

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

S. Jackson Kimball, Special Circuit Court Judge

RECEIVED

JUL 06 2016

SC Court of Appeals

Case No. 2015-CP-46-002460

Morningstar Fellowship Church,

Appellant/Respondent

v.

York County, South Carolina,

Respondent/Appellant

APPENDIX TO THE RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
2013-CP-46-00246

MORNINGSTAR FELLOWSHIP
CHURCH,

Plaintiff,

vs.

YORK COUNTY, SOUTH CAROLINA,

Defendant.

PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION IN LIMINE

FILED-RECEIVED
2015 JAN 26 AM 10:30
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

Plaintiff responds to Defendant's Motion in Limine as follows:

I. Evidence of Settlement Discussions and Mediation

The County moves to exclude any evidence of discussions during or concerning the mediation between the parties, on the grounds that compromise discussions are inadmissible under S.C. R. Evid. 408. Rule 408's prohibition of evidence of compromises is limited to evidence intended "to prove liability for or invalidity of the claim or its amount." Discussions of settlement negotiations or mediation efforts are not de facto inadmissible, but by the terms of the rule itself are only inadmissible when used for a specific purpose. Moreover, while the County correctly quotes the first half Rule 408, it ignores the final portion of the rule, which states that "[t]his rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution."

In fact, the County tacitly acknowledges that South Carolina case law restricting the admissibility of mediation discussions is limited to when such evidence is used to establish liability or damages. See Def. Motion at 2. For example, in Meehan v. Commercial Casualty

Ins. Co., 166 S.C. 496, 504 (S.C. 1932), the Supreme Court held that testimony concerning offers of compromise was admissible because the testimony was offered to establish an agency relationship, “and not for the purpose of showing that an offer of compromise had been made.” The Fourth Circuit has similarly observed that the nearly identical Fed. R. Evid. 408 “which generally forbids testimony regarding compromises or offers to compromise, need not prevent a litigant from offering such evidence when he does not seek to show the validity or invalidity of the compromised claim.” Wyatt v. Security Inn Food & Beverage, Inc., 819 F.2d 69, 71 (4th Cir. 1987); accord Fiberglass Insulators, Inc. v. Dupuy, 856 F.2d 652, 655 (4th Cir. 1988); Polk v. BP. Amoco Chem. Co., 586 F. Supp. 2d 619, 622 (D.S.C. 2008) (analyzing evidence to determine whether it fell within the exception to Fed. R. Evid. 408: “This rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness’s bias or prejudice; negating a contention of undue delay; and proving an effort to obstruct a criminal investigation or prosecution.”).

Here, Morningstar seeks to introduce evidence regarding information exchanged and positions taken in the parties’ mediation not to prove liability or the validity of the underlying claim negotiated during the mediation, but rather to demonstrate the County’s failure to properly follow the dispute resolution procedures required under the Development Agreement. Because evidence of the mediation is being introduced for a purpose other than that prohibited under Rule 408, it should be admitted.

II. Subjective Views of Former York County Councilman Buddy Motz

The County also moves to exclude, at a minimum, any testimony by Councilman Buddy Motz concerning his view of Morningstar and Mr. Motz’s January 22, 2010 email espousing upon his views. Ideally, it appears, the County would prefer the Court to prevent Mr. Motz from

testifying at all. According to the County, Mr. Motz's testimony and email cannot be imputed to the County nor admitted for the purpose of showing the County's bias. Plaintiff is informed that Mr. Motz was the Chairman of the County Council at the operative time and his testimony should be admitted under Rule 801 of the Rules of Evidence. Additionally, the County's emails are public records that should be admitted under Rules 803(6) and 803(8) of the Rules of Evidence. Finally, the relevance of Mr. Motz's testimony is not dependent on whether it can be imputed to the County. It is axiomatic that evidence may be admitted at trial for the purpose of demonstrating a witness's bias. S.C. R. Evid. 608(c) ("Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.").

The County relies on a footnote in Bear Enterprises v. County of Greenville, 319 S.C. 137, 139 n.1 (S.C. Ct. App. 1995), for the proposition that examination of individual members of a Council to impeach the Council's decision is not permitted. The footnote is dicta, at best. Here, however, Morningstar seeks to introduce Mr. Motz's email and to examine Mr. Motz as to his views of Morningstar not to challenge the procedures surrounding the Council's decision, but for the purpose of demonstrating that the County did not comply with its contractual obligations for handling this dispute. Accord Baird v. Charleston County, 333 S.C. 519, 535 (S.C. 1999) (finding the holding in Bear inapplicable where plaintiffs "are not attempting to go behind the actions of county council, but are simply arguing that [one member's] conflict of interest rendered a specific vote invalid). Furthermore, unlike the plaintiff in Bear, Morningstar does not challenge a legislative or quasi-legislative decision made by a collective Government body after debate and compromise, but the County's breach of a binding agreement with Morningstar. Any public policy against examining individual members of a governing body as to the body's

collective decision has no bearing on examination of a participant and witness concerning the government's breach of contract.

The Court should deny the County's motion to exclude Mr. Motz's email and testimony concerning his views of Morningstar.

III. Evidence of Plaintiff's Alleged Damages

Morningstar has filed a memorandum of law responding to Plaintiff's Motion to Exclude Damages and incorporates those arguments here. Responding to the specific points raised in this motion, Rick Joyner and Dave Yarnes were asked thorough, exhaustive questions about the pro forma which forms the basis for the lost profits calculations in their combined five (5) days of deposition testimony (See e.g., Yarnes depo. Pp. 595-615). Both testified consistently that pro forma generation was time consuming and ongoing throughout the project, and that a variety of assumptions were used to ensure accuracy. The County may cross examine each again at trial, and a jury may decide that the lost profits measure is too speculative. It is for the jury to do that, though. There is no obligation to show the claimed damages are absolutely certain to occur in order for the issue to be submitted. Haltiwanger v. Baur, 258 SC 27, 186 S.E.2d 819 (1972). Enough work went into the performance to remove this damage claim from the realm of speculation and conjecture. Lockhart Power Co. v. Askew, 110 SC 449, 96 SE 685 (1918). A business owner may testify to lost profits if his testimony has a rational basis. See Minter v. GOCT, Inc., 322 SC 525, 473 S.E.2d 67 (1996). A jury should be able to consider the claim and weigh the County's attacks upon it in order to determine what, if anything, Morningstar is entitled to.

Morningstar has responded to the County's arguments regarding the Tower's demolition in its response to the County's Motion to Exclude. Essentially, Morningstar contends that if the

Tower must be demolished it is because of the County's actions in 2010. It is entitled to the value as shown on the valuation of the Work in Place if that happens.

IV. Evidence or Argument that is Contrary to the Court's Prior Substantive Rulings

The County has taken the position throughout this litigation that it did not need to provide any notice of site plan approval to Morningstar. However, the Court has previously held as follows:

I find and conclude that the Agreement does not require that Morningstar receive formal notice of site plan approval as specified in Article XI., § H., of the Agreement quoted herein. While if notice is given in the manner specified in the applicable provision it is conclusively deemed to have been given and received, the language does not exclude the giving and receiving of notice by other means. In fact, the record presented reveals that the progress of the project was monitored and communicated by other means, such as emails or direct interaction between Power and the County, and Power and Morningstar, throughout the approval process.

Nevertheless, in looking into the intention of the parties, it is also relevant to consider "...the situation of the parties, as well as their purposes, at the time the contract was entered into." Klutts Resort Realty, Inc. v. Down'round Development Corp., 268 S.C. 80, 89, 232 S.E. 2d 20, 25 (1977). "In the absence of an express provision in the contract, the law will imply an agreement to do those things that according to reason and justice should be done to carry out the purpose for which the contract was made." Columbia East Associates v. Bi-Lo, Inc., 299 S.C. 515, 520-521, 386 S.E. 2d 259, 262 (Ct. App. 1989).

Although Section IV.C.2. of the Agreement says only that the 180 days for compliance starts with approval of the site plan, it is not reasonable to suppose that no notice of such approval was required. Based on the record presented, and applying the required standard of review, I conclude that some standard of reasonable notice should be implied as part of this provision of the Agreement. It would make no sense to suppose that the County could secretly approve the site plan, then make no communication of such approval to Morningstar, or its responsible agent, and wait for the 180 days to elapse to declare a default.

Morningstar acknowledges that it cannot argue that notice by certified mail was required by the language of the Agreement. However, reasonable notice was required, and Morningstar should be permitted to state that it expected notice in that fashion given the gravity of the consequences of a default. It should be for the jury to determine if that significance necessitated some of form of notice with the degree of formality expected by Morningstar, and whether the County provided it.

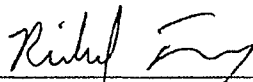
V. Petition Regarding Interest

Morningstar seeks to introduce the petition to rebut the County's claim that the Tower could not have been completed regardless of whether or not it declared a default. It is probative evidence of the fact that there was market interest in this project and that the Tower could have been completed. It should be permitted to be considered by the jury.

CONCLUSION

Plaintiff respectfully requests the Court to deny Defendant's motion in limine for all the reasons stated.

JAMES, MCELROY & DIEHL, P.A.

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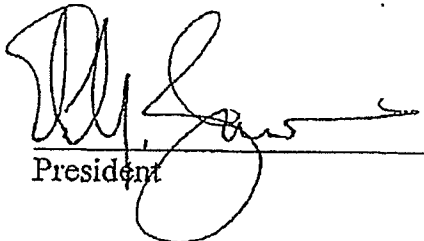
Dated: January 26, 2015.
Charlotte, North Carolina

**STATEMENT OF PROBABLE COST
FOR
COMPLETION OF "HERITAGE TOWERS"**

1.	Current Day Cost Model (308,547 sf, no site work)	\$45,109,375
2.	Statement of Probable Cost (Salvageable Work in Place)	(\$11,889,719)
	SUB TOTAL	\$33,219,656
3.	Cost Opinion of Clean-Up and Demolition at the Existing Building	\$539,950
4.	Opinion of Cost for Adding +/- 80,000 sf to the Existing Building while achieving Current Code Requirements	\$18,000,000
	TOTAL PROBABLE COST	\$51,759,606
	PROBABLE SF COST (388,547 sf)	\$133.21

Respectfully submitted by:

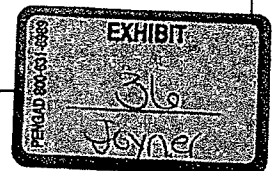
Eddie J. Brown, CPE



President



SEAL



CONFIDENTIAL

MORNINGSTAR_015833



January 30, 2007

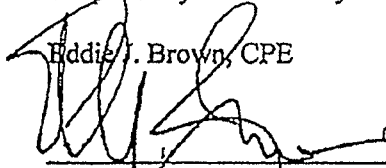
Morningstar Fellowship (Charlotte Area)
 Heritage International Ministries
 Fort Mill, SC

Re: Heritage Towers
 Fort Mill, SC

STATEMENT OF PROBABLE COST

Having physically visited the subject building and reviewed all available design documents (as prepared by James C. Thomson, Architect), it is our opinion that the "current day cost" of the salvageable work in place for this building is in the range of \$11,889,719.00.

