 And so, I didn't want to pay him, the same guy to
7 come back and possibly not fix it again. And so I got an
8 independent person to come in and fix that issue.

9 Q. On invoice 611, the April 29th, 2013, and invoice
10 487 of January 5th, 2015, had you already filed -- had you
11 already sued Mr. Prescott when these invoices were issued?

12 A. The one we just talked about?

13 Q. Invoice 611 and invoice 487.

14 A. 611 and -- I don't know what invoices you're
15 talking about. Are you talking about Marshall Contracting
16 invoices or the plumber?

17 Q. I'm talking about Marshall Contracting invoice 611
18 which is dated April 29th, 2013.

19 A. Correct.

20 Q. And Marshall Contracting invoice 487 dated January
21 5th, 2015.

22 A. Correct.

23 Q. Had you already sued Mr. Prescott when you incurred
24 these expenses?

25 A. Yes.

LARRY DALE ROGERS - CROSS BY DERIEG

1 Q. Looking -- may I approach again, Your Honor?

2 THE COURT: You may.

3 BY MR. DERIEG:

4 Q. Looking at Defendant's 17, what is Defendant's 17?

5 A. Defendant's 17 is a framing inspection.

6 Q. And looking at Plaintiff's Number Four, what was
7 that? Do you know what Plaintiff's Number Four is,
8 Mr. Rogers?

9 A. It is a summary of the city findings as of
10 September 7th, 2012.

11 Q. And that was Steve Smith's report?

12 A. Correct.

13 Q. And turn to that second page in the bottom
14 right-hand corner. Do you see that punch list, one
15 through 10?

16 A. On 6-29, yes.

17 Q. How is that different from what's listed in
18 Defendant's Number 17?

19 A. One thing that's different, the city investigator
20 testified that --

21 THE COURT: No, sir. He's asked you what's
22 different, not what somebody testified to. Listen to the
23 question, please.

24 THE WITNESS: I'd have to compare them line by line
25 to see exactly what's different.

LARRY DALE ROGERS - CROSS BY DERIEG

1 THE COURT: You're on cross-examination. Lead him
2 through it, please.

3 BY MR. DERIEG:

4 Q. Isn't it fair to say that these 10 on this page
5 that are handwritten are the same 10 that are the bottom
6 right corner, both dated 6-29-12?

7 A. There are some discrepancies that's not written on
8 here that is written here --

9 Q. Okay.

10 A. -- that they left off when they typed it into the
11 computer.

12 Q. Look at Plaintiff's Number Two. Plaintiff's Number
13 Two is the second contract that we've been talking about,
14 right?

15 A. That is correct.

16 Q. Would you read under agreement that first paragraph
17 titled residence?

18 A. The residence shall include the construction of a
19 single-family residence, addition of approximately 2,300
20 square feet of total area as well as porches, decks, and
21 garage. All to be constructed on the lot as set forth in
22 the plans and specifications prepared by the builder, both
23 of what are attached herein -- or incorporated herein as
24 Exhibit A, plans, Exhibit B, the specifications, both
25 having been reviewed and signed by the buyers and

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1 builders, buyers and builder. Both buyers and builder
2 acknowledge that the plans may be revised to include
3 additional items and/or more detail and that such
4 revisions shall construct either in change order or change
5 of scope as defined potentially increasing the estimate of
6 project cost.

7 Q. So, where does it talk about a basement being
8 built?

9 A. There -- well, this says there's two attachments to
10 this. I'm looking to see if I can find attachments here
11 so I can reference them.

12 Q. Specifically --

13 A. This contract references two attachments that are
14 not part of this.

15 Q. Does that paragraph reference a basement?

16 A. That paragraph does not represent a basement and it
17 does not represent a pool house.

18 Q. You got a pool house free, didn't you?

19 A. No. I had to pay for the pool house.

20 Q. Did you pay Mr. Prescott for the pool house?

21 A. I did pay Mr. Prescott for the pool house. I've
22 got bills from Prescott billing me for it. I've got
23 checks proving that I paid him for it. And I've got a
24 picture on his Facebook that states new pool house coming
25 on his Facebook that he didn't build.

LARRY DALE ROGERS - CROSS BY DERIEG

1 Q. What were you paying him for? Wasn't it the
2 materials, the labors of the subcontractors on that pool
3 house?

4 A. He had given me -- he had given me a quote what it
5 would cost. Nowhere in that quote said anything about
6 adding a builder's fee. He kept asking me to build it. I
7 had first stated I don't have my loan yet, I don't want to
8 incur a whole lot of cost until then. Can we do it then.
9 He stated, well, the framers will probably be gone and
10 with bringing them back it's going to increase the price.

11 Q. So is it fair to state --

12 A. And so I agreed, you know, let's build the pool
13 house. I thought it was a good idea. It matched the
14 house. But there was never one discussion about him
15 getting extra money personally for that.

16 Q. That was my next question. Mr. Prescott didn't get
17 a dollar for it, right?

18 A. He did get a dollar. He got his monthly
19 contractor's fee that he was on-site and if it took more
20 than five months he could have continued getting a
21 contractor's fee for \$2,500 a month.

22 Q. Well, doesn't that only include the scope of the
23 work? The 5,000 a month and the 2,500 a month after month
24 five, isn't that just for what's in paragraph one, the
25 scope of the work?

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1 A. It talks about there can be some other additions.
2 And in Prescott's statement that this was not going to be
3 any kind of basement plans after --

4 THE COURT: He's asking you about the pool house,
5 sir, not the basement.

6 THE WITNESS: No, he's asking about the contract.

7 THE COURT: No, sir. I heard the question asking
8 about the pool house.

9 THE WITNESS: All right. Please ask the question
10 again.

11 MR. DERIEG: I'm going to move on.

12 THE COURT: Thank you.

13 BY MR. DERIEG:

14 Q. Looking at Plaintiff's Number Three, why didn't you
15 pay those eight invoices?

16 A. I did not receive any of these. During the
17 testimony Mrs. Prescott provided an e-mail that showed
18 three that we got prior. I do not recall getting those.

19 Q. And that's Plaintiff's Exhibit Number Six, right?

20 A. That is correct.

21 Q. Why, why weren't the invoices in those, in Exhibit
22 Number Six paid?

23 A. That's, I don't recall receiving this.

24 Q. Is exhibit number -- does Plaintiff's Number Six --

25 A. Yes.

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1 Q. -- is that your wife's e-mail address?

2 A. It is.

3 Q. And do you recognize the Prescott e-mail address?

4 A. I do. It shows that Prescott sent it to my wife's
5 e-mail.

6 Q. On what day?

7 A. This was June 26th, 2012, the day he quit.

8 Q. Why did you tell Jeremy Kelley that if Josh didn't
9 agree to the basement under that contract that he wasn't
10 going to be allowed back on your property?

11 A. I did not tell Jeremy Kelley that.

12 Q. Why did you tell Steve Smith that Josh Prescott was
13 not allowed back on your property?

14 A. I did not tell Steve Smith that. Steve Smith, we
15 had a conversation about whether he was fired or split or
16 was it a mutual split but there was no discussion about
17 not coming on, not coming back.

18 Q. And I believe yesterday we had had some talk and a
19 little bit today about the second contract being, in your
20 opinion, an infinite contract where after five months you
21 just have this \$2,500 a month in perpetuity. Is that how
22 you see the contract?

23 A. I do not see it as infinite but I'm sure if it was
24 infinite the builder would be making a lot of money.

25 Q. And, for it to be infinite more and more things

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1 would have to be added on, right?

2 MR. ERVIN: Judge, I object. This is speculative.
3 I don't see how this is going anywhere.

4 THE COURT: You can ask the question.

5 BY MR. DERIEG:

6 Q. Well, wouldn't necessarily for this to be an
7 infinitely long contract the scope of the work would have
8 to keep getting bigger and bigger?

9 A. You know, one possibility, the scope could get
10 bigger. One possibility, they could run into some issues
11 that, you know, that was taking longer than expected.

12 Q. And for the scope of the work to change, don't both
13 you and Mr. Prescott have to agree to it?

14 A. The, the scope never changed. What's written in
15 here, the first contract had the basement --

16 Q. And --

17 A. -- and quotes prior to that had the basement.

18 Q. Did the second contract have the basement?

19 A. The second contract, this contract was prepared by
20 Prescott and it looks like he omitted it out of there.

21 Q. Did you -- you met with Jeremy Kelley prior to
22 making that phone call to Mr. Prescott where he got fired,
23 right?

24 A. Prior to that -- I do not recall meeting him prior
25 to that. He was on the job quite often, you know. When

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1 would I have met with him; I don't know.

2 Q. And you said that there was a second video that was
3 sent only to Michelle?

4 A. That is correct.

5 Q. Did you guys tell the police about the second
6 video?

7 A. Yes.

8 Q. And -- strike that. If Mr. Prescott was fired
9 would he be responsible for the work that was left
10 uncompleted?

11 A. If he was fired?

12 Q. Yes, sir.

13 A. He would -- I mean, if you fire somebody and you
14 fully paid for something and it wasn't done, he would be
15 responsible for that part of it.

16 Q. For just the work that he had completed or just the
17 work that he had done to that point, right?

18 MR. ERVIN: Judge, I'm going to object. It's
19 speculative. He testified he didn't fire him.

20 THE COURT: He asked him if he was fired. He
21 didn't ask him if he did. Overruled.

22 THE WITNESS: Ask the question again, please.

23 THE COURT: Sir, that's to an issue for the jury to
24 decide who fired who, or if anybody fired anybody, and if
25 they did what damages flow from it. The question is for

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1 the jury.

2 MR. ERVIN: Yes, sir. Thank you.

3 BY MR. DERIEG:

4 Q. What was that \$1,200 padded invoice that you were
5 talking about towards the end of your direct testimony?

6 A. It was a quote. During the project time I got
7 concerned about he was called padding the -- quote,
8 padding the invoices so that he could make more and his
9 vendors make less.