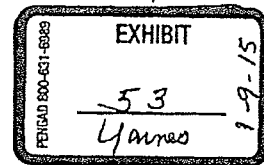
Respectfully submitted by:

Eddie J. Brown, CPE


 President



SEAL



A Division of
 E.J. Brown, Inc.

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MORNINGSTAR_011864

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Morningstar Fellowship
Church,

Plaintiff,

vs.

CA No. 2013-CP-46-00246

York County, South
Carolina,

Defendants.

DEPOSITION OF DAVID YARNES

ROCK HILL, SOUTH CAROLINA

DECEMBER 18, 2014

VOLUME 2

REPORTER: SHIRLEY DALLAS-GERRALD, CVR-CM

DALLAS REPORTING

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ROCK HILL, SOUTH CAROLINA

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1 of saving the Tower. Market research showed a
2 strong demand for multi-family retirement-
3 styled living facilities in the York County
4 area. We looked at some marketing information
5 in the business plan yesterday. What other
6 market research was done to determine whether a
7 strong demand for multi-family retirement-
8 styled living facilities in York County
9 existed? Are you aware of any?

10 A. I believe there was survey information
11 possibly done. It was -- Morningstar had
12 begun doing research with its -- or had -- I
13 believe, at this time, Morningstar had begun
14 to talk with its data base or do some market
15 research that they believed was indicative.

16 Q. Anything else?

17 A. At that point in time, I can't think of
18 anything else.

19 Q. Okay. The next paragraph, six, despite the
20 economic turmoil of the last few years, I
21 believe a demand still exists. What economic
22 turmoil were you talking about?

23 A. I believe I would have been referring -- I
24 would have been referring to the general
25 economic turmoil of the recession or the

1 economic downturn of 2008.

2 Q. The general economic turmoil, not specific to
3 Morningstar.

4 A. I believe that's correct, yes.

5 Q. After purchasing the property -- This is on
6 paragraph seven. After purchasing the
7 property, we refurbished over 500,000 square
8 feet of the old PTL facilities. That was work
9 done in the hotel area, was it not?

10 A. The work that I -- The refurbishing I believe
11 that I'm referring to here is in the Grand
12 Hotel, it's ballrooms, bunkhouses,
13 outbuildings.

14 Q. And this is all work that was allowed to be
15 performed without interference from York
16 County.

17 A. Some of it was done before my time, so I
18 can't attest to that.

19 Q. But you're not aware, as we sit here today,
20 that York County, in any way, interfered with
21 the church's refurbishment of 500,000 square
22 feet of the old PTL facilities, are you?

23 A. Can you say that one more time?

24 Q. You're not aware that York County interfered
25 or impeded, in any way, Morningstar's

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

MorningStar Fellowship Church,)
)
Plaintiff,)
)

-vs-

) 2013-CP-46-00246

York County, South Carolina,)
)
)
Defendant.)

DEPOSITION OF DAVID K. YARNES
ROCK HILL, SOUTH CAROLINA
JANUARY 9, 2015
VOLUME 3

REPORTED BY: Cathy L. Young, CVR-M

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

MorningStar Fellowship Church,)
)
Plaintiff,)
)

-vs-

) 2013-CP-46-00246

York County, South Carolina,)
)
)
Defendant.)

DEPOSITION OF DAVID K. YARNES
ROCK HILL, SOUTH CAROLINA
JANUARY 9, 2015
VOLUME 3

REPORTED BY: Cathy L. Young, CVR-M

1 (OFF RECORD)

2 EXAMINATION CONTINUES BY MR. BALLOU:

3 Q. We're back on, and we've discussed mechanically how
4 to handle this. I do have some questions about the
5 categories.

6 A. Okay.

7 Q. If you could provide testimony, that's fine;
8 otherwise, we'll move on. Did you help separate
9 these expenses into four categories; these
10 expenses, construction, legal, accounting,
11 administration, and marketing?

12 A. They appear to mimic a loan that we had -- had for
13 preconstruction.

14 Q. The Community One loan?

15 A. Yeah.

16 Q. All right. How did you go about compiling the
17 information that is summarized in this document?

18 A. I believe that Accounting would break out expenses
19 concerning the Tower into these categories.

20 Q. How did you define the assignment for Accounting to
21 do that? Did you say, "Give me all of the expenses
22 on the Tower project"?

23 A. No, I -- I think they were already categorized
24 here, and I'm sure there's backup for each of these
25 areas.

1 Q. Did you ask Accounting to differentiate between
2 expenses that were incurred, say, in the initial
3 acquisition and analysis of the building versus
4 expenses that were incurred after the development
5 agreement was executed?

6 A. It appears that these are after the development
7 agreement was executed.

8 Q. What leads you to believe that?

9 A. The type of people listed in the sections.

10 Q. Well, under construction, for instance, Tower
11 cleanup, was Tower cleanup an expense that was
12 required by the development agreement?

13 A. I can't recall if it's specifically required by the
14 development agreement; but it's -- as a, you know,
15 as a component of the ongoing engineering
16 evaluation, there was cleanup necessary.

17 Q. Okay. On this first page, well, the last page of
18 this document, page 154, "Stewart Engineering,
19 civil, \$1,500, Stewart Engineering, structural,
20 \$40,540.30;" do you see that?

21 A. (Reviews document.) Yes.

22 Q. In order to make a determination of whether or not
23 the Tower was a feasible project, you needed to
24 engage Stewart Engineering to answer that question,
25 didn't you?

1 A. We would have needed to engage professionals like
2 Stewart to help us make sure that it was able to be
3 rebuilt.

4 Q. Are the fees assessed in this first page, page 154,
5 from Stewart Engineering, structural, of \$40,000,
6 don't those reflect the efforts of Stewart
7 Engineering to determine whether or not this
8 building could be salvaged at all?

9 A. I don't believe so.

10 Q. You don't believe so?

11 A. No.

12 Q. Because if they did, that would not be fairly
13 chargeable to York County, would it?

14 A. I think these numbers reflect structural
15 engineering put in place in the Tower.

16 Q. I understand that but, as you sit here today, do
17 you know whether or not that number includes work
18 done to assess whether under any circumstances the
19 Tower could be saved?

20 A. I'm not sure that it does.

21 Q. You don't know that?

22 A. I don't.

23 Q. You didn't ask Accounting to drill down to that
24 level of detail?

25 A. I don't believe it does.

1 Q. Legal and accounting, Moore, Stephens and Lovelace
2 Accounting, \$14,000. What were they doing in the
3 beginning part of this project on the accounting?

4 A. (Reviews document.) I don't think they were
5 involved in the beginning part of the project.
6 They may have.

7 Q. So what are you asking York County to be
8 responsible for, in terms of the accounting from
9 Moore, Stephens and Lovelace?

10 A. General accounting -- it was accounting that they
11 would have done specific to the Tower and its
12 reconstruction.

13 Q. Producing pro formas, and --

14 A. Producing financial documents.

15 Q. Financial documents used in your business plan,
16 right?

17 A. I would think not limited to, but primarily.

18 Q. Driscoll Sheedy, attorneys' fees, \$813. Do you
19 know why Driscoll Sheedy's fees were being assessed
20 in this case? Why MorningStar is seeking to be
21 reimbursed for Driscoll Sheedy attorneys' fee?

22 A. I believe they were fees related to the Tower.

23 Q. Do you recall whether Driscoll Sheedy at any point
24 in time represented MorningStar after the
25 negotiation and execution of the Development

1 Agreement?

2 A. I seem to remember us working with them after the
3 Development Agreement.

4 Q. On what matters?

5 A. Matters concerning the Tower. I can't remember the
6 specifics.

7 Q. All right, under administration, you've got
8 development staff, project manager and director
9 salary, \$12,500. Do you know what period of time
10 that's supposed to cover?

11 A. (Reviews document.) I believe -- no, I don't.

12 Q. Project manager, that's you, right?

13 A. Yeah.

14 Q. Who is the director?

15 A. I'm assuming Pat Selvey.

16 Q. So that would be your salary and Pat's salary for
17 some unspecified period of time?

18 A. That's correct.

19 Q. The admin cost, \$35,000, support staff and square
20 footage for three offices. What support staff is
21 included in that?

22 A. I would say possibly secretary, possibly some
23 construction workers, or those type of folk.

24 Q. That's not your office, Pat's office, and
25 Patricia's office?

1 A. I think in that calculation is the three offices,
2 yes.

3 Q. Were you devoting 100 percent of your time to the
4 Tower?

5 A. No, I don't believe so.

6 Q. Was Patricia Smith devoting 100 percent of her time
7 to the Tower?

8 A. I don't know if she's the admin. I don't think she
9 would have been 100 percent.

10 Q. Was Pat Selvey devoted 100 percent of his time to
11 the Tower?

12 A. I believe so.

13 Q. Is it your testimony you believe that that 35,000
14 includes those people and others, or just those
15 people; or what do you understand that number to
16 reflect?

17 A. I believe that the admin costs represent the square
18 footage for the offices used in the engagement of
19 the Tower, and additional support staff, at that
20 period.

21 Q. It's your testimony that those offices and those
22 staff were engaged 100 percent on the Tower
23 project?

24 A. According to the ones that I gave you, whatever
25 breakdown is there, I believe that's what was

1 accredited to the Tower project.

2 Q. Did you go through the process of allocating staff
3 and square footage to some percentage devoted to
4 the Tower?

5 A. Yes.

6 Q. That would be reflected in documents somewhere?

7 A. I believe so.

8 Q. Okay. Marketing, all that. CRSA, what is that?

9 A. (Reviews document.) CRSA is a marketing company.

10 Q. There's a contract with them for \$32,500?

11 A. I believe that we paid them more than \$32,000.

12 Q. Were they marketing solely for the Tower?

13 A. I believe so.

14 Q. Did they do any marketing for Heritage Court?

15 A. Not that I can recall.

16 Q. Did SB&A do marketing for Heritage Court?

17 A. Possibly.

18 Q. Have you gone to the effort of determining how much
19 of SB&A's work was done on Tower versus on the
20 Court?

21 A. I believe so.

22 Q. Were there any other projects that SB&A or CRSA
23 were working on for MorningStar?

24 A. Not that I know of.

25 Q. Okay. On the next page, it begins 12 January, it

1 is page 153. Talbot and Associates, who are they?

2 A. (Reviews document.) Talbot and Associates are
3 engineers.

4 Q. What were they working on?

5 A. What is commonly referred to as PM&E.

6 Q. What is that?

7 A. Plumbing, mechanical and electrical, I believe.

8 Q. Concept Arc, who is that?

9 A. I can't recall. I believe they were an outside
10 architectural firm.

11 Q. What were they asked to do on this project?

12 A. They were hired by J. C. Woodall to provide some
13 architectural service. I can't recall at this
14 point what they were.

15 Q. Related to the Tower?

16 A. Uh-huh.

17 Q. Only the Tower?

18 A. I believe so.

19 Q. Did Talbot and Associates or Concept Arc do any
20 work on the Court?

21 A. Not that I know of.

22 Q. You're asking for reimbursement for payments to
23 Power Engineering for civil and surveying. Is it
24 your testimony that those charges are solely
25 related to the Tower and no other part of the

1 project?

2 A. I believe so.

3 Q. All right. Are there other components to the claim
4 for engineering, marketing, architectural, legal
5 and development spent to date other than what's
6 depicted on this exhibit?

7 A. I believe so.

8 Q. Where would those documents be located?

9 A. I believe they've been provided.

10 Q. Okay. You would agree with me that the first page
11 of this exhibit, page 149, shows a total drawn of
12 889,071.85; would you not?

13 A. Can you point that out?

14 MR. FENNELL:

15 Right there.

16 WITNESS CONTINUES:

17 A. Okay, yeah. Yes.

18 Q. So that's not 1.2 million dollars, that's \$889,000?

19 A. That's correct.

20 Q. So is it your testimony that there are other
21 documents other than are reflected in this exhibit
22 that would support the claim for architectural,
23 engineering, legal and development fees?

24 A. Yes.

25 Q. Is there a reason they weren't included in this

1 spreadsheet?

2 A. I can't recall.

3 Q. Did you discover additional expenses after you
4 compiled this spreadsheet?

5 A. I can't recall.

6 Q. Anyone else besides you help your attorneys compile
7 these numbers?

8 A. I believe our Accounting department would have
9 helped.

10 Q. Who in your Accounting department would have
11 helped?

12 A. We would have had Ramone wideman, possibly
13 Christine Newton.

14 Q. Okay.

15 (BRIEF RECESS)

16 (Court Reporter marks Exhibit Number 55, Tower
17 Refirement Center Soft Costs, attached hereto.)

18 EXAMINATION CONTINUES BY MR. BALLOU:

19 Q. Mr. Yarnes, please take a look at what's been
20 marked as Exhibit 55.

21 A. Uh-huh.

22 Q. Can you identify that document, sir?

23 A. (Reviews document.) I don't know what this is
24 exactly.

25 Q. Have you ever seen it before today?

1 A. Possibly, I can't recall.

2 Q. Did you have anything to do with putting it
3 together?

4 A. I can't recall it.

5 Q. All right, we'll move on. So of the 1.2 million
6 dollars, you've got the engineering that was done
7 on the Tower, the accounting, the marketing, the
8 administration. Didn't all that work go to the
9 benefit of the Tower?

10 A. I don't -- I don't understand the question. Didn't
11 all the work go to the benefit of the Tower?

12 Q. Sure.

13 A. The work was being completed for the reconstruction
14 of the Tower.

15 Q. Let me ask it this way, have you made a
16 determination of which, if any, of the expenses
17 that were made under this component of your
18 damages, the 1.2 million dollars, would have to be
19 redone if MorningStar were allowed to complete the
20 project?

21 A. Have I made that validation of --

22 Q. Yes, sir.

23 A. -- which things would have to be redone --

24 Q. Yes, sir.

25 A. -- if we were to complete the project? I don't

1 believe I have.

2 Q. So these are just all the expenses put into the
3 Tower project, and that's it? That's the analysis,
4 the soft costs?

5 A. There's like three questions there. These expenses
6 went to the Tower. Those expenses that you're
7 speaking of went towards the Tower.

8 Q. Right. The --

9 A. I don't believe --

10 Q. -- soft costs.

11 A. I don't believe they were all -- the term soft cost
12 is ambiguous, it's -- it's hard to say.

13 Q. Well, the accounting for the pro formas, those are
14 still valid, aren't they?

15 A. Possibly. Possibly so.

16 Q. Have you talked with your accountants to determine
17 whether or not they would need to revise those
18 documents if MorningStar were allowed to complete
19 this project?

20 A. I'm sure we would need to revise them.

21 Q. But you haven't talked to the accountants who would
22 do that work, have you?

23 A. I believe I have.

24 Q. You in fact have talked or your attorneys have
25 talked with your engineers and your architect,

DATE	DESCRIPTION	DRAW AMOUNT	PREVIOUS AMOUNT	TOTAL DRAWN	BUDGETED	FEES & INTEREST	AVAILABLE BALANCE
15-Mar	Construction	\$ 58,687.89	\$ 228,061.77	\$ 285,749.66	\$ 638,000.00	closing costs	\$ 351,250.34
15-Mar	Legal & Accounting	\$ 8,551.84	\$ 54,549.43	\$ 63,101.27	\$ 100,830.00	\$ 33,906.50	\$ 37,728.73
15-Mar	Administration	\$ 17,369.33	\$ 163,368.00	\$ 180,737.33	\$ 198,030.00	int. reserves	\$ 17,252.67
15-Mar	Marketing	\$ 129,612.82	\$ 228,870.77	\$ 258,483.59	\$ 600,000.00	\$ 100,000.00	\$ 241,516.41
		\$ 214,221.88	\$ 674,849.97	\$ 889,071.85	\$ 1,536,860.00	\$ 133,906.50	\$ 647,788.15

Construction			
Concept Arc (Architectural)	\$	33,900.00	Contract Attached
Jack Ottinger	\$	733.95	Invoices Attached
In House Labor for Model	\$	7,325.00	internal billing attached
York County Permitting	\$	502.00	
Contract Labor for Model	\$	16,225.94	Invoices Attached
sub-total	\$	58,687.89	

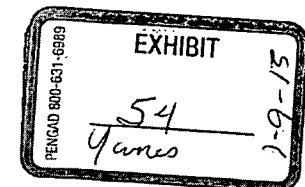
Legal & Accounting			
Moore, Stephens & Lov...accounting	\$	5,008.84	Invoices Attached
Barnes & Thornburg LLP	\$	3,043.00	Invoice Attached
Robert Brown PA	\$	500.00	Invoice Attached
sub-total	\$	8,551.84	

Administration			
Pat Selvey Consultation and Admin	\$	4,442.50	Invoices Attached
Development Staff	\$	12,926.83	Project Migr & Director Salary - internal billing
sub-total	\$	17,369.33	

Marketing			
Sales Staff - payroll	\$	66,908.54	internal billing
SB&A - Jan. & Feb. On Site Consulting	\$	6,400.00	Invoice Attached
SB&A - Conf. Call Floor Plan Consulting	\$	500.00	Invoice Attached
SB&A - Dec. On Site Consulting	\$	1,500.00	Invoice Attached
SB&A - Expenses for Dec. Consulting	\$	1,462.96	Invoice Attached
SB&A - Conversion Letter & Expenses	\$	1,425.49	Invoice Attached
Monthly REPS Leads Subscription (MDI)	\$	1,260.00	Oct. - Mar. Invoices Attached
Compu-Mail Mail Campaign	\$	5,714.42	Invoice Attached
Internal Publishing & Media Assistance	\$	1,517.40	Internal billing
Printing	\$	1,900.00	Invoices Attached
Office Supplies	\$	940.97	Invoices Attached
Internal Postage & Guest Hotel Rooms	\$	652.00	Internal billing
Office Space Rental - Sales Staff	\$	4,200.00	internal billing
Special Events - Food & Supplies	\$	2,007.07	Invoices Attached
Meals for Guests	\$	1,049.95	Invoices Attached
Travel - Airfare	\$	750.80	Invoice Attached
Materials for Model	\$	6,761.79	Invoices Attached
Staging of Model	\$	21,661.43	Invoices Attached
Veronica Hoerr - Interior Design Consultant	\$	3,000.00	Invoices Attached
sub-total	\$	129,612.82	

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DATE	DESCRIPTION	DRAW AMOUNT	PREVIOUS DRAWS	TOTAL DRAWN	BUDGETED	FEES & INTEREST	AVAILABLE BALANCE
12-Nov	Construction	\$ 9,596.41	\$ 218,465.36	\$ 228,061.77	\$ 638,000.00	closing costs	\$ 409,938.23
12-Nov	Legal & Accounting	\$ 27,192.06	\$ 27,357.37	\$ 54,549.43	\$ 100,830.00	\$ 33,906.50	\$ 46,280.57
12-Nov	Administration	\$ 47,250.00	\$ 116,118.00	\$ 163,368.00	\$ 198,030.00	int. reserves	\$ 34,662.00
12-Nov	Marketing	\$ 120,448.13	\$ 108,422.64	\$ 228,870.77	\$ 600,000.00	\$ 100,000.00	\$ 371,129.23
		\$ 204,486.60	\$ 470,363.37	\$ 674,849.97	\$ 1,536,860.00	\$ 133,906.50	\$ 728,103.53

Construction	
Concept Arc (Architectural)	\$ 7,840.00
Jack Ottinger	\$ 1,756.41
sub-total	\$ 9,596.41

Invoices Attached
Invoices Attached

Legal & Accounting	
Moore, Stephens & Lov...accounting	\$ 16,642.06
Barnes & Thornburg LLP	\$ 10,000.00
Robert Brown PA	\$ 550.00
sub-total	\$ 27,192.06

Invoices paid - Attached
Contract Attached
Invoice Attached

Administration	
Development Staff	\$ 47,250.00
sub-total	\$ 47,250.00

(Project Mgr and Director Salary) - Internal billing

Marketing	
Sales Staff - payroll	\$ 70,438.00
SB&A - On Site Consulting & Expenses	\$ 4,891.98
SB&A - Digital Sales Presentation	\$ 2,250.00
SB&A - On Site Consulting & Expenses	\$ 2,490.61
SB&A - On Site Consulting & Expenses	\$ 3,914.56
SB&A - Conversion of Res Holders	\$ 19,350.00
Monthly REPS Leads Subscription (MDI)	\$ 1,680.00
Taylor George	\$ 5,200.00
Sales Collateral	\$ 3,427.91
Compu-Mail - mail campaign	\$ 1,520.00
Traveling promotions - mileage	\$ 45.64
Phone expenses for training sessions	\$ 165.17
Office Supplies	\$ 1,439.44
Special Events - Food & Supplies	\$ 3,485.00
Meals for Guests	\$ 149.82
sub-total	\$ 120,448.13