10 Q. Oh. So this was only a quote?

11 A. Right. And so I started asking. I said, you
12 know -- and my fault on some of this. He would tell me
13 verbally one and the next later. So I didn't have nothing
14 in writing. So I said, here, we're going to add
15 something, you know, I need to have a price because you
16 keep later making it bigger. And so give me a quote. And
17 so this was for the stairs. That was a demolishing of the
18 stairs and redoing the stairs from the inside of the house
19 up to the bonus room. And so he sent a quote. That's
20 what he said it was going to cost us. And I asked him to
21 break it down. And he forwarded the e-mail that he got
22 from his framer prior to sending it to me to me breaking
23 it down. And when you add it up the framer was only going
24 to get \$1,200 less than what Prescott was going to get.
25 So he was actually going to get more. And the bonus room

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1 according to the contract it is part of the scope.

2 Q. We're not talking about the bonus room. We're
3 talking about demolition of the stairs in the front,
4 right?

5 A. No, we're talking about demolition. As I
6 testified, these stairs are inside. So it's, you go
7 inside the garage, you walk inside the house. Now you're
8 inside the house. There's steps that goes up to the bonus
9 room so you can access the bonus room from inside the
10 house.

11 Q. Does anything in Plaintiff's Number Two talk about
12 stairs?

13 A. How else was you going to access the bonus room?

14 THE COURT: Please answer the question.

15 BY MR. DERIEG:

16 Q. It's not in there, is it?

17 A. The plans that could be attached to this, that were
18 not provided here by the Plaintiff's Exhibit Number Two,
19 very well could show that.

20 Q. Do you have a copy of those plans?

21 A. This is provided by Plaintiff's Exhibit Number
22 Two.

23 THE COURT: He's asked you, do you have a copy of
24 the plans?

25 THE WITNESS: I would have to look at my records

LARRY DALE ROGERS - CROSS BY DERIEG

1 and see what I have. I'm pretty sure I may have
2 something.

3 THE COURT: Was there a plan? Were there
4 blueprints?

5 THE WITNESS: There was blueprints for the bonus
6 room.

7 BY MR. DERIEG:

8 Q. Aren't there stairs outside the scope of work
9 specifically in regards to paragraph number one of
10 contract number two?

11 A. No. And another reason the stairs -- the old door
12 going into the bonus room is one of those little quarter
13 doors that goes open this way (indicating). It would not
14 meet code because it's not a full door and so that one had
15 to be replaced.

16 Q. Could that \$1,200 be considered his contractor's
17 fee for supervising construction that was not part of the
18 contract?

19 A. The bonus room was part of the contract. How else
20 are you going to access the bonus room from inside?

21 THE COURT: All right. Gentlemen, let's move onto
22 something else.

23 MR. DERIEG: Yes, Your Honor.

24 BY MR. DERIEG:

25 Q. Talk about giving Josh Prescott \$76,000. To your

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1 knowledge how much of that \$76,000 did Josh Prescott keep?

2 A. There were two checks that was 5,000 each for the
3 two months. For the other checks I would have no clue
4 what he kept unless he had checks that he wrote to the
5 vendors proving what he gave to them.

6 Q. What did you write the other -- what did you give
7 the other \$66,000 to Josh Prescott for?

8 A. For invoices he submitted.

9 Q. So that's not money going to Josh Prescott, right?

10 A. I do not know that. If it was something for
11 material from a builder, it was an invoice that looks like
12 an invoice, very well. But some of the invoices is a
13 piece of paper with some stuff written on it with no date,
14 nothing. He was just saying this is an invoice. That
15 would need to be proof -- the proof to show that one would
16 be proof from his check going to the vendor.

17 Q. When there was all this heavy machinery out at your
18 property, did you ever have occasion to jump onto any of
19 the heavy equipment and ride it around yourself?

20 MR. ERVIN: Objection, Judge. This is beyond the
21 scope of direct.

22 THE COURT: Well, he's on cross-examination. He
23 can cross him on any relevant subject. Overruled.

24 THE WITNESS: Any equipment that belonged to
25 Prescott and any of his stuff I never jumped on any of his

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1 equipment or his subcontractor's during this time of this
2 invoice.

3 BY MR. DERIEG:

4 Q. Did you jump on Jeremy Kelley's heavy equipment
5 that was out there at your property?

6 A. I was given permission to do it, yes.

7 Q. And what piece of equipment did you jump on?

8 MR. ERVIN: Judge, I don't see how this is relevant
9 to Prescott's case against him.

10 THE COURT: Overruled. What equipment?

11 THE WITNESS: It was a bulldozer.

12 BY MR. DERIEG:

13 Q. And what did you do with that bulldozer?

14 A. I, you know, moved a little of the dirt. Probably
15 about 15 minutes of work.

16 Q. Do you have any experience or training on driving
17 bulldozers?

18 A. I have experience. My dad -- I grew up -- he was
19 in the coal mining business in West Virginia. He used to
20 drive a dozer making roads. Growing up, he turned -- he
21 was doing a coal hauling, hauling coal. We had backhoes.
22 We had bulldozers. Every summer I would be the one going
23 into the creek with this backhoe cleaning out the creek
24 and I did it for the neighbors also at no cost to the
25 neighbors.

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1 Q. So you were on this bulldozer driving where, from
2 your front yard to your back yard?

3 A. It was in the back yard well away from any of the
4 construction. It was in the very, very back yard. This
5 is almost a two-acre lot.

6 Q. And did Jeremy Kelley get upset with you for doing
7 that, didn't he?

8 A. I don't recall him saying anything about it.

9 Q. Why did you wait so long to get these inspections
10 other than the city inspection?

11 A. The Hargrove inspection, I was trying to find out
12 who to get and so when I found that person I got them as
13 quick as I found somebody. Trying to get builders to come
14 out to estimate some of this stuff, I would meet with
15 different builders and the builders said, yeah --

16 MR. DERIEG: Your Honor.

17 THE WITNESS: -- this is a job I want to do.

18 MR. DERIEG: Objection, Your Honor. I was asking
19 about inspectors.

20 THE COURT: Exactly. Disregard that last builder's
21 statement.

22 BY MR. DERIEG:

23 Q. How many of Josh's subcontractors did you try to
24 hire personally?

25 A. I did not try to hire any of them personally. The

LARRY DALE ROGERS - CROSS BY DERIEG

1 framer which was in the text on it was asking Josh to let
2 him come and finish what was being done. And since Josh
3 had quit, if there was anything else that could be done,
4 you know, would he be able to do it. Since Josh quit that
5 would have nothing to do with anything under Josh's
6 profit.

7 Q. And you testified about Defendant's One, where Josh
8 says, I guess we're done. That's where you say he said
9 that he quit, correct?

10 A. No, he told me on the phone that he, he wasn't
11 coming back, he's tired of -- his word of doing things
12 free is not free in my world. When I have to pay it's not
13 free. And so on the phone he kept trying to get me to say
14 well I fired him, I fired him. I said, no, you're not
15 fired. I still need this project done.

16 THE COURT: All right. Gentlemen, we've been over
17 this a number of times. Let's move along.

18 BY MR. DERIEG:

19 Q. Looking at Plaintiff's Exhibit Number Five in that
20 top left-hand corner, who is that text message written
21 from?

22 THE WITNESS: Do we have a magnifying glass? This
23 is, it's kind of --

24 THE COURT: No, sir. We don't have a magnifying
25 glass. You can read it. Ask him if that's what it says.

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1 THE WITNESS: I'm trying to find out what date this
2 is.

3 THE COURT: Well, he's going to tell you what date
4 it is. He can lead. He's on cross-examination. Just --

5 THE WITNESS: Oh, the date. I can see some dates
6 on here. Around June 8th.. I have not quit. I'm just not
7 going to do any more extra work for free and put up with
8 all the BS.

9 BY MR. DERIEG:

10 Q. All right. Looking at Defendant's 12, I want to
11 turn your attention to the third picture in Defendant's
12 12. Didn't you contract with Mr. Prescott to actually
13 tear this stuff out?

14 A. After this happened.

15 THE COURT: After what happened?

16 THE WITNESS: After -- this is the picture of the
17 garage where it all got damaged with all of our stuff
18 still in it. It had to be fixed then.

19 Prescott -- we had asked Prescott about it. And
20 Prescott said, well, turn it into your insurance. In the
21 contractor's thing on our insurance we had to get with the
22 builder was stated that he had to be on there on the
23 insurance. So since he is covered under the insurance my
24 insurance would not pay for it.

25 And so it had to be fixed. And he was going to

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1 tear down, you know, the drywall and put things back up.
2 And then, you know, at that point after all of that got
3 down they talk about this old building was a small
4 bounce. And they said that, well, we can do something to
5 help that bounce. And we added a beam going across there
6 since we had to take everything down anyway.

7 Q. So this is all work that you had contracted with
8 Josh to do?

9 A. After he damaged it I had to get somebody to fix
10 it. And my insurance wouldn't fix it. If he's not
11 covered he wouldn't do it for free.

12 Q. When did he damage it?

13 A. This was in, sometime in mid May probably. Exact
14 date I'd have to look it up. But it's, you know, May 12th
15 to the 15th.

16 Q. So approximately a week into the new contract
17 there's all this damage that you then contract to have
18 fixed?

19 A. I didn't contract that to get fixed within that --
20 this is just when it happened.

21 Q. Was that not a change in scope of work, or a change
22 order?

23 A. It was a change order. Josh Prescott billed us,
24 you know, for this.

25 Q. And you paid those bills, right, back in May?

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1 A. We did pay the bills because anything that we
2 questioned he kept saying he would leave the job, leave us
3 to do what we're on. He was constantly saying that.

4 Q. So, you contracted him to fix what's in this
5 picture and then you paid him for it and now today you say
6 that he owes you money for that?

7 A. Yes. He caused the damage and on the bill that
8 he's, you know, trying to do it. He's wanting to get
9 paid for taking down what he damaged that we were never
10 ever going to do that. I'm sitting here, I've -- my house
11 is open. I have no roof now. I've got to do something.
12 And he constantly said if I don't do it I'm quitting. We
13 were under the gun. What do we do. Like in the video,
14 you know --

15 MR. DERIEG: Objection, Your Honor.

16 THE WITNESS: The video was part of the testimony.

17 THE COURT: Sir, let me do the rulings. Okay?

18 Disregard that, ladies and gentlemen. Thank you.

19 Disregard what he said.

20 BY MR. DERIEG:

21 Q. And looking at, I guess, page four of Defendant's
22 12, you said that was a picture that was taken on May the
23 10th?

24 A. I don't have the date in front of me.

25 Q. Isn't that what you just testified to?

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1 A. Around the May 10th. I'd have to look -- I've got,
2 these are digital photos and they have dates on them. I
3 can reference my computer and I can give you the exact
4 date and time that I done this if that's what you want.