May 1st - Sept. 30th - Internal billing (Include esther rivers based on 36 weeks)
April Invoice Attached
April Invoice Attached
May Invoice Attached
Sept Invoice Attached
Contract Attached
Feb - Sept Invoices Attached
Invoices Attached
Invoices Attached
Invoice Attached
Invoice Attached
Invoice Attached
Invoices Attached
Invoices Attached - Interdepartmental billing
Invoices Attached - Interdepartmental billing

DATE	DESCRIPTION	DRAW AMOUNT	PREVIOUS DRAWS	TOTAL DRAWN	BUDGETED	FEES & INTEREST	AVAILABLE BALANCE
5-Mar	Construction	\$ 50,372.00	\$ 168,093.36	\$ 218,465.36	\$ 638,000.00	closing costs	\$ 419,534.64
5-Mar	Legal & Accounting	\$ 10,500.00	\$ 16,857.37	\$ 27,357.37	\$ 100,830.00	\$ 33,906.50	\$ 73,472.63
5-Mar	Administration	\$ 13,500.00	\$ 102,618.00	\$ 116,118.00	\$ 198,030.00	int. reserves	\$ 81,912.00
5-Mar	Marketing	\$ 49,610.14	\$ 58,812.50	\$ 108,422.64	\$ 600,000.00	\$ 100,000.00	\$ 491,577.36
		\$ 123,982.14	\$ 346,381.23	\$ 470,363.37	\$ 1,536,860.00	\$ 133,906.50	\$ 932,590.13

Construction	
Concept Arc (Architectural)	\$ 12,880.00
Talbot & Associates	\$ 30,000.00
Power Engineering (Civil)	\$ 7,492.00
sub-total	\$ 50,372.00

\$6880 invoice is attached \$6000 balance to be billed in two weeks
Contract attached
Contract attached

Legal & Accounting	
Moore's, Stephens & Lov...acc'ting	\$ 7,000.00
Moore's, Stephens & Lov...acc'ting	\$ 3,500.00
sub-total	\$ 10,500.00

Invoice paid -Attached
Invoice is in the mail to us

Administration	
Development Staff	\$ 13,500.00
sub-total	\$ 13,500.00

(Project Mgr and Director salary) - internal billing

Marketing	
Sales Staff - payroll	\$ 10,179.80
SB&A Marketing Plan	\$ 15,000.00
SB&A Focus Groups	\$ 4,000.00
SB&A 3 months Consulting	\$ 12,000.00
SB&A Training week	\$ 2,500.00
SB&A One two day initiation REPS	\$ 1,000.00
Focus Groups expenses	\$ 1,280.37
Office Supplies	\$ 104.15
Website Development	\$ 157.50
Sales Collateral	\$ 3,114.82
Meals	\$ 273.50
sub-total	\$ 49,610.14

Jan.15 - April 30th - internal billing
Contract Attached
Contract Attached
Contract Attached
invoice attached
invoice attached
receipts attached
receipts attached
invoice attached
invoice attached
conferences/mtgs - internal billing

DATE	DESCRIPTION	DRAW AMOUNT	PREVIOUS DRAWS	TOTAL DRAWN	BUDGETED	FEES & INTEREST	AVAILABLE BALANCE
12-Jan	Construction	\$ 101,094.10	\$ 66,999.26	\$ 168,093.36	\$ 638,000.00	closing costs	\$ 469,906.64
12-Jan	Legal & Accounting	\$ 1,400.00	\$ 15,457.37	\$ 16,857.37	\$ 100,830.00	\$ 33,906.50	\$ 83,972.63
12-Jan	Administration	\$ 53,923.00	\$ 48,695.00	\$ 102,618.00	\$ 198,030.00	Int. reserves	\$ 95,412.00
12-Jan	Marketing	\$ 16,322.14	\$ 42,490.36	\$ 58,812.50	\$ 600,000.00	\$ 100,000.00	\$ 541,187.50
		\$ 172,739.24	\$ 173,641.99	\$ 346,381.23	\$ 1,536,860.00	\$ 133,906.50	\$ 1,056,572.27

PAID ITEMS

Construction	
Concept Arc (Architectural)	\$ 18,000.00
Talbot & Associates	\$ 30,000.00
Stewart Engineer (Structural)	\$ 27,512.10
Power Engineering (Civil)	\$ 12,000.00
Power Engineering (Surveying)	\$ 13,582.00
sub-total	\$ 101,094.10

due in January

due in January

Legal & Accounting	
Moore's, Stephens & Lov...acc'ting	\$ 1,400.00
sub-total	\$ 1,400.00

Administration	
Development Staff	\$ 18,750.00
Training (Microsoft Project 2007)	\$ 173.00
Admin Costs	\$ 35,000.00
sub-total	\$ 53,923.00

(Project Mgr and Director salary)

support staff and square footage for 3 offices

Marketing	
Sales Staff - payroll	\$ 11,735.09
Sales Staff - contract labor	\$ 2,726.00
Sales Office - electronics, supplies	\$ 1,703.85
Meals	\$ 157.20
sub-total	\$ 16,322.14

DATE	DESCRIPTION	DRAW AMOUNT	TOTAL DRAWN	BUDGETED	AVAILABLE BALANCE
13-Oct	Construction	\$ 66,999.26	\$ 66,999.26	\$ 638,000.00	\$ 571,000.74
13-Oct	Legal & Accounting	\$ 15,457.37	\$ 15,457.37	\$ 100,830.00	\$ 85,372.63
13-Oct	Administration	\$ 48,695.00	\$ 48,695.00	\$ 198,030.00	\$ 149,335.00
13-Oct	Marketing	\$ 42,490.36	\$ 42,490.36	\$ 600,000.00	\$ 557,509.64
		\$ 173,641.99	\$ 173,641.99	\$ 1,536,860.00	\$ 1,363,218.01

Construction	
Tower Cleanup	\$ 7,852.96
Travel to ICC office (flight & meals)	\$ 300.00
Concept Arc (Architectural)	\$ 7,680.00
Stewart Engineer (Civil)	\$ 1,500.00
Stewart Engineer (Structural)	\$ 40,520.30
Power Engineering (Civil)	\$ 9,146.00
sub-total	\$ 66,999.26

Legal & Accounting	
Moore's, Stephens & Lov...accounting	\$ 14,644.37
Driscoll-Sheedy - Attorney Fees	\$ 813.00
sub-total	\$ 15,457.37

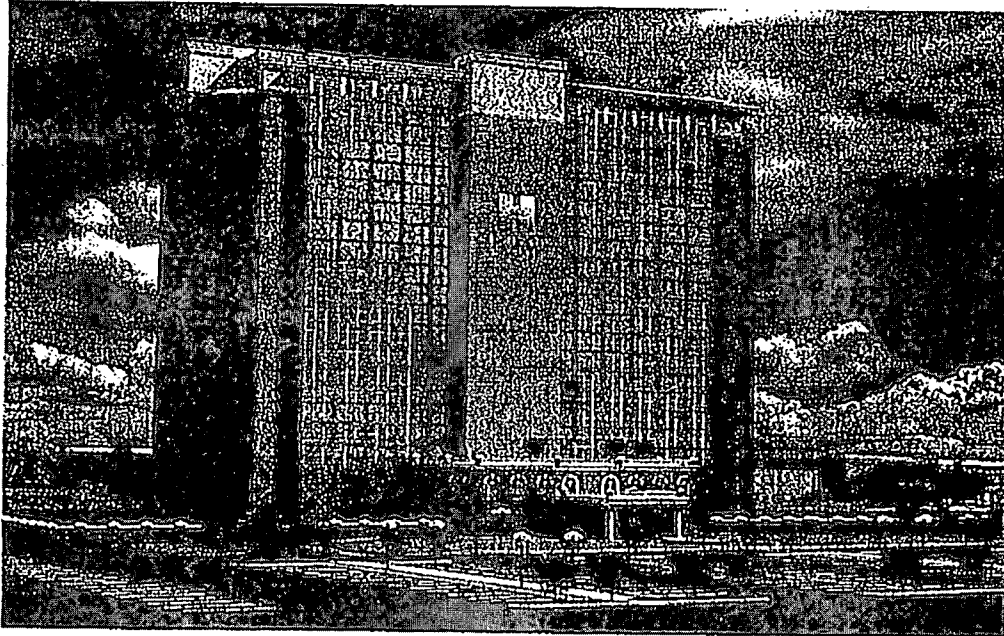
Administration	
Development Staff	\$ 12,500.00
Training (Microsoft Project 2007)	\$ 1,195.00
Admin Costs	\$ 35,000.00
sub-total	\$ 48,695.00

(Project Mgr and Director salary)

support staff and square footage for 3 offices

Marketing	
Marketing Firm CRSA	\$ 32,500.00
Travel (New Canaan Conf)	\$ 701.00
Sales Staff	\$ 2,379.00
Meals	\$ 158.62
Sales Office Equip. - 3 computers	\$ 2,109.09
Sales Office - Construction	\$ 2,100.00
Sales Office - Carpet	\$ 1,836.47
Furniture - Sales Center soft seating	\$ 706.18
sub-total	\$ 42,490.36

HERITAGE TOWERS PROJECT
EXECUTIVE SUMMARY



375 Star Light Drive

Fort Mill, SC 29715

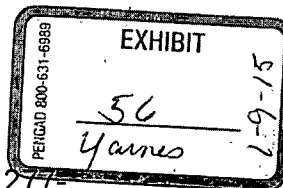
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This overview contains forecasts, projections and other forward-looking statements about the project's future performance and prospects. Actual results may differ materially from the forward-looking statements contained in this document. All information enclosed is non-audited for management purposes only.



OVERVIEW

Heritage Towers Project (HTP) is a planned Active Adult Independent Living Community ("ILF") coupled with Market Rate leased residences (MRU). The ILF component with its residents comprised of active adults 55 years and older will be marketed with two options a "Life Lease" and a "Market Rate Lease". Life Lease Units will be sold with a substantial, up front, lease amount; which allows residents to have life time use of their unit for a smaller monthly maintenance fee. The Market rate leased residences will be leased on a monthly basis with rates comparable to similar area residences. The HTP is designed to be housed in a freestanding, currently unoccupied 21-story high rise building which was designed as a 500 room luxury hotel. Currently this facility has been studied in depth from an engineering aspect and has been deemed structurally sound but has been unoccupied for approximately 27 years.

It is planned that HTP, including its facilities and current and future assets, will be wholly owned by a newly formed entity Heritage Active Adult Center, LLC ("HAAC"). This entity will be responsive to the governing board of MorningStar Ministries ("MSM") and other equity participants such as lending institutions as is appropriate. To facilitate this, the property and all improvements of the 6.88 acres have been separately subdivided by MorningStar Ministries and are designed to be free and clear of any and all liens and encumbrances at the commencement of the project. MSM is a not-for-profit religious organization which was initiated in 1985 under the leadership of Rick Joyner.

Historically, construction commenced in 1984 on Heritage Towers under the leadership of Jim Bakker and the PTL Ministry. Unfortunately, under allegations of financial impropriety PTL ceased construction on the Tower and the bustling resort center closed promptly. For approximately 27 years the Tower has been vacant and subject to some exterior decay. Both external and internal decay have been studied and pose no hindrance to the repurposing of the structure. In 2006 MorningStar purchased 52 acres of land which included Heritage Grand Hotel, the Conference Center, and Heritage Towers. Again the Tower was recertified as structurally sound and in 2007 it was officially approved by York County to be included in the redevelopment plan.

Presently MorningStar Ministries has fully rehabilitated the Heritage Grand Hotel and the Conference Center which were both in conditions unfit for occupancy due to neglect, vandalism, and disrepair. MorningStar has now positioned itself as a world class, Christian Community where current residents' lives are rich, rewarding, healthy and fulfilling. MorningStar aspires to provide the affordable, quality features in five main areas: 1) living units and common areas, 2) amenities, 3) ambience/environment, 4) campus and community, and 5) opportunities for residents to engage in either full or part time rewarding and enriching volunteer or professional Christian vocational

programs.

In conjunction with the proposed project, plans are in place to add a complete continuum of services to the MorningStar campus. These additions include, congregate independent living apartments, assisted living apartments, hospice and skilled nursing units. Although these projects are not in progress currently it is our goal to enhance HTP with complimentary lifestyle services. Our long-term goal is to integrate this campus with resident centers to uniquely provide a holistic view of keeping all HTP residents as a vital part of the Heritage Towers neighborhood.

Key Project Specifics

- Currently, Morningstar Ministries, HTP's parent company, is operating the former Heritage Grand Hotel and Conference Center which is comprised of 501 hotel rooms and 500,000 additional square feet. These facilities currently house: apartment residences, conference and hotel space, and a collegiate-level institution, MorningStar University.
- The HTP existing building presently consists of 324,358 square feet of partially completed hotel rooms. The facility has been vacant since the mid-1980s. The facility can not be occupied presently and is in need of significant interior and exterior renovation. The existing building has been appraised at \$11,000,000 in its present condition (as it represents substantial completion in place). It has been re-certified to be structurally sound for construction. It was originally constructed as a 490 room Grand Tower Hotel. The planned hotel was approximately 75% completed but never opened due to the parent company closing and subsequently filing bankruptcy just prior to the grand opening.
- To achieve best and highest use and code compliance, it is necessary to build within the existing dimensions of the building while increasing its value and functionality. The original 490 hotel rooms will be reconfigured into 240 living units occupying floors 2 through 21. Additionally, the 1st, 2nd, and 21st floors will have space allocated for amenities, leasable commercial spaces, and offices.
- Our construction plan and design has been reviewed by the International Code Council, which sets standards for national acceptance, and was approved by local zoning offices for reconstruction.
- The cost per square foot of each unit has been value engineered and is on-par with some of the lowest cost per square foot construction in the area for this type of project. Therefore, the HTP will provide maximized operating returns. Our pricing and reconstruction has been validated by building units of the same size and quality in the existing Grand Hotel. The original Grand Hotel construction features and constraints mirror that of the existing Tower and provide exacting pricing replica.

- The residence's units will have three configurations with the majority having a two-bedroom design. Larger units will have approximately 1,170 square feet and smaller units will have 780 square feet. An additional studio design will have approximately 390 square feet but will not comprise many units.
- Due to the nature of the existing Tower configuration, units are designed to fit within the original hotel room spaces, thus providing for maximum utilization of current structure and equity in place.
- The former hotel design had each hotel room occupying 390 square feet including balconies. The new units offered will have 390, 780 and 1170 square feet accordingly utilizing the original hotel room dimensions.
- The lease and service fee of each unit will be based on its size and configuration.
- A total of 240 units will be marketed. 72 units will be marketed on a "prepaid" life lease concept where individuals can pay a life time lease amount, up front, and enjoy lower monthly service rates. 168 units will be marketed on an annual lease basis (paid monthly) with lease amounts on par with regional rates.
- Units sold with pre paid leases have two sizes and commensurate price ranges: 780 square foot units will have a pre paid lease price of \$117,000 and a service fee of approximately \$550 per month; 1170 square foot units will have a pre paid lease price of \$195,000 and a monthly service fee of approximately \$750 per month.
- Maximum price at risk construction agreements are being sought. Total construction cost including furniture, fixtures, equipment and all construction line items is approximately \$22 million. Approximately 330,000 square feet of building space will be renovated, thus yielding a \$66 per square foot renovation cost.
- The site work (included in construction price) will include moderate landscaped areas, sufficient parking, and access to the adjacent Heritage International Ministries campus. The 6.88 acre site is located in the premier access point of the 52 acre HIM campus. This parcel is currently subdivided in anticipation of financing needs.
- Soft costs, including architectural design, structural engineering, permitting process, marketing and administration, have largely been paid previously by the project sponsor totaling approximately \$1.354 million. Remaining soft costs are estimated to be approximately \$1.12 million.

MARKETING

Current Marketing

The Heritage Towers Project full time marketing department has been in operation for over two years. HTP's seasoned staff has developed a fully integrated marketing plan, complete with all necessary collateral pieces, and two fully furnished models in addition to a full-time sales office/discovery center. Although currently not prioritizing Tower sales, sales and development of residence units in other areas of the campus have been robust. Currently in operation is an Executive Director and two Sales Personnel.

Goals

- The marketing team will "presale" 55 units (23% of 240 available units). These presales will consist of apartment residences whose owners choose to pay a larger up front life lease payment and a reduced monthly payment. These 55 units will have a 10% down payment in place to evidence commitment.
- Further, our marketing team will receive reservations on 129 or 70% of the 240 leasable spaces available. Using our "Priority Reservation Program" contracts, with a \$1,000 reservation payment will ensure future residents can choose the location and unit type they desire.
- Filling up and stabilization will commence from the certificate of occupancy and will take approximately 14 months at which time 95% of the units will be occupied.

Currently, 135 priority reservations of \$1,000 are in place but we expect some attrition.

Current activities at Heritage Towers' on-site relocation center include monthly Webinars, Conferences, Lunch and Learns, Discovery Weekends, and other marketing efforts which are providing a consistent increase of Priority Reservation Deposits. MorningStar has retained SB&A marketing firm (nationally recognized active adult community operators and marketers) to provide oversight, consultation, and strategy. Continual review of progress, marketing materials, and strategies are provided by MorningStar's Executive Team.

Market Competition

A completed professional market analysis and review of the market area, plus the ongoing success of current sales reveal no significant competitors in this product type.

Heritage Communities strong association with MorningStar Ministries makes it a unique product within the market. Located approximately 25 yards from Heritage Grand Conference Center's main facility, the Heritage Towers community is highly integrated with MorningStar facilities and activities. For those seeking to relocate to Heritage International Ministry ("HIM"), Heritage Towers' on-campus location makes it the best option. Surrounding single-family home developments account for the nearest competition. HTP differentiates itself from other active adult or congregant care facilities by providing: a worry-free lifestyle, health and wellness amenities, housekeeping service, dining options, affinity programs, campus integration, on-site security, and other lifestyle features.

HERITAGE TOWERS PROJECT FUNDING OBJECTIVES

- HTP is seeking \$16.3 million of long term equity financing, secured by the building, land, assets, and income stream of the project. Permanent financing is expected to commence after the stabilization period or approximately 24 months from the issue of the certificate of occupancy. This represents approximately %51 of the project total.
- HTP is seeking \$25.4 million of short term financing which will be repaid 38 months after project commencement (14 months of construction and 24 months of stabilization).

FINANCIAL PLAN

Additional information and financial statements for the Heritage Tower Project ("HTP") and its parent company Heritage International Ministry ("HIM") will be made available to qualified funding sources that have shown an interest and ability to provide necessary capital for the project. The financials included with this plan are designed to reflect conservative assumptions of basic project cost, income projections, and asset values.

Heritage Tower Project Sources and Uses of Funds

Sources

Loan Proceeds	\$ 25,419,200.00
Building Contribution	\$ 5,000,000.00
Cash Equity	\$ 1,354,800.00
Mezzanine	\$ -
Total	\$ 31,774,000.00

Uses

Building	\$ 5,000,000.00
Insurance	\$ 70,000.00
FFE	\$ 150,000.00
Misc Arch & Eng	\$ 34,000.00
Construction	\$ 22,000,000.00
Architect	\$ 400,000.00
Engineer	\$ 200,000.00
Survey	\$ 10,000.00
Appraisal	\$ 20,000.00
Fees and Permits	\$ 490,000.00
Financial Fees	\$ 1,000,000.00
Feasibility/Market Study	\$ 50,000.00
Development Fees	\$ -
Legal	\$ 150,000.00
Preopening and Op Deficit	\$ 1,000,000.00
Construction Interest	\$ 1,200,000.00
DSR	\$ -
Total	\$ 31,774,000.00