5 Q. Why didn't you just give Mr. Ervin an exact date
6 and then --

7 THE COURT: Please answer the question.

8 MR. DERIEG: Strike that.

9 Q. In the two invoices that are referencing
10 Mr. McGee's packet of Defendant's 10, just those two
11 invoices on the back, what was that for?

12 A. This first one here was cleanup. With all the
13 debris that he left around, nails, with all the debris and
14 nails that were left around, we have a little dog --

15 THE COURT: Have a what?

16 THE WITNESS: With all the debris that's around,
17 the nails that was damaging our yard, we have a little dog
18 that we let outside to use the bathroom. And to get to
19 the stuff and potentially get stuck by nails and all of
20 that, this needed to be cleaned up. Prescott was supposed
21 to keep it clean weekly.

22 THE COURT: Go ahead.

23 THE WITNESS: And so, I had to get somebody to
24 clean it up because Prescott did not respond that he would
25 come back and clean it up.

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1 THE COURT: How much more do you got?

2 MR. DERIEG: Just a couple more questions.

3 THE COURT: Couple questions. Hold on.

4 THE JUROR: I think we need to go.

5 THE COURT: All right. Let's take a break. Don't
6 discuss the case. They'll bring you a menu.

7 (Jury exits courtroom at 11:17 a.m.)

8 THE COURT: You may step down.

9 THE WITNESS: All right. Thank you, sir.

10 THE COURT: Don't discuss your case with anyone,
11 please.

12 Where do we stand, gentlemen?

13 MR. DERIEG: I've got just one or two more
14 questions of Larry and --

15 THE COURT: Okay.

16 MR. DERIEG: -- I've got Mr. Prescott for a short
17 reply witness.

18 THE COURT: Okay. How many more do you got?

19 MR. ERVIN: Judge, I got three redirect questions
20 and that's it.

21 THE COURT: Well, I just had a juror that had to go
22 to the bathroom. That's why we stopped. Everybody take a
23 morning break.

24 MR. ERVIN: Okay.

25 (Break taken at 11:18 a.m. At 11:34 a.m., the

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1 trial resumed:)

2 THE COURT: All right. Mr. Rogers, come on back
3 up, please.

4 MR. ERVIN: Mr. Rogers, take the stand, please.

5 THE COURT: Anything from the Plaintiff before we
6 start back?

7 MR. DERIEG: Yes, Your Honor. After speaking with
8 my client, we decided that we will not be calling anyone
9 in reply.

10 THE COURT: Thank you. Anything by the Defendant?

11 MR. ERVIN: Nothing, Your Honor.

12 THE COURT: So we're going to finish up here
13 shortly. Bring the jury in for me, please.

14 (Jury enters courtroom at 11:35 a.m.)

15 THE COURT: You may proceed.

16 MR. DERIEG: Thank you, Your Honor. May it please
17 the Court.

18 THE COURT: Yes, sir.

19 BY MR. DERIEG:

20 Q. Did you do any of the demolition to your house
21 yourself?

22 A. (No response.)

23 THE COURT: Did you hear the question?

24 THE WITNESS: I'm just trying to think off the top
25 of my head. I don't recall. Is this during, while he was

LARRY DALE ROGERS - CROSS BY DERIEG

1 working, is that what you're asking? To what time frame?

2 BY MR. DERIEG:

3 Q. While Mr. Prescott was working on your property,
4 did you participate in any of the demolition to include
5 things like ripping out drywall and insulation and
6 throwing it outside?

7 A. I don't recall, but I don't recall that I didn't.

8 THE COURT: Wait a minute. Say that again.

9 THE WITNESS: I don't recall doing it.

10 THE COURT: But I don't recall I didn't?

11 THE WITNESS: I mean, I could have but I don't
12 recall doing it. I don't recall.

13 BY MR. DERIEG:

14 Q. Looking at Defendant's Exhibit 16, specifically at
15 the second page, these -- June 18, 19, 20, 21, is that
16 what the dates on the pictures are?

17 A. That is correct.

18 Q. Isn't that pictorial evidence of exactly what the
19 roofer testified that he did?

20 A. It is not. The roofer testified that he ran out of
21 titanium felt on that one area where it shows him putting
22 shingles on raw wood. He said he did that because he was
23 out of titanium felt and just was tarping it.

24 Q. Isn't there a tarp in one of those pictures?

25 A. There are tarps in the pictures. And those tarps

LARRY DALE ROGERS - REDIRECT BY ERVIN

1 were used to put over bare wood that if it rained it
2 wouldn't do it. But there was nowhere ever that they just
3 put shingles down to -- shingles to cover it when you can
4 just tarp it. You'd have to redo brand new shingles.

5 Q. And they were using tarps to protect yourself from
6 the weather?

7 A. They were using, you know, tarps in the area. They
8 weren't doing a great job of covering things.

9 Q. And, finally looking at Plaintiff's Exhibit Number
10 Four, second paragraph, would you read those two
11 sentences, please?

12 A. The second paragraph. Mr. Prescott informed me by
13 letter dated June 29th, 2012, that the owner of the
14 property had released him from the project and that he
15 would not -- he was not allowed to continue working. Josh
16 had not completed the framing portion of the project or
17 requested any inspection of this part of the project as of
18 this date.

19 Q. And who is that written by?

20 A. Brian S. Smith, the city inspector.

21 Q. Does he go by Steve Smith?

22 A. People call him Steve. I think S is his middle
23 name (verbatim) so people call him Steve.

24 Q. And did you tell Steve that Josh wasn't allowed
25 back on your property?

LARRY DALE ROGERS - REDIRECT BY ERVIN

1 A. I did not say he was not allowed on there.

2 MR. DERIEG: That's all I have, Your Honor. Thank
3 you.

4 THE COURT: Redirect?

5 MR. ERVIN: Thank you, Judge.

6 REDIRECT EXAMINATION

7 BY MR. ERVIN:

8 Q. Mr. Rogers, that letter you have in your hand, that
9 is Mr. Smith's saying what Mr. Prescott told him, isn't
10 it?

11 A. That's what it says.

12 Q. Okay. What else did Mr. Smith say Mr. Prescott
13 told him with regards to said pool house?

14 MR. DERIEG: Objection, Your Honor.

15 THE COURT: Gentlemen, the jury has heard Mr. Smith
16 testify. They know what he said.

17 MR. ERVIN: Okay.

18 THE COURT: Move along.

19 BY MR. ERVIN:

20 Q. With regards to the pool house, who built the pool
21 house?

22 A. Prescott --

23 Q. Okay.

24 A. -- & Sons.

25 Q. Did Prescott pull a permit for the pool house?

LARRY DALE ROGERS - REDIRECT BY ERVIN

1 A. He did not pull a permit for the pool house.

2 Q. Did Prescott tell Mr. Smith he built the pool
3 house?

4 A. Prescott told Mr. Smith under testimony here that
5 he did not build that pool house.

6 Q. Why would he tell him he didn't build the pool
7 house?

8 THE COURT: He can't speculate and know why he --

9 MR. ERVIN: Understand, Judge. I withdraw the
10 question.

11 THE COURT: Thank you.

12 MR. ERVIN: Sorry.

13 Q. All right. This letter from Mr. Smith, what's the
14 date on it?

15 A. September 7th, 2012.

16 Q. And at that time had you already been sued by
17 Mr. Prescott?

18 A. That is around the exact time. I don't know if
19 it's a day or two off, but it's right around when we got
20 sued.

21 Q. And who is that letter addressed to?

22 A. To whom it may concern.

23 Q. Were there any repairs still needed to be completed
24 at your house after McGee and all the other subcontractors
25 did their work?

LARRY DALE ROGERS - REDIRECT BY ERVIN

1 A. There are still some repairs.

2 THE COURT: Hold on.

3 MR. DERIEG: I'm going to object. I think this
4 goes outside the scope of cross-examination.

5 THE COURT: Of your cross-examination. I will
6 allow it but it's close.

7 BY MR. ERVIN:

8 Q. Were there any repairs still needed to be completed
9 after your subcontractors, Mr. McGee, et cetera, had
10 finished work?

11 A. There are still some repairs that needed to be
12 completed. We did not complete those at the time of this
13 one because we were trying to get the bank loan and so we
14 were doing what we could to pass that. And once the bank
15 loan came we paid for that one. And because of other
16 interests that we had on credit cards that we had to put
17 some of the stuff to get repairs on, the interest on
18 that --

19 Q. Mr. Rogers --

20 A. Sorry.

21 Q. -- I'll be more specific with you. Did you have
22 estimates as to what it would cost to do repairs still
23 needed to be completed?

24 A. Yes, I do have estimates of repairs that still
25 needs to be done.

1 Q. Do you recall what the total estimate is for
2 repairs that need to be completed is? You don't recall?

3 A. I don't recall exact number.

4 Q. Would you like a recollection?

5 THE COURT: All right. That's going way beyond his
6 cross-examination.

7 MR. ERVIN: Yes, sir.

8 THE COURT: You went through all of that before.

9 MR. ERVIN: Yes, sir. Thank you, Judge.

10 THE COURT: Thank you.

11 MR. ERVIN: Judge, I don't have any further
12 questions for Mr. Rogers.

13 THE COURT: All right. You may step down. Next
14 witness.

15 MR. ERVIN: Your Honor, the defense rests.

16 THE COURT: Thank you. Any witnesses in reply?

17 MR. DERIEG: None, Your Honor.

18 THE COURT: All right. Give me five minutes with
19 the lawyers. We'll come back and we'll hear final
20 arguments. Thank you.

21 (Jury exits courtroom at 11:44 a.m.)

22 THE COURT: Any motions by the Plaintiff?

23 MR. DERIEG: Yes, Your Honor.

24 At this time I'd like to make a motion for a
25 directed verdict. Specifically the three elements of

1 breach of contract are the contract, the breach, and the
2 damage. In the light most favorable to the Defendant,
3 I'll concede that there is at least some scintilla of
4 evidence put in through the Defendants themselves that
5 they said that there was -- well, everyone can see there's
6 a contract. Based -- and I'll concede that there is some
7 scintilla of evidence of a breach based on the Rogers'
8 testimony.