Preliminary Operating Statements

Absorption	# Units	Year 1												Vacant	
		January	February	March	April	May	June	July	August	September	October	November	December		
Rented	0														0
2 Bedroom	130	20	28	36	44	52	60	68	76	84	92	100	108	22	
2 Bedroom & Study	38	2	4	6	8	10	12	14	16	18	20	22	24	16	
Total Units	168	22	32	42	52	62	72	82	92	102	112	122	132	38	
% Occupied		13%	19%	25%	31%	37%	43%	49%	55%	61%	67%	73%	79%	23%	
Revenue Monthly															
															Total
1 Bedroom	1,100	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2 Bedroom	1,100	22,000	30,800	39,600	48,400	57,200	66,000	74,800	83,600	92,400	101,200	110,000	118,800	844,800	
2 Bedroom & Study	1,350	2,700	3,400	4,100	4,800	5,500	6,200	6,900	7,600	8,300	9,000	9,700	10,400	21,600	
Total		24,700	34,200	43,700	53,200	62,700	72,200	81,700	91,200	100,700	110,200	119,700	129,200	1,065,400	
Second Person	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Commercial Leases	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Total		24,700	34,200	43,700	53,200	62,700	72,200	81,700	91,200	100,700	110,200	119,700	129,200	1,065,400	
Life Lease Occupancy															
2 Bedroom	55	12	19	26	33	40	47	54	61	68	75	82	89	0	
2 Bedroom/Don	17	4	8	11	14	17	20	23	26	29	32	35	38	0	
2 Bedroom Life Lease	117,000	1,404,000	1,404,000	1,521,000	2,234,000	2,340,000	2,340,000	2,340,000	2,340,000	2,340,000	2,340,000	2,340,000	2,340,000	0	
2 Bedroom Life Lease	185,000	780,000	780,000	585,000	195,000	0	195,000	0	195,000	0	185,000	0	0	0	
Total		2,184,016	2,184,016	2,106,016	428,003	234,002	428,003	234,002	428,003	234,002	428,003	234,002	0	8,128,068	
Life Lease Cumulative Occupancy															
2 Bedroom	55	12	24	37	49	61	73	85	97	109	121	133	145	53	
2 Bedroom/Don	17	4	8	11	12	12	13	13	14	14	16	15	15	15	
Life Lease 2 Bedroom	550	6,600	13,200	20,350	21,450	22,550	23,650	24,750	25,850	26,950	28,050	29,150	29,150		
Life Lease 2 Bedroom/Don	760	3,000	6,000	8,250	9,000	9,000	9,750	9,750	10,500	10,500	11,250	11,250	11,250		
Life Lease Operating Income		9,600	19,200	28,600	30,450	31,550	33,400	34,500	36,350	37,450	39,300	40,400	40,400		
Total Operating Income	240	34,300	55,400	76,300	89,650	102,268	116,600	128,200	141,650	154,150	167,500	180,100	181,600	1,436,840	
Expenses															
General and Admin	4.00%	1,372	2,216	3,052	3,536	4,080	4,624	5,128	5,682	6,186	6,700	7,204	7,664	57,484	
Marketing		9,573	9,573	9,573	9,573	9,573	9,573	9,573	9,573	9,573	9,573	9,573	9,573	115,113	
Food Service		0	0	0	0	0	0	0	0	0	0	0	0	0	
Housekeeping		0	0	0	0	0	0	0	0	0	0	0	0	0	

Cap Ex	0	0	0	0	0	0	0	0	0	0	0	0	0	
Utilities	32,165	32,165	32,165	32,165	32,165	32,165	32,165	32,165	32,165	32,165	32,165	32,165	385,980	
Repairs/Maintenance	22,183	22,183	22,183	22,183	22,183	22,183	22,183	22,183	22,183	22,183	22,183	22,183	266,196	
Insurance	12,070	12,070	12,070	12,070	12,070	12,070	12,070	12,070	12,070	12,070	12,070	12,070	144,840	
Operating Expenses	77,353	78,257	78,043	79,577	80,081	80,615	81,149	81,683	82,167	82,691	83,196	83,882	989,893	
Net Operating Income	(43,063)	(22,807)	(2,743)	10,073	22,160	34,885	47,681	60,837	71,983	84,809	96,905	107,708	457,007	
Life Lease Revenue	2,184,018	2,184,018	2,106,018	428,003	234,002	428,003	234,002	428,003	234,002	428,003	234,002	0	0	
Loan Balance	25,419,200	23,225,184	21,051,168	18,945,152	18,515,149	18,282,147	17,853,144	17,619,142	17,190,139	16,958,137	16,527,134	16,293,132		
Debt Service	4.75%	(100,678)	(61,973)	(83,328)	(74,991)	(73,253)	(72,567)	(70,669)	(69,742)	(68,046)	(67,118)	(65,320)	(64,394)	(302,050)
Prof Return		0	0	0	0	0	0	0	0	0	0	0	0	
Net Cash	(143,661)	(114,780)	(80,071)	(64,918)	(51,124)	(37,262)	(23,569)	(9,845)	3,949	17,891	31,485	43,214	(439,049)	

*PreSales

Absorption	Available # Units	Year 2												Vizard	
		January	February	March	April	May	June	July	August	September	October	November	December		
1 Bedroom	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2 Bedroom	130	118	124	124	124	124	124	124	124	124	124	124	124	124	124
2 Bedroom & Study	38	28	28	30	32	32	32	32	32	32	32	32	32	32	32
Total Units	168	142	152	154	156	156	156	156	156	156	156	156	156	156	156
% Occupied		85%	90%	92%	93%	93%	93%	93%	93%	93%	93%	93%	93%	93%	93%
Revenue Monthly															
1 Bedroom	1,100	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2 Bedroom	1,155	133,980	143,220	143,220	143,220	143,220	143,220	143,220	143,220	143,220	143,220	143,220	143,220	143,220	1,709,400
2 Bedroom & Study	1,416	38,855	39,680	42,525	45,360	45,360	45,360	45,360	45,360	45,360	45,360	45,360	45,360	45,360	527,310
Total		170,835	182,910	185,745	188,580	188,580	188,580	188,580	188,580	188,580	188,580	188,580	188,580	188,580	2,236,710
Second Person	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total		170,835	182,910	185,745	188,580	188,580	188,580	188,580	188,580	188,580	188,580	188,580	188,580	188,580	2,236,710
Life Lease Occupancy															
2 Bedroom	53	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2 Bedroom/Den	17	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2 Bedroom Life Lease	117,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2 Bedroom Life Lease	195,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total		0	0	0	0	0	0	0	0	0	0	0	0	0	0
Life Lease Cumulative Occupancy															
2 Bedroom	53	53	53	53	53	53	53	53	53	53	53	53	53	53	53
2 Bedroom/Den	17	15	15	15	15	15	15	15	15	15	15	15	15	15	15
Life Lease 2 Bedroom	550	29,150	29,150	29,150	29,150	29,150	29,150	29,150	29,150	29,150	29,150	29,150	29,150	29,150	29,150
Life Lease 2 Bedrm/Den	750	11,250	11,250	11,250	11,250	11,250	11,250	11,250	11,250	11,250	11,250	11,250	11,250	11,250	11,250
Life Lease Operating Income		40,400	40,400	40,400	40,400	40,400	40,400	40,400	40,400	40,400	40,400	40,400	40,400	40,400	40,400
Total Operating Income		211,235	223,310	228,145	228,980	228,980	228,980	228,980	228,980	228,980	228,980	228,980	228,980	228,980	2,721,510
Expenses															
General and Admin	4.00%	8,449	8,332	9,046	9,159	9,159	9,159	9,159	9,159	9,159	9,159	9,159	9,159	9,159	108,850
Marketing		9,860	9,860	9,860	9,860	9,860	9,860	9,860	9,860	9,860	9,860	9,860	9,860	9,810	118,272
Food Service		0	0	0	0	0	0	0	0	0	0	0	0	0	0
Housekeeping		0	0	0	0	0	0	0	0	0	0	0	0	0	0

Cap Ex	0	0	0	0	0	0	0	0	0	0	0	0	0
UEKec	33,130	33,130	33,130	33,130	33,130	33,130	33,130	33,130	33,130	33,130	33,130	33,130	397,559
Repair/Maintenance	22,848	22,848	22,848	22,848	22,848	22,848	22,848	22,848	22,848	22,848	22,848	22,848	274,162
Insurance	12,432	12,432	12,432	12,432	12,432	12,432	12,432	12,432	12,432	12,432	12,432	12,432	149,185
Operating Expenses	88,720	87,203	87,317	87,430	87,430	87,430	87,430	87,430	87,430	87,430	87,430	87,380	1,048,059
Not Operating Income	84,115	95,707	98,428	101,150	101,150	101,150	101,150	101,150	101,150	101,150	101,150	101,200	1,673,451
Life Lease Income	0	0	0	0	0	0	0	0	0	0	0	0	0
Loan Balance													
Debt Service	(84,993)	(84,993)	(84,993)	(84,993)	(84,993)	(84,993)	(84,993)	(84,993)	(84,993)	(84,993)	(84,993)	(84,993)	(1,018,912)
Prof Return	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Cash	(878)	10,714	13,436	16,157	16,157	16,157	16,157	16,157	16,157	16,157	16,157	16,206	653,539
Loan Balance	0												

Absorption	Available # Units	Year 3												Vacant	
		January	February	March	April	May	June	July	August	September	October	November	December		
1 Bedroom	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2 Bedroom	130	124	124	124	124	124	124	124	124	124	124	124	124	124	124
2 Bedroom & Study	38	28	28	30	32	32	32	32	32	32	32	32	32	32	32
Total Units	168	150	152	154	156	156	156	156	156	156	156	156	156	156	156
% Occupied		89%	90%	92%	93%	93%	93%	93%	93%	93%	93%	93%	93%	93%	93%
Revenue Monthly															
1 Bedroom	1,100	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2 Bedroom	1,155	143,220	143,220	143,220	143,220	143,220	143,220	143,220	143,220	143,220	143,220	143,220	143,220	143,220	1,718,840
2 Bedroom & Study	1,418	38,855	39,680	42,525	45,360	45,360	45,360	45,360	45,360	45,360	45,360	45,360	45,360	45,360	527,310
Total		180,075	182,910	185,745	188,580	188,580	188,580	188,580	188,580	188,580	188,580	188,580	188,580	188,580	2,245,950
Second Person	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total		180,075	182,910	185,745	188,580	188,580	188,580	188,580	188,580	188,580	188,580	188,580	188,580	188,580	2,245,950
Life Lease Occupancy															
2 Bedroom	55	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2 Bedroom/Den	17	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2 Bedroom Life Lease	117,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2 Bedroom Life Lease	185,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total		0	0	0	0	0	0	0	0	0	0	0	0	0	0
Life Lease Cumulative Occupancy															
2 Bedroom	55	53	53	53	53	53	53	53	53	53	53	53	53	53	53
2 Bedroom/Den	17	15	15	15	15	15	15	15	15	15	15	15	15	15	15
Life Lease 2 Bedroom	550	29,150	29,150	29,150	29,150	29,150	29,150	29,150	29,150	29,150	29,150	29,150	29,150	29,150	29,150
Life Lease 2 Bedroom/Den	750	11,250	11,250	11,250	11,250	11,250	11,250	11,250	11,250	11,250	11,250	11,250	11,250	11,250	11,250
Life Lease Operating Income		40,400	40,400	40,400	40,400	40,400	40,400	40,400	40,400	40,400	40,400	40,400	40,400	40,400	40,400
Total Operating Income		220,476	223,310	226,145	228,980	228,980	228,980	228,980	228,980	228,980	228,980	228,980	228,980	228,980	2,730,750
Expenses															
General and Admin	4.00%	8,818	8,932	9,046	9,159	9,159	9,159	9,159	9,159	9,159	9,159	9,159	9,159	9,159	109,230
Marketing		9,860	9,860	9,880	9,880	9,880	9,880	9,880	9,860	9,860	9,860	9,860	9,810	9,810	118,272
Food Service		0	0	0	0	0	0	0	0	0	0	0	0	0	0
Housekeeping		0	0	0	0	0	0	0	0	0	0	0	0	0	0