9 I don't believe, Your Honor, that there has been
10 articulated any relief for which they can, they can get
11 it. So far we have repairs from damages of 27,000 plus.
12 We've got no specific itemized list of what that \$27,000
13 was. And now we have this last number of this estimated
14 \$36,000 of repairs yet to be made. And there's no
15 document.

16 THE COURT: No, there's no testimony about 36 to be
17 made. The testimony was McGee did 27,000 and change and
18 then there was a \$6,400 invoice, another 6,500, 340, a 75
19 and 85. And then he testified that all of that, the
20 repair was 36,000 which is less than the invoices but
21 there's been no testimony about repairs to be made or the
22 amount. So it's the total he's testified is 36,000 and
23 change. 36,193.14.

24 MR. DERIEG: And it seems like at least the
25 majority of that is just being pulled out of thin air.

1 The \$27,000, I don't know what that is.

2 THE COURT: Well, I haven't looked at those
3 exhibits. And, quite frankly, yesterday all they did was
4 put the exhibit in. There was no testimony as to what
5 work was done, what it was for. And I don't know what the
6 exhibits show. I haven't looked at them.

7 But it is awfully speculative as to what that money
8 was spent on, what repairs they were talking about. In
9 fact, he just put -- what's the guy's name, McGee?

10 MR. DERIEG: Yes, sir.

11 THE COURT: Just put him up and let him introduce
12 the invoices and that was it. So I don't know what was
13 done. I don't know what the invoices show. Let me see
14 them, please, ma'am, or one of you. That would be --

15 MR. DERIEG: Defendant's 10, I believe.

16 MR. ERVIN: -- his estimated invoice was --

17 THE COURT: Defendant's 10 I think is one of them

18 MR. ERVIN: That's it. Judge, may I respond or --

19 THE COURT: Well, let me look at it first.

20 MR. ERVIN: I'll tell you what's in there.

21 THE COURT: Well, I'm looking at what's in here.

22 Well, the first invoice is for general cleanup labor
23 service call to fix a repair leak. And there was
24 testimony about the alleged debris left on site. There
25 was some testimony about a repair to an ice machine.

1 MR. ERVIN: HVAC unit.

2 THE COURT: Sir?

3 MR. ERVIN: There was also repair to the HVAC unit.

4 THE COURT: Well, it's not on this. It says
5 service call, repair leak on ice maker line in kitchen.

6 MR. ERVIN: Yes, sir.

7 THE COURT: Then the next invoice, 10-10-12, that's
8 a 30-yard dumpster. The next invoice, that's just an
9 inspection estimate.

10 MR. ERVIN: Judge, I put it to you that that
11 estimate lists work to be done and Mr. Rogers testified
12 that that work was done and showed three checks of over
13 \$13,000 that he paid Mr. McGee, and testified that the
14 majority of those payments were made for work done to
15 repair. And those repair items are listed in detail in
16 that estimate. That's where the figure came from. And we
17 have checks that he paid Mr. McGee and he testified that
18 he paid Mr. McGee for that work that was completed.

19 I think it's up to the jury to determine if
20 Mr. McGee or Mr. Rogers' testimony establishes those
21 facts. But we certainly set it, and we got cancelled
22 checks showing that he paid it.

23 In addition to that, Judge, the other invoices were
24 paid as well. So I think Mr. Rogers clearly showed that
25 by the photographs, by the estimates and by the invoices

1 that the work was done to repair work left unfinished and
2 exposed by Mr. Prescott. We got cancelled checks to show
3 it. I don't see how that doesn't exist in the record or
4 the evidence.

5 THE COURT: Where are the cancelled checks?

6 MR. ERVIN: Judge, it's three checks were made out
7 to Mr. McGee.

8 THE COURT: That's Number 17?

9 MR. ERVIN: That would be 17 right here, Your
10 Honor.

11 (Defendant's Exhibit 11 is three checks,
12 Defendant's Exhibit No. 17 is inspection report.)

13 MR. ERVIN: Judge, if I may.

14 THE COURT: You got his estimate for some \$66,000.

15 MR. ERVIN: Judge, and Mr. Rogers testified
16 clearly. He said he's not asking for all of Mr. McGee's
17 work. He's only asking for the portion they deem to be
18 repairs. And of that he's listed \$27,000 which in that
19 estimate, it takes out what is repairs and what is not
20 repairs. It's in there.

21 THE COURT: Go ahead.

22 MR. DERIEG: Your Honor, he did say that \$27,000
23 was, I guess, of the 39,000-plus was for repairs. But he
24 failed to testify as to specifically what those things
25 were that were done. And as you said, nobody asked

1 Mr. McGee what he did. So we've got no testimony in the
2 record as to specifically what it is --

3 THE COURT: Well, you don't have it specifically
4 but you could have cross-examined him on specifics. And
5 he generally said he paid 27,000. That is evidence.

6 And so I'm not concerned about the weight of it.
7 I'm concerned about the existence but certainly gives you
8 fertile ground to argue in final arguments as to how they
9 can look at that.

10 I'm going to deny your motion presently. I may
11 have to revisit it depending on what the verdict is.

12 MR. DERIEG: Thank you, Your Honor.

13 MR. ERVIN: Your Honor, if I may, I have a motion.

14 THE COURT: Well, I'm sitting here. I'll listen to
15 you if you want to make it.

16 MR. ERVIN: Judge, I want to add a directed verdict
17 with regards to their claim of attorney fees. I don't
18 believe they have any evidence in the record for it. I
19 think their claim for attorney's fees should be dismissed.

20 THE COURT: No evidence on attorney's fees, I
21 agree.

22 MR. DERIEG: Your Honor, Plaintiff's Two clearly
23 states the attorney's fees.

24 THE COURT: It does clearly state it but you got to
25 have some evidence as to what you paid. A lot of times we

1 do attorney's fees after the fact depending on what the
2 jury does.

3 MR. DERIEG: And that's how I actually assumed that
4 we were going to do this.

5 THE COURT: Well, if you prevail I'll let you make
6 a post-trial motion for attorney's fees.

7 MR. DERIEG: Thank you.

8 THE COURT: And I'll let you make a post-trial
9 motion to include whatever it would be up until the end.

10 MR. ERVIN: Yes, sir.

11 THE COURT: Don't argue attorney's fees to the
12 jury.

13 MR. DERIEG: No, sir. Yes, sir, I won't.

14 THE COURT: Anything else?

15 MR. DERIEG: Nothing, Your Honor.

16 MR. ERVIN: No, Judge.

17 THE COURT: All right. Are you ready to open?

18 MR. DERIEG: Yes, Your Honor.

19 (Jury enters courtroom at 11:54 a.m.)

20 THE COURT: All right. Mr. Foreman, ladies and
21 gentlemen. We've reached the stage of the trial where the
22 lawyers will make their final arguments. Please bear in
23 mind that the final argument is not evidence in the case.
24 It's simply the lawyers' take on the evidence. Y'all
25 heard all the evidence from which you'll decide what the

1 true facts are and decide whether or not there are any
2 breaches of contract in this case. I'll go through all of
3 that when they finish arguing, but please pay close
4 attention. Once we finish the final arguments I'll
5 instruct you on the law very briefly and then you'll be in
6 a position to decide the case. Thank you.

7 All right, sir. You may begin.

8 MR. DERIEG: May it please the Court, Your Honor.

9 THE COURT: Yes, sir.

10 MR. DERIEG: Yesterday at the beginning of this
11 trial, you heard from both myself and Mr. Ervin sort of a
12 road map as to what we thought it was that was going to
13 come out here on this witness stand. I told you that you
14 were going to hear about unpaid invoices that Mr. Prescott
15 had submitted to the Rogers and that got unpaid.

16 You heard from the stand Mr. Prescott, eight
17 invoices, Plaintiff's Number Three. You guys will have
18 all of this evidence back there to take a look at. Eight
19 invoices totaling a little over \$5,000. I believe it's
20 \$5,086 that had been submitted.

21 I also told you that you were going to hear from
22 somebody that the second they stepped -- the very first
23 day they set foot on 28 Plantation Court, started getting
24 approached by Mr. Rogers asking about prices, asking about
25 doing work outside of Mr. Prescott. Phil Padgett came in

1 and testified to that for you guys.

2 You also heard some things that were said that you
3 guys would see. Like, the Plaintiffs trying to make
4 Mr. Rogers out to be a bad guy, out to make him look
5 terrible. The Plaintiffs came in here and testified about
6 Mr. Rogers riding him around, their kid around in a dune
7 buggy and that they generally liked Mr. Rogers up until
8 they had this disagreement.

9 Nobody from the Plaintiff's side took that stand
10 and had anything negative to say about Mr. Rogers
11 personally. I think (inaudible) might have come a little
12 bit close but I still think that he was only talking about
13 profession -- whether or not payments were made. Even
14 Mr. Hutto didn't get into trying to call names or besmirch
15 his character. That didn't happen.

16 And you were told that you were going to hear about
17 Mr. Prescott going around telling other contractors, other
18 builders, other subcontractors that Mr. Rogers didn't pay
19 his bills. You didn't hear one person get on that stand
20 yesterday or today to testify that Mr. Prescott ever went
21 and said anything about Mr. Rogers not paying his bills to
22 anybody else.

23 So I want to go briefly through the witnesses that
24 have been called. The first one was a Matt McGee. Matt
25 McGee was a contractor that had been hired by the Rogers.

1 And what did Matt McGee have to add to this, we'll call it
2 a puzzle that we're putting together? He said work that's
3 unfinished for months it is going to deteriorate, it is
4 going to have to be repaired. If the work is stopped then
5 it is very naturally exposed to the weather. It's just
6 sitting there, it's going to deteriorate over time. We
7 know his estimates.

8 You see in Defendant's Number 10. You see in
9 Plaintiff's Number 10 -- you guys will have this back
10 there to take a look at. You see one invoice and you guys
11 will have an opportunity to read it, see what the invoice
12 is for; cleaning up the yard. Another invoice, same
13 thing; cleaning up the yard. And then we have a bunch of
14 estimates. You guys will have an opportunity to look at
15 all of these estimates.

16 But you didn't hear Matt McGee testify to having
17 done a single thing other than those two invoices. He
18 gave estimates. Matt McGee never testified to having done
19 anything other than those two invoices.

20 Then we have Larry and Michelle Rogers. And Larry
21 seems to see things differently than other people, than
22 everyone else actually. Just because Larry sees things
23 differently and thinks that certain things should happen
24 that aren't in reality doesn't mean that Mr. Prescott
25 breached that contract.

1 When Mr. Rogers conditioned payment upon the
2 completion of the basement that Mr. Prescott was never
3 going to get paid for, that was a breach of contract.
4 When Mr. Prescott -- when his subs were approached and
5 Mr. Rogers tried to hire them out from under him, that was
6 a breach of contract. And then when those invoices didn't
7 get paid, that was another breach of contract. So at the
8 very least we have Larry and Michelle Rogers having
9 breached this contract not one, not twice but at least
10 three different times.

11 And the fourth time we have Mr. Prescott not
12 getting his contractor's fee. He said he had gone past
13 the 40 percent that the \$10,000 would have covered. And
14 you guys will have the contracts in the back. Read the
15 contract. See what it says about when and if Mr. Prescott
16 is entitled to all \$25,000 of that contractor's fee.

17 We have Michelle. Poor Michelle. Peacemaker of
18 the family. The loving wife that went and took \$50,000
19 out of her own company and is paying it back through her
20 paychecks. The same woman who ended up having to, you
21 heard testimony, that would go and pay Mr. Rogers and pay
22 Mr. Kelley and possibly other subcontractors on the side
23 so that her husband could feel like he had won. Like he
24 had worked them down and gotten a better deal. You heard
25 Mr. Prescott get on the stand and talk about that.

1 But unfortunately Mrs. Rogers didn't have a whole
2 lot of choice here when Larry fired Josh on the 26th, and
3 approximately the exact same time Ashley was sending those
4 e-mails to Michelle. She didn't have any choice. She
5 couldn't pay them. Larry just fired the subcontractor or
6 the contractor. They needed to keep their money to go
7 find a new contractor. She didn't have any other choice
8 but to also breach the contract by failing to pay the
9 invoices that are listed here in Plaintiff's Number Three.

10 And as to whether or not they ever got those
11 invoices, I ask you guys just to look at Plaintiff's
12 Number Six and you'll see the attachments.

13 Now we have Mr. Prescott, father, husband, takes
14 pride in his business name, takes pride in being a small
15 business owner. He entered into a second contract with
16 the Rogers in order to help save them money. He was fired
17 by Larry on June 26, 2012, because he wouldn't build a
18 basement for free. Mr. Prescott only got paid \$10,000 of
19 the \$25,000 contractor fee. And I ask you guys to look at
20 that contractor's fee, whether or not Mr. Prescott is
21 entitled to all \$25,000.

22 We have Jeremy Kelley, Between the Edges, a Georgia
23 fan. He had the individual contract with -- for the
24 landscaping to make it cheaper on the Rogers. People
25 bending over backwards to make it cheaper on the Rogers.

1 On June 26th, 2012, he was with Larry Rogers when Larry
2 Rogers said, I'm not going to allow Josh Prescott back on
3 my property if he doesn't meet my demands about the
4 basement. 45 minutes later Jeremy Kelley is with Josh
5 Prescott when Larry calls Josh and Josh gets fired.
6 And he came in here and despite having to take a little
7 beating for being a Georgia fan, he came and told you
8 guys.

9 We had Chris Allen, Cornerstone Concrete. You'll
10 see his invoice back there. It's the one that, it will be
11 cut off at the bottom. It's tough to see. He's the one
12 that testified it was \$165 and plus tax, be \$177. And
13 when I asked if his invoice is paid by Mr. Prescott,
14 Prescott always paid his bills.

15 And Joe Voigt, Crazy Joe's Containers, he told you
16 he messed up one of the invoices and put Plantation Point
17 instead of Plantation Court but he says that he did
18 confirm three invoices that are part of Plaintiff's Number
19 Three, invoices 673, 678, 681 for 291, 354 and 309 were
20 all paid by Josh Prescott because Josh Prescott always
21 pays his bills.

22 Jan Bentley, she drove all the way from Lincolnton,
23 Georgia to tell you Mr. Prescott paid invoice number 51625
24 and that he always pays his bills and that he paid her
25 \$89.30. Robbie Barrett came in same thing. One invoice,

1 invoice number 6309. He was paid \$367.68 by Mr. Prescott
2 as Mr. Prescott always pays his bills.

3 And you had old Floyd, Hutto Roofing. He had one
4 invoice that he was able to tell you after borrowing the
5 Judge's glass that it was \$3,000. And in fact Floyd's and
6 Mr. Barrett's invoices are some of the invoices that show
7 up both in Plaintiff's Exhibit Number Three and
8 Plaintiff's Exhibit Number Six. Compare those two.

9 And Mr. Hutto said he was paid \$3,000 by Josh
10 Prescott and Josh Prescott always pays his bill. And we
11 have Phil Padgett, the framer. He's the one that said the
12 first day that he steps foot onto that property at 28
13 Plantation Court Mr. Rogers immediately started trying to
14 negotiate things with him specifically. Despite having
15 been told and in the contract that he is not allowed to do
16 so, Mr. Rogers would go and specifically try and engage
17 Mr. Padgett to either change the price or even work out
18 from under Mr. Prescott.

19 Mr. Padgett was also the person that was with Josh
20 when that infamous now video was sent. And you heard him
21 tell you that Josh was laughing. And you heard the video.
22 He was laughing and joking when he sent it. And that
23 video a year and a half later, a police report gets filed.

24 And the only thing Phil Padgett really had negative
25 to say about Mr. Rogers was that on Fridays when the

1 invoices were due, may have been submitted on Thursdays
2 and he had to pay all the money he'd get a little
3 temperamental, a little hostile. But other than that
4 that's about the worst thing that anybody that the
5 Plaintiffs called to the stand said about Mr. Rogers.

6 And you got Steve Smith. Old Steve Smith used to
7 be a City of Augusta or City of North Augusta inspector.
8 The man got out of bed, put on clothes, left his
9 retirement and drove down here. He's not connected to any
10 of these parties. He doesn't have any bias. He's a
11 retired city inspector. He told you that Larry told him
12 that Josh Prescott was not allowed back on his property.
13 And in fact what Mr. Rogers told Steve Smith matched up
14 almost identically with what Mr. Prescott told Steve
15 Smith. And he came in here and told you guys that.

16 And we got Ashley, the mother, wife, office
17 manager. And she didn't realize until yesterday that the
18 veracity of these invoices was being challenged. She
19 didn't understand that. Until yesterday she didn't
20 understand that the Rogers were claiming she never sent
21 those invoices. So -- and you saw the Prescotts show up a
22 little late after lunch yesterday. They went and printed
23 out Plaintiffs Six, Seven and Eight.

24 You'll have the building application in Plaintiff's
25 Number Seven. It shows the Regions paperwork that Ashley

1 spent hours that morning filling out and that she sent
2 almost contemporaneously as Josh was getting fired.

3 You'll see in Plaintiff's Exhibit Number Eight
4 there's a general contractor's license which you heard
5 replaces the residential contractor's license, and a
6 certificate of liability insurance. And you'll see the
7 e-mail that says a bank has to have those things for a
8 loan to go through.

9 A loan, by the way, that will be going to pay
10 Mr. Prescott. Does it make sense that Mr. Prescott would
11 have his wife spend hours filling out this paperwork if he
12 was just going to quit? I mean, almost immediately upon
13 her completion of that paperwork that he's just going to
14 quit, and she's putting paperwork together to get them the
15 thousands of dollars that they're owed and he's just going
16 to quit.

17 Michelle told you that -- excuse me. Ashley told
18 you that she would typically just forward on the invoices
19 when she would get them, almost immediately. But
20 yesterday when she had to sit in here and listen to her
21 husband get grilled and have proof that any of these
22 invoices were ever even sent, you saw how emotional she
23 got. She came -- she went and printed those things out,
24 brought them to court, got on the stand and let out about
25 two and a half years of frustration telling you guys about

1 what had happened.

2 And she just picked -- because we only had an hour
3 lunch period, she picked one day. And in that one day you
4 see three e-mails with attachments and invoices and the
5 bank records. And ask yourself: What makes sense. Did
6 Ashley fail to send any of those other three or those
7 other five and somehow magically Michelle never received
8 Plaintiff's Number Six? Or, did those actually get sent
9 and just not get paid?

10 And there have been some things throughout this
11 case. An old boss of mine called them smoke screens. I'm
12 not sure if that's the exact right word for it. I've been
13 trying to think of a different word for it for the last, I
14 don't know, 18 hours but I can't come up with anything
15 better than smoke screens.

16 The first one, denying any memory of ever having
17 received Plaintiff's Number Six. And with all the other
18 e-mails and all the text messages that have been saved and
19 submitted, does it make sense that this one is magically
20 the one that Michelle either didn't get or doesn't
21 remember?

22 You had Mr. Rogers sit on that stand and tell you
23 that he never told Jeremy Kelley that Mr. Prescott wasn't
24 going to be allowed back on his property and then he told
25 you that he never told Steve Smith that he wasn't going to

1 let Josh Prescott back on the property.

2 I don't know if there's any bigger smoke screen in
3 this case than this missile video. It certainly was an
4 entertaining 17 seconds today, but I don't know whether
5 that even comes in. And you've heard the testimony that
6 Michelle was joking and laughing and sent it to Larry and
7 Larry got a real kick out of it. You heard Phil Padgett
8 come in and tell you guys that.

9 Please read Plaintiff's Number Two. Read the
10 second contract, specifically paragraph one and see if the
11 basement or stairs is mentioned in that paragraph or
12 anywhere in this document.

13 And the text messages. You kept hearing about, I
14 guess we're done. I'll let you know what you owe me. I
15 think you heard that same thing over and over and over.
16 Is that being Josh's manifestation of quitting at least
17 per Michelle?

18 Well, when you look in Plaintiff's Exhibit Number
19 Five you'll see it says even prior to the 26th he's not
20 quitting, he's just not doing any more work for free.
21 You'll have all of these text messages back there. You
22 can read them. You can go through them. We got the whole
23 set in all five pages so you can see what those
24 conversations were like.

25 And the Judge is going to tell you that you can

1 come back with one of three verdicts. You can find a
2 breach of contract -- you can find that the Rogers
3 breached the contract towards Mr. Prescott; you can find
4 Mr. Prescott breached the contract with Mr. Rogers; or you
5 can find that nobody breached the contract, that nobody
6 was at fault, nobody did anybody wrong.