Cap Ex	0	0	0	0	0	0	0	0	0	0	0	0	0
Utilities	33,130	33,130	33,130	33,130	33,130	33,130	33,130	33,130	33,130	33,130	33,130	33,130	397,559
Repairs/Maintenance	22,848	22,848	22,848	22,848	22,848	22,848	22,848	22,848	22,848	22,848	22,848	22,848	274,182
Insurance	12,432	12,432	12,432	12,432	12,432	12,432	12,432	12,432	12,432	12,432	12,432	12,432	149,185
Operating Expenses	87,080	87,203	87,317	87,430	87,430	87,430	87,430	87,430	87,430	87,430	87,430	87,386	1,048,429
Net Operating Income	\$2,985	\$5,707	\$8,428	101,150	101,150	101,150	101,150	101,150	101,150	101,150	101,150	101,200	1,682,321
Life Lease Income	0	0	0	0	0	0	0	0	0	0	0	0	0
Loan Balance													
Debt Service	(84,993)	(84,993)	(84,993)	(84,993)	(84,993)	(84,993)	(84,993)	(84,993)	(84,993)	(84,993)	(84,993)	(84,993)	(1,010,912)
Prof Return	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Cash	7,993	10,714	13,436	16,157	16,157	16,157	16,157	16,157	16,157	16,157	16,157	16,208	662,409
Loan Balance	0												

Deposition of Gerald Lee

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

MORNINGSTAR FELLOWSHIP)
CHURCH,)

)
) PLAINTIFF,)

-VS-) CA No. 2013-CP-46-00246
)

YORK COUNTY, SOUTH)
CAROLINA,)

)
) DEFENDANTS.)

_____)

DEPOSITION OF GERALD A. LEE
COLUMBIA, SOUTH CAROLINA
MARCH 20, 2014

REPORTER: SHIRLEY DALLAS-GERRALD, CVR-CM

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1 Rains was let go?

2 A Johnny came up to assess the situation, but I was
3 basically in charge of the office from that point
4 on.

5 Q And that would be John Stephenson?

6 A No, Johnny Johnson, --

7 Q Johnny Johnson.

8 A -- the president of the company.

9 Q Okay. And so, from 2008 until you were let go, you
10 were basically in charge of the Charlotte office?

11 A 2008 until March of 2009, when they shut it down.

12 Q Were you Derrick Boyte's supervisor?

13 A Yes.

14 Q Did you start working on the Morningstar Fellowship
15 project before you went up to Charlotte?

16 A No.

17 Q You said when you went to Charlotte, that was one
18 of the projects they wanted you to work on.

19 A Right.

20 Q And we talked about the parking lot a little bit
21 and these bunk houses. When Keith Rains was your
22 supervisor up to 2008, would you communicate
23 directly with the people at Morningstar or would
24 Keith Rains communicate with the people at
25 Morningstar?

1 A Until I got there, Keith did; but I then took over
2 the management responsibilities, and I had the
3 direct contact with the parties.

4 Q And who, at Morningstar, did you directly
5 communicate with?

6 A Pat Selvey.

7 Q And who is he?

8 A He was just my contact with them.

9 Q Do you know anything about his background?

10 A I don't remember his capacity or whatever. I just
11 remember his name.

12 Q In your --

13 A And then he signed the permit applications, he gave
14 me the checks for the review fees, so --

15 Q In your experience in dealing with Pat Selvey, did
16 it appear to you that he was an engineer or a
17 developer or have any particular expertise in the
18 development field?

19 A In my few meetings, he just acted as a developer.

20 Q Okay. So how would you communicate with Pat
21 Selvey?

22 A I'd bring whatever we were working on, at the time,
23 that needed his review and we -- We had a
24 development meeting, a coordination meeting at
25 Heritage USA one time, where the architect was

1 there. It was a coordination meeting.

2 Q And was that coordination meeting while Keith Rains
3 was still with Power?

4 A Yes, Keith was still there at the time.

5 Q So you and Keith attended this meeting --

6 A No, just me.

7 Q Just you?

8 A (Indicating yes)

9 Q Even though Keith was the direct contact -- or the
10 direct contact between Power and Morningstar, he
11 sent you to that meeting.

12 A Right.

13 Q Okay. And tell me what happened at that meeting.

14 A The architect was there, I was there, the
15 mechanical and plumbing guys were there, and we
16 just sat around and discussed coordination issues.

17 Q And was this before the parking lot and bunk house
18 projects were really underway?

19 A We were in the process of working on those, at the
20 time; that's hence, the coordination -- the need
21 for coordination meetings.

22 Q Had your work begun on the Tower project, at that
23 time?

24 A The only thing we were doing for the Tower was
25 supplying a fire sprinkler, a new fire sprinkler

1 line to the Tower.

2 Q Okay. But you were not in the process of obtaining
3 site plan approval, for instance, at that time.

4 A Well, yeah, the parking lot with a site plan. You
5 know, it was sitting in the middle of our parking
6 lot.

7 Q Was there a separate site plan approval process for
8 this parking lot -- for the parking lot
9 improvements, as opposed to the Tower project
10 itself?

11 MR. FENNEL: Objection. Go ahead.

12 BY THE WITNESS:

13 A They were connected because the parking lot
14 improvement was for the Tower.

15 Q Right. But is it your testimony that the -- When
16 you say parking lot improvements, there was a
17 process -- Let me back up. There was a process
18 that you went through with York County to obtain
19 site plan approval for the Tower itself, correct?

20 A Yes.

21 Q And is it your testimony that the parking lot
22 improvements you mentioned earlier was part of
23 that process, or was there a separate submittal and
24 comment and resubmittal process with York County
25 specific to just the parking lot?

1 MR. FENNEL: Objection. You can answer.

2 BY THE WITNESS:

3 A The parking lot, which was all I had -- my part of
4 the scope of this thing. The development was all
5 one big project. There were several little pieces
6 and parts to that project, one being, you know, the
7 parking lot. My involvement was getting that
8 parking lot approved.

9 Q Okay. But eventually, you had more involvement
10 over getting the Tower site approved; didn't you?

11 A In what way? I don't follow that one.

12 Q Well, so is it your testimony that, in obtaining
13 site plan approval for the Tower -- in the process
14 of obtaining site plan approval for the Tower, your
15 responsibility was only limited to the parking lot?

16 A The bunk house layout was important. The lake that
17 was there, we had to make an adjustment to the
18 outlet structure on the lake to handle an increase
19 in runoff. In the parking lot, they wanted water
20 quality control devices installed. There was
21 issues about the traffic impact. They had a
22 traffic impact study done. All that stuff had to
23 be, you know, looked at, as part of this project.

24 Q And all that would be part of the site plan
25 approval process for the Tower --

1 A Yes.

2 Q And so what did you do, when you reviewed these
3 comments?

4 A We needed to figure out how to address each one so
5 we can get an approval.

6 Q And how long do you recall that it took you to
7 address all of the problems that were recited in
8 this --

9 A Oh, I don't --

10 Q -- review comment?

11 A I don't even -- I don't recall.

12 Q But it wasn't something you could do in a day.

13 A No. No.

14 Q It took some time.

15 A Yes.

16 Whereupon - Document marked as Deposition
17 Exhibit 8.

18 Q I'm showing you what's been marked as Exhibit 8.
19 Can you identify that document?

20 A This is my transmittal back to York County of the
21 revised plans.

22 Q Okay. Is it fair to say that this document was
23 generated, as a result of the work you did in
24 responding to Exhibit 7, the review comments?

25 A Yes.

1 Q Why did you sign this document, instead of having
2 Joe continue to sign it?

3 A Because I was now in charge of this thing.

4 Q Was this perceived as a problem project, at this
5 point? Were you brought in to kind of fix things
6 or were -- Tell me about that.

7 A There was quality issues with the work that was
8 coming out of the Power Engineering office in
9 Charlotte, as a result of Keith Rains's lack of
10 management of the office.

11 Q Okay.

12 A That's just some background on this thing.

13 Q Okay.

14 A There was poor work coming out of that office. I
15 was brought up there to help out. And I was upset
16 by this stuff, so I took over this project.

17 Q Why were you upset by it?

18 A Because I don't stand for poor work.

19 Q Was Keith Rains gone as of March 31, 2009?

20 A No, he was still there.

21 Q What was his role, when you were there? When you
22 were working on this project, what was his role?

23 A He was supposed to be managing the office.

24 Q When you say supposed, does that mean he actually
25 wasn't?

1 A Is Keith Rains being under scrutiny here?

2 Q No, I --

3 A No. To my knowledge, he was not doing a good job.

4 Q Okay. Were there any conversations, that you were
5 aware of, between Power Engineering and
6 Morningstar about you taking over this project?

7 A Not to my recollection.

8 Q Nobody at Morningstar asked, what's going on?
9 Why isn't Keith involved in this project anymore?

10 A Not to my recollection.

11 Q Did you have any conversations with Morningstar to
12 tell them you're now in the Charlotte office and
13 taking over this project?

14 A I believe I discussed it with Pat.

15 Q Tell me about that conversation.

16 A I think it was just one of the meetings that Keith
17 sent me to, and I just told them that I would be
18 the contact.

19 Q Would that meeting have occurred before or after
20 Exhibit 8 was prepared?

21 A It probably would've been before.

22 Q How about Exhibit 5, January 29th; would that
23 meeting have occurred before or after --

24 A No, I don't believe it did.

25 Q So sometime between January and March of 2009 --

1 Q Okay. When did you stop working -- When were you
2 let go from Power Engineering?

3 A August of 2009.

4 Q Before or after August 24th of 2009?

5 A I think it was August 18th, 2009, was the actual
6 date.

7 Q Did you continue to do any work on this project
8 after August 18th of 2009?

9 A No.

10 Q And so the day that you went to meet with Billy was
11 the day you were let go, August 18th of 2009, --

12 A No.

13 Q Okay. Go back and look at Exhibit 11, please.

14 A Do I have my dates messed up? I must've got let go
15 in 2010. Must've been 2010 I got let go. I just
16 had the date screwed up.

17 Q Okay. Would it have been about August of 2010, or
18 was it sometime --

19 A Yeah, August 18th was the actual date.

20 Q So you were employed by Power Engineering for
21 about another year after you received this Notice
22 of Approval, Exhibit 14.

23 A Something's not jiving with me on these dates.

24 Q Okay. You were with Power Engineering for some
25 period of time after you received Exhibit 14.

1 Whereupon - Document marked as Deposition
2 Exhibit 19.

3 Q And Exhibit 19, can you identify that?

4 A This is Accounts Receivable Ledger.

5 Q So, in the process of billing, Exhibit 17 would be
6 a record of your time entries.

7 A (Indicating yes)

8 Q That would generate invoices represented by Exhibit
9 18. Those would go to the client, and then Exhibit
10 19 would be the record of payment by the client on
11 those.