7 Clearly somebody breached the contract because on
8 June 26th, 2012, the work of Prescott & Sons Construction
9 along with all of his subcontractors ceased. And it's up
10 to you guys to sit here and you have listened to the
11 evidence, listened to the testimony. And I asked you
12 yesterday to pay attention to the witnesses. See if they
13 are forthright with their answers, do they look like
14 they're searching, if their answers are consistent, if
15 their answers made sense. That's your job as the judge of
16 the facts to determine who's credible, who's believable.

17 It's up to you to determine the facts and give the
18 weight to each piece of evidence that you deem proper. So
19 judge, think about the people that we've gone over that
20 sat in that stand. Think about who had a bias to come in
21 here, who didn't, and what they testified to.

22 And Josh Prescott is owed the more than \$5,000 that
23 has come out of his pocket to these eight invoices in
24 number three. I ask you to double-check my math because
25 I'm a lawyer, not a finance guy. But my math says that

1 it's a little over \$5,000. And you've heard some
2 testimony about the mechanic's lien and some faulty math
3 that was done. So check my math. I think it's a little
4 bit more than \$5,000. It's approximately 5,086.

5 And then read number two. Read Plaintiff's Number
6 Two and make the determination as to whether or not Josh
7 was owed the additional \$15,000 as the contract says.

8 It's the Plaintiff's position that there was a
9 breach of contract and it was Larry and Michelle Rogers
10 that breached that contract by trying to hire out their
11 subs, by not paying them, and by firing Josh.

12 The Plaintiffs are asking for approximately
13 \$20,086. It's the right thing to do. 5,000 and change
14 has come directly out of this man's pocket for work that
15 was done on Larry's house. It's not a benefit that Larry
16 should, Larry and Michelle should get to have. They don't
17 get to have free work. Josh stood up and told them that,
18 no, you have to pay for your work.

19 And that's what we're asking you to do as well.
20 When you go back and you have your three choices, I submit
21 to you that the only correct choice would be to find for
22 the Plaintiff in the amount of \$20,000, \$20,086. Thank
23 you.

24 MR. ERVIN: If it may please the Court. Ladies and
25 gentlemen -- ladies and gentleman. Once again, thank you

1 so much for listening to this. I know it hasn't been the
2 most riveting day and a half in your lives but I beg your
3 patience for just a few more minutes for me to tell you
4 our side of the story. I know it's getting close to lunch
5 but this is a big deal to my clients and we're almost
6 done. At least you didn't get the three-week term for
7 next week.

8 I'm going to try and use this easel, trying to map
9 it out but I'll refer to my notes just to stay on track so
10 I'm not all over the place. Judge, I'll do it so you can
11 see it too.

12 Ladies and gentlemen, first and foremost
13 Plaintiff's Exhibit Number Two shows the existence of a
14 contract between the Plaintiff and the Defendant. That
15 contract is for the dates of May 1st to June 26th, 2012.

16 Okay. First both parties allege there's a breach
17 of contract. One says the other breached. For
18 Mr. Prescott, he claims that my client breached the
19 contract by talking to his subs and then not paying
20 invoices. Now, there's a great deal of he said/she said
21 with regards to these two issues.

22 With regard to the subcontractors, Mr. Prescott
23 claims that right out of the gate Larry Rogers negotiated
24 with the subcontractors and dealt with them without his
25 permission. And I asked Mr. Prescott, is there any

1 occasion where he gave permission for the Rogers to talk
2 to the subcontractors.

3 First -- well, on his direct testimony he said that
4 he never gave permission for that to happen. And then
5 subsequent to that we elicited testimony where it happened
6 at least three times, by his permission, where he was out
7 of town. Larry and Michelle, please pay Phil Padgett for
8 the framing. They paid him directly. And then several
9 other subs. So to say that they breached the contract by
10 doing what the contractor gave them permission to do is
11 absolutely -- it falls short. It's not a breach. That's
12 in the evidence. That's on the record. It's testimony.

13 The second breach that the Prescotts claims the
14 Rogers committed was with regards to the invoices. He
15 submitted eight invoices that were not paid. In the
16 contract it states that Mr. Prescott is to submit invoices
17 to the Rogers and they are to pay. The only invoices he
18 claims were unpaid were the eight that were attached to
19 the mechanic's lien. The only evidence that the Rogers
20 ever received those invoices was the e-mail from Ashley
21 Prescott on June 26th, the same day they claim either he
22 quit or that he was fired.

23 In addition to that, the evidence only shows that
24 Ashley Prescott sent three of the eight invoices. So I
25 put it to you on June 26th, how could the Rogers breach

1 the contract if the contract terminates somehow on the
2 26th? The invoices were sent to them on the 26th. They
3 didn't -- they had 30 minutes to pay the invoices or
4 they're in breach of contract. Is that what you are to
5 believe?

6 That's not what happened. They paid everything up
7 until June 26th. The testimony is they paid close to
8 \$80,000 to Mr. Prescott. They paid their bills. They
9 left no invoices unpaid except for on June 26th when the
10 contract was terminated. And there's plenty of testimony
11 that Mr. Prescott quit the job. Mr. Rogers said on many
12 occasions: Prescott said, I'm leaving, I'm leaving, I'm
13 done. We actually have evidence where he says he's done.

14 That leads me to the breach on the part of the
15 Defendants -- on the part of the Plaintiffs. I'm sorry.
16 How did Prescott breach the contract? How did the Rogers
17 claim Prescott breached the contract? First, the contract
18 says that Prescott is to receive payment by a flat fee and
19 that the invoices are to be paid directly -- well, the
20 invoices are to be paid penny for penny to the
21 subcontractors.

22 Larry Rogers testified that at least on one
23 occasion he caught Mr. Prescott padding the invoice during
24 the contract where Prescott is only to receive a flat fee.
25 So, you're to take that testimony as you will, but the

1 testimony was Prescott enhanced the invoice because he was
2 sick of putting up with all the aggravation.

3 Now, that phrase sounds familiar. In the text
4 messages he even repeats that phrase. So is it possible
5 Mr. Prescott said it more than once? Well, he said it in
6 his text, sick of putting up with all the BS. Mr. Rogers
7 says he padded the invoice because he's sick of putting up
8 with all the aggravation. He's due more money.

9 Well, the contract says he doesn't get a part of
10 the invoice. He gets a flat fee. That's a breach of
11 contract. He's not to pad those invoices because he's
12 aggravated and doing more work and feels he should be paid
13 more. He should renegotiate the contract if he wants more
14 money, but he didn't do that.

15 Finally the biggest breach. He quit. On more than
16 one occasion he said he would quit. In the text message
17 he said, all right, I'm not quitting now. But finally on
18 June 26th he does quit. He leaves the job site. He
19 leaves a significant portion of this work unfinished and
20 exposed. All right.

21 Those are the breaches that we heard about today.
22 I put it to you, which makes more sense? That Larry and
23 Michelle Rogers tried to negotiate with the subs behind
24 his back, or, as he even admitted, he gave them permission
25 to do so when he wasn't around to deal with certain

1 things?

2 The invoices that were received on June 26th, they
3 breached it by not paying it the minute they received
4 those invoices. By the way they only received three of
5 the eight, evidence shows, when they paid up to \$80,000 to
6 that point. Who's telling the truth here? Who really
7 breached the contract?

8 In addition to breach, let's talk about bias.
9 Sorry about my handwriting. It's atrocious. Bias.
10 Credibility. A lot of the testimony is verbal today. We
11 had a great deal of evidence here but a lot of the
12 evidence is by testimony. And the testimony for the
13 Plaintiff, the testimony for the Defendant, you have to
14 judge whether or not these people are biased.

15 I put it to you that everybody who testified for
16 Mr. Prescott can be biased towards him because, one, they
17 are paid by him. They are his employees or they're his
18 partners and colleagues. They work with him all the
19 time. Mr. Kelley said he gets at least one job a year.
20 They're pretty good jobs. These guys get paid a lot of
21 money when they work with Mr. Prescott. Mr. Hutto about
22 jumped out of his seat during his testimony. I could
23 barely get a question in because he was adamant,
24 Mr. Prescott pays his bills. He's my boss. I work for
25 him. Mr. Hutto also corroborated that he left the roof

1 unfinished and exposed. We got testimony that roofing
2 nails were in the HVAC unit that had to be repaired.
3 Pictures of the roof left unfinished and exposed. That's
4 where our damages come in.

5 Mr. McGee was testifying -- who testified for my
6 clients, was he biased? Not in least bit. He was hired
7 to finish the job. Hired sometime later in November.
8 After June 26th. November was when he finally got hired.
9 Now why the delay? Plenty of testimony from the Rogers
10 regarding the delay being based on financing.

11 Now let's talk about that. I'm going to call this
12 motive. What did either party stand to lose if they
13 breached or if the contract terminated? Well, let's see.
14 What did the Plaintiff stand to lose? All right. If the
15 contract was terminated and he didn't get what he was
16 entitled to out of the contract then he was out the eight
17 invoices, okay. 5,000 and some odd dollars. Well, really
18 it's three invoices because they've only proven that Larry
19 and Michelle even received three of those eight. So you
20 do the math there, but that's less than \$5,000.

21 All right. And those invoices were the same day
22 that Mr. Prescott was allegedly fired. Well, so he loses
23 that money. What else? His wife had the unduly
24 burdensome task of filling out that loan paperwork for
25 hours. Look at that.

1 Beg your indulgence, ladies and gentlemen. I think
2 it's important that you see the paperwork that took hours
3 to complete. It's one page. It's a standard document
4 that contractors fill out for bank loans. This is what
5 they had to put up with that day. Why would they do
6 that?

7 Well, what else did they stand to lose?
8 Mr. Prescott claimed that loan was part of that money they
9 were going to get paid out of. They were already paid
10 \$80,000. So he didn't stand to lose a whole lot at all if
11 he walked off that job. He loses a couple grand in
12 invoices. He's already been paid \$80,000 and his wife had
13 to fill out a full page for the bank payment.

14 What did Larry and Michelle stand to lose? They
15 paid \$80,000 out of a 401(k) and life insurance policy
16 that if it wasn't paid back within the year they got
17 penalties, interest. They don't get the \$400,000. Their
18 home which they live in is left exposed and unfinished.
19 What incentive does that give them to fire Mr. Prescott?
20 Wouldn't it have made more sense if they got the loan then
21 fired him? Why would they fire him and then send him the
22 loan paperwork the same day?

23 Because, what happened after that? They didn't get
24 the loan. They defaulted on the 401(k), got penalized.
25 It took them at least three months to get financing enough

1 to hire a contractor and then they found a contractor to
2 do the work. Took until November. So they lost a
3 substantial amount of money.

4 Something -- and then something to the tune of
5 \$36,000 in damages to the property that they had to get
6 repaired. Who lost more than they did? Who stood to lose
7 more? Clearly the Rogers lost out. Did they bring that
8 upon themselves or is that what happened as a result of
9 Mr. Prescott breaching the contract?

10 All right. I'll spare y'all the rest of the
11 penmanship there.

12 Talk about credibility real quick. Mentioned
13 Mr. Prescott going back and forth as to whether he gave
14 permission for the Rogers to talk to the subcontractors.
15 Clearly he did. He said he didn't. But within a few
16 minutes of his testimony he's contradicting himself. In
17 addition to that one pretty big credibility issue is
18 Mr. Smith, the city inspector, stated Mr. Prescott didn't
19 build that pool house because he had to pull a permit to
20 do so and he told me he didn't build the pool house
21 because if he did he would have been working without a
22 permit which was a violation which he would have been
23 fined for.

24 Well Mr. Prescott actually built the pool house.
25 So he lied to the city official. The city official comes

1 in here and says, Mr. Prescott tells him he can't come on
2 the job site any more. Well he lied about the pool house,
3 do you think he might have fudged that a little bit so he
4 could get paid under this contract?

5 All right. Finally we're going to talk about
6 damages. My client stated clearly he had to hire somebody
7 to come fix the work Prescott left unfinished and exposed.
8 Mr. McGee, Marshall Contracting and the other invoices
9 total for repair work done \$36,000, \$36,193.14. That's
10 how much it cost him to repair the work left. Not to
11 finish the job. To finish the job is much more than
12 that. You'll see the estimate is much more than that.
13 The work McGee did beyond repairing was significant and
14 this is represented in the invoices.

15 In addition to that, the contract allows my client
16 to ask you for attorney's fees. He has hired two attorneys
17 over the course of two years dealing with this litigation.
18 That amount at the time of, before the trial was \$7,409.
19 That amount accrues as we sit here.

20 Finally the video. We started the morning out with
21 a bang. It may seem like a silly little app but think
22 about it. One year after that video was sent my clients
23 are out tens of thousands of dollars. Their home is not
24 finished. The contractor who sent them that video
25 basically sent them a video of their house being

1 destroyed. Their house literally was destroyed. Their
2 credit was destroyed. Their financing was destroyed. So
3 it kind of --

4 THE COURT: All right, sir. Credit and finances is
5 not an issue in this case. So disregard that, ladies and
6 gentlemen.

7 MR. ERVIN: Disregard that, ladies and gentlemen of
8 the jury. I think you get the point. I'm going to stop
9 talking. I think you guys understand what we need here.

10 My clients did not breach the contract.
11 Mr. Prescott did. You need to find for them. You need to
12 give them a little bit of their money back.
13 Mr. Prescott's got plenty of it already. Thanks a lot.

14 THE COURT: Anything in reply?

15 MR. DERIEG: No, Your Honor.

16 THE COURT: No further arguments?

17 MR. DERIEG: No, sir.

18 THE COURT: Okay. All right. Mr. Foreman, ladies
19 and gentlemen. My little charge is about 10 minutes.
20 Everybody okay?

21 THE JURY (COLLECTIVELY): Uh-huh.

22 THE COURT: All right. Let me first of all tell
23 you what your job is in this case. Obviously we all know
24 it's a breach of contract case.

25 The Plaintiff says the Defendant breached the

1 contract, he's entitled to damages. The Defendant says
2 the Plaintiff breached the contract and he's entitled to
3 damages.

4 So you got to decide if the contract was breached
5 and if so who breached it. And if you decide that it
6 wasn't a breach then they walk out of here in the same
7 position they're in now.

8 So the jury verdict form will have three options.
9 If you find that the Defendant breached the contract then
10 the Plaintiff is entitled to damages and you have to put
11 the amount. Or you find the Plaintiff breached the
12 contract and the Defendant is entitled to damages and you
13 put the amount, or you find neither one of them breached
14 the contract and there's no damages awarded. So those are
15 your three options.

16 So, we all in this case have had -- obviously we've
17 had various roles to play. The law makes my position,
18 makes me the judge of the law in the case. So you have to
19 accept the law as I give it to you.

20 More importantly the law makes you the judges of
21 the facts in the case. And as I told you when we started,
22 this case will be like all the other thousands I've
23 tried. You're going to hear one said say one thing and
24 the other side say the other thing. It's up to you to
25 determine who you believe.

1 Now, since you are the judges of the facts -- if at
2 any time during the trial of the case I've rolled my eyes
3 or frowned or smiled or whatever up here, I cannot have an
4 opinion about the facts. So disregard anything, if I did
5 anything, that you think I do have an opinion. Just
6 disregard it. I listen to cases day in and day out and I
7 just can't have an opinion about the facts. That's not my
8 job. That's your province. So please disregard anything,
9 if I have done anything, that would lead you to believe
10 that I have an opinion about the facts.

11 Now, because you are the finders of the facts
12 obviously you determine the credibility of the witnesses
13 who have testified in the case. Credibility simply means
14 believability. Who did you believe in this case. It is
15 your duty as jurors to evaluate the evidence and determine
16 which evidence convinces you of its truth.

17 In doing that you can believe one witness over
18 several, several witnesses over one. You can disbelieve
19 everything a witness says. You can believe everything he
20 says. You can believe a little bit and disregard the
21 rest.

22 Just do this for me. You know, you deal with
23 husbands, wives, friends, children, employees, employers.
24 You've been doing it all of your life. You know how to
25 judge when somebody's telling you the truth. You use that

1 same common sense in determining what the credibility of
2 these witnesses who have testified in this case, then
3 you'll be in a position to render a true and just verdict.

4 You have the right to determine whether a witness
5 has an interest in the result of the trial, whether the
6 witness is prejudiced towards either the Plaintiff or the
7 Defendant, the opportunity for the witnesses to have seen
8 the matters and things about which they may testify and
9 even the way the witness acts on the witness stand.

10 In this case one of the parties is a corporation.
11 In our courts no distinction is made between corporations
12 and individuals. The corporation is a person in the eyes
13 of the law. The corporation is entitled to the same fair
14 and impartial consideration and to justice by the same
15 legal standards as an individual. This case is not a
16 corporation but is what we call a limited liability
17 corporation, same thing.

18 As I told you in my opening remarks to you, for the
19 Plaintiff to prevail or for the Defendant to prevail,
20 since they're both claiming each other breached the
21 contract, they both have the burden of proof in their
22 specific, or their cases.

23 So, the Defendant is, he's trying to prove the
24 Plaintiff breached the contract or the Plaintiff's trying
25 to prove the Defendant breached the contract. They both

1 have to do it by what we call, as I told you, the
2 preponderance or greater weight of the evidence. It is
3 evidence which as a whole shows that the act sought to be
4 proved is more likely true than not.

5 And judges all over the state use different
6 illustrations, but I use the one with the scales. They
7 come in on equal footing. Whichever one's going to
8 prevail, if any, they have to move the evidence in their
9 favor. 50 yard line, puts you just barely over. So both
10 of them, in order to prove their claims, they have the
11 burden of proving it by the preponderance or a greater
12 weight of the evidence, or you may find that neither one
13 of them has proved that anybody breached the contract and
14 neither one of them are entitled to anything. That's
15 entirely up to you.

16 Now let's talk about what we've got here in this
17 case which is -- obviously you probably don't think I'm
18 young enough to use an iPad but I'm trying to. And I'm
19 not doing a very good job because I can't go from one page
20 to the next. My law clerk should be doing this for me but
21 she's sitting over there doing something else.

22 THE LAW CLERK: It would be my fault.

23 THE COURT: It's always the law clerk's fault.

24 THE LAW CLERK: Judge, would you like me to do that
25 for you?

1 THE COURT: I think I found it.

2 THE LAW CLERK: If not, I'd be happy to help you.

3 THE COURT: Aren't you supposed to be able to tip
4 something and you go right to it?

5 When I first went on the bench they gave us these
6 huge notebooks, all the stuff on civil cases and criminal
7 cases. And I could go right that. I knew what page I
8 could turn to. Now they give us a little iPad and it's
9 amazing. They've taken all the books away from up here.
10 Everything is on the iPads, but I've been using them a
11 long time so I really know how to do it.

12 All right. In this case, as I told you earlier,
13 the Plaintiff claims the Defendant breached the contract.
14 The Defendant claims the Plaintiff breached the contract.
15 In order for them to prove that they must prove by the
16 preponderance or greater weight of the evidence several
17 things.

18 The first thing they have to prove is that there is
19 in fact a contract. Well, I think everybody in this case
20 agrees that we got a contract. It's Exhibit Two. So
21 that's not -- there is a contract. It gives both of them
22 certain rights against the other.

23 Now the second thing they have to prove to you by
24 the preponderance or greater weight of the evidence is
25 that one of them breached the contract. The word breach

1 simply means that they have failed and without legal
2 excuse to perform the promises that forms the contract.
3 This includes the refusal of a party to recognize the
4 contract or doing of something inconsistent with the
5 existence of a contract. A party breaches a contract when
6 that party does not perform as agreed under the terms of
7 the contract by failing to carry out a term, promise or
8 condition of the contract.

9 There is a -- some contentions in this case that
10 either of the parties prevented the other one from
11 performing the requirements of the contract. The law is
12 that when two people make a contract each one is required
13 to allow the other one to perform their part of the
14 contract without interference. Each party must reasonably
15 avoid any action which would effectively prevent the other
16 party from doing what was agreed on in the contract. So
17 if you find that neither one of them prevented the other
18 one from performing, then obviously there wouldn't be the
19 breach.

20 Now, if you find that one or the other breached the
21 terms of the contract then you must turn your attention
22 towards damages. And each one of them must prove their
23 damages by the preponderance or greater weight of the
24 evidence that each one of them suffered damages which were
25 proximately caused by the breach of the other party.