12 A Payment received, yes.

13 Q Okay. And the last payment received on this
14 file was on what date?

15 A May 11, 2009.

16 Q Well, look up a little bit. Looks like an invoice
17 1390 and 1416.

18 A All right. They received, I guess, partial
19 payments in April 13, '08 on invoice 1390, and
20 received a partial payment on November 2nd, 2009,
21 on invoice 1416.

22 Q All that was after your departure, though.

23 A Yes. Well, the November 2nd, '09 one was. But we
24 weren't -- The engineers weren't privy to this.

25 Q Okay. To your knowledge, Morningstar had

1 authorized Power Engineering, and you specifically,
2 to communicate directly with York County?

3 MR. FENNELL: Objection.

4 BY MR. BALLOU:

5 Q Did they?

6 A Yes.

7 Q Were you aware of any restrictions placed on the
8 scope of your authority to communicate with York
9 County?

10 A No.

11 Q Based on that letter to Heritage -- to the bank
12 regarding Heritage Tower, Community One Bank, is
13 there any doubt in your mind that you did, in fact,
14 communicate with Morningstar about the status of
15 this project?

16 MR. FENNELL: Objection.

17 BY THE WITNESS:

18 A There was no doubt in my mind. I'm -- We
19 regularly, routinely notify the client of the
20 status of their projects.

21 Q Did you ever receive a complaint from Morningstar
22 that they didn't get information from you?

23 A I don't recall receiving any.

24 Q You're not aware of any?

25 A I'm not aware of any.

Deposition of Derrick Boyte

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

MORNINGSTAR FELLOWSHIP)
CHURCH,)

)
) PLAINTIFF,)

-VS-) CA NO. 2013-CP-46-00246
)

YORK COUNTY, SOUTH)
CAROLINA,)

)
) DEFENDANTS.)

_____)

DEPOSITION OF DERRICK E. BOYTE
COLUMBIA, SOUTH CAROLINA
MARCH 20, 2014

REPORTER: SHIRLEY DALLAS-GERRALD, CVR-CM

DALLAS REPORTING
SERVING THE CAROLINAS FOR OVER TWENTY-FIVE YEARS
ROCK HILL, SOUTH CAROLINA
803-328-9640/TOLL FREE 1-877-871-6363

1 Stormwater Department; so, if there was stormwater
2 questions, you know, she would've been there. But,
3 like I say, I do not know specifically who was
4 there that day.

5 Q Okay.

6 A I'd have to look at the comments.

7 Q Do you recall doing any work on the Morningstar
8 Tower Project after that meeting with the County?

9 A No, sir, I don't.

10 Q And you testified you didn't know whether this was
11 a fixed-fee contract or --

12 A I have not seen the contract.

13 Q And do you ever recall any discussions with anybody
14 about being upside-down on this project or --

15 A At the very end, when we were attempting to get
16 paid for the work, I was involved with -- Since I
17 was the only one in the engineering department left
18 from Charlotte, I did have some e-mail
19 correspondence back and forth trying -- attempting
20 to get paid the final invoices that we had billed.

21 Q And what were the issues y'all were dealing with,
22 at that point in time, trying to get paid?

23 A What type of issues are you referring to?

24 Q What were the subject of the e-mails? I mean,
25 what --

1 A It was just, you know, we have an outstanding
2 invoice, you know, can we receive payment, and why
3 have we not received payment.

4 Q Was there any reason given why payment hadn't been
5 received?

6 A One e-mail was -- The only e-mail that I recall
7 seeing was the fact that they had not received
8 copies of the stamped plans from the County.

9 Q Okay. Was this before or after Gerald was let go?

10 A I don't recall the exact date of when this e-mail
11 was.

12 Q If he was still with Power, he would've been copied
13 on an e-mail like that; wouldn't he?

14 A Not necessarily. When it comes to billing and
15 stuff like that, there was no need to have three or
16 four people in the office dealing with it.

17 Q Do you ever recall talking with Gerald about the
18 fact that Morningstar hadn't received a copy of the
19 stamped plans?

20 A No, I do not.

21 Q What did you do, in response to that e-mail, when
22 you were told that they hadn't received copies of
23 stamped plans?

24 A As I recall, from the e-mail that I wrote back to
25 them, that they would not receive stamped -- copies

1 of the stamped approved plans until the pre-con
2 meeting was held.

3 Q Okay.

4 A And it had not been set up.

5 Q And so that wasn't a concern for you that they
6 hadn't received the stamped plans.

7 A No, the plans, at that point -- My understanding
8 was, at that point, the plans were approved. It's
9 just the County does not give you copies of them
10 until you have the pre-con.

11 Q Okay. Did it appear to you that Morningstar was
12 using the fact that they hadn't received stamped
13 plans as a reason not to pay Power, pay a bill?

14 A Well, that was their first response and they -- As
15 I recall, they did pay, you know, once we had --
16 because, we did have -- I believe we would've
17 received a letter from York County saying the plans
18 are approved, which is not a copy of the plans
19 themselves.

20 Q Would you have received that or would Gerald have
21 received that?

22 A It would've come to the office and been filed.

23 Q Are you aware of such a letter existing?

24 A I have not personally laid eyes on it. I've been
25 told that it exists.

1 Q Okay. Let me show you what's marked, well, let's
2 see, Exhibit 19, that one with my notes on it. And
3 this is the Accounts Receivable Ledger?

4 A (Indicating yes)

5 Q There are payments under this file for a variety of
6 invoices, and I'll refer you to the first section
7 where it says 62180.21 and there's a payment in
8 April of 2009. Do you see that?

9 A Yes.

10 Q And then a payment November 2nd of 2009.

11 A Okay.

12 Q And then a payment on April 28th of -- Well,
13 actually, let's go down a little bit -- made a
14 payment on January 20th of 2010, and then a payment
15 on April 28th of 2010. Do you see those?

16 A Yes, I do.

17 Q Do you know whether those payments were associated,
18 in any way, with the conversation that you just
19 described about Morningstar wanting a copy of the
20 stamped plans?

21 A As I recall, they were; at least, the \$1,000, the
22 very last payment on 4/28.

23 Q So you think that conversation would've occurred as
24 late as 4/28/2010?

25 A As I recall, it was January that I had that e-mail,

Deposition of Patrick Selvey

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK CASE NO.:2013-CP-46-00246

MORNINGSTAR FELLOWSHIP,)
CHURCH,)
 Plaintiff,)
)
 vs.)
)
YORK COUNTY,)
SOUTH CAROLINA,)
)
 Defendants.)
_____)

VIDEOTAPED DEPOSITION OF PATRICK SELVEY
WILKESBORO, NORTH CAROLINA
AUGUST 19, 2014

REPORTER: WENDY ALCOCK, RPR

1 wanted on the plans and they actually allowed me to just
2 write the changes on the previously submitted drawings.
3 This is the last of the comments and it's my understanding
4 they will be issuing their approval letter next. We
5 probably need to talk again to discuss where we need to go
6 from this point. Please call me at your earliest
7 convenience.

8 "There is also an issue of past due billings.
9 Since we did not have the approval on the work we did, I
10 did not push the issue, but now that we do I need to bring
11 it up. The last payment we received from MorningStar I
12 believe was back in January and it was a partial payment.
13 We need to get current with billings. Thanks."

14 Q. So there are two things going on in this email,
15 correct?

16 A. Uh-huh.

17 Q. There's notice to you that approval has been
18 received.

19 A. Unfortunately, the approval wasn't from the
20 County, though.

21 Q. Okay. But your engineer is telling you you've
22 got approval.

23 A. He's telling me he's done with the comments.

24 Q. He says, "Now that we do, now that we have
25 approval, we need to get the invoices done."

1 A. Well, he says, "My understanding is that they
2 will be issuing their approval letter next." So he's
3 still pointing to the future saying, "York County has not
4 approved it yet, but my understanding is they will be."
5 That's what I'm seeing there.

6 Q. This will be Exhibit 7.
7 (Exhibit Number 7 was marked for identification.)

8 A. Is this -- okay, looks like a month later.

9 Q. Let me look back at Exhibit 6 again. Did you
10 ever see those emails in Exhibit 6 prior to this case?

11 A. I could have, I just don't remember.

12 Q. Do you recall any conversation with Patricia
13 Smith about receiving approval and getting the invoices
14 from Power Engineering caught up in August of 2009?

15 A. I was aware that Power was saying, "We're
16 finished. Pay us." And I was aware that we did pay them
17 before we received the site plan approval, which is not
18 normal. It's normal to hold a retainage. But we didn't
19 receive it. But their work was done and they finally
20 convinced us that they weren't the holdup. So I was aware
21 of that. I'm not sure if it was through this email that
22 piqued to that, the beginning of that.

23 Q. And so you were aware in August and September of
24 2009 that Power had said, "We're finished"?

25 A. Yes.

1 us. But they're holding it." Because I said, "Where is
2 it? Why didn't you get it?" "They won't give it to us."
3 "Why?" "They're holding it until they meet with you and
4 your contractors."

5 So I'm busy working, and in the back of my mind
6 I'm waiting for them to give us a call and say, "We would
7 like to call for a meeting."

8 Q. And so your understanding is, in the next email
9 on Exhibit 2, where it says -- this is Derrick Boyte to
10 Patricia Smith, "I do not understand why Pat thinks the
11 project is not approved."

12 A. Uh-huh.

13 Q. Clearly Derrick thinks the project is approved,
14 right?

15 A. You'd have to ask Derrick.

16 Q. Well, he can't understand why you think it's
17 not, right?

18 A. He's trying to convince me to pay him.

19 Q. That's what he's saying though, right?

20 A. He's trying to convince me the site plan is
21 approved and I need to pay them.

22 Q. All right. Well, you would agree with me that
23 what he wrote is, "I do not understand why Pat thinks the
24 project is not approved." That's what he wrote.

25 A. That's exactly what he wrote, yeah.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2015-CP-46-002460

Morningstar Fellowship Church,

Appellant/Respondent

v.

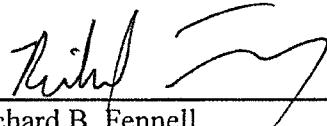
York County, South Carolina,

Respondent/Appellant

CERTIFICATE OF COUNSEL

I certify that the Appendix to the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 6, 2016


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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2015-CP-46-002460

Morningstar Fellowship Church,

Appellant/Respondent

v.

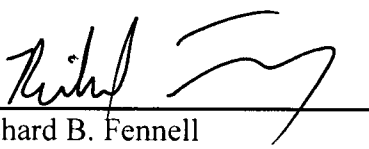
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