1 They don't have to prove the damages to a
2 mathematical certainty but they obviously cannot be left
3 to speculation or guesswork. The law says that damages
4 are designed to try to put a person in the same position
5 that he or she would have been in had the contract not
6 been breached. That makes sense.

7 Actual damages that a party sustains from the
8 breach of the contract is to put him or her as closely as
9 possible in the same position that he or she would have
10 been in before the breach of contract. In other words,
11 they are the actual losses and expenses which the party
12 has suffered because the other side breached the contract.

13 Generally those are the out-of-pocket expenses
14 actually paid as a result of the breach of the contract.
15 Pretty simple common language.

16 Either side has the duty to what we call minimize
17 the damages caused by the breach. So either party has to
18 do what an ordinary, reasonable, prudent person would have
19 done in like circumstances. So they have to use
20 reasonable care to reduce the losses.

21 So, just that's pretty common sense stuff. If you
22 got a contract and you don't do what you're supposed to
23 and you got damages that flow from it then you're entitled
24 to it if you can prove it by the preponderance or the
25 greater weight of the evidence.

1 Your verdict must be unanimous. All 12 of you have
2 to agree. Once you all come to an agreement then please
3 fill out the verdict form, I'll go over that with you, and
4 let us know.

5 If during your deliberations you have a question
6 about anything, the protocol is that you write it out on a
7 pad that you'll have back there and knock on the door and
8 they'll hand it to me. Sometimes I can answer it,
9 sometimes I can't. Depends on what your question is.

10 We're not here to reward any friends or punish any
11 enemies. I'm just asking that you make a careful
12 deliberation on what you believe the testimony to be,
13 apply the law as I've given it to you and you'll be in a
14 position to be fair to both of these parties.

15 Your choices, as I told you earlier, are three. If
16 you find that the Defendant breached the contract, then
17 the Plaintiff is entitled to damages. It would be the
18 first one. If you find that the Plaintiff breached the
19 contract and the Defendant suffered damages, it would be
20 the second one, we find that the Plaintiff is entitled to
21 damages in the amount of. Or, we find the Defendant in
22 the amount of. Or, if you find that the contract was not
23 breached at all, it would be no damages. Then you do the
24 third one. Pretty simple. Whichever one you unanimously
25 agree on, check it, sign your name, date it, knock on the

1 door and we'll get you back in the courtroom.

2 Lunch here yet?

3 THE BAILIFF: I'm not sure.

4 THE COURT: Your lunch has been ordered. So if you
5 want to go on back and start deliberating, when lunch
6 comes you can deliberate while you eat, you can take a
7 break while you eat but you can't be excused from the
8 deliberations. If somebody just has to be excused for a
9 few minutes you need to stop deliberating until they
10 return. In other words, if somebody needs go to the
11 bathroom, whatever.

12 I'm going to send you back to the jury room. I'm
13 going to ask you not to start deliberating quite yet. I
14 have to ask the lawyers if I've left anything out of my
15 charge. We have to very quickly go through the exhibits
16 to make sure we have everything in order. Then I'll send
17 the verdict form and exhibits back to you and then when
18 you get that then you may start your deliberations.

19 THE JUROR: May I go out to my car? I have to make
20 a call. I have to see somebody at 1:30. And I'm just
21 going to let them know I won't be able to make it.

22 THE COURT: Your phone's in your car?

23 THE JUROR: Yes, sir.

24 THE COURT: Do you know the phone number that
25 you're going to call?

1 THE JUROR: I don't know the phone number.

2 THE COURT: It's in your telephone?

3 THE JUROR: It's in my phone.

4 THE COURT: That's the way I do. I can use my
5 iPhone.

6 ANOTHER JUROR: Is there a phone here that I can
7 use?

8 THE COURT: Yes, ma'am. Let's do this. While I'm
9 asking the lawyers if I've left anything out, you go into
10 my chambers. Mr. Whittle will show you. Use my phone in
11 there. You're welcome to go to your car to make your
12 phone call. Don't start deliberating until everyone is
13 back there. Okay? Fair enough?

14 THE JUROR: Yes.

15 (Jury exits courtroom at 12:49 p.m.)

16 THE COURT: All right. Gentlemen, any objections,
17 requests, additions, or deletions to the charge by the
18 Plaintiff?

19 MR. DERIEG: None, Your Honor.

20 THE COURT: By the Defendant?

21 MR. ERVIN: Nothing, Judge.

22 THE COURT: Gentlemen, please come up and review
23 the exhibits, review the verdict form so we can get it
24 back to the jury. The clerk will assist you, or the
25 reporter will assist you.

1 (Lawyers comply.)

2 MR. ERVIN: Fine. Got it. Looks good to me Judge.

3 THE COURT: Let the record reflect that both
4 lawyers have reviewed all the exhibits and they are in
5 order and/or accounted for. They both reviewed the
6 verdict form and are in agreement to it.

7 I will hand all the exhibits and the verdict form
8 to the bailiff. He will take them back to the jury room.
9 Make sure that all jurors have returned. I let one go
10 make a phone call. Just hold onto them until they all get
11 back.

12 THE BAILIFF: Hold onto all of this until they get
13 back.

14 THE COURT: Isn't that what I said?

15 THE BAILIFF: Thank you.

16 THE COURT: All right. Gentlemen, anything for the
17 record before we break while the jury deliberates?

18 MR. DERIEG: Nothing from the Plaintiff.

19 MR. ERVIN: Nothing from the defense, Judge.

20 THE COURT: Y'all sort of sit tight. We may have
21 some questions. I don't know how long it's going to take
22 them to reach a verdict.

23 MR. DERIEG: Yes, sir.

24 (Deliberations commenced at 12:52 p.m. The jurors
25 thereafter had a question which was answered by the Judge

1 on the same note, marked as Court's Exhibit No. 2. At
2 3:17 p.m., the trial resumed:)

3 THE COURT: Plaintiff ready to receive the
4 verdict?

5 MR. DERIEG: Plaintiff's ready.

6 THE COURT: Defendant?

7 MR. ERVIN: Defendant's ready, Your Honor.

8 THE COURT: All right. Bring the jury in, please.

9 (Jury enters courtroom at 3:17 p.m.)

10 THE COURT: Already. Mr. Foreman, have y'all
11 reached a verdict?

12 FOREPERSON OF THE JURY: Yes, sir. We have.

13 THE COURT: If you'd hand it to Ms. Jimmie, please.

14 FOREPERSON OF THE JURY: This is just scratch
15 paper.

16 THE COURT: Did you not save the note?

17 FOREPERSON OF THE JURY: It's saved with the
18 evidence.

19 THE COURT: He did one thing right. Good job.

20 FOREPERSON OF THE JURY: Let's see if I signed it
21 right.

22 THE COURT: You signed it. You did a good job.

23 THE CLERK: Your Honor, in case number

24 2012-CP-02-2382, Prescott & Sons Construction, LLC, versus
25 Larry Rogers and Michelle Rogers. We find for the

1 Plaintiff, Prescott & Sons Construction, LLC, in the
2 amount of \$18,166.03.

3 If this is your final verdict, please indicate by
4 raising your right hand.

5 THE JURY (COLLECTIVELY): (Complying.)

6 THE CLERK: Please note that all hands are raised.

7 THE COURT: Anything else for the jury before I
8 dismiss them from the Plaintiff?

9 MR. DERIEG: Nothing from the Plaintiff.

10 THE COURT: By the Defendant?

11 MR. ERVIN: Nothing, Judge.

12 THE COURT: Thank you. Got good news for you all.
13 Y'all have done such a wonderful job I've asked the clerk
14 to put you in the list for the next week's three-week
15 trial.

16 THE JUROR: Thank you.

17 ANOTHER JUROR: No, no.

18 ANOTHER JUROR: Huh-uh.

19 ANOTHER JUROR: Right on -- not.

20 THE COURT: Got one that wants to do it. Thank you
21 very much. You know, this is not the biggest case in the
22 world but it's big to the clients. You all have been
23 great to work with. I was glad I was able to get you a
24 couple lunches and sausage biscuits. Thank you.

25 If anybody needs a work excuse, Ms. Jimmie, anybody

1 going to need one? How about calling down and send
2 somebody to the jury.

3 THE CLERK: Okay.

4 THE COURT: They'll be up in just a second. I
5 enjoyed working with you. Thanks for having a little
6 levity with us. Most of these things are real serious and
7 every now and then we get to cut up a little bit. So
8 thank you for that.

9 Thank you. We can't run the system without you.
10 Y'all have been wonderful. I'm going to excuse you now.
11 Those that would like to wait on a work excuse you can go
12 back to the jury room in just a second. I'm going to come
13 back and speak to you.

14 (Jury exits courtroom at 3:20 p.m.)

15 THE COURT: Gentlemen, I'll give you 10 days to
16 file any post-trial motions.

17 MR. ERVIN: Thank you, Your Honor.

18 THE COURT: Thank you very much. Stand adjourned.

19 END OF CASE: 3:20 P.M.

20 ***

21 CERTIFICATE OF REPORTER

22 STATE OF SOUTH CAROLINA)

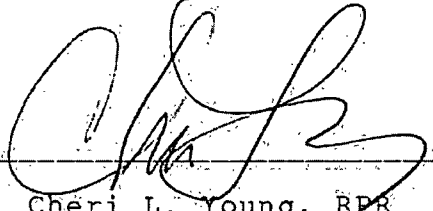
23 COUNTY OF AIKEN)

24 I, Cheri L. Young, Registered Professional Reporter
25 and Official Court Reporter for the State of South

1 Carolina, Second Circuit-At Large, do hereby certify that
2 the foregoing proceedings were written stenographically by
3 me using computer-aided translation; further, that the
4 foregoing is a true, accurate and complete record, to the
5 best of my skill and ability, of all the proceedings had
6 and evidence introduced in the hearing of the captioned
7 case, relative to appeal, in the Court of Common Pleas for
8 Aiken County, on the 20th and 21st days of January, 2015.

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

11 I have hereunder set my hand this 6th day of March,
12 2015.

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15 
16 Cheri L. Young, RPR
17 Official Court Reporter
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2012-CP-02-02382
Appellate Case Tracking No.: 2015-001115

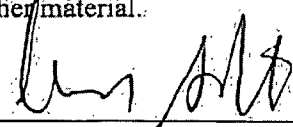
Prescott & Sons Construction, LLC, ... Respondent,

v.

Larry Rogers and Michelle Rogers, ... Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.


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